

ABBOZZ TA' LIĠI msejjaħ

ATT biex jemenda l-Att dwar ir-Rifuġjati, Kap. 420.

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:-

1. It-titolu fil-qosor ta' dan l-Att huwa Att ta' l-2008 li jemenda l-Att dwar ir-Rifuġjati, u għandu jiftiehem u jinqara haġa waħda ma' l-Att dwar ir-Rifuġjati, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali". Titolu fil-qosor.

2. L-artikolu 2 ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 2 ta' l-Att prinċipali.

(a) it-tifsiriet "applikant", "applikazzjoni", "persuna li tfittex asil", "protezzjoni umanitarja" u "uffiċjal ta' l-immigrazzjoni" għandhom jithassru;

(b) minnufih qabel it-tifsira "applikazzjoni manifestament infondata" għandha tiżdied din it-tifsira ġdida li ġejja:

" applikant għal asil" tfisser ċittadin ta' pajjiż terz jew persuna apolida li tkun għamlet applikazzjoni għal asil li ma tkunx għadha tiegħet deċiżjoni finali dwarha;"

(ċ) minnufih wara t-tifsira ġdida "applikant għal asil" għandha tiżdied din it-tifsira ġdida li ġejja:

" applikazzjoni għal asil" tfisser applikazzjoni li ssir minn ċittadin ta' pajjiż terz jew minn persuna apolida li tista' tiftiehem bhala talba għal protezzjoni internazzjonali

taht il-Konvenzjoni;"

(d) fit-tifsira "applikazzjoni manifestament infondata" minflok il-kliem "f'dawn iċ-ċirkostanzi;" fil-paragrafu (j) tagħha, għandhom jidhlu l-kliem "f'dawn iċ-ċirkostanzi; jew", u minnufih wara l-paragrafu (j) għandu jizdied dan il-paragrafu ġdid li ġej:

"(k) meta l-persuna li tfittex asil tkun ġejja minn pajjiż ta' l-oriġini sigur;"

(e) minnufih wara t-tifsira "applikazzjoni manifestament infondata" għandha tiżdied din it-tifsira ġdida li ġejja:

" "awtorità li tiddeċiedi" tfisser il-Kummissarju għar-Rifuġjati;"

(f) minnufih wara t-tifsira ġdida "awtorità li tiddeċiedi" għandha tiżdied din it-tifsira li ġejja:

" "il-Bord" tfisser il-Bord ta' l-Appelli dwar ir-Rifuġjati kif imwaqqaf bl-artikolu 5;"

(g) minnufih wara t-tifsira ġdida "il-Bord" għandha tiżdied din it-tifsira ġdida li ġejja:

" "deċiżjoni finali" tfisser deċiżjoni dwar jekk iċ-ċittadin ta' pajjiż terz jew persuna apolidi tingħatax status ta' rifuġjat u din ma tkun soġġetta għal ebda appell;"

(h) minnufih wara t-tifsira "dikjarazzjoni" għandha tiżdied din it-tifsira ġdida li ġejja:

" "Direttivi" tfisser id-Direttiva tal-Kunsill 2004/83/KE tad-29 ta' April 2004 dwar *standards* minimi għall-kwalifika u l-istatus ta' ċittadin ta' pajjiżi terzi jew persuni apolidi bħala rifuġjati jew bħala persuni li fin-nuqqas ta' dan ikunu jehtieġu protezzjoni internazzjonali u l-kontenut tal-protezzjoni mogħtija u d-Direttiva tal-Kunsill 2005/85/KE ta' l-1 ta' Diċembru 2005 dwar *standards* minimi dwar proċeduri fi Stati Membri dwar l-għoti u l-irtirar ta' status ta' rifuġjat;"

(i) minnufih wara t-tifsira "Dokument ta' l-Ivvjaġġar tal-Konvenzjoni" għandha tiżdied din it-tifsira ġdida li ġejja:

" "l-ewwel pajjiż ta' l-asil" tfisser dak il-pajjiż fejn

applikant għal asil:

(a) ikun ġie rikonoxxut f'dak il-pajjiż bhala rifuġjat u jkun għadu jista' jutilizza dik il-protezzjoni; jew

(b) ikun mod ieħor igawdi protezzjoni bizżejjed f'dak il-pajjiż inkluż kull benefiċċju mill-prinċipju ta' *non-refoulement* u jkun soġġett għal dhul mill-ġdid f'dak il-pajjiż;"

(j) minnufih wara t-tifsira ġdida "l-ewwel pajjiż ta' asil" għandha tiżdied din it-tifsira ġdida li ġejja:

" "irtirar ta' status ta' rifuġjat" tfisser id-deċiżjoni li tittiehed minn awtorità kompetenti li tirrevoka, ittemm jew tiċhad milli ġgedded l-istatus ta' rifuġjat ta' persuna;"

(k) minnufih wara t-tifsira ġdida "irtirar ta' status ta' rifuġjat" għandha tiżdied din it-tifsira ġdida li ġejja:

" "jibqa'" tfisser li tibqa' fit-territorju, inkluża l-fruntiera jew f'żoni ta' transitu, ta' l-Istat Membru fejn tkun saret jew tkun qegħda tiġi eżaminata l-applikazzjoni għal asil;"

(l) minnufih wara t-tifsira "il-Ministru" għandha tiżdied din it-tifsira ġdida li ġejja:

" "minuri mhux akkumpanjat" tfisser persuna li tkun għadha ma għalqitx it-tmintax-il sena li tasal f'Malta mhux akkumpanjata jew li tithalla f'Malta mhux akkumpanjata minn adult responsabbli għaliha;"

(m) minnufih wara t-tifsira ġdida "minuri mhux akkumpanjat" għandha tiżdied din it-tifsira ġdida li ġejja:

" "pajjiż ta' l-orìġini" tfisser il-pajjiż jew pajjiżi taċ-ċittadinanza jew, għar-rigward ta' persuni apolidi, fejn kienu qabel soltu joqogħdu;"

(n) minflok it-tifsira "pajjiż ta' l-orìġini sigur" għandha tidhol din it-tifsira ġdida li ġejja:

" "pajjiż ta' l-orìġini sigur" tfisser pajjiż li applikant għal asil:

(a) ikun ċittadin tiegħu; jew

(b) għax ikun persuna apolidi, kien qabel soltu joqgħod f'dak il-pajjiż u ma jkun ippreżenta ebda raġuni gravi għaliex dak il-pajjiż m'għandux jitqies li jkun wieħed li m'huwiex pajjiż ta' l-orìġini sigur fiċ-ċirkostanzi partikolari tiegħu;"

(o) minflok it-tifsira "pajjiż terz sigur" għandha tidhol din it-tifsira li ġejja:

" "pajjiż terz sigur" tfisser pajjiż li l-applikant ma jkollux in-nazzjonalità jew ma jkunx ċittadin tiegħu u fejn -

(a) il-hajja u l-libertà ma jiġux mhedda minhabba fir-razza, reliġjon, nazzjonalità, għaliex tkun membru fi grupp soċjali partikolari jew fehma politika;

(b) il-prinċipju ta' *non-refoulement* skond il-Konvenzjoni jiġi rispettata;

(c) il-projbizzjoni tat-tnehhija bi ksur tad-dritt għall-ħelsien minn tortura u trattament krudil, inuman jew degradanti kif provduta fid-dritt internazzjonali tiġi rispettata;

(d) tkun teżisti l-possibilità biex issir talba għal status ta' rifuġjat u, jekk jinstab li jkun rifuġjat, jirċievi ħarsien skond il-Konvenzjoni;

(e) l-applikant kien joqgħod hemmhekk għal perjodu ta' żmien konsiderevoli qabel ma dahal Malta;"

(p) minflok it-tifsira "rifuġjat" għandha tidhol din it-tifsira li ġejja:

