

EUROPEAN MIGRATION NETWORK

National Contact Point for Malta

THE PRACTICE IN MALTA CONCERNING THE GRANTING OF NON-EU HARMONISED PROTECTION STATUSES

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Executive Summary

The Maltese asylum framework presently provides for the granting of Refugee status and Subsidiary Protection in accordance with Directive 2004/83, the Qualification Directive. The relevant provisions relating to both forms of international protection have been transposed into the Refugees Act and the Procedural standards in examining applications for refugee status Regulations, which a) introduce the actors involved and enumerate their respective competencies, b) detail the protection regimes in place, and c) establish the asylum procedure.

The non-EU harmonised form of protection granted in Malta, Temporary Humanitarian Protection, was introduced late in 2008. This status is awarded as a result of a policy initiative rather than legislation, which affords the Office of the Refugee Commissioner a greater degree of discretion and flexibility. Hence, this form of protection can be granted whenever necessary, and that particular cases which may arise, but cannot be foreseen, may nevertheless benefit from it.

Temporary Humanitarian Protection may be granted a) whenever the applicant is a minor, b) where the Refugee Commissioner considers that the applicant should not be returned to his country of origin on medical grounds, and c) where the Refugee Commissioner considers that the applicant should not be returned to his country of origin on other humanitarian grounds.

In view of the recent introduction of this status into the national asylum framework a conclusive assessment of this status and its implementation cannot be made. As at end of May 2009 six asylum applicants have been granted Temporary Humanitarian Protection.

The Maltese asylum framework operates on the single procedure model, whereby the Office of the Refugee Commissioner first examines whether an asylum applicant qualifies for Refugee status. In the event that the applicant is deemed not to qualify for Refugee status, an assessment is made in relation to whether he qualifies for Subsidiary Protection. Temporary Humanitarian Protection is only considered when the applicant is deemed not to qualify for either form of EU harmonised status.

Asylum applicants whose claim is rejected, or who are awarded Subsidiary Protection or Temporary Humanitarian Protection, may file an appeal with the Refugee Appeals Board. Free legal aid is provided at this stage of the procedure.

The Maltese asylum procedure also provides for the filing of subsequent applications, whereby an applicant may submit a fresh application if new elements or findings are presented which could not have been submitted earlier. The present legislative framework also caters for an accelerated procedure in relation to inadmissible and manifestly unfounded applications.

The entitlements of beneficiaries of international protection include the right to remain in Malta for a prescribed period, subject to renewal, the right to a travel document, as well

as access to employment, social welfare, accommodation, integration programmes, State education and training and, in the case of refugees, family reunification. Beneficiaries of Subsidiary Protection are substantially entitled to the same benefits, although access to employment may be limited subject to labour market considerations, and access to social welfare and medical care is limited to core benefits. Beneficiaries of Temporary Humanitarian Protection are granted access to the same benefits as beneficiaries of Subsidiary Protection.

At present no conclusions can be drawn in relation to national opinions on the granting of Temporary Humanitarian Protection in view of the very recent introduction of this status.

1. INTRODUCTION: PURPOSE AND METHODOLOGY FOLLOWED

The aim of this study is to provide information as to non-EU harmonised protection granted in Malta. To this end, the report provides an overview of Temporary Humanitarian Protection, a national form of protection available alongside the EU-harmonised Refugee status and Subsidiary protection. It is intended to give an overview of the relevant procedures and rights, as well as the implementation aspects, supported by statistics.

It is envisaged that this report will be of use to officials and practitioners, as well as non-governmental organisations and international organisations seeking information about the various forms of protection available in Malta. Moreover, members of the general public who are interested in asylum legislation and policy may find this Report a useful source of information.

1.1 Methodology

This national report was drawn up by the Policy Development Directorate within the Ministry for Justice and Home Affairs in collaboration with the Office of the Refugee Commissioner. It is the result of desk research, complemented by practical experience in the processing of applications for international protection.

Official sources of information were used wherever possible. Documentary sources used were mainly the relevant legislative instruments and policy documents, while information regarding the practical implementation of the legislation and policy, including statistics, were provided by the Office of the Refugee Commissioner.

While no particular difficulties were encountered in preparing the study itself, it is important to note that Temporary Humanitarian Protection, the national form of protection granted in Malta, was only introduced towards the end of 2008, and it was first granted in December 2008. Consequently, it is still premature to attempt an in-depth analysis of its practical implementation and the consequences thereof. The Report is, therefore, necessarily restricted to providing the framework for the granting of Temporary Humanitarian Protection on the basis of the policy established in its regard. Statistics relating to this form of protection also provide only limited insight, since the reference period covered is relatively short.

Nevertheless, although this form of national protection was only recently introduced into the Maltese asylum framework, this should not be misinterpreted as meaning that cases falling within this category were previously ineligible for any form of protection. It should be borne in mind that prior to the transposition of *Council Directive 2004/83/EC 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*¹ into Maltese law, in July 2008, a protection

¹ Hereinafter referred to as the Qualification Directive.

status known as 'Humanitarian Protection' covered all cases which now qualify for subsidiary protection or temporary humanitarian protection.

