

Naghti l-kunsens tieghi.

(L.S.)

GUIDO DE MARCO
President

25 ta' Lulju, 2000

ATT Nru. XX ta' l-2000

ATT biex jagħmel provvedimenti dwar u jistabbilixxi proċeduri għar-rigward ta' rifuġjati 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'ligi dan li ġej: —

TAQSIMA I

Provvedimenti Ġenerali

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-2000 dwar ir- Titolu fil-qosor
u bidu fis-sehh.
Rifuġjati.

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għall-immigrazzjoni jista' b'avviż fil-Gazzetta jistabbilixxi, u jistgħu jigu 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 Tifsir.
xort'ohra —

“applikant” tfisser persuna li tkun għamlet applikazzjoni għal dikjarazzjoni taht l-artikolu 8;

“applikazzjoni” tfisser applikazzjoni għal status ta' rifuġjat magħmula taht l-artikolu 8;

“applikazzjoni manifestament infondata” tfisser applikazzjoni –

(a) li ma tkunx relatata ma’ raġunijiet għaliex persuna tkun rifuġjat kif imfissra fil-Konvenzjoni; jew

(b) li tkun għal kollox nieqsa fis-sustanza billi l-applikant ma jipprovdi ebda indikazzjoni li se jkun espost għal biża’ ta’ persekuzzjoni f’pajjiżu stess jew l-istorja li jagħti ma jkun fiha ebda dettall ċirkostanzjali jew personali; jew

(ċ) li dwarha l-applikant jagħti dettalji jew iġib provi li b’mod ċar ma jkunux suffiċjenti biex jissostanzjaw il-pretensjoni tiegħu u l-istorja li jagħti tkun wahda inkonsistenti, kontradittorja jew fundamentament improbabbli; jew

(d) li dwarha l-applikant isejjes l-applikazzjoni tiegħu fuq identità falsa jew fuq dokumenti falsifikati jew foloz li huwa jirritjeni bhala ġenwini meta jiġi mistoqsi dwarhom; jew

(e) li dwarha l-applikant ikun deliberatament qarraq b’mod sostanzjali; jew

(f) li dwarha l-applikant, mingħajr kawża raġonevoli u b’malafidi, ikun qered, hassar jew xort’ohra għamel minn xi passaport, dokument jew biljett iehor rilevanti għall-pretensjoni tiegħu, kemm biex jistabbilixxi identità falsa għall-fini ta’ l-applikazzjoni tiegħu kemm biex jirrendi l-konsiderazzjoni ta’ l-applikazzjoni tiegħu mill-awtoritajiet iktar diffiċli; jew

(g) li dwarha l-applikant ikun deliberatament naqas li jiżvela li jkun qabel għamel applikazzjoni għal asil f’pajjiż iehor; jew

(h) li dwarha l-applikant, għax kellu qabel opportunità biżżejjed li jressaq applikazzjoni għal asil, ikun għamel l-applikazzjoni bil-għan li jwaqqaf ordni li jkun se jsir dwar it-tnehhija tiegħu minn Malta, u ma jkunx ipprova spjegazzjoni valida għaliex ma jkunx applika aktar qabel; jew

(i) li dwarha l-applikant ikun b’mod flagranti naqas milli jikkonforma ruhu ma’ obbligazzjonijiet sostantivi imposti bil-provvedimenti tal-liġi ta’ Malta għar-rigward ta’ proċeduri ta’ asil; jew

(j) li qabilha l-applikant ikun ghamel applikazzjoni ghar-rikonoxximent tiegħu bhala rifugjat fi stat parti fil-Konvenzjoni, u l-Kummissarju jkun sodisfatt li l-applikazzjoni tiegħu kienet giet ikkunsidrata u miċhuda kif dovut u li l-applikant ikun naqas li juri bidla materjali f'dawn iċ-ċirkostanzi;

“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 għaliha fis-17 ta' Ġunju, 1971, u l-Protokoll ta' l-1967 dwar l-Istatus ta' Rifugjati tal-31 ta' Jannar, 1967 li Malta aderiet għalih fil-15 ta' Settembru, 1971, bla hsara għad-dikjarazzjonijiet u r-riservi magħmulin minn Malta;

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

“il-Kummissarju Għoli” tfisser il-Kummissarju Għoli għar-Rifugjati tan-Nazzjonijiet Uniti jew min jirrapprezentah;

“membri tal-familja dipendenti” tfisser il-konjuġi tar-rifugjat, sakemm iż-żwieġ ikun jissussisti fid-data ta' l-applikazzjoni tar-rifugjat, u dawk l-ulied tar-rifugjat li fid-data ta' l-applikazzjoni tar-rifugjat ikunu taħt l-età ta' tmintax-il sena u ma jkunux miżżewġin;

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

“pajjiż ta' l-origini sigur” tfisser pajjiż li tiegħu applikant ikollu nazzjonalità jew ċittadinanza jew, jekk ma jkollux nazzjonalità jew ċittadinanza tiegħu, li fih ikollu dritt ta' residenza u li f'termini ġenerali, jitqies bhala li ma jipprezenta ebda riskju serju ta' persekuzzjoni fuq il-bażi ta' dawn il-kriterji ta' stima li ġejjin:—

(a) li l-pajjiż ġeneralment ma għandux it-tendenza li jiġġenera r-rifugjati;

(b) li l-pajjiż formalment jaderixxi għall-obbligazzjonijiet tiegħu skond l-istrumenti internazzjonali relattivi għad-drittijiet tal-bniedem u sew fid-dritt sew fil-prattika domestika tiegħu, ikun konformi ma' daww l-obbligazzjonijiet u iktar minn hekk ikollu storja li turi li jkun jippermetti li organizzazzjonijiet nazzjonali jew internazzjonali rikonoxxuti jissorveljaw għajjietu għar-rigward tad-drittijiet tal-bniedem;