" "rifuġjat" tfisser ċittadin ta' pajjiż terz li, minhabba f'biża' msejsa fuq ir-realtà li jista' jiġi persegwit għal 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 li, mingħajr ma jkollu nazzjonalità u filwaqt li jkun barra mill-pajjiż fejn soltu kien joqgħod, minhabba f'dawn l-avvenimenti, ma jkunx kapaċi jew, minhabba f'dik il-biża', ma jkunx

irid jerga' lura fih, iżda ma tinkludix lil persuna li tkun eskluża skond ma hemm fl-artikolu 13:

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 biża' msejsa fuq il-persekuzzjoni, ma tkunx fittxet il-protezzjoni ta' xi wiehed mill-pajjiżi li tiegħu dik il-persuna tkun ċittadin:

Iżda wkoll:

(a) atti ta' persekuzzjoni fil-kuntest tat-tifsira ta' l-Artikolu 1A tal-Konvenzjoni għandhom ikunu daqstant gravi mix-xorta jew mir-ripetizzjoni tagħhom stess hekk li jkunu jikkostitwixxu vjolazzjoni gravi tad-drittijiet bażiċi tal-bniedem, partikolarment tad-dritt li ma tistax issir deroga minnu taħt l-Artikolu 15(2) tal-Konvenzjoni Ewropea għall-Protezzjoni tad-Drittijiet u l-Libertajiet Fundamentali tal-Bniedem; jew

(b) ikunu gabra ta' diversi miżuri, inklużi vjolazzjonijiet tad-Drittijiet tal-Bniedem, li tkun daqstant gravi li taffettwa lill-individwu bl-istess mod bhal ma hemm fil-paragrafu (a) hawn qabel;";

(q) minnufih wara t-tifsira "Stat Membru" għandha tiżdied din it-tifsira ġdida li ġejja:

" "status ta' protezzjoni sussidjarja" tfisser ir-rikonoxximent ta' ċittadin ta' pajjiż terz jew ta' persuna apolidi bhala persuna eligibbli għal protezzjoni sussidjarja taħt it-Taqsima IV;";

(r) minnufih wara t-tifsira "status ta' protezzjoni sussidjarja" għandha tiżdied din it-tifsira ġdida li ġejja:

" "status ta' rifuġjat" tfisser ir-rikonoxximent ta' ċittadin ta' pajjiż terz jew ta' persuna apolidi bhala rifuġjat.".

3. Minflok l-artikolu 3 ta' l-Att prinċipali, għandu jidhol dan li ġej:

Sostituzzjoni ta' l-artikolu 3 ta' l-Att prinċipali.

"3. Dan l-Att jinkorpora l-obbligazzjonijiet li Malta assumiet

taħt il-Konvenzjoni u l-obbligazzjonijiet tagħha taħt id-Direttivi."

Emenda tat-
Titolu I fit-
Taqsimha II ta' l-
Att prinċipali.

4. Fit-Taqsimha II ta' l-Att prinċipali minflok l-intestaturi "Proċeduri" u "Titolu I - Il-Kummissarju għar-Rifuġjati" għandha tidhol l-intestatura "Kummissarju għar-Rifuġjati".

Emenda tat-
Titolu II fit-
Taqsimha II ta' l-
Att prinċipali.

5. Fit-Taqsimha II ta' l-Att prinċipali minflok l-intestatura "Titolu II - Bord ta' l-Appelli dwar ir-Rifuġjati" għandhom jidhlu l-intestaturi "Taqsimha III" u "Bord ta' l-Appelli dwar ir-Rifuġjati".

Emenda ta' l-
artikolu 7 ta' l-
Att prinċipali.

6. L-artikolu 7 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok is-subartikolu (2) tiegħu għandu jidhol dan li ġej:

"(2) Appelli lill-Bord għandhom isiru fi żmien hmistax-il ġurnata 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:

Iżda l-Bord jista' jassumi li l-applikant ikun impliċitament irtira r-rikors ta' l-appell tiegħu meta jiġi żgurat li:

(a) huwa jkun naqas milli jipprovdri informazzjoni essenzjali għall-appell li jkun qiegħed jagħmel kemm-il darba l-applikant ma jurix, fi żmien raġonevoli, li n-nuqqas tiegħu seħħ minhabba f'ċirkostanzi li ma setax jikkontrolla;

(b) huwa jkun abbanduna jew telaq mingħajr ma kien awtorizzat mill-post fejn kien joqgħod jew fejn kien qed jinżamm, mingħajr ma għarraf lill-awtoritajiet kompetenti fi żmien raġonevoli jew ma jkunx, fi żmien tletin ġurnata, haress id-dmir li kellu li jirrapporta jew xi obbligazzjoni ohra li seta' kellu biex jikkomunika.";

(b) fis-subartikolu (7) tiegħu, minflok il-kliem "Minkejja d-disposizzjonijiet tas-subartikolu ta' qabel, rappreżentant" għandha tidhol il-kelma "Rappreżentant";

(ċ) fis-subartikolu (8) tiegħu, minflok il-kliem "l-artikolu 19(1)(b)" għandhom jidhlu l-kliem "l-artikolu

24(1)(b)";

(d) fis-subartikolu (9) tiegħu, minnufih wara l-kliem "quddiem ebda qorti tal-ġustizzja" għandhom jiżdedu l-kliem ", hliet taht id-disposizzjonijiet ta' l-artikolu 7A"; u

(e) is-subartikolu (11) tiegħu għandu jithassar.

7. Minnufih wara l-artikolu 7 ta' l-Att prinċipali, għandu jiżded dan l-artikolu ġdid li ġej:

Żjieda ta' l-artikolu 7A ġdid ma' l-Att prinċipali.

"Applikazzjoni sussegwenti wara deċiżjoni finali.

7A. (1) Persuna li tkun applikat għal asil tista' tagħmel applikazzjoni sussegwenti lill-Kummissarju għar-Rifuġjati wara li tkun ingħatat deċiżjoni finali:

Izda dik l-applikazzjoni għandha tiġi biss ikkunsidrata wara li jiġu preżentati elementi jew riżultanzi ġodda, li jkollhom x'jaqsmu ma' l-eżami dwar jekk l-applikant ikunx jikkwalifika bħala rifuġjat, u li l-applikant ma setax ikun jaf bihom jew li huwa ma setax jippreżenta.

(2) Il-persuna li tkun qegħda tippreżenta applikazzjoni sussegwenti għandha:

(a) tindika l-fatti u ġġib provi li jkunu jiġġustifikaw din il-proċedura; u

(b) tippreżenta dik l-informazzjoni ġdida fi żmien hmistax-il ġurnata mill-jum meta l-applikant ikun kiseb dik l-informazzjoni.

(3) L-eżami jista' jsir abbażi biss ta' sottomissjonijiet bil-miktub u l-applikant għandu jiġi mgharraf bl-eżitu ta' l-eżami u tad-dritt li jkollu li jagħmel appell."

8. Minflok it-Taqsimiet III, IV u V (u l-artikoli 8 sa 18A li hemm fihom) ta' l-Att prinċipali għandu jidhol dan li ġej:

Sostituzzjoni ta' l-artikoli 8 sa 18A ta' l-Att prinċipali.

"Taqsimi IV

Status ta' Rifuġjat

u Status ta' Protezzjoni Sussidjarja

I - Status ta' Rifuġjat

Kwalifika ghal
status ta'
rifugjat.

8. (1) Persuna tista' tapplika lill-Kummissarju, fuq il-formola preskritta, u għandha tinghata protezzjoni ta' rifugjat, meta jiġi stabbilit li hija tkun qiegħda tiffaċċa biża' msejsa sew fuq il-persekuzzjoni fil-pajjiż ta' l-origini tagħha jew fejn tkun soltu toqgħod skond il-Konvenzjoni.