2. PROTECTION STATUSES GRANTED IN MALTA

At present, there are three different protection statuses which can be granted by Maltese authorities. Refugee status and Subsidiary Protection are covered by the Qualification Directive, while the third form, Temporary Humanitarian Protection, is a national status not covered by the said Directive. The aim of this status is to reduce the existing protection gap for those asylum seekers who do not qualify for refugee status or subsidiary protection but nonetheless require some form of protection. These three forms of protection are further described below.

2.1 EU statuses covered by the definitions of Directive 2004/83

Directive 2004/83, the Qualification Directive, provides that ‘international protection’ means refugee and subsidiary protection status, as each defined within the Directive itself. The provisions relating to these statuses were transposed into the Refugees Act² and the Procedural standards in examining applications for refugee status Regulations³. These legal texts represent the basis of Malta’s international protection system since they: (1) introduce the actors involved and enumerate their respective competencies; (2) detail the protection regimes in place; and (3) establish the asylum procedure. Refugee and Subsidiary Protection status may therefore be granted by the Maltese Office of the Refugee Commissioner on the basis of these legislative instruments.

2.1.1 Refugee Status

2.1.1.1 Legislative Framework

The legislative framework governing Refugee status is provided by the Refugees Act and the Procedural Standards Regulations.

Refugee status was originally provided for in the Refugees Act adopted by means of Act XX of 2000 pursuant to Malta’s accession to the 1951 Convention relating to the Status of Refugees (1971) and the 1967 Protocol relating to the Status of Refugees (1971). It should be noted that reservations made by Malta upon accession to those instruments were all withdrawn by 24 February 2004⁴. The Refugees Act was then amended by Act VIII of 2004, Legal Notices 40 of 2005 and 426 of 2007, and Act VII of 2008.

² Chapter 420 of the Laws of Malta

³ Subsidiary Legislation 420.07, hereinafter referred to as the Procedural Standards Regulations.

⁴ Most had been withdrawn on the 13th December 2001

2.1.1.2 Definition

Article 2 of the Refugees Act defines Refugee status as the recognition of a third country national or stateless person as a refugee. A *refugee* is in turn defined within the same Article as:

‘a third country national 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’.

Pursuant to Article 8(2) of the Refugees Act, *a well-founded fear of persecution may be based on events which have taken place after applicant has left his country of origin or activities engaged in by applicant since leaving the country of origin, except when based on circumstances which the applicant has created by his own decision since leaving the country of origin.*

On the other hand Article 12(1) excludes a third country national or stateless person from being recognised as a refugee if he or she:

- *falls within the scope of Article 1D of the Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees ...*
- *is recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, or equivalent rights and obligations*

Similarly, recognition of refugee status is excluded under Article 12(2) if there are serious reasons for considering that the third country national or stateless person has:

- committed a crime against peace, a war crime, or a crime against humanity,
- committed a serious non-political crime outside the country of refuge, prior to his admission as a refugee,
- been guilty of acts contrary to the purposes and principles of the United Nations.

The same exclusion applies to persons who instigate or otherwise participate in the commission of the abovementioned crimes or acts⁵.

⁵ Refugees Act, Article 12(3)

2.1.1.3 Implementation in practice

The Office of the Refugee Commissioner, when considering an application for refugee status and in view of assessing fear of persecution, takes into account the elements of race, religion, nationality, social group and political opinion. It is also acknowledged that the applicant may not actually possess the relevant racial, religious, national, social or political characteristic, but he/she may be persecuted because such a characteristic is attributed to the applicant by the actor of persecution.

2.1.2 ***Subsidiary Protection Status***

2.1.2.1 Legislative Framework

As for Refugee Status, the legislative framework governing Subsidiary Protection is composed of the Refugees Act and the Procedural Standards Regulations.

Subsidiary Protection was introduced into Maltese legislation in 2008, with the transposition of the Qualification Directive. Prior to that however, the Refugees Act provided for Humanitarian Protection status, which constituted special leave to remain in Malta for those persons who did not qualify for Refugee status but could not have returned safely to their country of origin. The Subsidiary Protection status introduced in 2008 is therefore very similar.

2.1.2.2 Definition

Pursuant to Article 17(1) of the Refugees Act, Subsidiary Protection may be granted where the applicant does not qualify for Refugee status, but where there are substantial grounds for believing that, if returned to his country of origin, or in the case of a stateless person, to his country of former habitual residence, the applicant would face a real risk of suffering serious harm. According to Article 2, *serious harm* is defined as:

- (a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

However, a person is excluded from subsidiary protection where

- (a) he has committed a crime against peace, a war crime, or a crime against humanity,
- (b) he has committed a serious crime,
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations
- (d) he constitutes a danger to the community or to the security of Malta

The same applies to persons who instigate or participate in the commission of such acts.