(ċ) li l-pajjiż juri sew fil-liġi sew fil-prattika li jkun kapaci jaderixxi għal proċessi demokratiċi, inklużi elezzjonijiet hielsa, pluraliżmu politiku u liberta ta' espressjoni u tal-hsieb b'attenzjoni partikolari għad-disponibbiltà u l-effettività ta' possibilitajiet legali ta' protezzjoni u rimedju:

Izda f'kull stima li ssir dwar kemm pajjiż jista' jkun sigur minn persekuzzjoni skond il-Konvenzjoni, għandu jiġi provdut dwar kull bidla drammatika istantanea li jista' jkun hemm fis-sitwazzjoni politika jew legali tiegħu li minhabba fiha ma jibqax jitqies bħala pajjiż sigur;

“pajjiż terz sigur” tfisser pajjiż li tiegħu l-applikant ma jkollux nazzjonalità jew ma jkunx ċittadin u fejn:

(a) il-hajja jew il-libertà ta' l-applikant mhux se tkun mhedda fil-kuntest tat-tifsira t'a l-Artiklu 33 tal-Konvenzjoni; u

(b) l-applikant kien jirrisjedi għal perjodu ta' zmien konsiderevoli qabel id-dhul tiegħu f'Malta; u

(ċ) l-applikant mhux se jkun espost għat-tortura jew għal trattament inuman jew degradanti, u jkun se jiġi ttrattat skond livelli ta' drittijiet tal-bniedem bażiċi; u

(d) l-applikant jew kien diġà ngħata protezzjoni jew kollu opportunità, fuq il-fruntiera jew got-territorju ta' dak il-pajjiż, li jagħmel kuntatt ma' l-awtoritajiet ta' dak il-pajjiż sabiex jikseb il-protezzjoni tagħhom, qabel ma japplika għal asil f'Malta, jew fejn ikun hemm prova ċara ta' l-ammissibilità tiegħu f'dak il-pajjiż; u

(e) l-applikant jingħata protezzjoni effettiva kontra *refoulement* fil-kuntest tat-tifsira tal-Konvenzjoni;

“persuna li tfittex asil” tfisser persuna li tkun għamlet applikazzjoni għal dikjarazzjoni taht l-artikolu 8;

“preskritt” tfisser preskritt b’xi regolament, regola, ordni jew strument iehor magħmul taht id-dispożizzjonijiet ta’ dan l-Att li jagħti 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 tagħha jew inkella tibda tabita mill-ġdid f’pajjiż iehor;

“rifugjat” tfisser min, minhabba f’biza’ msejsa fuq ir-realtà li jista’ jiġi ppersegwitat għal raġunijiet ta’ razza, religjon, 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-biza’, ma jkunx irid jinqeda bil-protezzjoni ta’ dak il-pajjiż; jew min, mingħajr 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-biza’, ma jkunx irid jerga’ 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 Għolja),

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

(i) ikun għamel 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 għamel reat gravi mhux ta’ xorta politika barra minn Malta qabel ma jkun daħal Malta; jew

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

Iżda meta persuna jkollha iktar minn nazzjonalità waħda, il-kelma “pajjiż” imsemmija hawn aktar qabel, għandha tkun tirreferi għal kull wiehed mill-pajjiżi li tiegħu tkun ċittadin, u dik il-persuna ma għandhiex titqies bhala li ma għandhiex il-protezzjoni ta’ pajjiżha, jekk, mingħajr 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-immigrazzjoni nominat taht l-Att dwar l-Immigrazzjoni.

Konvenzjoni ta' l-1951 dwar l-Istatus ta' Rifugjati.

3. Dan l-Att jinkorpora l-obbligazzjonijiet li Malta assumiet taht il-Konvenzjoni, u fit-tifsir tiegħu għandu jittiehed kont tal-provvedimenti tal-Konvenzjoni.

TAQSIMA II

Proċeduri

Titolu I - Il-Kummissarju għar-Rifugjati

Twaqqif ta' Kummissarju għar-Rifugjati.

4. (1) Għandu jkun hemm persuna li tkun magħrufa bhala l-Kummissarju għar-Rifugjati.

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

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

(4) Il-Prim Ministru 'jista' jassenja uffiċjali pubbliċi biex ikunu membri tal-persunal tal-Kummissarju hekk kif jista' jkollu meħtieġ sabiex jgħinu lill-Kummissarju fit-tweġġ 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 jkun magħmul minn president u żewġ membri oħra li jinħatru mill-Prim Ministru minn fost persuni li jkunu ta' integrità magħrufa u li jidhrulu li jkunu kwalifikati minħabba f'li kellhom esperjenza, u wrew hila, f'suġġetti li jittqiesu adattati għal dak l-iskop:

Iżda għall-inqas wiehed mill-membri tal-Bord għandu jkun persuna li tkun eżerċitat ta' avukat f'Malta għal perjodu jew perjodi li jammontaw, b'kolloxx, għal mhux anqas minn seba' snin.

Hatra.

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

(3) Il-Ministru jista' wkoll jahtar president sostitut u membri sostituti tal-Bord sabiex joqogħdu fil-Bord kull meta l-president jew il-membri jew xi wiehed minnhom ikun għal xi raġuni valida temporanjament inkapaċi milli jattendi u jippartecipa fis-seduti tal-Bord:

Iżda, kemm jista' jkun prattikament possibbli, l-istess president u l-istess membri ghandhom jisimghu u jikkonkludu l-istess każ.