(2) Il-biża' msejsa sew fuq il-persekuzzjoni tista' tkun ibbażata fuq avvenimenti li jkunu seħħew wara li l-applikant ikun telaq mill-pajjiż ta' l-origini tiegħu jew mill-attivitajiet li l-applikant ikun wettaq minn meta jkun telaq mill-pajjiż ta' l-origini, hlief meta din tkun ibbażata fuq ċirkostanzi li l-applikant ikun ta lok għalihom b'deċiżjoni tiegħu innifsu minn meta huwa jkun telaq mill-pajjiż ta' l-origini.

(3) Jekk il-Kummissarju jirrakkomanda li l-applikazzjoni tiġi aċċettata, il-Ministru għandu jagħmel dikjarazzjoni li l-applikant ikun eliġibbli għal status ta' rifugjat, jew appell kontra dik ir-rakkomandazzjoni.

Waqfien ta'
kwalifika għal
status ta'
rifugjat.

9. (1) Persuna ittemm milli jibqa' jkollha l-istatus ta' rifugjat jekk hija -

(a) tkun volontarjament reġgħet utilizzat il-protezzjoni tal-pajjiż taċ-ċittadinanza tagħha, jew wara li tkun tilfet iċ-ċittadinanza tagħha, hija tkun volontarjament reġgħet kisbitha; jew

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

(ċ) tkun volontarjament reġgħet stabbiliet lilha nnifisha fil-pajjiż li tkun telqet minnu jew li tkun baqgħet 'il barra minnu minhabba f'biża' ta' persekuzzjoni; jew

(d) ma tkunx tista' tibqa', minhabba f'li ċ-ċirkostanzi li minhabba fihom hija tkun giet rikonoxxuta bħala rifugjat ma jkunux għadhom aktar jeżistu, tkompli tiċhad li tagħmel użu mill-protezzjoni tal-pajjiż li tkun ċittadin tiegħu; jew

(e) tkun persuna li ma jkollhiex òittadinanza u li, billi è-òirkostanzi li minhabba fihom hija tkun giet rikonoxxuta bhala rifuġjat ma jkunux ghadhom aktar jeżistu, hija tkun tista' tiritorna lejn il-pajjiż fejn soltu kienet toqghod:

Iżda fil-paragrafi (d) u (e), ghandu jitqies jekk il-bidla fiè-òirkostanzi tkunx waħda ta' natura sinifikanti u mhux temporanja li l-biża ta' persekuzzoni li jkollu rifuġjat ma tkunx tista' tibqa' titqies bhala waħda li tkun imsejsa sew.

(2) Persuna li tkun giet avżata li ma tkunx ghad ghandha status ta' rifuġjat ikollha jedd tappella kontra dik id-deòizjoni fil-Bord fi żmien hmistax-il jum minn dak l-avviż u d-disposizzjonijiet ta' l-artikolu 7 ghandhom ikunu japplikaw *mutatis mutandis* ghal dak l-appell. Id-deòizjoni tal-Bord tkun waħda finali.

Revoka jew
chid ta' tiġdid
ta' status ta'
refuġjat.

10. (1) Il-Ministru ghandu jirrevoka dikjarazzjoni ta' status ta' rifuġjat meta huwa jkun sodisfatt, wara li jagħmel investigazzjoni kif imiss, li dik il-persuna li tkun inħarġitilha dikjarazzjoni tkun giet rikonoxxuta hażin bhala rifuġjat abbażi ta' applikazzjoni li jkun fiha informazzjoni materjalment mhux korretta jew falza, jew kienet hekk rikonoxxuta minhabba fi frodi, falsifikazzjoni, jew li tkun ippreżentat tagħrif falz jew qarrieqi ta' xorta materjali jew sostanzjali għar-rigward ta' dik l-applikazzjoni:

Iżda dik il-persuna ghandha tiġi mgharrfa bil-miktub meta l-kwalifika tagħha għal status ta' rifuġjat tkun qegħda tiġi kkunsidrata mill-ġdid, ghandha tinghata raġunijiet għal dik il-kunsiderazzjoni mill-ġdid u ghandha tinghata l-opportunità li tippreżenta, waqt li ssirilha intervista personali, ir-raġunijiet għaliex l-istatus tagħha ta' rifuġjat ma ghandux ikun irtirat.

(2) Il-Ministru jista' jirrevoka jew jiçhad milli jgedded il-protezzjoni mogħtija lil rifuġjat meta:

(a) jkun hemm raġunijiet validi biex jikkunsidrah bhala perikoluż għas-sigurezza ta' Malta;

(b) billi jkun instab hati b'sentenza li tkun daħlet f'gudikat ta' xi reat li jkun wieħed partikolarment gravi, huwa jkun ta' periklu għall-komunità f'Malta.

(3) Persuna li dwarha l-Ministru jkun irrevoka jew ċaħad milli jgedded dikjarazzjoni taħt is-subartikoli (1) jew (2) ikollha l-jedd tappella kontra r-revoka fil-Bord fi żmien sebat ijiem min-notifika li ssirilha tar-revoka, u d-disposizzjonijiet ta' l-artikolu 7 għandhom ikunu japplikaw *mutatis mutandis* għal dak l-appell.

Tkeċċija.

11. (1) Il-Ministru jista' jordna t-tkeċċija minn Malta ta' rifuġjat jew persuni mogħtija protezzjoni sussidjarja abbażi tas-sigurezza nazzjonali jew l-ordni pubbliku, u sakemm issir dik it-tkeċċija dik il-persuna għandha tinżamm f'kustodja.

(2) Id-disposizzjonijiet ta' l-artikolu 7 għandhom ikunu japplikaw *mutatis mutandis* għal ordnijiet ta' tkeċċija mahruġin taħt dan l-artikolu.

(3) Rifuġjat li dwaru jkun japplika dan l-artikolu għandu jinghata żmien raġonevoli li matulu jkun jista' jikseb dhul legali f'pajjiż ieħor.

Esklużjoni.

12. (1) Persuna li tkun ċittadin ta' pajjiż terz jew persuna apolidi hija eskluża milli tkun rifuġjat jekk:

(a) hija tkun tinkwadra fl-iskop ta' l-Artikolu 1D tal-Konvenzjoni, dwar il-protezzjoni jew l-assistenza minn organi jew aġenziji tan-Nazzjonijiet Uniti li ma jkunx il-Kummissarju Għoli għar-Rifuġjati tan-Nazzjonijiet Uniti. Meta għal xi raġuni tkun intemmet dik il-protezzjoni jew assistenza mingħajr ma l-posizzjoni ta' dik il-persuna ma tkun giet stabbilita definitivament skond ir-risoluzzjonijiet rilevanti adottati mill-Assemblea Ġenerali tan-Nazzjonijiet Uniti, dawk il-persuni għandu jkollhom *ipso facto* il-jedd għall-benefiċċji ta' dan l-Att; jew

(b) hija tkun rikonoxxuta mill-awtoritajiet kompetenti tal-pajjiż fejn hija tkun toqghod bħala li għandha d-drittijiet u l-obbligazzjonijiet li jinkombu fuq min ikollu è-ċittadinanza ta' dak il-pajjiż, jew drittijiet u obbligazzjonijiet ekwivalenti.

(2) Persuna li tkun ċittadin ta' pajjiż terz jew persuna apolidi hija wkoll eskluża milli tkun rifuġjat meta jkun hemm raġunijiet gravi sabiex jitqies li:

(a) hija tkun għamlet delitt kontra l-paċi, delitt tal-gwerra, jew delitt kontra l-umanità, kif imfissrin fl-istrumenti internazzjonali magħmulin biex jipprovdu dwar delitti bhal dawk; jew

(b) hija tkun għamlet delitt gravi mhux politiku barra l-pajjiż fejn tkun rifuġjat, inklużi azzjonijiet partikolarment krudili ukoll jekk dawn isiru bi skop allegatament politiku, qabel ma tkun iddahhlet bħala rifuġjat; jew

(ċ) hija tkun insabet haġja ta' atti li jmorru kontra l-finijiet u l-prinċipji tan-Nazzjonijiet Uniti kif stipulati fil-Preambolu u fl-Artikoli 1 u 2 tal-Karta tan-Nazzjonijiet Uniti.