Furthermore, the Refugee Commissioner has discretion to exclude an applicant from obtaining Subsidiary Protection if, prior to his admission to Malta, that applicant committed a crime which would be punishable with imprisonment had it been committed in Malta, and if the applicant left his country of origin solely to escape punishment resulting from that crime.

2.1.2.3 Implementation in practice

Around 50% of asylum applicants are granted international protection by the Maltese authorities each year. A considerable majority of that 50% are found not to be eligible for refugee status, but qualify for subsidiary protection (and previously *Humanitarian Protection*). In fact, out of the 4,229 persons granted international protection between January 2002 and December 2008, 2,630 were granted the former humanitarian protection and 1,387 were granted subsidiary protection.

The principal reason for this high rate of protection is the fact that a significant number of applicants in Malta originate from regions characterized by conflicts, in particular the Horn of Africa. Somalia is in fact one of the major countries of origin for asylum seekers in Malta. Although most applicants fail to substantiate their claim for refugee status, they are still considered to qualify for subsidiary protection due to the fact that their return would expose them to a real risk of serious harm, in view of conflicts in the region. This practice is in line with recommendations issued by the UNHCR, particularly the '[UNHCR Advisory on the Return of Somali Nationals to Somalia](#).'⁶ In this document '*UNHCR acknowledges that not all Somali asylum-seekers may qualify for refugee status under the 1951 Convention. However, UNHCR considers that asylum-seekers originating from southern and central Somalia are in need of international protection and, excepting exclusion grounds, should be granted, if not refugee status, then complementary forms of protection.*'

2.2 National statuses not covered by the Directive

Although Subsidiary Protection is very similar to the previous Humanitarian Protection regime as regards its definition and application, the latter extended also to certain cases which do not qualify for Subsidiary Protection as defined above⁷. A new status, Temporary Humanitarian Protection was therefore introduced alongside Refugee status and Subsidiary Protection, in order to cover these cases. Temporary Humanitarian Protection was introduced at the end of 2008, with the first beneficiaries in December 2008.

⁶ UN High Commissioner for Refugees, *UNHCR Advisory on the Return of Somali Nationals to Somalia*, 2 November 2005. Online. UNHCR Refworld

⁷ See Section 2.1.2

2.2.1 Temporary Humanitarian Protection

2.2.1.1 Legislative Framework

Temporary Humanitarian Protection was introduced in the form of a policy, rather than legislation. This affords the Refugee Commissioner a greater degree of discretion and flexibility, thus ensuring that this form of protection can be granted whenever it is considered necessary, and that particular cases which may arise, but which cannot be foreseen, may however, benefit from it. Nevertheless, Temporary Humanitarian Protection falls within the asylum policy framework, so much so that it closely resembles Subsidiary Protection, with the principal difference lying in the qualification criteria.

2.2.1.2 Definition

Temporary Humanitarian Protection is a form of protection granted to applicants who do not satisfy the conditions for Refugee status or Subsidiary Protection as laid down in the Qualification Directive and the corresponding provisions of the Refugees Act and Procedural Standards Regulations, but who nonetheless should not be returned in view of humanitarian considerations.

Temporary Humanitarian Protection affords the beneficiary the same protection as that enjoyed under Subsidiary Protection. It may be granted:

- a. Where the applicant is a minor;
- b. Where the Refugee Commissioner considers that the applicant should not be returned to his country of origin on medical grounds;
- c. Where the Refugee Commissioner considers that the applicant should not be returned to his country of origin on other humanitarian grounds;

2.2.1.3 Implementation in Practice

The introduction of Temporary Humanitarian Protection as a national protection status ensures that special humanitarian cases can be granted protection even where they do not fall within the categories covered by the legislative framework governing Refugee status and Subsidiary Protection.

Given that this new status has been awarded only since December 2008, it is still too early to undertake an analysis of its implementation and the effects. It may however be noted that 2 persons were granted Temporary Humanitarian Protection during December 2008, and a further 4 persons were granted this status between January and May 2009. This could be considered sufficient preliminary evidence of the need for this more flexible form of protection on the one hand, and the fact that it is not applied too restrictively on the other.

3. PROCEDURES FOLLOWED AND RIGHTS PROVIDED

Malta has adopted a single asylum procedure. The Office of the Refugee Commissioner, as stipulated by law, may recommend two types of protection: (a) Refugee status; and (b) Subsidiary Protection. At the discretion of the Refugee Commissioner, a failed asylum seeker who is nonetheless considered to be in need of protection due to special humanitarian reasons may be granted Temporary Humanitarian Protection.

