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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Ligi mressaq mill-Onorevoli Tonio Borg, M.P., Ministru ta' l-Intern u moqri għall-Ewwel Darba fis-Seduta ta' 1-4 ta' Ottubru, 1999.

ATT biex jagħmel provvedimenti dwar u jistabbilixxi proċeduri għar-rigward ta' rifuġjati u persuni li jfittxu asil.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Tonio Borg, M.P., Minister of Home Affairs, and read the First time at the Sitting of the 4th October, 1999.

AN ACT to make provisions relating to and establishing procedures with regard to refugees and asylum seekers.

RICHARD J. CAUCHI
Clerk of the House of Representatives

ABBOZZ TA' LIĠI msejjah

ATT biex jagħmel provvedimenti dwar u jistabbilixxi proċeduri għar-rigward ta' rifugjati u persuni li jfittxu asil.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:—

TAQSIMA I

Provvedimenti Ġenerali

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1999 dwar ir-Rifugjati. Titolu fil-qosor u bidu fis-sehh.

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għall-immigrazzjoni jista' b'avviz fil-Gazzetta jistabbilixxi, u jistgħu jiġu hekk stabbiliti dati differenti għal dispożizzjonijiet differenti jew għanijiet differenti ta' l-Att.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tehtiegħ xort'ohra — Tifsir.

“dikjarazzjoni” tfisser dikjarazzjoni li persuna tkun rifugjata;

“Dokument ta' l-Ivvjaġġar tal-Konvenzjoni” tfisser id-dokument ta' l-ivvjaġġar imsemmi fl-Artiklu 28 tal-Konvenzjoni;

“Konvenzjoni” tfisser il-Konvenzjoni ta' l-1951 dwar l-Istatus ta' Rifugjati magħmula f'Ġinevra fit-28 ta' Lulju, 1951, li

Malta aderiet ghalha fis-17 ta' Ġunju, 1971, u l-Protokoll ta' l-1967 dwar l-Istatus ta' Rifugjati tal-31 ta' Jannar, 1967 li Malta aderiet ghalha fil-15 ta' Settembru, 1971, bla hsara ghad-dikjarazzjonijiet u r-riservi maghmulin minn Malta li jistghu jkunu jsehhu minn żmien ghal żmien;

“il-Kummissarju” tfisser il-Kummissarju ghar-Rifugjati, u tinkludi skond il-limitu u l-awtorità moghtija, lil kull persuna ohra temporanjament awtorizzata f'dik il-kapaċità mill-Ministru;

“il-Kummissarju Gholi” tfisser il-Kummissarju Gholi ghar-Rifugjati tan-Nazzjonijiet Uniti jew min jirrapprezentah;

“il-Ministru” tfisser il-Ministru responsabbli ghall-immigrazzjoni, u kull uffiċjal pubbliku li l-Ministru jista' jiddelegalu bil-miktub xi wiehed mid-dmirijiet li huwa ghandu taht dan l-Att;

“persuna li tfittex asil” tfisser persuna li tkun ghamlet applikazzjoni ghal dikjarazzjoni taht l-artikolu 7;

“preskritt” tfisser preskritt b'xi regolament, regola, ordni jew strument iehor maghmul taht id-dispożizzjonijiet ta' dan l-Att li jaghti setgha ta' ghemil ta' xi strument bhal dak;

“protezzjoni umanitarja” tfisser permess speċjali biex persuna tibqa' Malta sakemm hija tkun tista' terġa' lura b'sigurezza fil-pajjiż ta' oriġni taghha jew inkella tibda tabita mill-ġdid f'pajjiż iehor;

“rifugjat” tfisser min, minhabba f'biża' msejsa fuq ir-realtà li jista' jigi ppersegwitat ghal raġunijiet ta' razza, reliġjon, nazzjonalità, shubija f'xi grupp soċjali jew fehma politika partikolari, ikun jinsab barra mill-pajjiż tan-nazzjonalità tiegħu u ma jkunx kapaċi jew, minhabba f'dik il-biża', ma jkunx irid jinqeda bil-protezzjoni ta' dak il-pajjiż; jew min, minghajr ma jkollu nazzjonalità u filwaqt li jkun barra mill-pajjiż fejn soltu kien joqghod, minhabba f'dawn l-avvenimenti, ma jkunx kapaċi jew, minhabba f'dik il-biża', ma jkunx irid jerġa' lura fih, iżda ma tinkludix lil min —

(a) ikun qed jirċievi xi protezzjoni jew assistenza minghand l-organi jew aġenziji tan-Nazzjonijiet Uniti (minbarra l-Kummissjoni Gholja),

(b) dwaru jkun hemm raġunijiet serji biex jigi kkunsidrat li huwa:

(i) ikun ghamel reat kontra l-paċi, reat ta' gwerra, jew reat kontra l-umanità, kif imfisser fl-istrumenti internazzjonali kostitwiti biex jipprovdu dwar reati bhal dawk; jew

(ii) ikun ghamel reat gravi mhux ta' xorta politika barra minn Malta qabel ma jkun dahal Malta; jew

(iii) ikun hati ta' attijiet li jmorru kontra l-ghanijiet u l-prinċipji tan-Nazzjonijiet Uniti:

Izda meta persuna jkollha iktar minn nazzjonalità wahda, il-kelma "pajjiż" imsemmija hawn aktar qabel, ghandha tkun tirreferi ghal kull wiehed mill-pajjiżi li tiegħu tkun ċittadin, u dik il-persuna ma ghandhiex titqies bhala li ma ghandhiex il-protezzjoni ta' pajjiżha, jekk, minghajr biza' msejsa fuq il-persekuzzjoni, ma tkunx fittxet il-protezzjoni ta' xi wiehed mill-pajjiżi li tiegħu dik il-persuna tkun ċittadin;

"uffiċjal ta' l-immigrazzjoni" tfisser uffiċjal ta' l- (Kap. 217)
immigrazzjoni nominat taht l-Att dwar l-Immigrazzjoni.