(3) Is-subartikolu (2) japplika għal persuni li jistigaw jew xort'ohra jipparteċipaw fl-għemil tad-delitti jew fl-atti msemmija f'dak is-subartikolu.

II - *Non-refoulement*, meta persuna tmur tghammar f'pajjiż ieħor u assistenza

Projbizzjoni ta' *refoulement*.

13. (1) M'għandhiex persuna titkeċċa minn Malta jew titreġġa' lura b'ebda mod li jkun lejn il-fruntieri ta' territorji fejn il-ħajja jew il-libertà ta' dik il-persuna jkunu mhedda minħabba fir-razza, ir-religjon, ċittadinanza jew nazzjonalità tagħha, jew għax hija tkun membru ta' xi grupp soċjali partikolari jew ta' xi fehma politika.

(2) Id-disposizzjonijiet tas-subartikolu (1) m'għandhomx ikunu japplikaw għal rifuġjat jew persuna li tkun qegħda tgawdi protezzjoni sussidjarja u li dwarha jkun hemm raġunijiet validi għaliex għandha titqies bhala ta' periklu għas-sigurezza ta' Malta, jew li, għax tkun insabet ħatja b'sentenza li tkun daħlet f'gudikat ta' xi reat li jkun wiehed partikolarment gravi, tkun ta' periklu għall-komunità.

Min imur jghammar f'pajjiż ieħor.

14. Il-Ministru jista', wara li ssirlu talba bil-miktub mill-applikant, minn rifuġjat rikonoxxut jew minn persuna li tkun tgawdi protezzjoni sussidjarja, u meta jkun meħtieġ bl-assistenza tal-Kummissarju Għoli, jiffaċilita t-tluq ta' dik il-persuna biex tmur tghammar f'pajjiż ieħor u tagħmel dak kollu li jkun meħtieġ għal dak il-għan.

Assistenza.

15. Il-Kummissarju għandu kemm jista' jkun jiżgura li l-applikazzjoni ta' dan l-Att tkun konformi mal-prattika internazzjonali, u għal dan il-għan huwa jista' jikseb l-assistenza tal-Kummissarju Għoli jew ta' xi korp mhux governattiv nazzjonali jew internazzjonali li jkollu x'jaqsam ma' affarijiet li jirrigwardaw ir-rifuġjati.

III - Status ta' protezzjoni sussidjarja

Kwalifika għal status ta' protezzjoni sussidjarja.

Kap. 319.

16. (1) Wara li ssirlu rakkomandazzjoni mill-Kummissarju tar-Rifuġjati, il-Ministru jista' jiddikjara li jinghata status ta' protezzjoni sussidjarja lil persuna li tfittex asil u li l-applikazzjoni tagħha tkun giet miċhuda, meta t-treġġigh lura bil-forza lejn il-pajjiż ta' l-origini tagħha jew il-pajjiż fejn tkun soltu toqghod ikun jikkostitwixxi riskju kbir ta' ksur ta' l-Artikolu 2 jew l-Artikolu 3 tal-Konvenzjoni Ewropea għall-Protezzjoni tad-Drittijiet u l-Libertajiet Fundamentali tal-Bniedem skond ma hemm indikat fl-Att dwar il-Konvenzjoni Ewropea jew ikun ta' theddida gravi għall-hajja jew fuq il-persuna ta' ċittadin minhabba fi vjolenza li ma tiddiskriminax f'sitwazzjonijiet ta' konflitt armat internazzjonali jew intern:

Iżda persuna li tkun ċittadin ta' pajjiż terz jew persuna apolidi hija eskluża milli tkun eliġibbli għal protezzjoni sussidjarja meta jkun hemm raġunijiet gravi biex jiġi kkunsidrat li:

(a) hija tkun għamlet delitt kontra l-paċi, delitt tal-gwerra, jew delitt kontra l-umanità, kif imfissrin fl-istrumenti internazzjonali magħmulin biex jipprovdu dwar delitti bħal dawk jew persuna li tinstiga jew xort'oħra tipparteċipa fl-għemil ta' dawk id-delitti; jew

(b) hija tkun għamlet delitt mhux gravi; jew

(ċ) hija tkun insabet hatja ta' atti li jmorru kontra l-finijiet u l-prinċipji tan-Nazzjonijiet Uniti kif stipulati fil-Preambolu u fl-Artikoli 1 u 2 tal-Karta tan-Nazzjonijiet Uniti; jew

(d) hija tkun ta' periklu għall-komunità jew għas-sigurezza ta' Malta:

Iżda wkoll il-paragrafi (a), (b), (ċ) u (d) għandhom ukoll ikunu japplikaw għal persuni li jinstigaw jew xort'oħra jipparteċipaw fl-għemil tad-delitti jew ta' l-atti msemmija fihom:

Iżda wkoll id-deċiżjoni li tirrigwarda l-ghoti ta' protezzjoni sussidjarja għandha tinghata flimkien mad-deċiżjoni ta' ċhid li jkollha x'taqsam ma' l-applikazzjoni għal status ta' rifuġjat.

(2) Il-Kummissarju għar-Rifuġjati jista' jeskludi lil ċittadin ta' pajjiż terz jew lil persuna apolidi milli tkun eliġibbli għall-protezzjoni sussidjarja jekk l-applikant, qabel ma jiddaħhal Malta, ikun għamel xi delitt wieħed jew aktar, li jmorru lil hinn mill-iskop tas-subartikolu (1), li dwarhom ikun hemm piena ta' priġunerija li kieku dawn kienu saru f'Malta u jekk l-applikant ikun telaq mill-pajjiż ta' l-orijini tiegħu unikament biex jevita s-sanzjonijiet li joħroġu minn dawn id-delitti.

Atturi dwar riskju kbir jew theddida gravi.

Kap. 319.

17. Dawn li ġejjin jistgħu jiġu kkunsidrati bħala atturi ta' riskju kbir bi ksur ta' l-Artikolu 2 jew l-Artikolu 3 tal-Konvenzjoni Ewropea għall-Protezzjoni tad-Drittijiet u l-Libertajiet Fundamentali tal-Bniedem skond ma hemm indikat fl-Att dwar il-Konvenzjoni Ewropea, jew li jistgħu jkunu ta' theddida gravi għall-ħajja jew fuq il-persuna ta' ċittadin minħabba fi vjolenza li ma tiddiskriminax f'sitwazzjonijiet ta' konflitt armat internazzjonali jew intern:

(a) l-Istat;

(b) gruppi jew organizzazzjonijiet li jkunu qegħdin jikkontrollaw l-Istat jew parti sostanzjali mit-territorju ta' l-Istat;

(ċ) atturi mhux Statali, jekk ikun jista' jintwera li l-atturi msemmija fil-paragrafi (a) u (b), inklużi organizzazzjonijiet internazzjonali, ma jkunux kapaċi jew ma jkunux iridu jipprovdu protezzjoni kontra l-atti msemmija fl-artikolu 16(1).

Atturi dwar il-protezzjoni.

18. (1) Il-protezzjoni tista' tiġi provduta:

(a) mill-Istat; jew

(b) minn gruppi jew organizzazzjonijiet, inklużi organizzazzjonijiet internazzjonali, li jkunu qeghdin jikkontrollaw l-Istat jew parti sostanzjali mit-territorju ta' l-Istat.