3.1 Procedure

3.1.1 *Single Procedure*

Article 4 of the Procedural Standards Regulations stipulates that an application for Refugee status may be submitted, in the prescribed form, to the Refugee Commissioner, who is responsible for receiving, examining and determining asylum applications. A person wishing to apply for international protection shall also be advised on how and where he may make such application and where necessary, assistance is also provided in forwarding such application to the Refugee Commissioner. An asylum application must be submitted within 60 days from the applicant's arrival in Malta. However, the Refugee Commissioner has discretion to allow an application after the expiry of this time period where there are "special and exceptional reasons".

Prior to the asylum determination process, the applicant is informed of his rights and duties as stipulated by law. The procedure to be followed is explained, and the applicant is informed, *inter alia*, of his right to legal assistance during all phases of the asylum procedures as well as his right to consult the UNHCR. Whenever necessary, the services of an interpreter are provided.

In practice, almost all applicants enter Malta illegally, by boat, having reportedly departed from the Libyan coast. Upon arrival, all illegal immigrants are provided with an information booklet in different languages by Immigration Officers. They are also given various other documents and a preliminary questionnaire, available in various languages including Amharic, Arabic, English, French, Hausa, Somali and Tigrinya. By filling and submitting this preliminary questionnaire, third country nationals register their desire to apply for international protection.

A personal interview is then held with each applicant, by the competent persons from the Office of the Refugee Commissioner, where necessary with the assistance of an interpreter, under conditions which ensure confidentiality, allowing the applicant to present his case in a comprehensive manner. The applicant is required to provide all the evidence supporting his application. A legal adviser, as well as a UNHCR representative, may be present for the interview.

The Refugee Commissioner must then examine the application as soon as possible; however no specific timeframe is set by the law for the elaboration of the Commissioner's recommendation on the case. Nevertheless, where a recommendation

cannot be made within 6 months, the applicant is either informed of the delay, or upon his request, is informed about the timeframe within which a decision may be expected

The Office of the Refugee Commissioner 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 Office of the Refugee Commissioner then proceeds to make a recommendation to the Minister of Justice and Home Affairs. Every recommendation made by the Refugee Commissioner has to be in writing and motivated. Applicants are also 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.

Upon the recommendation of the Refugee Commissioner, the Minister officially declares the applicant a Refugee, beneficiary of Subsidiary Protection, or beneficiary of Temporary Humanitarian Protection as the case may be and he will be entitled to the rights attached thereto.

Where the Refugee Commissioner comes to the conclusion that the conditions to declare an applicant a Refugee are not satisfied and therefore recommends the granting of Subsidiary Protection, the Refugees Act specifically requires that the decision granting Subsidiary Protection *be given in conjunction with the formal determination that the applicant does not meet the criteria of a refugee*. This ensures that an applicant granted Subsidiary Protection may nevertheless appeal with a view to obtaining Refugee status. This is also applicable where the Refugee Commissioner recommends the granting of Temporary Humanitarian Protection.

3.1.2 Appeal

It is possible for the applicant or the Minister to appeal from the Refugee Commissioner's recommendation. Such appeal is made to the Refugee Appeals Board within fifteen days from the notification to the applicant of the recommendation. The services of an interpreter are provided at the appeal stage too, while the applicant is also entitled to free legal aid under the same conditions as Maltese citizens. A UNHCR representative is also entitled to attend the hearings. Should the Minister appeal a recommendation of the Refugee Commissioner, applicants in custody awaiting the execution of a *removal order* would be released until the Refugee Appeals Board takes a decision. The decision given by the Refugee Appeals Board is final, and no appeal is possible, unless a violation of human rights or fundamental freedoms is alleged.

3.1.3 Subsequent Application

The Refugees Act, as amended by Act VII of 2008, also introduced the subsequent application procedure, whereby an applicant who has had his or her case rejected, may submit a second application if new elements or findings are presented, of which the applicant could not have been aware before, or which he could not have submitted earlier⁸. The subsequent application must be made within 15 days from when the new elements become known or available, as the case may be. Subsequent applications also have the effect of suspending removal orders, since the applicant is entitled to remain in Malta until a final decision is given. Moreover, a right of appeal also lies from the decision given upon such subsequent application.

3.1.4 Accelerated Procedure

Under certain circumstances, an accelerated procedure may apply. According to Article 23 of the Refugees Act, this accelerated procedure applies when an application is *prima facie* manifestly unfounded, while Article 24 renders the same procedure applicable to inadmissible applications.