3. Dan l-Att jinkorpora l-obbligazzjonijiet li Malta assumiet taht il-Konvenzjoni, u fit-tifsir tiegħu ghandu jittiehed kont tal-provvedimenti tal-Konvenzjoni. Konvenzjoni ta' l-1951 dwar l-Istatus ta' Rifuġjati.

TAQSIMA II

Proċeduri

Titolu I - Il-Kummissarju għar-Rifuġjati

4. (1) Ghandu jkun hemm persuna li tkun maghrufa bhala l-Kummissarju għar-Rifuġjati. Twaqqif ta' Kummissarju għar-Rifuġjati.

(2) Il-Kummissarju jinhatar mill-Prim Ministru minn fost uffiċjali pubbliċi jew minn fost persuni ohra li f'kull każ, fil-fehma tal-Prim Ministru, jkollhom għarfien u esperjenza fi hwejjeġ li jolqtu r-rifuġjati.

(3) Il-Kummissarju ghandu jwettaq dawk il-funzjonijiet li jiġu lil mogħtija b'dan l-Att, u minghajr preġudizzju għall-ġeneralità ta' dak imsemmi hawn aktar qabel, huwa għandu jeżamina applikazzjonijiet li jsiru għal status ta' rifuġjat u jkollu s-setgħa li jagħti ġuramenti lil kull persuna.

(4) Il-Prim Ministru jista' jassenja uffiċjali pubbliċi biex ikunu membri tal-persunal tal-Kummissarju hekk kif jista' jqis li jkun meħtieġ sabiex jgħinu lill-Kummissarju fit-twettiq ta' dmirijietu.

Titolu II - Bord ta' l-Appelli dwar ir-Rifugjati

Twaqqif ta' Bord ta' l-Appelli dwar ir-Rifugjati.

5. (1) Il-Bord ta' l-Appelli dwar ir-Rifugjati ghandu jkun magħmul minn president u żewġ membri oħra li jinhatru mill-Prim Ministru minn fost persuni li jkollhom esperjenza u konoxxenza fi hwejjeġ li jolqtu r-rifugjati. Il-president ikun persuna li għal seba' snin ikollha jew kellha *warrant* li tezerċita bhala avukat.

Hatra.

(2) Il-membri tal-Bord għandhom jibqgħu fil-kariga għal perijodu ta' tliet snin, u jkunu jistgħu jergħu jiġu mahtura.

Tnehhija.

6. Membru tal-Bord jista' biss jitneħħa mill-kariga mill-Prim Ministru minhabba fi traskuragni gravi, inkompetenza, jew attijiet, ommissjonijiet jew imġieba li ma jixirqux lil membru tal-Bord.

Appelli lill-Bord.

7. (1) Il-Bord ikollu s-setgħa li jisma' u jiddeċiedi appelli kontra xi rakkomandazzjoni tal-Kummissarju.

(2) Appelli lill-Bord għandhom isiru fi żmien ġimghatejn minn meta ssir in-notifika tar-rakkomandazzjoni tal-Kummissarju lill-applikant. Meta jkun l-applikant li jagħmel l-appell, għandha tiġi notifikata kopja ta' l-appell lill-Ministru u lill-Kummissarju. Meta jkun il-Ministru li jagħmel l-appell, għandha tiġi notifikata kopja ta' l-appell lill-applikant u lill-Kummissarju.

(3) Meta jsir appell mill-Ministru, applikant li jkun qiegħed jinżamm f'kustodja minhabba biss f'ordni ta' deportazzjoni jew ta' tneħħija għandu jinheles sakemm tinghata d-deċizzjoni tal-Bord.

(4) Il-Bord ta' l-Appelli dwar ir-Rifugjati għandu, skond ma jista' jkun jeħtieġ il-każ partikolari, jagħmel arrangamenti biex jipprokura l-attendenza ta' interpretu biex jassisti waqt is-seduti.

(5) Appellant ikollu d-dritt għal għajnuna legali bla hlas taht l-istess kondizzjonijiet li japplikaw għal ċittadini Maltin.

(6) Sakemm il-partijiet kollha jkunu jaqblu bejniethom, is-seduti tal-Bord għandhom jinżammu *in camera*.

(7) Minkejja d-dispożizzjonijiet tas-subartikolu ta' qabel, rappreżentant tal-Kummissarju Għoli dejjem ikollu d-dritt jattendi għas-seduti tal-Bord.