(2) Għandha tiġi provduta protezzjoni meta l-entitajiet imsemmija fis-subartikolu (1) jieħdu passi raġonevoli biex jipprevjenu l-atti msemmija fl-artikolu 16(1) bit-tħaddim ta' sistema legali effettiva għall-kxif, il-prosekuzzjoni u l-ghoti ta' pjeni għal atti li jikkostitwixxu persekuzzjoni jew danni gravi, u l-applikant ikollu aċċess għal dik il-protezzjoni.

Protezzjoni interna.

19. (1) Bħala parti mill-valutazzjoni ta' l-applikazzjoni għal protezzjoni internazzjonali, il-Kummissarju għar-Rifuġjati jista' jiddeċiedi li l-applikant ma jkollux bżonn protezzjoni internazzjonali jekk f'xi parti mill-pajjiż ta' l-orijini ma jkun hemm ebda biża' msejsa sew li persuna ser tkun soġġetta għall-atti msemmija fl-artikolu 16(1) u l-applikant jista' jkun raġonevolment mistenni li jibqa' f'dik il-parti tal-pajjiż.

(2) Is-subartikolu (1) jista' jkun japplika minkejja kull tfixkil jew diffikultà li l-applikant jista' jkollu biex jerġa' lura lejn il-pajjiż ta' l-orijini tiegħu.

Kif tintemm il-kwalifika ta' status ta' protezzjoni sussidjarja.

20. Il-protezzjoni sussidjarja għandha tintemm jekk il-Ministru ikun sodisfatt, wara li jikkonsulta mal-Kummissarju, li daww iċ-ċirkostanzi li wasslu għall-ghoti ta' status ta' protezzjoni sussidjarja ma jkunux baqgħu jeżistu jew ikunu daqstant inbidlu li ma tkun meħtieġa aktar ebda protezzjoni:

Iżda għandu jitqies jekk il-bidla fiċ-ċirkostanzi tkunx waħda daqstant sinifikanti u ta' xorta mhux temporanja li l-persuna eliġibbli għal protezzjoni sussidjarja ma tkunx għadha aktar tiffaċċa riskju kbir ta' danni gravi.

Revoka jew ċid ta' tiġdid ta' status ta' protezzjoni sussidjarja.

21. Il-Ministru għandu jirrevoka jew jiċhad milli jgedded l-istatus ta' protezzjoni sussidjarja ta' ċittadin ta' pajjiż terz jew ta' persuna apolidi jekk:

(a) wara li tkun inghatat status ta' protezzjoni sussidjarja, hija kien imissha tiġi eskluża jew tiġi eskluża milli tkun eliġibbli għall-protezzjoni sussidjarja skond l-artikolu 16(1); jew

(b) meta hija qarrqet bil-fatti jew halliet barra xi fatti, inkluż meta setgħet użat dokumenti foloz, dan kien ikun deċiżiv għall-għoti ta' status ta' protezzjoni sussidjarja.

Taqsimha V

Proċeduri Aċċellerati

Applikazzjoni-
jiet
manifestament
infondati.

22. (1) Persuna li tfittex asil f'Malta skond l-artikolu 8 għandha tiġi eżaminata taħt proċeduri aċċellerati skond dan l-artikolu meta l-applikazzjoni tagħha tkun *prima facie* tidher bħala waħda manifestament infondata.

(2) Meta l-Kummissarju jkun tal-fehma *prima facie* li l-applikazzjoni tkun waħda manifestament infondata, il-Kummissarju għandu jeżamina l-applikazzjoni fi żmien tliet ijiem tax-xogħol u għandu, skond ma jkun japplika, jirrakkomanda li l-applikazzjoni tkun waħda manifestament infondata.

(3) Ir-rakkomandazzjoni għanda tiġi minnufih riferita lill-President tal-Bord li għandu jeżamina u jirrevedi r-rakkomandazzjoni tal-Kummissarju fi żmien tliet ijiem tax-xogħol.

(4) Il-deċiżjoni tal-President tal-Bord dwar jekk l-applikazzjoni tkunx waħda manifestament infondata għandha tkun waħda finali u konkluziva u minkejja d-disposizzjonijiet ta' kull liġi oħra, ebda appell jew għamla ta' reviżjoni ġudizzjarja oħra ma tista' ssir quddiem il-Bord jew quddiem xi qorti oħra.

(5) Meta, wara li jsiru l-proċeduri msemija fid-disposizzjonijiet ta' qabel ta' dan l-artikolu, applikazzjoni tiġi miċhuda, il-President tal-Bord għandu jibgħat kopja tad-deċiżjoni motivata lill-Ministru u lill-Kummissarju.

(6) Kull intervista ma' l-applikant taht id-disposizzjonijiet ta' qabel ta' dan l-artikolu ghandha, skond ma jkun mehtieg, titmexxa bil-magħluq u bl-assistenza ta' interpretu. L-applikant ghandhu wkoll jiġi mgharraf bid-dritt li jkollu li jikseb is-servizz ta' konsulent legali biex jassistih matul il-proċeduri aċċellerati u li jikkonsulta lill-Kummissarju Għoli.

(7) Meta l-applikazzjoni titqies bħala waħda mhux manifestament infondata, dik l-applikazzjoni ghandha tiġi eżaminata taht proċeduri normali skond ma hemm provdut taht dan l-Att.

(8) Mingħajr preġudizzju għall-generalità tad-disposizzjonijiet ta' qabel ta' dan l-artikolu, jekk waqt li jkun qiegħed isir l-eżami ta' xi applikazzjoni li tkun saret skond l-artikolu 8, il-Kummissarju jasal għall-konkluzjoni li l-applikazzjoni ghandha tinstama' taht proċeduri aċċellerati minhabba f'li din tkun *prima facie* waħda manifestament infondata jew ghaliex l-applikant ikun sab jew seta' jsib protezzjoni sigura band'oħra skond il-Konvenzjoni u d-Direttivi, l-applikazzjoni ghandha tinstama' taht proċeduri aċċellerati u d-disposizzjonijiet ta' qabel ta' dan l-artikolu għandhom ikunu japplikaw *mutatis mutandis*.

(9) Meta applikant ikollu dokument ta' l-ivvjaġġar maħruġ minn pajjiż terz sigur konformement mal-Konvenzjoni u mad-Direttivi, huwa jista' jiġi dikjarat bħala li kien sigur mill-persekuzzjoni f'dak l-Istat u l-applikazzjoni tiegħu ghandha tinstama' taht proċeduri aċċellerati skond id-disposizzjonijiet ta' qabel ta' dan l-artikolu.

Applikazzjoni-
jiet
inammissibbli.

23. (1) Applikazzjoni li ssir minn persuna f'Malta li tkun qegħda tfittex ir-rikonossiment ta' status ta' rifuġjat u li tkun tinkwadra taht xi waħda minn dawn il-kondizzjonijiet li ġejjin, tkun inammissibbli jekk:

(a) ikun hemm Stat Membru ieħor li jkun hareġ status ta' rifuġjat jew li jkollu l-obbligu li jeżamina dik l-applikazzjoni għal asil skond ir-Regolament tal-Kunsill (KE) 343/03 tat-18 ta' Frar 2003 li jistabbilixxi l-kriterji u l-mekkaniżmi li jiddeterminaw liema jkun l-Istat Membru responsabbli biex isir l-eżami ta' applikazzjoni għal asil li tkun giet ippreżentata f'xi wieħed mill-Istati Membri minn ċittadin ta' pajjiż terz;

(b) pajjiż li ma jkunx Stat Membru jitqies bħala l-ewwel pajjiż ta' l-asil għall-applikant;

(ċ) pajjiż li ma jkunx Stat Membru jitqies bħala pajjiż terz sigur għall-applikant;

(d) l-applikant jithalla jibqa' Malta abbażi ta' xi raġuni oħra u bħala riżultat ta' dan huwa jkun ingħata status komparabbli għad-drittijiet u l-benefiċċji ta' l-istatus ta' rifuġjat;