Pursuant to Article 2, a *manifestly unfounded application* is one (a) which is not related to refugee grounds as defined in the Convention; or (b) which is totally lacking in substance and the applicant provides no indications that he would be exposed to fear of persecution in his own country or his story contains no circumstantial or personal details; or (c) in relation to which the applicant gives clearly insufficient details or evidence to substantiate his claim and his story is inconsistent, contradictory or fundamentally improbable; or (d) in relation to which applicant bases his application on a false identity or on forged or counterfeit documents which he maintains as genuine when questioned about them; or (e) in relation to which applicant deliberately made false representations of a substantial nature; or (f) in relation to which applicant, without reasonable cause and in bad faith, destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim, either in order to establish a false identity for the purpose of his application or to make the consideration of his application by the authorities more difficult; or (g) in relation to which applicant deliberately failed to reveal that he had previously lodged an application for asylum in another country; or (h) in relation to which the applicant, having had ample earlier opportunity to submit an asylum application, submitted the application in order to forestall an impending removal order from Malta, and did not provide a valid explanation for not having applied earlier; or (i) in relation to which applicant has flagrantly failed to comply with the substantive obligations imposed by Malta's legal provisions relating to asylum procedures; or (j) prior to which the applicant had made an application for recognition as a refugee in a country party to the Convention, and the Commissioner is satisfied that his application was properly considered and rejected in that country and the applicant has failed to show a material change of these circumstances; or (k) when the applicant for asylum comes from a safe country of origin.

⁸ Article 7A

Where the Refugee Commissioner is of the opinion, at whichever stage, that the application is *prima facie* manifestly unfounded, he must examine the application within three working days, and if applicable, will recommend that the application is manifestly unfounded. The applicant is informed of his rights to be assisted by a legal adviser and to consult UNHCR. The Refugee Commissioner's recommendation is then immediately referred to the Chairman of the Refugee Appeals Board, who reviews the recommendation within a further three working days. The decision of the Chairman is final and conclusive, and no appeal is possible, with the exception of actions relating to human rights claims.

Similarly, an accelerated procedure is applied where the application is inadmissible. According to Article 24 of the Refugees Act an application is considered inadmissible if:

(a) another Member State has granted refugee status or is obliged to examine the particular application for asylum in terms of Council Regulation 343/03/EC; (b) a country which is not a Member State is considered as a first country of asylum for the applicant; (c) a country which is not a Member State is considered as a safe third country for the applicant; (d) the applicant is allowed to stay in Malta on some other grounds and as a result of this he has been granted a status comparable to the rights and benefits of the refugee status; (e) the applicant is allowed to stay in Malta on some other grounds which protect him against *refoulement* pending the outcome of a procedure for the determination of his status; (f) the applicant has lodged an identical application after a final decision; (g) a dependant of the applicant lodges an application after consenting to have his case be part of an application made on his behalf, and there are no facts relating to the dependant person's situation which justify a separate application; (h) has been recognized in a country which is not a member state as a refugee and can still avail himself of that protection or otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*, and such person can be re-admitted to that country; or (i) is a national or citizen of any safe country of origin listed in the Schedule or, if he is not a national or citizen thereof, he has a right of residence therein.

As with manifestly unfounded applications, the Refugee Commissioner gives a recommendation within 3 days, and the Chairman of the Refugee Appeals Board reviews that recommendation within a further 3 days.

3.1.5 Suspension of removals

During the entire procedure, asylum applicants cannot be removed from Malta. Article 12(1) of the Procedural Standards Regulations specifically entitles applicants to remain in Malta until a final decision has been given. In this regard, the application at first instance, as well as the appeal and subsequent applications, have the effect of suspending the removal order.

3.2 Rights attached to each form of protection

3.2.1 Rights attached to Refugee Status

A person recognized as a Refugee is entitled to a 3-year renewable residence permit, a Convention Travel Document, as well as a number of social rights namely access to employment, social welfare, accommodation, state education and integration programmes, and medical care. Article 14(1)(a) of the Procedural Standards Regulations thus stipulates that a Refugee is entitled:

- (i) to remain in Malta with freedom of movement, and to be granted personal documents, including a residence permit for a period of three years, which shall be renewable. However, a residence permit granted to a family member may be for less than three years, although it is also renewable;
- (ii) 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;

Article 14(2)(a) also provides that the dependent family members of a Refugee who are in Malta when the decision granting Refugee status is given, or if they join him in Malta, also enjoy the same rights and benefits (with the exception of the length of the residence permit) as the Refugee, so as to maintain family unity. Pursuant to the definition of *dependent members of the family* provided in the Refugees Act, these rights extend to the spouse of the Refugee if the marriage subsisted when the Refugee's application was made, and the children of the Refugee who are under eighteen years old and unmarried on the date of the Refugee's application.

3.2.2 Rights attached to Subsidiary Protection

The rights attached to Subsidiary Protection are broadly similar to those granted to refugees. The main differences lie in the duration of the residence permit granted, the limitation of social welfare benefits and medical care to those which constitute *core* benefits and care, and the subjection of access to employment to labour market considerations. Beneficiaries of subsidiary protection may also be provided with an Aliens Travel Document.

Article 14(1)(b) thus provides that a person enjoying Subsidiary Protection shall be entitled –

- (i) without prejudice to the provisions of articles 21 [cessation] and 22 [revocation and refusal to renew] 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.