(8) Il-Bord jirregola l-proċedura tiegħu nnifsu u barra hekk jkollu s-setgħa li jagħti għuramenti lil kull persuna.

(9) Minkejja d-dispożizzjonijiet ta' kull liġi oħra, iżda minghajr preġudizzju għall-artikolu 46 tal-Kostituzzjoni ta' Malta u (Kostituzzjoni) minghajr preġudizzju għad-dispożizzjonijiet ta' l-artikolu 4 ta' l-Att dwar il-Konvenzjoni Ewropea, id-deċizjoni tal-Bord tkun waħda finali u konkluziva u ma tkun tista' tiġi kontestata jew appellata quddiem ebda qorti tal-ġustizzja. (Kap. 319)

(10) Meta l-Bord jiddeċiedi favur l-applikant, il-Ministru għandu jorog dikjarazzjoni skond hekk.

TAQSIMA III

Kif jiġu trattati Persuni li jfittxu Asil u Rifugjati

8. (1) Persuna li tasal f'xi post ta'dhul f'Malta u tkun qeghda tfittex asil f'Malta, għandha ssirilha intervista minn uffiċjal ta' l-immigrazzjoni kemm jista' jkun malajr, u hija tista' tapplika lill-Kummissarju fuq il-formola preskritta għal dikjarazzjoni. Il-formola preskritta għandha, meta jkun possibbli, tkun f'isien li l-applikant ikun jifhem. L-uffiċjal ta' l-immigrazzjoni għandu wkoll jgharraf lil dik il-persuna bid-dritt li għandha li tapplika għal dikjarazzjoni u li tikkonsulta lill-Kummissarju Għoli. Applikazzjonijiet għal Status ta' Rifugjat.

(2) Persuna li f'xi żmien tkun tinsab Malta (sew legalment sew mhux) u li tkun qeghda tfittex li jkollha l-istatus ta' rifugjat f'Malta, tista' tapplika fuq il-formola preskritta lill-Kummissarju għal dikjarazzjoni, u l-Kummissarju għandu jehtieg lill-applikant sabiex jattendi għal intervista fi żmien ġimgħa. Intervista taht dan is-subartikolu għandha ssir bil-magħluq u, meta jkun hekk mehtieg u possibbli, bl-assistenza ta' interpretu.

(3) Kull informazzjoni li tirrigwarda applikazzjonijiet għal status ta' rifugjat għandha tibqa' waħda konfidenzjali. Taht ebda ċirkostanza ma għandha xi informazzjoni li tkun tirrigwarda daww l-applikazzjonijiet tiġi żvelata lill-awtoritajiet tal-pajjiż ta' l-origini ta' l-applikant, lanqas ma għandha tintalab xi informazzjoni minghand daww l-awtoritajiet dwar l-applikant.

(4) Il-Kummissarju Għoli jkollu aċċess liberu għal kull persuna li tfittex asil u jista' jkun preżenti waqt kull intervista li ssirilha mill-Kummissarju għar-Rifugjati.

(5) Il-Kummissarju għandu kemm jista' jkun malajr jeżamina applikazzjoni għal status ta' rifugjat li tkun saret skond is-subartikoli (1) jew (2) ta' dan l-artikolu u għandu jirrikmanda lill-Ministru dwar jekk għandux jilqa' dik l-applikazzjoni jew le. F'dan l-

ghemil il-Kummissarju ghandu jiżgura ruhu li l-applikant ikun ippreżenta l-każ tieghu kollu kemm hu, li jkun sostnib bi provi u li jkun ta spjegazzjonijiet xierqa ghar-ragunijiet kollha li jkun għab fl-applikazzjoni tieghu. Kull deċizzjoni tal-Kummissarju dwar xi applikazzjoni għandha tkun bil-miktub u għandu jkun fiha r-ragunijiet li tkun imsejsa fuqhom.

(6) Jekk il-Kummissarju jirrikmanda li l-applikazzjoni għandha tintlaqa', il-Ministru jagħmel dikjarazzjoni li tkun tghid li l-applikant ikun eliġibbli għal status ta' rifuġjat, jew inkella jappella kontra rikmandazzjoni bħal dik skond ma hemm fl-artikolu 6.

(7) Il-Kummissarju jista' jirrikmanda lill-Ministru li, minkejja l-fatt li persuna ma tkunx tissodisfa l-htigiet biex tigi rikonoxxuta bħala rifuġjat, dik il-persuna għandha tinghata protezzjoni umanitarja f'Malta.

(8) Meta ssir tali rakkomandazzjoni, il-Ministru għandu jagħti dik il-protezzjoni umanitarja; dik il-protezzjoni għandha tieqaf jekk il-Ministru jkun sodisfatt, wara li jikkonsulta lill-Kummissarju, li dik il-protezzjoni ma tkunx aktar mehtieġa.

Projbizzjoni ta' *refoulement*.

9. (1) Persuna ma għandhiex titkeċċa minn Malta jew titreġġa' lura b'xi mod li jkun lejn il-fruntieri ta' territorji fejn il-hajja jew il-libertà ta' dik il-persuna jkunu mhedda minhabba fir-razza, religjon, nazzjonalità, shubija f'xi grupp soċjali partikolari jew il-fehma politika tagħha.