(e) l-applikant jithalla jibqa' Malta abbażi ta' xi raġuni oħra li tipproteġih kontra *refoulement* sakemm tintemm proċedura għad-determinazzjoni ta' l-istatus tiegħu;

(f) l-applikant ikun ippreżenta applikazzjoni identika wara deċiżjoni finali;

(g) membru dipendenti ta' l-applikant jippreżenta applikazzjoni wara li jkun ta l-kunsens tiegħu biex il-każ tiegħu jkun jiffirma parti minn applikazzjoni li tkun saret f'ismu, u ma jkun hemm ebda fatt li jkollu x'jaqsam mas-sitwazzjoni tal-persuna dipendenti li jkunu jiġġustifikaw applikazzjoni separata;

(h) ikun ġie rikonoxxut f'xi pajjiż li ma jkunx Stat Membru bħala rifuġjat u jkun xorta għadu jista' jużufuwixxi minn dik il-protezzjoni jew ikun xort'ohra jgawdi protezzjoni biżżejjed f'dak il-pajjiż, inkluż li jkun jikseb benefiċċju mill-prinċipju ta' *non-refoulement*, u dik il-persuna tkun tista' terġa' tiddaħhal f'dak il-pajjiż; jew

(i) ikollu in-nazzjonalità jew ikun ċittadin ta' xi pajjiż ta' l-oriġini sigur elenkat fl-Iskeda jew, jekk huwa ma jkollux in-nazzjonalità jew ma jkunx ċittadin ta' dak il-pajjiż, huwa jkollu d-dritt ta' residenza fih.

(2) Il-Ministru jista' jagħmel regolamenti li jkunu jemendaw l-elenku ta' pajjiżi speċifikati fl-Iskeda, iżda jkunu jistgħu jiġu elenkati f'dik l-Iskeda daww il-pajjiżi biss li fil-fehma tiegħu jkunu pajjiżi ta' oriġini sigur, b'dan ukoll li l-Ministru għandu jnehhi minn dik l-Iskeda xi pajjiż li fil-fehma tiegħu ma jkunx għadu pajjiż ta' l-oriġini sigur."

9. L-artikoli 19 u 20 ta' l-Att prinċipali għandhom jiġu enumerati mill-ġdid bħala l-artikoli 24 u 25 ta' l-Att rispettivament.

Enumerazzjoni mill-ġdid ta' l-artikoli 19 u 20 ta' l-Att prinċipali.

10. L-artikolu 24 ta' l-Att prinċipali kif enumerat mill-ġdid għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 24 ta' l-Att prinċipali.

(a) fil-paragrafu (f) tas-subartikolu (1) tiegħu minnufih wara l-kliem "permessi tax-xogħol lil rifuġjati rikonoxxuti" għandhom jiżdiedu l-kliem "u lill-membri tal-familja tagħhom, u lil persuni li jkunu qegħdin igawdu protezzjoni sussidjarja";

(b) minnufih wara l-paragrafu (g) tiegħu għandhom jiżdiedu dawn il-paragrafi ġodda li ġejjin:

"(h) jimplimentaw id-disposizzjonijiet tad-Direttivi tal-Kunsill ta' l-Unjoni Ewropea li jkollhom x'jaqsmu mar-rifuġjati u affarijiet anċillari;

(i) jipprovdu li kull persuna li tikser jew li tonqos milli tħares id-disposizzjonijiet ta' xi regolament wiehed jew aktar regolamenti, tkun hatja ta' reat kontra r-regolamenti u jstabbilixxu għall-ksur ta' daww ir-

regolamenti l-piena ta' multa ta' mhux iżjed minn elfejn u ħames mitt euro (€2,500) jew ta' prigunerija għal żmien mhux iżjed minn tliet xhur, jew ta' dik il-multa u prigunerija flimkien."

Emenda ta' l-
Iskeda li tinsab
ma' l-Att
prinċipali.

11. L-Iskeda li tinsab ma' l-Att prinċipali għandha tiġi emendata kif ġej:

(a) minflok il-kliem "(Artikolu 18A)" għandhom jidhlu l-kliem "(Artikolu 23)";

(b) il-kliem "Bulgarija" u "Romanija" għandhom jithassru; u

(ċ) minnufih wara l-kelma "Urugway" għandhom jiżdiedu l-kliem "Stati Membri ta' l-Unjoni Ewropea u taż-Żona Ekonomika Ewropea".

Emenda ta' l-
Att dwar l-
Immigrazzjoni.
Kap. 217.

12. Fis-subartikolu (1) ta' l-artikolu 36 ta' l-Att dwar l-Immigrazzjoni, minflok il-kliem "sabiex il-finijiet jew id-disposizzjonijiet ta' dan l-Att ikunu jistgħu jingiebu fis-seħħ." għandhom jidhlu l-kliem "sabiex il-finijiet jew id-disposizzjonijiet ta' dan l-Att ikunu jistgħu jingiebu fis-seħħ, u dik is-setgħa għandha tinkludi s-setgħa li jiġi provdut li kull persuna li tikser jew tonqos milli thares id-disposizzjonijiet ta' xi regolament wiehed jew aktar regolamenti tkun hatja ta' reat kontra dawk ir-regolamenti u li tistabilixxi l-piena għal dak il-ksur li tkun multa ta' mhux iżjed minn elfejn u ħames mitt euro (€2,500) jew prigunerija għal żmien mhux iżjed minn tliet xhur, jew dik il-multa u prigunerija flimkien."

Għanijiet u Raġunijiet

L-għan ta' dan l-Abbozz hu biex jaġġorna d-disposizzjonijiet ta' l-Att dwar ir-Rifuġjati, u jinkorpora d-disposizzjonijiet tad-Direttiva tal-Kunsill 2004/83/KE tad-29 ta' April 2004 dwar *standards* minimi għall-kwalifika u l-istatus ta' ċittadin ta' pajjiżi terzi jew persuni apolidi bħala rifuġjati jew bħala persuni li jkunu xort'ohra jeħtieġu l-protezzjoni internazzjonali u d-Direttiva tal-Kunsill 2005/85/KE ta' l-1 ta' Diċembru 2005 dwar *standards* minimi dwar proċeduri fi Stati Membri għall-ġoti u l-irtirar ta' l-istatus ta' rifuġjat.

**A BILL
entitled**

AN ACT to amend the Refugees Act, Cap. 420.

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:-

1. The short title of this Act is the Refugees (Amendment) Act, 2008, and it shall be read and construed as one with the Refugees Act, hereinafter referred to as "the principal Act". Short title.

2. Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.
 - (a) the definitions "applicant", "application", "asylum seeker", "humanitarian protection" and "immigration officer" shall be deleted;

 - (b) immediately before the definition "the Commissioner" there shall be inserted the following new definition:

" "applicant for asylum" means a third country national or stateless person who has made an application for asylum in respect of which a final decision has not yet been taken;"

 - (c) immediately after the new definition "applicant for asylum" there shall be inserted the following new definition:

" "application for asylum" means an application made by a third country national or a stateless person which can be understood as a request for international protection under the Convention;"

 - (d) immediately after the new definition "application for asylum" there shall be inserted the following definition:

" "the Board" means the Refugee Appeals Board as established by article 5;"

(e) immediately after the definition "Convention Travel Document" there shall be inserted the following new definition:

" "country of origin" means the country or countries of nationality or, for stateless persons, of former habitual residence;"

(f) immediately after the definition "dependent members of the family" there shall be inserted the following new definition:

" "determining authority" means the Refugee Commissioner;"

(g) immediately after the new definition "determining authority" there shall be inserted the following new definition:

" "Directives" means Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status;"

(h) immediately after the new definition "Directives" there shall be inserted the following new definition:

" "final decision" means a decision on whether the third country national or stateless person be granted refugee status which is not subject to appeal;"