6. Membru tal-Bord jista' biss jitnehha mill-kariga mill-Prim ^{Tnehhija.} Ministru minhabba fi traskuraġni gravi, inkompetenza, jew attijiet, ommissjonijiet jew imġieba li ma jixirqux lil membru tal-Bord.

7. (1) Il-Bord ikollu s-setgħa li jisma' u jiddeciedi appelli ^{Appelli lill-Bord.} kontra xi rakkomandazzjoni tal-Kummissarju.

(2) Appelli lill-Bord ghandhom 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' tnehhija għandu jinheles sakemm tingħata d-decizjoni tal-Bord.

(4) Il-Bord ta' l-Appelli dwar ir-Rifugjati għandu, skond ma jista' jkun jehtieg 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) Bla hsara għar-regolamenti magħmulin taht il-paragrafu (b) tas-subartikolu (1) ta' l-artikolu 19 ta' dan l-Att, il-Bord għandu jirregola l-proċedura tiegħu nnifsu. Il-Bord għandu wkoll permezz tal-President ikollu s-setgħa li jamministra l-ġurament lil kull persuna li tidher quddiemu.

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

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

(11) Id-dispożizzjonijiet ta' dan l-artikolu ma ghandhomx japplikaw fil-każ ta' applikazzjonijiet li ghandhom jiġu kkunsidrati taht il-proċeduri aċċellerati skond l-artikolu 18 ta' dan l-Att.

TAQSIMA III

Kif jiġu trattati Persuni li jfittxu Asil u Rifugjati

Applikazzjonijiet ghal status ta' rifugjat.

8. (1) Persuna li tkun qeghda tfittex asil f'Malta, ghandha ssirilha intervista minn uffiċjal ta' l-immigrazzjoni kemm jista' jkun malajr, u hija tista' tapplika lill-Kummissarju fuq il-formola preskritta ghal dikjarazzjoni. Il-formola preskritta ghandha, meta jkun possibbli, tkun f'islen li l-applikant ikun jifhem. L-uffiċjal ta' l-immigrazzjoni ghandu wkoll jgharraf lil dik il-persuna bid-dritt li ghandha li tapplika ghal dikjarazzjoni u li tikkonsulta lill-Kummissarju Gholi u li jkollha assistenza legali matul il-fażijiet kollha tal-proċedura ta' l-asil.

(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 ghal dikjarazzjoni, u l-Kummissarju ghandu jehtieg lill-applikant sabiex jattendi ghal intervista fi żmien ġimgħa. Intervista taht dan is-subartikolu ghandha ssir bil-magħluq u, meta jkun hekk mehtieg u possibbli, bl-assistenza ta' interpretu.

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

(4) Il-Kummissarju Gholi jkollu aċċess liberu ghal kull persuna li tfittex asil u jista' jkun prezenti waqt kull intervista li ssirilha mill-Kummissarju ghar-Rifugjati.

(5) Il-Kummissarju ghandu kemm jista' jkun malajr jeżamina applikazzjoni ghal status ta' rifugjat li tkun saret skond is-subartikoli (1) jew (2) ta' dan l-artikolu u ghandu jirrikmanda lill-Ministru dwar jekk ghandux jilqa' dik l-applikazzjoni jew le. F'dan l-ghemil il-Kummissarju ghandu jiżgura ruhu li l-applikant ikun ippreżenta l-każ tiegħu kollu kemm hu, li jkun sostnib bi provi u li jkun

ta spjegazzjonijiet xierqa ghar-ragunijiet kollha li jkun gab fl-applikazzjoni tieghu. Kull decizjoni tal-Kummissarju dwar xi aplikazzjoni ghandha tkun bil-miktub u ghandu jkun fiha r-ragunijiet li tkun imsejsa fuqhom.

(6) Jekk il-Kummissarju jirrikmanda li l-applikazzjoni ghandha tintlaqa', il-Ministru jaghmel dikjarazzjoni li tkun tghid li l-applikant ikun eligibbli ghal status ta' rifugjat, jew inkella jappella kontra rikmandazzjoni bhal dik skond ma hemm fl-artikolu 7.

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

(8) Meta ssir tali rakkomandazzjoni, il-Ministru ghandu jaghti dik il-protezzjoni umanitarja; dik il-protezzjoni ghandha tieqaf jekk il-Ministru jkun sodisfatt, wara li jikkonsulta lill-Kummissarju, li dik il-protezzjoni ma tkunx aktar mehtiega.

9. (1) Persuna ma ghandhiex titkecca minn Malta jew titregga' Projbizzjoni ta' refoulement. 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 taghha.

(2) Id-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu m'ghandhomx japplikaw ghal rifugjat li dwaru jkun hemm ragunijiet validi li jitqies bhala bniedem perikoluz ghas-sigurtà ta' Malta, jew li, wara li jkun instab hati b'sentenza finali ta' xi delitt partikolarment serju, jkun ta' periklu ghall-komunità.

10. (1) Minkejja d-dispożizzjonijiet ta' kull ligi ohra li Kif jigu trattati persuni li jfittxu asil. tistabilixxi xort'ohra, persuna li tfittex asil m'ghandhiex titnehha minn Malta qabel ma tigi deciza finalment l-applikazzjoni taghha skond dan l-Att u dak l-applikant ghandu jithalla jidhol jew jibqa' Malta sakemm tinghata decizjoni finali dwar l-applikazzjoni tieghu. Hija ghandha jkollha wkoll aċċess ghal edukazzjoni u tahrig statali f'Malta u li tircievi servizz u kura medika statali.

(2) Persuna li tfittex asil —

(a) ma ghandhiex 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 waħda 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 għax irid hu, l-applikazzjoni tiegħu titqies li tkun giet irtirata, kemm-il darba t-tluq tiegħu minn Malta ma jkunx gie awtorizzat mill-Ministru.