(2) Id-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu m'għandhomx japplikaw għal rifuġjat li dwaru jkun hemm ragunijiet validi li jitqies bħala bniedem perikoluz għas-sigurtà ta' Malta, jew li, wara li jkun instab hati b'sentenza finali ta' xi delitt partikolarment serju, jkun ta' periklu għall-komunità.

Kif jiġu trattati persuni li jfittxu asil.

10. (1) Minkejja d-dispożizzjonijiet ta' kull liġi ohra li tistabilixxi xort'ohra, persuna li tfittex asil m'għandhiex titnehha minn Malta qabel ma tigi deċiża finalment l-applikazzjoni tagħha skond dan l-Att u dak l-applikant għandu jithalla jidhol jew jibqa' Malta sakemm tinghata deċizzjoni finali dwar l-applikazzjoni tieghu. Hija għandha jkollha wkoll aċċess għal edukazzjoni u tahrig statali f'Malta u li tircievi servizz u kura medika statali.

(2) Persuna li tfittex asil —

(a) ma għandhiex tfittex li jkollha x'impieg jew li tiggestixxi xi negozju kemm-il darba ma jkollhiex il-kunsens tal-Ministru;

(b) ghandha, kemm-il darba ma tkunx taht kustodja, toqghod u tibqa' residenti fil-postijiet li l-Ministru jista' jindikalha;

(c) ghandha tirraporta f'intervalli speċifikati ghand l-awtoritajiet ta' l-immigrazzjoni skond kif jista' jindikalha l-Ministru:

Izda jekk xi applikant bhal dak ikun qed jikser xi wahda mid-dispożizzjonijiet tal-paragrafi (a), (b) u (c) ta' dan l-artikolu huwa jkun hati ta' reat u jista' jehel, meta jinsab hati, prigunerija ghal żmien mhux iktar minn sitt xhur.

(3) Jekk l-applikant jitlaq minn Malta ghax irid hu, l-applikazzjoni tieghu titqies li tkun giet irtirata, kemm-il darba t-tluq tieghu minn Malta ma jkunx gie awtorizzat mill-Ministru.

11. (1) Minkejja d-dispożizzjonijiet ta' kull ligi ohra li tkun tghid xort'ohra u minkejja kull ordni ta' deportazzjoni jew ta' tnehhija, min ikun dikjarat rifugjat ikollu jedd: —

Drittijiet tar-rifugjati.

(a) li jibqa' Malta, u li jinghata dokumenti personali, inkluż permess ta' residenza; u jekk ikun taht kustodja minhabba biss f'ordni ta' deportazzjoni jew ta' tnehhija, li jinheles minnufih;

(b) kemm-il darba ma jkunx taht kustodja jistenna li jghaddi procedimenti għudizzjarji għall-għemil ta' reat kriminali, jew ikun qed iservi perjodu ta' prigunerija, li jinghata Dokument ta' l-Ivvjaġġar tal-Konvenzjoni li jagħtih dritt ta' tluq u ritorn f'Malta mingħajr il-htieġa ta' ebda viża;

(c) li jkollu aċċess għal edukazzjoni u taħriġ statali f'Malta, u li jirċievi assistenza u servizzi mediċi statali.

(2) Il-membri dipendenti tal-familja ta' persuna dikjarata bhala rifugjat li jkunu qeghdin Malta filwaqt tad-dikjarazzjoni jew li jinghaqdu magħha f'Malta, ikollhom l-istess drittijiet u benefiċċji bħar-rifugjat innifsu.

12. Tifel jew żaġżuġ taht l-età ta' tmintax il-sena li jaqa' fl-ambitu ta' dan l-Att li jinstab taht ċirkostanzi li jkunu jindikaw ċar li jkun tifel jew żaġżuġ fil-bżonn ta' harsien, għandu jithalla japplika għal asil, u għall-finijiet ta' dan l-Att, għandu jkun assistit skond ma hemm fl-Att dwar Tfal u Żgħażaġh (Ordinijiet għall-Harsien), bhallikieku kien xi tifel jew żaġżuġ taht dak l-Att.

Tfal u żgħażaġh.

(Kap. 285)

Min imur jghammar
f'pajjiż iehor.

13. Il-Ministru jista', fuq talba bil-miktub ta' applikant jew ta' rifuġjat rikonoxxut, u meta hekk mehtieg, bl-assistenza tal-Kummissarju Gholi, jiffaċilita ċ-ċirkostanzi li jwasslu biex applikant jew rifuġjat imur jghammar f'xi pajjiż iehor u jaghmel dak kollu mehtieg ghal dak l-ghan.

Assistenza.

14. Il-Kummissarju ghandu jiżgura kemm jista' jkun possibbli, li l-mod kif jigi applikat dan l-Att ikun konformi mal-prattika internazzjonali aċċettata, u ghal dak l-ghan jista' jikseb l-ghajnuna tal-Kummissarju Gholi jew ta' kull ghaqda mhux governattiva sew nazzjonali sew internazzjonali li jkollha x'taqsam ma' hwejjeg li jolqtu lir-rifuġjati.

TAQSIMA IV

Revoka ta' Dikjarazzjoni

Tmiem ta' status
ta' rifuġjat.