(i) immediately after the new definition "final decision" there shall be inserted the following new definition:

" "first country of asylum" means that country where an applicant for asylum:

(a) has been recognised in that country as a refugee and he can still avail himself of that protection; or

(b) he otherwise enjoys sufficient protection in

that country including benefiting from the principle of *non-refoulement* and subject to re-admission to that country;"

(j) in the definition "manifestly unfounded application" for the words "of these circumstances;" in paragraph (j) thereof, there shall be substituted the words "of these circumstances; or", and immediately after paragraph (j) thereof there shall be added the following new paragraph:

"(k) when the asylum seeker comes from a safe country of origin;"

(k) for the definition "refugee" there shall be substituted the following:

" "refugee" means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events is unable or, owing to such fear, is unwilling to return to it, but does not include a person excluded in terms of article 13:

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:

Provided further that:

(a) acts of persecution within the meaning of Article 1A of the Convention must be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the right from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner as in paragraph (a) above;"

(l) immediately after the definition "refugee" there shall be inserted the following new definition:

" "refugee status" means the recognition of a third country national or stateless person as a refugee;"

(m) immediately after the definition "refugee status" there shall be inserted the following new definition:

" "remain" means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for asylum has been made or is being examined;"

(n) for the definition "safe country of origin" there shall be substituted the following:

" "safe country of origin" means a country of which the applicant for asylum:

(a) is a national; or

(b) being a stateless person, was formerly habitually resident in that country and he has not submitted any serious grounds for considering the country not to be a safe country of origin in his particular circumstances;"

(o) for the definition "safe third country" there shall be substituted the following:

" "safe third country" means a country of which the applicant is not a national or citizen and where -

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

(b) the principle of *non-refoulement* in accordance with the Convention is respected;

(c) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman

or degrading treatment as laid down in international law, is respected;

(d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Convention;

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

(p) immediately after the definition "safe third country" there shall be added the following new definition:

" "subsidiary protection status" means the recognition of a third country national or a stateless person as a person eligible for subsidiary protection under Part IV;"

(q) immediately after the new definition "subsidiary protection status" there shall be added the following new definition:

" "unaccompanied minor" means a person below the age of eighteen years who arrives in Malta unaccompanied or is left in Malta unaccompanied by an adult responsible for him;"

(r) immediately after the new definition "unaccompanied minor" there shall be added the following new definition:

" "withdrawal of refugee status" means the decision by a competent authority to revoke, end or refuse to renew the refugee status of a person.".

3. For article 3 of the principal Act, there shall be substituted the following:

Substitution of article 3 of the principal Act.

"3. This Act incorporates the obligations assumed by Malta under the Convention and its obligations under the Directives."

4. In Part II of the principal Act for the headings "Procedures" and "Title I - The Refugee Commissioner" there shall be substituted the heading "Refugee Commissioner".

Amendment of Title I in Part II of the principal Act.

5. In Part II of the principal Act for the heading "Title II - Refugee Appeals Board" there shall be substituted the headings "Part

Amendment of Title II in Part II of the principal Act.

III" and "Refugee Appeals Board".

Amendment of article 7 of the principal Act.

6. Article 7 of the principal Act shall be amended as follows:-

(a) for sub-article (2) thereof there shall be substituted the following:

"(2) Appeals to the Board shall be made within fifteen days 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:

Provided that the Appeals Board may assume that the applicant has implicitly withdrawn his application of appeal when it is ascertained that:

(a) he has failed to provide information essential to his appeal unless the applicant demonstrates, within a reasonable time, that his failure was due to circumstances beyond his control;

(b) he has abandoned or left without authorization the place where he lived or was held, without contacting the competent authorities within a reasonable time or he has not, within thirty days, complied with reporting duties or other obligations to communicate.";

(b) in sub-article (7) thereof, for the words "Notwithstanding the provisions of the previous sub-article, a representative" there shall be substituted the words "A representative";

(c) in sub-article (8) thereof, for the words "article 19(1)(b)" there shall be substituted the words "article 24(1)(b)";

(d) in sub-article (9) thereof, immediately after the words "before any court of law" there shall be added the words ", saving the provisions of article 7A"; and

(e) sub-article (11) thereof shall be deleted.

Addition of new article 7A to the principal Act.

7. Immediately after article 7 of the principal Act, there shall

be added the following new article:

"Subsequent application after final decision.

7A. (1) A person who has applied for asylum may make a subsequent application after a final decision to the Commissioner for Refugees:

Provided that such application shall only be considered on the presentation of new elements or findings, relating to the examination of whether the applicant qualifies as a refugee, and of which the applicant could not have been aware or which he could not have submitted.

(2) The person submitting a subsequent application shall:

(a) indicate facts and provide evidence which justify this procedure; and

(b) submit such new information within fifteen days from the day on which the applicant obtained such information.

(3) The examination may be conducted on the sole basis of written submissions and the applicant is to be informed of the outcome of the examination and of his right for an appeal."

8. For Parts III, IV and V (and articles 8 to 18A therein) of the principal Act, there shall be substituted the following:

Substitution of articles 8 to 18A of the principal Act.

"Part IV
Refugee Status
and Subsidiary Protection Status
I - Refugee Status

Qualification for refugee status.

8. (1) A person may apply to the Commissioner, in the prescribed form, and shall be granted refugee protection, where it is established that he faces a well-founded fear of persecution in his country of origin or habitual residence in terms of the Convention.

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

(3) If the Commissioner recommends the acceptance of the application, the Minister shall make a declaration that applicant is eligible for refugee status, or appeal against such recommendation.

Cessation of qualification for refugee status.

9. (1) 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 former habitual residence:

Provided that in paragraphs (d) and (e), regard shall be had as to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

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

Revocation or
refusal to
renew refugee
status.

10. (1) The Minister shall 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:

Provided that he shall be informed in writing that his qualification for refugee status is being reconsidered, is given reasons for such reconsideration and is given the opportunity to submit, in a personal interview, reasons as to why his refugee status should not be withdrawn.

(2) The Minister may revoke or refuse to renew the protection granted to a refugee when:

(a) there are reasonable grounds for regarding him as a danger to the security of Malta;

(b) having been convicted by a final judgment of a particularly serious crime, he constitutes a danger to the community of Malta.

(3) A person, in whose regard the Minister has revoked or refused to renew a declaration under sub-articles (1) or (2), shall be entitled to appeal against the revocation to the Board within seven days of the notification of the revocation to him, and the provisions of article 7 shall, *mutatis mutandis*, apply to such appeal.

Expulsion.

11. (1) The Minister may order the expulsion from Malta of any refugee or persons granted subsidiary protection 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 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.

Exclusion.

12. (1) A third country national or a stateless person is excluded from being a refugee if:

(a) he falls within the scope of Article 1D of the Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, such persons shall *ipso facto* be entitled to the benefits of this Act; or

(b) he is recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, or equivalent rights and obligations.

(2) A third country national or a stateless person is also excluded from being a refugee where there are serious reasons for considering that:

(a) he 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

(b) he has committed a serious non-political crime outside the country of refuge, including particularly cruel actions even if committed with an allegedly political objective, prior to his admission as a refugee; or

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

(3) Sub-article (2) applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

II - *Non-refoulement*, resettlement
and assistance

Prohibition of
refoulement.

13. (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 sub-article (1) shall not apply to a refugee or a person enjoying subsidiary protection 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 judgment of a particularly serious crime, constitutes a danger to the community.

Resettlement. 14. The Minister may, at the written request of an applicant, or of a recognized refugee or of a person enjoying subsidiary protection, and, where necessary, with the assistance of the High Commissioner, facilitate the resettlement of such person to another country and do all that is required for the purpose.

Assistance. 15. 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.