Drittijiet
tar-rifuġjati.

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

(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 jgħaddi proċedimenti gudizzjarji għall-ghemil 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 minghajr 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 rifuġjat li jkunu qegħdin Malta filwaqt tad-dikjarazzjoni jew li jinghaqdu magħha f'Malta, jkollhom l-istess drittijiet u benefiċċji bħar-rifuġjat innifsu.

Tfal u zghazagh.

12. Tifel jew zaghżugh 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 zaghżugh 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 Żghazagh (Ordnijiet għall-Harsien), bhallikieku kien xi tifel jew zaghżugh taht dak l-Att.

Kap. 285.

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

Min imur jghammar f'pajjiż iehor.

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

Assistenza.

TAQSIMA IV

Revoka ta' Dikjarazzjoni

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

Tmien ta' status ta' rifuġjat.

(a) għax riedet, reġghet inqadiet bil-protezzjoni tal-pajjiż tan-nazzjonalità tagħha, jew jekk kienet tilfet in-nazzjonalità tagħha, reġghet kisbitha għax hekk riedet; jew

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

(ċ) għax riedet, tkun stabbiliet ruhha mill-ġdid fil-pajjiż mnejn tkun telqet jew li tkun baqgħet barra minnu minhabba fil-biża' mill-persekuzzjoni; jew

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

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

(2) Persuna li tkun giet avzata li tkun temmet milli tibqa' jkollha l-istatus ta' rifuġjat ikollha jedd għal appell kontra dik id-deċiżjoni quddiem il-Bord ta' l-Appelli dwar ir-Rifuġjati fi żmien ġimghatejn minn dak l-avviż u d-dispożizzjonijiet ta' l-artikolu 7 ta' dan l-Att għandhom ikunu *mutatis mutandis* japplikaw għal dak l-appell. Id-deċiżjoni ta' Bord ta' l-Appelli dwar ir-Rifuġjati tkun wahda finali.

Thassir ta'
status ta' rifugjat.

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

(2) Persuna li dwarha l-Ministru jkun irrevoka dikjarazzjoni taht is-subartikolu (1) ta' dan l-artikolu jkollha jedd tappella kontra r-revoka quddiem il-Bord ta' l-Appelli dwar ir-Rifugjati fi zmien gimgha minn meta tigi notifikata bir-revoka, u d-dispozizzjonijiet ta' l-artikolu 7 ta' l-Att ghandhom ikunu japplikaw *mutatis mutandis* ghal dak l-appell.

Tkeccija ta'
rifugjat.

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

(2) Id-dispozizzjonijiet ta' l-artikolu 7 ta' dan l-Att ghandhom, *mutatis mutandis*, ikunu japplikaw ghall-ordnijiet ta' tkeccija li jinharqu taht dan l-artikolu.

(3) Rifugjat li ghalih japplika dan l-artikolu ghandu jinghata perjodu ta' zmien ragonevoli li matulu jkun jista' jfittex li jithalla jidhol legalment f'xi pajjiz iehor.

TAQSIMA V

Proceduri Accellerati

Proceduri
accellerati.

18. (1) Persuna li tkun qed tfittex asil f'Malta skond l-artikolu 8 ta' dan l-Att ghandha tigi ezaminata taht proceduri accellerati skond dan l-artikolu meta:-

(a) l-applikazzjoni taghha tkun tidher *prima facie* bhala wahda manifestament infondata kif imfisser fl-artikolu 2 ta' dan l-Att, jew

(b) il-persuna jkollha nazzjonalita' fi jew tkun cittadin ta', jew, jekk ma jkollhiex nazzjonalita' fi jew ma tkunx cittadin ta', ikollha dritt ta' residenza fi, pajjiz ta' l-origni sigur kif imfisser fl-artikolu 2 ta' dan l-Att u fejn ma jkun hemm ghalih ebda riskju gravi ta' persekuzzjoni fil-kuntest u fl-iskop tal-Konvenzjoni, jew

(ċ) il-persuna jew tkun giet diġà rikonoxxuta bhala rifuġjat skond il-Konvenzjoni f'pajjiż terz sigur kif imfisser fl-artikolu 2 ta' dan l-Att jew fejn diġà kellu l-opportunità, fil-fruntiera tiegħu jew got-territorju tiegħu, japplika hemhekk għal status ta' rifuġjat qabel ma jiġi Malta u jkun hemm provi ċari li jkun jista' jiddaħhal f'dak il-pajjiż terz.

(2) Jekk wara li l-applikant jiġi intervistat skond proċeduri delineati fis-subartikolu (1) ta' l-artikolu 8 ta' dan l-Att, l-uffiċjal ta' l-immigrazzjoni involut ikun tal-fehma li l-applikazzjoni tkun tinkwadra f'xi waħda jew iktar mill-kategoriji speċifikati fil paragrafi (a) sa (ċ) tas-subartikolu (1) ta' dan l-artikolu, huwa għandu minnufih jagħmel rapport bil-miktub dwar il-każ, flimkien ma' l-applikazzjoni magħmula mill-persuna lill-Kummissarju, u għandha wkoll tintbagħat mill-imsemmi uffiċjal ta' l-immigrazzjoni kopja tal-materjal kollu mibgħut lill-Kummissarju, lill-President tal-Bord ta' l-Appelli dwar ir-Rifuġjati.

(3) Meta jsir rapport lill-Kummissarju taht il-provvedimenti ta' hawn aktar qabel, il Kummissarju għandu jeżamina l-applikazzjoni minghajr dewmien u f'kull każ fi żmien tlett ijiem minn meta jirċievi r-rapport mill-uffiċjal ta' l-immigrazzjoni skond is-subartikolu (2) ta' dan l-artikolu.