15. Persuna ttemm milli jibqa' jkollha status ta' rifuġjat jekk: —

(a) ghax riedet, reġghet inqdiet bil-protezzjoni tal-pajjiż tan-nazzjonalità taghha, jew jekk kienet tilfet in-nazzjonalità taghha, reġghet kisbitha ghax hekk riedet; jew

(b) tkun kisbet nazzjonalità ġdida u tkun tgawdi l-protezzjoni tal-pajjiż tan-nazzjonalità ġdida taghha; jew

(c) ghax riedet, tkun stabbiliet ruhha mill-ġdid fil-pajjiż mnejn tkun telqet jew li tkun baqghet barra minnu minhabba fil-biza' mill-persekuzzjoni; jew

(d) ma tkunx iktar tista' tkompli, minhabba f'li ċ-ċirkostanzi li b'konnessjoni maghhom hija tkun ġiet rikonoxxuta bhala rifuġjat jkunu ntemmu milli jibqghu jeżistu, tirrifjuta li tinqeda bil-protezzjoni tal-pajjiż tan-nazzjonalità tiegħu; jew

(e) tkun persuna li ma jkollha ebda nazzjonalità u, minhabba li ċ-ċirkostanzi li dwarhom hija tkun ġiet rikonoxxuta bhala rifuġjat ma jkunux għadhom jeżistu, tkun tista' tirritorna fil-pajjiż fejn soltu kienet toqghod.

Thassir ta'
status ta' rifuġjat.

16. (1) Il-Ministru jista' jirrevoka dikjarazzjoni ta' status ta' rifuġjat jekk, wara investigazzjoni xierqa, jkun sodisfatt li persuna li tkun inghatatilha dikjarazzjoni tkun ġiet rikonoxxuta bi żball bhala rifuġjat minhabba f'applikazzjoni li jkun fiha xi informazzjoni materjalment mhux korretta jew falza, jew tkun ġiet hekk rikonoxxuta minhabba fi frodi, falsifikazzjoni jew xi ghemil falz jew qarrieqi ta' xorta materjali jew sostantiva għar-rigward ta' l-applikazzjoni.

(2) Persuna li dwarha l-Ministru jkun irrevoka dikjarazzjoni taht is-subartikolu (1) ta' dan l-artikolu ikollha jedd tappella kontra r-revoka quddiem il-Bord ta' l-Appelli dwar ir-Rifuġjati fi żmien ġimgha minn meta tiġi notifikata bir-revoka, u d-dispożizzjonijiet ta' l-artikolu 6 ta' l-Att ghandhom ikunu japplikaw *mutatis mutandis* ghal dak l-appell.

17. (1) Il-Ministru jista' jordna t-tkeċċija minn Malta ta' rifuġjat minhabba fis-sigurezza nazzjonali jew l-ordni pubbliku, u sakemm issir dik it-tkeċċija dik il-persuna ghandha tinżamm taht kustodja. Tkeċċija ta' rifuġjat.

(2) Id-dispożizzjonijiet ta' l-artikolu 6 ta' dan l-Att ghandhom, *mutatis mutandis*, ikunu japplikaw ghall-ordnijiet ta' tkeċċija li jinħarġu taht dan l-artikolu.

(3) Rifuġjat li ghalih japplika dan l-artikolu ghandu jinghata perjodu ta' żmien raġonevoli li matulu jkun jista' jfittex li jithalla jidhol legalment f'xi pajjiż ieħor.

TAQSIMA V

Mixxellanji

18. (1) Il-Ministru jista' jagħmel regolamenti bil-ghan li dan l-Att ikun jista' jkollu sehh u, b'mod partikolari iżda mingħajr preġudizzju għall-ġeneralità ta' dak kollu hawn aktar qabel imsemmi, regolamenti taht dan l-artikolu jistgħu jagħmlu provvedimenti li: Setgħa ta' għemil ta' regolamenti.

(a) jirregolaw l-applikazzjonijiet għal dikjarazzjoni u l-proċedura għal u dwar dawk l-applikazzjonijiet,

(b) jirregolaw bi ftehim mal-Bord ta' l-Appelli dwar ir-Rifuġjati appelli taht dan l-Att quddiem il-Bord ta' l-Appelli dwar ir-Rifuġjati u l-proċedura għal u dwar dawk l-appelli;

(ċ) jirregolaw l-ghoti ta' għajnuna legali lil persuni li jfittxu asil; u

(d) jestendu, bi ftehim mal-Ministru responsabbli għas-sigurtà soċjali, kull dispożizzjoni ta' l-Att dwar is-Sigurtà Soċjali lil persuni li jaqghu taht dan l-Att; (Kap. 318)

(e) jirregolaw l-ghoti u l-allokkazzjoni ta' responsabbiltajiet u dmirijiet li jkollu l-Ministru taht dan l-Att lil ufficjal pubbliku; u

(f) jirregolaw bi ftehim mal-Ministru responsabbli ghax-xoghol l-ghoti ta' permessi tax-xoghol lil rifugjati rikonoxxuti.