Furthermore, Article 14(2)(b) extends to the dependant members of the family of a person granted Subsidiary Protection, if they are in Malta at the time of decision, the same rights and benefits as the person enjoying Subsidiary Protection so that family unity may be maintained. This provision governing the rights of dependent family members of a person granted Subsidiary Protection is equivalent to that applicable to the family members of Refugees, and the definition of *dependent family members* is the same in both cases.

3.2.3 Rights attached to Temporary Humanitarian Protection

A person who is granted Temporary Humanitarian Protection is given similar rights as those granted to beneficiaries of Subsidiary Protection under Article 14 of the Procedural Standards Regulations outlined above⁹.

Persons granted Temporary Humanitarian Protection are allowed to remain in Malta for one year. This status may also be renewed for further periods of one year, by means of a declaration by the Minister, upon the recommendation of the Refugee Commissioner, if the circumstances warranting temporary humanitarian protection subsist.

3.2.4 Renewal obligations

As stated in the foregoing sections, Refugee status is granted for three years and may be renewed for further three-year periods. Subsidiary Protection and Temporary Humanitarian Protection on the other hand are granted for a period of one year, and may be renewed for further one-year periods. Renewal is made by the Office of the Refugee Commissioner, provided the conditions for granting the form of protection in question still subsist, and provided that none of the grounds for cessation, revocation or refusal to renew exist. These grounds are established by the Refugees Act for Refugee status and Subsidiary Protection. With regard to Temporary Humanitarian Protection, those grounds applicable to Subsidiary Protection also apply, insofar as they are of relevance to Temporary Humanitarian Protection status.

⁹ See Section 3.2.2

3.2.4.1 Cessation, Revocation and Refusal to Renew Refugee Status

Article 9 of the Refugees Act provides that a person *ceases* to possess Refugee status if he:

- (a) 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,
- (b) has acquired a new nationality and enjoys the protection of the country of his new nationality,
- (c) has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution,
- (d) can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality,
- (e) 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 person in question must be notified of such cessation, and is entitled to appeal from the decision within 15 days from the notification. Such appeal is lodged with the Refugee Appeals Board, and the appellant is entitled to free legal aid and the assistance of an interpreter.

According to Article 10 of the Refugees Act, the Minister *shall revoke* a declaration of Refugee status if a person has been erroneously recognized as a Refugee on an application which contains any materially incorrect or false information, or if he was so recognized owing to fraud, forgery, false or misleading representation of a material or substantial nature in relation to the application. In such cases, the person in question must be informed in writing that his qualification for Refugee status is being reconsidered. He is given reasons for such reconsideration as well as the opportunity to submit, in a personal interview, reasons as to why his Refugee status should not be withdrawn.

Article 11 then lays down circumstances in which the Minister *may revoke* or *refuse to renew* Refugee status, namely when there are reasonable grounds for regarding the person as a danger to the security of Malta, or when, having been convicted by a final judgment of a particularly serious crime, he constitutes a danger to the community of Malta. In such cases, the person concerned may appeal from this decision to the Refugee Appeals Board, within 7 days from the notification to him of that decision.

3.2.4.2 Cessation, Revocation and Refusal to Renew Subsidiary Protection Status

Pursuant to Article 21 of the Refugees Act, Subsidiary Protection shall *cease* if the circumstances warranting that status have ceased to exist, or if circumstances have changed to the extent that protection is no longer required. In the latter case however, the change must be of a significant and non-temporary nature, so that the person in question no longer faces a real risk of serious harm.

Article 22 then establishes the circumstances in which Subsidiary Protection *must be revoked and renewal must be refused*, namely where:

- (a) after having been granted subsidiary protection, that person should have been or is excluded from being eligible, in accordance with the exclusion provisions outlined above; or
- (b) that person's misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection.

3.2.4.3 Cessation, Revocation and Refusal to Renew Temporary Humanitarian Protection

Temporary Humanitarian Protection ceases, may be revoked and renewal may be refused, on the same grounds as those for the cessation or revocation of Subsidiary Protection. The main reason would most likely be where the circumstances for which the protection was granted no longer subsist. Since Temporary Humanitarian Protection has only started being granted recently, no cases of cessation, revocation or refusal to renew have arisen as yet.

4 STATISTICS ON PROTECTION

Between January 2004 and December 2008, 7,401 asylum applications were lodged with the Office of the Refugee Commissioner. In 2008 alone, 2,607 applications were submitted, amounting to 6.4 applications per 1,000 inhabitants in Malta, the largest proportion among all industrialised countries.

During the same period, the Office of the Refugee Commissioner made a recommendation on 6,801 applications, out of which 3,084 were rejected and 3,717 accepted, while a further 149 applicants withdrew their application. This indicates a recognition rate of around 55%, the highest in the European Union. Of those granted protection 137 were recognised as refugees, while 3,578 were granted humanitarian or subsidiary protection. 2 persons were granted the new Temporary Humanitarian Protection towards the end of 2008.