(4) Il-President tal-Bord ta' l-Appelli dwar ir-Rifuġjati għandu, fi żmien tlett ijiem u indipendentement mill-eżami li jkun qed isir mill-Kummissarju, jeżamina applikazzjoni li tkun giet lilu riferita mill-uffiċjal ta' l-immigrazzjoni skond is subartikolu (2) ta' dan l-artikolu.

(5) Il-fehma tal-Kummissarju u tal-President tal-Bord ta' l-Appelli dwar ir-Rifuġjati, dwar kull kwistjoni lilhom riferita skond is-subartikolu (2) ta' dan l-artikolu, għandha tkun iffurmata b'mod indipendenti ta' wiehed minn ta' l-iehor u tkun bażata fuq intervista separata li ssir ma' l-applikant, fuq id-dokumentazzjoni provduta mill-uffiċjal ta' l-immigrazzjoni, u fuq kull informazzjoni oħra minn individwi, organizzazzjonijiet jew awtoritajiet oħra involuti li huma jistgħu indipendentement iqisu bhala mehtieġa u spedjenti għall-finijiet tat-twettiq ta' eżami kif dovut tal-każ.

(6) Intervista ma' l-applikant taht id-dispożizzjonijiet ta' hawn aktar qabel għandha, meta dan ikun japplika, titmexxa privatament u bl-assistenza ta' interpretu, u, jekk l-applikant ikun hekk jixtieq, fil-preżenza tal-Kummissarju Għoli. L-applikant għandu wkoll jiġi mgharraf bid-dritt li għandu li jkollu s-servizz ta' avukat sabiex dan jassistih waqt il-proċedimenti.

(7) L-applikant involut u l-Kummissarju Gholi jistghu jaghmlu iktar sottomissjonijiet, sew bil-fomm sew bil-miktub, lill-Kummissarju u, jew lill-President tal-Bord ta' l-Appelli dwar ir-Rifugjati, skond il-każ, dwar investigazzjoni li tkun qed issir minnhom skond applikazzjoni li titqies mill-ufficjal ta' l-immigrazzjoni bhala li tinkwadra taht wahda mill-kategoriji specifickati taht il-paragrafu (b) u (c) tas-subartikolu (1) ta' dan l-artikolu jekk l-applikant involut ivanta fuq bażi individwali u personali riskju serju ta' persekuzzjoni lili nnifsu f'pajjiż xort'ohra kkunsidrat bhala sigur fil-kuntest ta' l-iskop tal-Konvenzjoni, u l-Kummissarju u l-President tal-Bord ta' l-Appelli dwar ir-Rifugjati ghandhom jikkunsidraw kull tali sottomissjoni.

(8) Bla hsara ghad-dispożizzjonijiet ta' qabel ta' dan l-artikolu, meta fid-deċiżjoni li jaghmlu l-Kummissarju u l-President tal-Bord ta' l-Appelli dwar ir-Rifugjati, independentement wiehed mill-iehor, it-tnejn jaslu għall-konklużjoni li l-applikazzjoni tinkwadra taht xi wahda mill-kategoriji specificki msemmija fil-paragrafi (a) sa (c) fis-subartikolu (1) ta' dan l-artikolu, l-applikazzjoni ghandha tigi miċhuda u dik id-deċiżjoni ghandha tkun wahda finali u konklużiva u minkejja d-dispożizzjonijiet ta' kull liġi ohra ma ghandu jsir ebda appell jew tittiehed azzjoni għal stharrig ġudizzjarju minnha quddiem il-Bord ta' l-Appelli dwar ir-Rifugjati jew quddiem xi qorti tal-ġustizzja ohra. Id-deċiżjoni, inkluzi l-motivazzjonijiet tagħha, ghandhom jiġu komunikati mill-Kummissarju lill-applikant bil-fomm, kemm-il darba huwa ma jitlobx konferma bil-miktub.

(9) (a) Meta, skond il-proċeduri delineati fid-dispożizzjonijiet ta' qabel ta' dan l-artikolu, applikazzjoni tkun giet miċhuda, il-Kummissarju ghandu jibgħat kopja tad-deċiżjoni flimkien mal-motivazzjonijiet relattivi lil –

- (i) il-Ministru,
- (ii) il-President tal-Bord ta' l-Appelli dwar ir-Rifugjati,
- (iii) il-Kummissarju Gholi, u
- (iv) l-ufficjal ta' l-immigrazzjoni.

(b) Wara li tittiehed deċiżjoni li tkun tiċhad applikazzjoni eżaminata taht proċeduri aċċellerati skond dan l-artikolu, il-Kummissarju jista', jekk huwa jqis li jkun mehtieg li jsir hekk, jgħarraf lill-awtoritajiet ta' xi pajjiż terz involut li dik l-applikazzjoni għal asil ma gietx eżaminata fis-sustanza tagħha.

(10) Meta l-Kummissarju u l-President tal-Bord ta' l-Appelli dwar ir-Rifuġjati, wara li jkunu ghamlu eżami indipendenti ta' applikazzjoni lilhom riferita skond id dispozizzjonijiet ta' qabel ta' dan l-artikolu, jaslu ghal konkluzjonijiet differenti jew it-tnejn li huma ma jaqblux mal-fehma ta' l-ufficjal ta' l-immigrazzjoni dwar jekk l-applikazzjoni ghandhiex tkun ikkunsidrata taht xi waħda mill-kategoriji speċifikati fil-paragrafi (a) sa (c) tas-subartikolu (1) ta' dan l-artikolu, l-applikant ikun intitolat li l-applikazzjoni tiegħu ghal asil tiġi proċessata taht proċeduri normali kif provdut taht dan l-Att, inkluż id-dritt ta' appell skond l-artikolu 7, u l-Kummissarju ghandu skond hekk jgharraf bil-fomm lill-applikant u lill-Kummissarju Għoli bil-miktub minnufih.