(2) Minkejja d-dispozizzjonijiet ta' kull ligi ohra, il-Ministru jista' taht dan is-subartikolu b'regolamenti jaghmel provvedimenti li jkunu jzidu mad-dispozizzjonijiet ta' dan l-Att, jew jidderogaw minnhom, sabiex igibu fis-sehh il-provvedimenti ta' xi konvenzjoni jew trattat iehor internazzjonali li jkunu jirrigwardaw lir-rifugjati, l-istatus u l-protezzjoni taghhom, li Malta tista' ssir parti fihom wara li r-ratifika ta' dak it-trattat tkun giet approvata permezz ta' Rizoluzzjoni tal-Kamra tad-Deputati.

Dispozizzjoni
transitorja.

19. (a) Meta, qabel id-dhul fis-sehh ta' dan l-Att, persuna tkun ghamlet applikazzjoni ghal status ta' rifugjat quddiem il-Kummissarju Gholi izda ma tkun ittiehdet ebda decizjoni dwar dan, l-applikazzjoni ghandha titqies bhala applikazzjoni taht l-artikolu 7 ta' dan l-Att u ghandha tigi trattata skond dan l-Att.

(b) Minghajr pregudizzju ghad-dispozizzjonijiet ta' kull ligi ohra, persuna f'Malta li qabel id-dhul fis-sehh ta' dan l-Att kienet digà rikonoxxuta bhala rifugjat mill-Kummissarju Gholi, ghandha fuq talba taghha tkompli tigi rikonoxxuta bhala tali u d-dispozizzjonijiet ta' dan l-Att, meta jkunu rilevanti, ghandhom ikunu wkoll japplikaw ghaliha.

(c) Persuna f'Malta li qabel il-bidu fis-sehh ta' dan l-Att, ghalkemm mhux rikonoxxuta mill-Kummissarju Gholi bhala rifugjat, ikollha protezzjoni umanitarja li tinghatalha mill-istess Kummissarju Gholi, jew li l-każ taghha jkun klassifikat mill-Kummissarju Gholi bhala wiehed ta' interess, ghandha meta hija hekk titlob tibqa' titqies bhala tali u ghandha tgawdi protezzjoni umanitarja f'Malta kif imfisser taht dan l-Att.

Ghanijiet u Ragunijiet

L-ghan ta' l-Abbozz hu sabiex jaghmel provvedimenti dwar, u jistabilixxi proceduri li jkunu jirrigwardaw persuni li jfittxu asil u rifugjati u sabiex jinkorpora l-obbligazzjonijiet li Malta ghandha taht il-Konvenzjoni ta' l-1951 dwar l-Istatus ta' Rifugjati.

**A BILL
entitled**

AN ACT to make provisions relating to and establishing procedures with regard to refugees and asylum seekers.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

**PART I
General Provisions**

1. (1) This Act may be cited as the Refugees Act, 1999.

Short title and commencement.

(2) This Act shall come into force on such date as the Minister responsible for immigration may by notice in the Gazette appoint, and different dates may be so appointed for different provisions or different purposes of this Act.

2. In this Act, unless the context otherwise requires:-

Interpretation.

“asylum seeker” means a person who has made an application for a declaration under section 7;

“the Commissioner” means the Refugee Commissioner; and includes to the extent and authority given, any other person temporarily authorised in that behalf by the Minister:

“Convention” means the 1951 Convention relating to the Status of Refugees done at Geneva on 28th July, 1951, to which Malta acceded on 17th June, 1971, and the 1967 Protocol relating to the Status of Refugees of 31st January, 1967 to which Malta acceded on 15th September, 1971, subject to the declarations and reservations made by Malta which may be in operation from time to time.

“Convention Travel Document” means the travel document referred to in article 28 of the Convention;

“declaration” means a declaration that a person is a refugee;

“the High Commissioner” means the United Nations High Commissioner for Refugees or his representative;

“humanitarian protection” means special leave to remain in Malta until such time when the person concerned can return safely to his country of origin or otherwise resettle safely in a third country;

“immigration officer” means an immigration officer appointed under the Immigration Act;

(Cap. 217)

“the Minister” means the Minister responsible for immigration, and any public officer to whom the Minister may delegate in writing any of the duties appertaining to him under this Act;

“prescribed” means prescribed by regulation, rule, order or other instrument made under any of the provisions of this Act empowering the making of any such instrument;

“refugee” means 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, but does not include a person -

(a) who is receiving from organs or agencies of the United Nations (other than the High Commissioner) protection or assistance;

(b) with respect to whom there are serious reasons for considering that such person:

(i) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; or

(ii) has committed a serious non-political crime outside Malta prior to his arrival in Malta; or

(iii) has been guilty of acts contrary to the purposes and principles of the United Nations:

Provided, that in the case where a person has more than one nationality, the term "country" mentioned above, shall refer to each country of which he is a national, and such a person shall not be considered as not having the protection of his country, if, without any founded fear of persecution, he has not sought the protection of one of the countries of which such a person is a national.

3. This Act incorporates the obligations assumed by Malta under the Convention, and in its interpretation regard shall be had to the provisions of the Convention.

1951 Convention
on the Status
Relating to
Refugees

PART II Procedures

Title I - The Refugee Commissioner

4. (1) There shall be a person who shall be known as the Refugee Commissioner.

Establishment
of Refugee
Commissioner.

(2) The Commissioner shall be appointed by the Prime Minister from among public officers or from among persons who in each case, in the opinion of the Prime Minister, have knowledge and experience in matters relating to refugees.