Of those granted refugee status, the largest number originated from Palestine in 2005, whereas between 2006 and 2008, Somalia and Eritrea were the countries of origin for the largest number of persons recognised as refugees. With regard to subsidiary protection, the large majority originated from Somalia, while considerable numbers also originated from Eritrea.

Most recommendations given by the Office of the Refugee Commissioner have been confirmed on appeal. In fact, of the appeals lodged with the Refugee Appeals Board between 2004 and 2008, 6 recommendations have been overturned, with the appellants recognised as refugees. Of these, 4 were within the 25-35 age group, 1 was a minor, while the last was between 18 and 25 years old. This is also a reflection of the profile of migrants reaching Malta illegally by boat, who subsequently proceed to seek asylum.

Considering appeals lodged during 2008, a large proportion of the 911 appeals were submitted by persons claiming to be nationals of Ivory Coast (20.6%), Nigeria (18.6%) or Mali (13.4%). The overwhelming majority of appeals were lodged by males (92.9%), also reflecting the composition of illegal migration flows to Malta. Moreover, almost half the appellants had never received any schooling.

5. NATIONAL OPINIONS ON THE GRANTING OF PROTECTION

Given that the national status of Temporary Humanitarian Protection has only been recently introduced, it may be considered somewhat early to identify definitive opinions. It would be appropriate to allow time for the granting of this form of protection to unfold, and for the consequences thereof to become apparent, in order to enable the identification of its strengths and weaknesses and to evaluate its practical application.

Nevertheless, some views have already been expressed. Generally, the introduction of Temporary Humanitarian Protection has been welcomed, particularly since it allows protection to be afforded to a broader category of persons than that covered by the relevant EU Directives, the Refugees Act and relevant subsidiary legislation, thus filling a *lacuna* that came about as a result of the replacement of the former Humanitarian Protection status with Subsidiary Protection.

On the other hand, some concerns have also been raised by NGOs working in the field. Among these, is the possibility of granting Temporary Humanitarian Protection on particular 'humanitarian grounds', in addition to the grounds referring specifically to health and age. It has been argued that this allows the Refugee Commissioner discretion, and the grounds should therefore be further specified, possibly with reference to human rights. It has also been recommended that the possibility of appeal from or review of decisions granting or withdrawing Temporary Humanitarian Protection should be provided for, independently of the appeal available from the decision that the applicant is ineligible for refugee or subsidiary protection.

The fact that the granting of Temporary Humanitarian Protection is not provided for in the relevant legislation has also been criticised as rendering this form of protection discretionary. Moreover, it has also been argued that its introduction should have been given more publicity.

Finally, it has been observed that an applicant may not apply for Temporary Humanitarian protection directly, but this form of protection is only granted where an application for refugee status or subsidiary protection has been rejected. It has also been suggested that consideration should be given to the possibility of granting this form of protection *after* a final decision has been taken rejecting an application.

ANNEX 1: BIBLIOGRAPHY

Legal Instruments

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ANNEX 2: STATISTICS

A2.1 Applications lodged and decisions given at first instance 2004 – 2008

	2004	2005	2006	2007	2008	2004-2008
Applications lodged	977 (851 cases)	1166 (1119 cases)	1272 (1203 cases)	1379 (1354 cases)	2607 (2515 cases)	7401
Refugee Status	49	34	28	7	19	137
Humanitarian Protection (previous)	560	484	522	620	5	2191
Subsidiary Protection	-	-	-	-	1387	1387
Temporary Humanitarian Protection	-	-	-	-	2	2
Rejected	259	580	637	329	1279	3084
Withdrawn	20	60	23	23	23	149
Pending	141	149	211	611	503	
Awaiting start of procedure	449	692	720	1285	1100	

A2.2 Persons recognised as refugees by nationality

REFUGEE STATUS BY NATIONALITY PER YEAR				
NATIONALITY	2005	2006	2007	2008
CONGO DRC				
EGYPT				
ERITREA	2	8		10
ETHIOPIA	2	4	2	6
IRAN				
IRAQ	5			
IVORY COAST	1	1		
MOROCCO				
PAKISTAN				
PALESTINE	15			
SERBIA	1			
SIERRA LEONE				
SOMALIA	1	9	4	3
SRI LANKA	2			
SUDAN	1	2	1	
SYRIA	3	4		
TURK	1			
TOTALS	34	28	7	19

A2.3 Persons granted humanitarian or subsidiary protection by nationality

HUMANITARIAN/SUBSIDIARY PROTECTION BY NATIONALITY				
NATIONALITY	2005	2006	2007	2008
CHAD				
CONGO DRC	2			
EGYPT				
ERITREA	228	251	210	251
ETHIOPIA	2	1	5	3
IRAN				
IRAQ	6	2	4	
IVORY COAST		2	2	1
MALI				1
MOROCCO				
NIGERIA				2
PAKISTAN	1			
PALESTINE				
SERBIA				
SIERRA LEONE				
SOMALIA	223	130	368	1117
SRI LANKA				5
SUDAN	21	136	31	14
SYRIA	1			
TURK				
TOTALS	484	522	620	1394

A2.4 Appeals accepted by the Refugee Appeals board

	Minors	18-25		26-35		36-45		46-49		over 50		Total
		M	F	M	F	M	F	M	F	M	F	
2004	0	0	0	1	1	0	0	0	0	0	0	2
2005	0	0	0	1	0	0	0	0	0	0	0	1
2006	0	0	0	0	0	0	0	0	0	0	0	0
2007	1	0	0	0	1	0	0	0	0	0	0	2
2008	0	1	0	0	0	0	0	0	0	0	0	1
Total	1	1	0	2	2	0	0	0	0	0	0	6

A2.5 Appeals lodged with the Refugee Appeals Board during 2008, by nationality

Claimed country of origin	Number of appeals	%
Benin	3	0.3%
Burkina Faso	16	1.8%
Congo DRC	4	0.4%
Eritrea	21	2.3%
Ethiopia	84	9.2%
Gambia	27	3.0%
Ghana	46	5.0%
Guinea	15	1.6%
Guinea Bissau	18	2.0%
Ivory Coast	188	20.6%
Liberia	12	1.3%
Libya	5	0.5%
Mali	122	13.4%
Niger	30	3.3%
Nigeria	169	18.6%
Pakistan	3	0.3%
Palestine	5	0.5%
Senegal	6	0.7%
Sierra Leone	15	1.6%
Somalia	43	4.7%
Sudan	26	2.9%
Togo	42	4.6%
Others <i>1 person</i>	5	0.5%
Other <i>2 persons</i>	6	0.7%
Total No. of Persons	911	99.7%

A2.6 Appeals lodged during 2008, by gender

Gender	Number of appellants	%
Male	846	92.9%
Female	57	6.3%
Accompanied Children	8	0.9%
Total No. of Persons	911	100.0%

A2.7 Level of education of appellants during 2008

Education level	Number of applicants	%
Primary School	288	31.6%
Secondary School	176	19.3%
High School	10	1.1%
University	7	0.8%
Never attended school	430	47.2%
Total Persons	911	100.0%

ANNEX 3: POLICY ON THE GRANTING OF TEMPORARY HUMANITARIAN PROTECTION

1. Where the Refugee Commissioner considers that an asylum-applicant is not eligible for refugee status or subsidiary protection, in accordance with the Procedural Standards in Examining Applications for Refugee Status Regulations¹⁰, he may nevertheless recommend the granting of *Temporary Humanitarian Protection* status in the following circumstances:
 - d. Where the applicant is a minor;
 - e. Where he considers that the applicant should not be returned to his country of origin on medical grounds;
 - f. Where he considers that the applicant should not be returned to his country of origin on other humanitarian grounds;
2. The recommendation to grant temporary humanitarian protection shall clearly state the grounds on which such protection is to be granted i.e. age, medical reasons, or other humanitarian reasons. In cases where such protection is granted for 'other humanitarian reasons', those reasons shall also be specified.
3. Upon the recommendation of the Refugee Commissioner, the Minister may make a declaration that the applicant is eligible for temporary humanitarian protection. The procedure in this regard shall be that which is also applicable to the recognition of Refugee Status or Subsidiary Protection.
4. Any recommendation for the granting of temporary humanitarian protection should be given by the Refugee Commissioner in conjunction with the decision that the applicant does not qualify for refugee status or subsidiary protection.
5. The recommendation to grant temporary humanitarian protection shall be without prejudice to the applicant's right to appeal from the recommendation of the Refugee Commissioner that the applicant does not qualify for refugee or subsidiary protection status. However, no appeal shall lie from the Refugee Commissioner's recommendation or from the Minister's declaration concerning the granting or otherwise of temporary humanitarian protection.
6. A certificate shall be issued to persons granted temporary humanitarian protection.
7. A beneficiary of temporary humanitarian protection shall be entitled to remain in Malta for one year.
8. The status of temporary humanitarian protection may be renewed for further periods of one year, by means of a declaration by the Minister, upon the recommendation of the Refugee Commissioner.

¹⁰ Legal Notice 243 of 2008; SL 420.07

9. The temporary humanitarian protection shall cease once the reason for which it was granted no longer subsists. Temporary humanitarian protection shall also cease, and may be revoked, on the same grounds as those for the cessation or revocation of subsidiary protection, which are laid down in the Refugees Act and the Procedural Standards in Examining Applications for Refugee Status Regulations.
10. No appeal shall lie from a decision concerning the renewal, cessation or revocation of the temporary humanitarian protection.
11. A person who is granted temporary humanitarian protection shall have the same rights as those granted to beneficiaries of subsidiary protection under Article 14 of the *Procedural Standards in Examining Applications for Refugee Status Regulations*¹¹

¹¹ Article 14 (1)(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)(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.