(11) Għall-finijiet tal-paragrafi (b) u (c) tas-subartikolu (1) ta' dan l-artikolu, il-Ministru jista', bil-miktub permezz ta' proċeduri amministrattivi, jiddikjara lil xi pajjiż bhala wiehed sigur mill-persekuzzjoni fit-termini u l-iskop tal-Konvenzjoni. Il-Ministru jista', ukoll bil-miktub permezz ta' proċeduri amministrattivi, jiddikjara lil xi pajjiż bhala li ma jkunx għadu wiehed sigur jekk, fil-fehma tiegħu, xi tibdil li jsir fis-sitwazzjoni politika jew legali tiegħu jkun juri li l-htigiet tal-Konvenzjoni dwar il-protezzjoni jkunu temmew milli jeżistu jew ikunu saru insodisfacenti.

(12) Minghajr preġudizzju għall-generalità tad-dispożizzjonijiet ta' hawn aktar qabel ta' dan l-artikolu, jekk filwaqt li tkun qiegħda tiġi eżaminata xi applikazzjoni magħmula skond l-artikolu 8 ta' dan l-Att, il-Kummissarju jasal għall-konkluzjoni li l-applikazzjoni għandha tiġi trattata taht proċeduri aċċellerati minhabba li tkun waħda manifestament infondata jew għaliex l-applikant ikun sab u seta' jsib protezzjoni sigura band'ohra skond il-Konvenzjoni, l-applikant għandu jiġi trattat taht proċeduri aċċellerati u d-dispożizzjonijiet ta' hawn aktar qabel ta' dan l-artikolu għandhom ikunu *mutatis mutandis* japplikaw.

(13) Għall-finijiet tal-paragrafu (c) tas-subartikolu (1) ta' dan l-artikolu, jekk applikant ikollu dokument ta' l-ivvjagġar mahruġ minn pajjiż terz sigur skond il-Konvenzjoni, huwa għandu jiġi dikjarat bhala li kien sigur mill-persekuzzjoni f'dak l-istat u l-applikazzjoni tiegħu għandha tiġi trattata taht proċeduri aċċellerati skond id-dispożizzjonijiet ta' hawn aktar qabel ta' dan l-artikolu.

TAQSIMA VI

Mixxellanji

19. (1) Il-Ministru jista' jagħmel regolamenti bil-għan li dan l-Att ikun jista' jkollu seħħ u, b'mod partikolari iżda minghajr preġudizzju għall-generalità 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 u jipprovdu li kull persuna li tikser jew tonqos mill-thares id-dispożizzjonijiet ta' xi regolament wiehed jew aktar minn dawk tkun hatja ta' reat kontra r-regolamenti u sabiex tiġi stabbilita l-piena li tali persuna tkun tista' tehel meta tinsab hatja, liema piena ma tkunx teċċedi multa ta' hames mitt lira Maltija jew prigunerija għal żmien mhux iktar minn tliet xhur, jew dik il-multa u prigunerija flimkien;

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

Kap. 318.

(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;

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

(f) jirregolaw bi ftehim mal-Ministru responsabbli għax-xogħol l-ghoti ta' permessi tax-xogħol lil rifuġjati rikonoxxuti;

(g) jipprovdu l-mezzi sabiex tiġi faċilitata l-identifikazzjoni ta' applikanti għal status ta' rifuġjati u sabiex tali informazzjoni tiġi komunikata, meta tkun hekk mitluba, lill-awtoritajiet kompetenti tal-pajjiżi li magħhom Malta jkollha xi ftehim bilaterali intiż għal dawk l-ghanijiet jew li jkunu partijiet f'konvenzjonijiet internazzjonali relatati mar-rifuġjati u li fihom Malta tkun ukoll parti u li jkunu jipprovdu għal skambji bħal dawk.

(2) Minkejja d-dispożizzjonijiet ta' kull liġi oħra, il-Ministru jista' taht dan is-subartikolu b'regolamenti jagħmel provvedimenti li jkunu jżidu mad-dispożizzjonijiet ta' dan l-Att, jew jidderogaw minnhom, sabiex igibu fis-seħh il-provvedimenti ta' xi konvenzjoni jew trattat iehor internazzjonali li jkunu jirrigwardaw lir-rifuġjati, l-istatus u l-protezzjoni tagħhom, li Malta tista' ssir parti fihom wara li r-ratifika ta' dak it-trattat tkun giet approvata permezz ta' Riżoluzzjoni tal-Kamra tad-Deputati.

Dispożizzjoni
transitorja.

20. (a) Meta, qabel id-dhul fis-seħh ta' dan l-Att, persuna tkun għamlet applikazzjoni għal status ta' rifuġjat quddiem il-Kummissarju Għoli iżda ma tkun ittiehdet ebda deċiżjoni dwar dan, l-applikazzjoni għandha titqies bħala applikazzjoni taht l-artikolu 8 ta' dan l-Att u għandha tiġi trattata skond dan l-Att.

(b) Mingħajr preġudizzju għad-dispożizzjonijiet ta' kull ligi oħra, persuna f'Malta li qabel id-dhul fis-seħh ta' dan l-Att kienet diġà rikonoxxuta bħala rifugjat mill-Kummissarju Għoli, għandha fuq talba tagħha tkompli tiġi rikonoxxuta bħala tali u d-dispożizzjonijiet ta' dan l-Att, meta jkunu rilevanti, għandhom ikunu wkoll japplikaw għaliha.