(3) The Commissioner shall perform such functions as are conferred on him by this Act, and without prejudice to the generality of the above, shall examine applications for refugee status and shall have the power to administer oath to any person.

(4) The Prime Minister may assign public officers to be members of the staff of the Commissioner as he may consider necessary to assist the Commissioner in the performance of his functions.

Title II - Refugee Appeals Board

Establishment
of Refugee
Appeals Board.

5. (1) The Refugee Appeals Board shall consist of a chairperson and two other members who shall be appointed by the Prime Minister from amongst persons who have experience and knowledge in matters relating to refugees. The chairperson shall be a person who holds or has held the warrant to practice as an advocate in Malta for seven years.

Appointment.

(2) The members of the Board shall hold office for a period of three years, and shall be eligible for reappointment.

Removal.

6. A member of the Board may only be removed from office by the Prime Minister on the grounds of gross negligence, incompetence, or acts, omissions or conduct unbecoming a member of the Board.

Appeals to
Board.

7. (1) The Board shall have power to hear and determine appeals against a recommendation of the Commissioner.

(2) Appeals to the Board shall be made within two weeks from the notification on the applicant of the recommendation of the Commissioner. Where the appeal is entered by the applicant a copy of the appeal shall be served on the Minister and the Commissioner. Where the appeal is entered by the Minister a copy of the appeal shall be served on the applicant and the Commissioner.

(3) When an appeal is entered by the Minister, an applicant who is in custody in virtue only of a deportation or removal order shall be released pending the decision of the Board.

(4) The Refugee Appeals Board shall, as the particular case may require, make arrangements to procure the attendance of an interpreter to assist at the hearings.

(5) An appellant shall have the right to free legal aid under the same conditions applicable to Maltese nationals.

(6) Provided all the parties agree thereto, the sittings of the Board shall be held *in camera*.

(7) Notwithstanding the provisions of the previous subsection, a representative of the High Commissioner shall be entitled to attend the sittings of the Board.

(8) The Board shall regulate its own procedure and shall also have the power to administer oath to any person.

(9) Notwithstanding the provisions of any other law, but without prejudice to article 46 of the Constitution of Malta and without prejudice to the provisions of Section 4 of the European Convention Act the decision of the Board shall be final and conclusive and may not be challenged and no appeal may lie therefrom, before any court of law.

(Constitution)

(Cap. 319)

(10) Where the Board finds in favour of the applicant the Minister shall issue a declaration accordingly.

PART III Treatment of Asylum Seekers and Refugees

8. (1) A person who arrives at any point of entry in Malta seeking asylum in Malta shall be interviewed by an immigration officer as soon as practicable, and may apply to the Commissioner in the prescribed form for a declaration. The prescribed form shall, where possible, be in a language that the applicant understands. The immigration officer shall also inform such a person of his right to apply for a declaration and to consult the High Commissioner.

Applications
for Refugee Status.

(2) A person who at any time is in Malta (whether lawfully or unlawfully) and is seeking the status of a refugee in Malta may apply in the prescribed form to the Commissioner for a declaration and the Commissioner shall require the applicant to attend an interview within one week. An interview under this subsection shall be conducted in private and, where necessary, with the assistance of an interpreter.

(3) All information concerning applications for refugee status shall remain confidential. Under no circumstance shall any information concerning such applications be disclosed to the authorities of the country of origin of the applicant, nor shall any information be requested from such authorities regarding the applicant.

(4) The High Commissioner shall have free access to any asylum seeker and to be present during any interview of such person by the Refugee Commissioner.

(5) The Commissioner shall as soon as possible examine any application for refugee status made in accordance with subsections (1) or (2) hereof and shall recommend or otherwise to the Minister the acceptance of the application. In so doing he shall ensure that the applicant has presented his case fully, has supported it with testimonies and has given adequate explanations for all the reasons he has submitted in his application. Any decision by the Commissioner on any application shall be in writing and shall state the reasons supporting it.

(6) If the Commissioner recommends the acceptance of the application, the Minister shall make a declaration declaring applicant eligible for refugee status or appeal against such recommendation in accordance with section 6.

(7) The Commissioner may recommend to the Minister that, in spite of the fact that a person does not satisfy the requirements to be recognised as a refugee, such person should be granted humanitarian protection in Malta.

(8) When such recommendation is made the Minister shall grant such humanitarian protection; such protection shall cease if the Minister is satisfied, after consulting the Commissioner, that such protection is no longer necessary.

*Prohibition of
refoulement.*

9. (1) A person shall not be expelled from Malta or returned in any manner whatsoever to the frontiers of territories where, the life or freedom of that person would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

(2) The provisions of subsection (1) of this section shall not apply to a refugee in respect of whom there are reasonable grounds for regarding him as a danger to the security of Malta, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community.

*Treatment of
Asylum Seekers*

10. (1) Notwithstanding the provisions of any other law to the contrary, an asylum seeker shall not be removed from Malta before his application is finally determined in accordance with this Act and such applicant shall be allowed to enter or remain in Malta pending a final decision of his application. He shall also have access to state education and training in Malta and to receive state medical care and services

(2) An asylum seeker:-

(a) shall not seek to enter employment or carry on business unless with the consent of the Minister;

(b) shall, unless he is in custody, reside and remain in the places which may be indicated by the Minister;

(c) shall report at specified intervals to the immigration authorities as indicated by the Minister:

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

(3) If the applicant leaves Malta voluntarily, his application will be deemed to be withdrawn, unless his departure from Malta is authorised by the Minister.