III - Subsidiary Protection Status

Qualification for subsidiary protection status. 16. (1) Upon the recommendation of the Commissioner of Refugees, the Minister may declare that subsidiary protection status be granted to an asylum seeker whose application has been dismissed, where his forcible return to his country of origin or country of habitual residence would constitute a real risk of violation of Article 2 or Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms indicated in the European Convention Act or be a serious threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict:

Cap. 319.

Provided that a third country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:

- (a) he 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 is a person who instigates or otherwise participates in the commission of such crimes; or

(b) he has committed a serious crime; or

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations; or

(d) he constitutes a danger to the community or to the security of Malta:

Provided further that paragraphs (a), (b), (c) and (d) shall also apply to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein:

Provided also that the decision concerning the granting of subsidiary protection shall be given in conjunction with the dismissal ruling relating to the application for refugee status.

(2) The Refugee Commissioner may exclude a third country national or a stateless person from being eligible for subsidiary protection if applicant, prior to his admission to Malta, has committed one or more crimes, outside the scope of sub-article (1), which would be punishable by imprisonment had they been committed in Malta and if applicant left his country of origin solely in order to avoid sanctions resulting from these crimes.

Actors of real risk or serious threat.

Cap. 319.

17. The following may be considered as actors of real risk of violation of Article 2 or Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as indicated in the European Convention Act, or may be a serious threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict:

(a) the State;

(b) parties or organizations controlling the State or a substantial part of the territory of the State;

(c) non-State actors, if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including international organizations, are unable or unwilling to provide protection against the acts mentioned in article 16(1).

Actors of protection.

18. (1) Protection may be provided by:

- (a) the State; or
- (b) parties or organizations, including international organizations, controlling the State or a substantial part of the territory of the State.

(2) Protection is provided when the entities mentioned in sub-article (1) take reasonable steps to prevent the acts mentioned in article 16(1) by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

Internal protection.

19. (1) As part of the assessment of the application for international protection, the Refugee Commissioner may determine that the applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being subject to the acts mentioned in article 16(1) and the applicant is reasonably expected to stay in that part of the country.

(2) Sub-article (1) may apply notwithstanding any obstacle or difficulty which the applicant may have to return to his country of origin.

Cessation of qualification of subsidiary protection status.

20. Subsidiary protection shall cease if the Minister is satisfied, after consulting the Commissioner, that the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required:

Provided that regard shall be had as to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.

Revocation or refusal to renew subsidiary protection status.

21. The Minister shall revoke or refuse to renew the subsidiary protection status of a third country national or a stateless person if:

(a) after having been granted subsidiary protection status, that person should have been or is excluded from being eligible for subsidiary protection in accordance with article 16(1); or

(b) that person's misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status.

Part V

Accelerated Procedures

Manifestly unfounded applications.

22. (1) A person seeking asylum in Malta in terms of article 8 shall be examined under accelerated procedures in accordance with this article when his application appears *prima facie* to be manifestly unfounded.

(2) Where the Commissioner is *prima facie* of the opinion that the application is manifestly unfounded, the Commissioner shall examine the application within three working days and shall, where applicable, recommend that the application is manifestly unfounded.

(3) The recommendation shall immediately be referred to the Chairman of the Board who shall examine and review the recommendation of the Commissioner within three working days.

(4) The decision of the Chairman of the Board on whether the application is manifestly unfounded shall be final and conclusive and, notwithstanding the provisions of any other law, no appeal or form of judicial review shall lie before the Board or before any other court of law.

(5) Where, following the procedures outlined in the previous provisions of this article, an application is rejected, the Chairman of the Board shall send a copy of the decision with the grounds therefor to the Minister and the Commissioner.

(6) Any interview with the applicant under the foregoing provisions of this article shall, where necessary, be conducted in private and with the assistance of an interpreter. The applicant shall also be informed of his right to obtain the services of a legal adviser to assist him during accelerated proceedings and to consult the High Commissioner.

(7) Where the application is considered not to be manifestly unfounded such application shall be examined under normal procedures as provided under this Act.

(8) 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, the Commissioner arrives at the conclusion that the application should be dealt with under accelerated procedures on the basis of its being *prima facie* manifestly unfounded or because the applicant has found or could have found safe protection elsewhere in terms of the Convention and the Directives, the application shall be dealt with under accelerated procedures and the foregoing provisions of this article shall *mutatis mutandis* apply.

(9) If an applicant holds a travel document issued by a safe third country pursuant to the Convention and the Directives, he may 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.

Inadmissible
applications.

23. (1) The application of any person in Malta seeking recognition of refugee status and who falls under any one of the following conditions, shall be inadmissible if:

(a) another Member State has granted refugee status or is obliged to examine the particular application for asylum in terms of Council Regulation (EC) 343/03 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national;

(b) a country which is not a Member State is considered as a first country of asylum for the applicant;

(c) a country which is not a Member State is considered as a safe third country for the applicant;

(d) the applicant is allowed to stay in Malta on some other grounds and as a result of this he has been granted a status comparable to the rights and benefits of the refugee status;

(e) the applicant is allowed to stay in Malta on some other grounds which protect him against *refoulement* pending the outcome of a procedure for the determination of his status;

(f) the applicant has lodged an identical application after a final decision;

(g) a dependant of the applicant lodges an application after consenting to have his case be part of an application made on his behalf, and there are no facts relating to the dependant person's situation which justify a separate application;

(h) has been recognized in a country which is not a member state as a refugee and can still avail himself of that protection or otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*, and such person can be re-admitted to that country; or

(i) is a national or citizen of any safe country of origin listed in the Schedule or, if he is not a national or citizen thereof, he has a right of residence therein.

(2) The Minister may by regulations amend the list of countries specified in the Schedule, provided that only countries which in his opinion are countries of safe origin may be listed in the said Schedule, so however that the Minister shall remove from the said Schedule any country which in his opinion is no longer a safe country of origin."

Renumbering of articles 19 and 20 of the principal Act.

9. Articles 19 and 20 of the principal Act shall be renumbered as articles 24 and 25 thereof respectively.

Amendment of article 24 of the principal Act.

10. Article 24 of the principal Act as renumbered shall be amended as follows:

(a) in paragraph (f) of sub-article (1) thereof immediately after the words "permits to recognized refugees" there shall be added the words "and their family members, and persons enjoying subsidiary protection";

(b) immediately after paragraph (g) thereof there shall be added the following new paragraphs:

"(h) for implementing the provisions of the European Union Council Directives relating to refugees and ancillary matters;

(i) for providing that any person who contravenes or fails to comply with the provisions of any one or more regulations, shall be guilty of an offence against the regulations and for establishing the penalty for infringement of such regulations of a fine (*multa*) not exceeding two thousand and five hundred euro (€2,500) or

imprisonment not exceeding three months, or of both such fine and imprisonment."

11. The Schedule to the principal Act shall be amended as follows:

Amendment of the Schedule to the principal Act.

(a) for the words "(Article 18A)" there shall be substituted the words "(Article 23)";

(b) the words "Bulgaria" and "Romania" shall be deleted; and

(c) immediately after the word "Uruguay" there shall be added the words "Member States of the European Union and European Economic Area".

12. In sub-article (1) of article 36 of the Immigration Act, for the words "for carrying the purposes or provisions of this Act into effect." there shall be substituted the words "for carrying the purposes or provisions of this Act into effect, and such power shall include that of providing that any person who contravenes or fails to comply with the provisions of any one or more regulations shall be guilty of an offence against such regulations and of establishing the penalty for such infringement which shall be a fine (*multa*) not exceeding two thousand and five hundred euro (€2,500) or imprisonment not exceeding three months, or both such fine and imprisonment."

Amendment of the Immigration Act. Cap. 217.

Objects and Reasons

The object of this Bill is to update the provisions of the Refugees Act and incorporate the provisions of Council Directive 2004/83/EC of the 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.