(ċ) Persuna f'Malta li qabel il-bidu fis-seħh ta' dan l-Att, għalkemm mhux rikonoxxuta mill-Kummissarju Għoli bħala rifugjat, ikollha protezzjoni umanitarja li tingħatalha mill-istess Kummissarju Għoli, jew li l-każ tagħha jkun klassifikat mill-Kummissarju Għoli bħala wiehed ta' interess, għandha meta hija hekk titlob tibqa' titqies bħala tali u għandha tgawdi protezzjoni umanitarja f'Malta kif imfisser taht dan l-Att.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 357 ta' 1-24 ta' Lulju, 2000.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GUIDO DE MARCO
President

25th July, 2000

ACT No. XX of 2000

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

Short title and commencement.

1. (1) This Act may be cited as the Refugees Act, 2000.

(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.

Interpretation.

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

“applicant” means a person who has made an application for a declaration under article 8;

“application” means an application for refugee status made under article 8;

“asylum seeker” means a person who has made an application for a declaration under article 8;

“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;

“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;

“dependent members of the family” means the spouse of the refugee, provided the marriage is subsisting on the date of the refugee’s application, and such children of the refugee who on the date of the refugee’s application are under the age of eighteen years and are not married;

“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.

“manifestly unfounded application” means an application

(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;

“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;

"safe country of origin" means a country of which an applicant is a national or citizen or, if he is not a national or citizen thereof, in which he has a right of residence and which, in general terms, is considered as presenting no serious risk of persecution on the basis of the following assessment criteria:-

(a) that the country generally tends not to generate refugees;

(b) that the country formally adheres to its obligations according to international human rights instruments and both in its domestic law and practice meets those obligations and has moreover a history showing that it allows recognised national or international organisations to monitor its human rights record;

(c) that the country demonstrates in law and in practice its capacity to adhere to democratic processes, including free elections, political pluralism and freedom of expression and thought with particular attention to the availability and effectiveness of legal avenues of protection and redress:

Provided that in any assessment reached of a country's capacity to be safe from persecution in terms of the Convention, allowance shall be made to the possibility of sudden dramatic changes in its political or legal situation which would render it no longer a safe country;

“safe third country” means a country of which the applicant is not a national or citizen and where:

(a) the life or freedom of the applicant would not be threatened within the meaning of Article 33 of the Convention; and

(b) the applicant had resided for a meaningful period of time prior to his entry into Malta; and

(c) the applicant would not be exposed to torture or inhuman or degrading treatment, and would be treated in accordance with basic human rights standards; and

(d) the applicant had either already been granted protection or has had an opportunity, at the border or within the territory of that country, to make contact with that country's authorities in order to seek their protection, before applying for asylum in Malta, or where there is clear evidence of his admissibility to that country; and

(e) the applicant is afforded effective protection against *refoulement* within the meaning of the Convention.

1951 Convention
on the Status
Relating to
Refugees

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.

PART II

Procedures

Title I - The Refugee Commissioner

Establishment
of Refugee
Commissioner.

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

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 of known integrity who appear to him to be qualified by reason of having had experience of, and shown capacity in, matters deemed appropriate for the purpose: Establishment
of Refugee
Appeals Board.

Provided that at least one of the members of the Board shall be a person who has practised as an advocate in Malta for a period or periods amounting, in the aggregate, to not less than seven years.

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

(3) The Minister may also appoint a substitute chairperson and substitute members of the Board to sit on the Board whenever the chairperson or members or any one of them is for some valid reason unable temporarily to attend and participate in the sittings of the Board:

Provided that, as far as practicable, the same chairperson and the same members shall hear and conclude the same case.

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. Removal.

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

(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 subarticle, a representative of the High Commissioner shall be entitled to attend the sittings of the Board.

(8) Subject to regulations made under paragraph (b) of subarticle (1) of article 19 of this Act, the Board shall regulate its own procedure. The Board shall also through the Chairperson have the power to administer an oath to any person appearing before it.

Cap. 319.

(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 Article 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.

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

(11) The provisions of this article shall not apply in the case of applications that fall to be considered under accelerated procedures in terms of article 18 of this Act.

PART III

Treatment of Asylum Seekers and Refugees

Applications
for refugee status.

8. (1) A person 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 and to have legal assistance during all the phases of the asylum procedure.

(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 subarticle 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 subarticles (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 article 7.

(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 subarticle (1) of this article 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.

Rights of
refugees.

11. (1) 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:-

(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

15. (1) A person shall cease to possess refugee status if he:- Cessation of refugee status.

(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.

(2) A person who is notified that he has ceased to possess refugee status shall be entitled to appeal against such decision to the Refugee Appeals Board within two weeks of such notification and the provisions of article 7 of this Act shall *mutatis mutandis* apply to such appeal. The decision of the Refugee Appeals Board shall be final.

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 subarticle (1) of this article 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 article 7 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 article 7 of this Act shall, *mutatis mutandis*, apply to expulsion orders issued under this article.

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

PART V

Accelerated Procedures

Accelerated
procedures.

18. (1) A person seeking asylum in Malta in terms of article 8 of this Act shall be examined under accelerated procedures in accordance with this article when:—

(a) his application appears *prima facie* to be manifestly unfounded as defined in article 2 of this Act, or

(b) the person is a national or citizen of a safe country of origin as defined in article 2 of this Act, or if he is not a national or citizen thereof, he has a right of residence therein, and there is no serious risk to him of persecution within the terms and scope of the Convention, or

(c) the person has either already been recognized as a refugee in terms of the Convention in a safe third country as defined in article 2 of this Act or where he has had the opportunity, at its border or within its territory, to apply there for refugee status before coming to Malta and there is clear evidence of his admissibility to that third country.