11. Notwithstanding the provisions of any other law to the contrary, and notwithstanding any deportation or removal order, a person declared to be a refugee shall be entitled:- Rights of Refugees.

(a) to remain in Malta, and to be granted personal documents, including a residence permit; and if in custody in virtue only of a deportation or removal order, to be immediately released;

(b) unless he is in custody awaiting judicial proceedings for the commission of a criminal offence, or is serving a term of imprisonment, to be given a Convention Travel Document entitling him to leave and return to Malta without the need of any visa;

(c) to have access to state education and training in Malta, and to receive state medical care and services.

(2) Dependant members of the family of a person declared to be a refugee, if they are in Malta at the time of declaration or if they join him in Malta, enjoy the same rights and benefits as the refugee.

12. Any child or young person below the age of eighteen years falling within the scope of this Act who is found under circumstances which clearly indicate that he is a child or young person in need of care, shall be allowed to apply for asylum, and for the purposes of this Act, shall be assisted in terms of the Children and Young Persons (Care Orders) Act, as if he were a child or young person under such Act. Young persons.
(Cap. 285)

13. The Minister may at the written request of an applicant or recognised refugee, and where necessary, with the assistance of the High Commissioner, facilitate the resettlement of any applicant or refugee to another country and do all that is required for the purpose. Resettlement.

14. The Commissioner shall ensure as far as possible that the application of this Act is in conformity with accepted international practice, and for this purpose may seek the assistance of the High Commissioner or of any national or international non-governmental body concerned with refugee matters. Assistance.

Part IV Revocation of Declaration

Cessation of
refugee
status

15. A person shall cease 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; or

(b) has acquired a new nationality and enjoys the protection of the country of his new nationality; or

(c) has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(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; or

(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 habitual residence.

Cancellation of
Refugee status

16. (1) The Minister may revoke a declaration of refugee status if he is satisfied, after due investigation, that a person to whom a declaration has been given has been erroneously recognized as a refugee on an application which contains any materially incorrect or false information, or was so recognized owing to fraud, forgery, false or misleading representation of a material or substantial nature in relation to the application.

(2) A person in whose regard the Minister has revoked a declaration under subsection (1) of this section shall be entitled to appeal against the revocation to the Refugee Appeals Board within one week of the notification of the revocation to him, and the provisions of section 6 of this Act, shall, "*mutatis mutandis*" apply to such appeal.

Expulsion of
a refugee

17. (1) The Minister may order the expulsion from Malta of any refugee on grounds of national security or public order, and pending such expulsion such person shall be held in custody.

(2) The provisions of section 6 of this Act shall, "*mutatis mutandis*", apply to expulsion orders issued under this section.

(3) Any refugee to whom this section applies shall be allowed a reasonable period of time within which to seek legal admission into another country.

PART V Miscellaneous

18. (1) The Minister may make regulations for the purpose of enabling this Act to have full effect and, in particular, but without prejudice to the generality of the foregoing, regulations under this section may make provisions: Power to make regulations.

(a) regulating applications for a declaration and the procedure for and in relation to such applications,

(b) regulating with the concurrence of the Refugee Appeals Board, appeals under this Act to the Refugee Appeals Board and the procedure for and in relation to such appeals;

(c) regulating the provision of legal aid to asylum seekers;

(d) extending, with the concurrence of the Minister responsible for social security, any of the provisions of the Social Security Act to persons falling under this Act. (Cap. 318)

(e) regulating the assignment and allocation of responsibilities and duties appertaining to the Minister under this Act to a public officer and,

(f) regulating, with the concurrence of the Minister responsible for labour, the granting of work permits to recognised refugees.

(2) Notwithstanding the provisions of any other law, the Minister may under this subsection make regulations, making provisions adding to or derogating from the provisions of this Act, to enforce the provisions of any international convention or other treaty relating to refugees, their status and protection, to which Malta may become a party provided the ratification of such treaty has been approved by a Resolution of the House of Representatives.

19. (a) Where, before the commencement of this Act, a person has made an application for refugee status before the High Commissioner but a decision in relation thereto has not been made, the application shall be deemed to be an application under section 7 of this Act and shall be dealt with in accordance with this Act. Transitory Provision.

(b) Without prejudice to the provisions of any other law, a person in Malta who before the commencement of this Act had already been recognised as a refugee by the High Commissioner, shall upon his request continue to be regarded as such, and the provisions of this Act, where relevant, shall apply also to him.

(c) A person in Malta who before the commencement of this Act, although not recognised by the High Commissioner as a refugee, enjoys humanitarian protection granted to him by the said High Commissioner, or whose case is one classified by the High Commissioner as one of concern, shall upon his request continue to be regarded as such and shall enjoy humanitarian protection in Malta as defined under this Act.

Objects and Reasons

The object of the Bill is to make provisions relating to and to establish procedures with regard to asylum seekers and refugees and to incorporate the obligations assumed by Malta under the 1951 Convention Relating to the Status of Refugees.