(2) If after interviewing the applicant in accordance with the procedures outlined in subarticle (1) of article 8 of this Act, the immigration officer is of the opinion that the application falls into one or more of the categories specified in paragraphs (a) to (c) of subarticle (1) of this article, he shall immediately submit a report in writing on the case, together with the application made by the person, to the Commissioner, and a copy of all the material sent to the Commissioner shall also be sent by the immigration officer to the Chairman of the Refugee Appeals Board.

(3) Where a report is made to the Commissioner under the foregoing provisions, the Commissioner shall examine the application without delay and in any case within three days after receiving the report from the immigration officer in accordance with subarticle (2) hereof.

(4) The Chairman of the Refugee Appeals Board shall, within three days and independently of the examination being carried out by the Commissioner, examine an application referred to him by the immigration officer in accordance with subarticle (2) hereof.

(5) The opinion of the Commissioner and the Chairman of the Refugee Appeals Board on any matter referred to them in accordance with subarticle (2) hereof shall be formed independently of each other on the basis of a separate interview with the applicant, on the documentation provided by the immigration officer, and upon any other information from individuals, organisations or other authorities concerned which they may independently consider necessary and expedient for the purposes of carrying out a proper examination of the case.

(6) Any interview with the applicant under the foregoing provisions shall, where necessary, be conducted in private and with the assistance of an interpreter, and, if so desired by the applicant, in the presence of the High Commissioner. The applicant shall also be informed of his right to obtain the services of a lawyer to assist him during proceedings.

(7) The applicant concerned and the High Commissioner may make further representations, verbally or in writing, to the Commissioner and, or the Chairman of the Refugee Appeals Board, as the case may be, in relation to an investigation being carried out by them in pursuance of an application considered by the immigration officer to fall under one of the categories specified under paragraphs (b) and (c) of subarticle (1) hereof if the applicant concerned claims on an individual and personal basis a serious risk to himself in a country otherwise considered as safe within the scope of the Convention, and the Commissioner and the Chairman of the Refugee Appeals Board shall consider any such representations.

(8) Subject to the foregoing provisions of this article, where in their decision the Commissioner and the Chairman of the Refugee Appeals Board independently of each other both come to the conclusion that the application falls under any one of the specific categories mentioned in paragraphs (a) to (c) of subarticle (1) of this article, the application shall be rejected and such decision shall be final and conclusive and notwithstanding the provisions of any other law no appeal or action for judicial review shall lie before the Refugee Appeals Board or before any other court of law. The decision, including the grounds therefor, shall be communicated by the Commissioner to the applicant orally, unless he requests its confirmation in writing.

(9) (a) Where, following the procedures outlined in the previous provisions of this article, an application has been rejected, the Commissioner shall send a copy of the decision together with the grounds therefor to –

- (i) the Minister,
- (ii) the Chairman of the Refugee Appeals Board,
- (iii) the High Commissioner, and
- (iv) the immigration officer.

(b) Following a decision rejecting an application examined under accelerated procedures in accordance with this article, the Commissioner may, if he considers it necessary to do so, inform any third country authorities concerned that the said asylum application was not examined as to substance.

(10) Where the Commissioner and the Chairman of the Refugee Appeals Board, following an independent examination of an application referred to them in terms of the foregoing provisions of this article reach different conclusions or both disagree with the opinion of the immigration officer as to whether the application falls to be considered under any one of the categories specified in paragraphs (a) to (c) of subarticle (1) hereof, the applicant shall be entitled to have his application for asylum processed under normal procedures as provided for under this Act, including the right to appeal in terms of article 7, and the Commissioner shall accordingly orally inform the applicant and the High Commissioner in writing immediately.

(11) For the purposes of paragraphs (b) and (c) of subarticle (1) hereof, the Minister may in writing through administrative procedures declare a country to be safe from persecution within the terms and scope of the Convention. The Minister may, also in writing through administrative procedures, declare a country to be no longer safe if, in his opinion, changes in its political or legal situation show that the requirements of the Convention as to protection have ceased to exist or have become unsatisfactory.

(12) Without prejudice to the generality of the foregoing provisions of this article, if in the process of examining any application submitted in terms of article 8 of this Act, the Commissioner arrives at the conclusion that the application should be dealt with under accelerated procedures on the basis of its being manifestly unfounded or because the applicant has found or could have found safe protection elsewhere in terms of the Convention, the application shall be dealt with under accelerated procedures and the foregoing provisions of this article shall *mutatis mutandis* apply.

(13) For the purposes of paragraph (c) of subarticle (1) hereof, if an applicant holds a travel document issued by a third safe country pursuant to the Convention, he shall be declared to have been safe from persecution in such state and his application shall be dealt with under accelerated procedures in accordance with the foregoing provisions of this article.

PART VI

Miscellaneous

19. (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 article 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 and for providing that any person who contravenes or fails to comply with the provisions of any one or more of such regulations shall be guilty of an offence against the regulations and for establishing the penalty being not more than that to which such person shall on conviction be liable, a fine (*multa*) not exceeding five hundred Maltese liri or imprisonment not exceeding three months, or to both such fine and imprisonment;

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

Cap. 318.

(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;

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

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

(g) for providing the means for facilitating the identification of applicants for refugee status and for communicating such information, when requested, to the competent authorities of the countries with which Malta has related bilateral agreement intended for such purposes or which are parties to international conventions related to refugees and to which Malta is also a party and which provide for such exchanges.

(2) Notwithstanding the provisions of any other law, the Minister may under this subarticle 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.

Transitory provision.

20. (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 article 8 of this Act and shall be dealt with in accordance with this Act.

(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.

Passed by the House of Representatives at Sitting No. 357 of 24th July, 2000.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives