First instance determination - Malta

Overview of first instance procedures

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Relevant EU legislation

Malta is bound by the recast Asylum Procedures Directive, the recast Qualification Directive, the recast Reception Conditions Directive, and the Dublin III Regulation. The country has transposed provisions from these legal instruments through the International Protection Act, Chapter 420 of the Laws of Malta, the Reception of Asylum Seekers Regulations S.L. 420.06, and the Procedural Standards for Granting and Withdrawing International Protection Regulations, S.L. 420.07.

National legislation

The International Protection Act contains provisions on the following:

- The establishment and appointment of the Chief Executive Officer of the International Protection Agency (article 4)
- Subsequent application after final decision (article 7A)
- Qualification for refugee status and subsidiary protection (article 8)
- Cessation of qualification for refugee status (article 9)
- Revocation of, ending of or refusal to renew refugee status (article 10)
- Exclusion (article 12)
- Applications for international protection (article 13)
- Qualification for subsidiary protection status (article 17)
- Actors of persecution or serious harm (article 18)
- Actors of protection (article 19)
- Internal protection (article 20)
- Cessation of qualification, revocation of, ending of or refusal to renew subsidiary protection status (article 21-22)
- Manifestly unfounded applications (article 23)

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- Accelerated procedures (article 23A)
- Inadmissible applications (article 24)
- The Minister's power to make regulations (article 25)
- The list of designated safe countries of origin (SCHEDULE relating to Article 24)

The Procedural Standards for Granting and Withdrawing International Protection Regulations, S.L. 420.07 contains provisions on the following:

- Guarantees and obligations of applicants (article 4)
- Access to the procedure (article 5)
- Information and counselling in detention facilities and at border crossing points (article 5A)
- time limits for the examination procedure (article 6)
- applicants in need of special procedural guarantees (article 7)
- requirements for the examination of applications (article 8)
- examination of facts and circumstances (article 9)
- the personal interview (article 10)
- reporting and recording of personal interviews (article 11)
- legal assistance (article 12)
- Withdrawal of the application (article 13)
- lapse of international protection (article 13A)
- decisions by the International Protection Agency (article 14)
- confidentiality (article 15)
- the right to remain (article 16)
- unaccompanied minors, including those being represented by the Agency for the Welfare of Asylum Seekers (article 17-18)
- assessing the reasons for persecution for the granting of refugee status (article 19)
- rights of refugees and beneficiaries of subsidiary protection (article 20)
- UNHCR's role in asylum procedures (article 21)
- assessing safe third countries (article 22)
- general principle regarding vulnerable persons, i.e. special reception needs throughout the duration of the asylum procedure (article 14)
- the concept of safe county of origin (article 23)

The Reception of Asylum Seekers Regulations, S.L. 420.06 contains the following provisions which are directly relevant to asylum procedures:

- documentation (article 5)

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- the representation of unaccompanied minors for the asylum procedure (article 15)

Competent authority and other stakeholders

The national authority responsible for processing and examining requests for international protection is the International Protection Agency (IPA). This government agency under the Ministry responsible for migration and asylum. It was step up in 2020 and preceded by the Office of the Refugee Commissioner. It is headquartered in Ħamrun and the Dublin Unit office is located in Ħal Far.

The responsibilities of the IPA include the registration and lodging of applications for international protection, issuing documentation for applicants of international protection, conducting personal interviews of applicants, assessing and examining applications, deciding on the outcome of the procedure and notifying applicants of the results as well as their right to appeal.

The IPA is headed by the Chief Executive Officer. A number of agency officers assist with registration and lodging of applications, conducting interviews, and assessing applications. The IPA also includes a Legal Unit representing the agency at appeal hearings before the International Protection Appeals Tribunal (IPAT).

Malta has been benefitting from EUAA operational support since 2017. Currently, EUAA continues to provide support to the IPA, with a focus on operational support on Voluntary Solidarity mechanism (VSM) relocation activities (from Malta to other EU Member States), as well as on interpretation services for relocation (until June 2026) and first instance activities (until December 2025). See Operational Plan 2025-2026. For previous operational plans click here.

Types of procedures and case processing

IPA implements different types of procedures which are anchored in national legislation as well as other based on internal policies relating to case management.

The following is a list of the type of procedures implemented:

- Regular procedure (regular assessment of application) (article 9-11 of S.L. 420.07)

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- Prioritisation procedure (this can be based on internal policy, e.g. in case of a specific vulnerability of the applicant, or other specific profiles)
- Accelerated procedures (in terms of articles 23 and 23A of the International Protection Act)
- Subsequent application procedure (in terms of article 7A of the International Protection Act)

Time limit for a decision and length of the procedure

Article 6 of S.L. 420.07 states that the International Protection Agency shall ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination. It shall also ensure that the examination procedure is concluded within 6 months of the lodging of the application.

In the case of an application which is in a Dublin procedure, the 6 month time limit runs from the date when Malta becomes the Member State responsible for the examination of the application.

Extensions

The International Protection Agency may extend the time limit of 6 months for a period not exceeding a further 9 months where:

- Complex issues of fact and, or law are involved;
- A large number of third country nationals or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the 6-month time limit;
- Where the delay can be clearly attributed to the failure of the applicant to comply with their obligations in the context of the procedure (article 4 – cooperation to establish identity of applicant, report or appear when required, inform competent authorities of place of residence, hand over all document in their possession, photographs, fingerprints, subject to search).
- A further extension of 3 months may be given to ensure an adequate and complete examination of the application for international protection.

Maximum time limit

The International Protection Agency shall ensure that examination procedure shall not exceed the maximum time limit of 21 months from the lodging of the

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application.

Postponement of procedure

The law provides that when the examination procedure cannot be concluded due to an uncertain situation in the country of origin, the International Protection Agency may postpone concluding the examination procedure. In such case, the International Agency shall:

- Conduct reviews of the situation in that country of origin at least every 6 months;
- Inform applicants concerned within a reasonable time of the reasons of postponement;
- Inform the Commission within a reasonable time of the postponement of procedures for that country of origin.

Quality assurance of first instance procedures

The International Protection Agency implements internal quality assurance measures including:

- Review of assessments conducted by senior officers prior to final decision
- Implementing guidance provided by the EUAA, and UNHCR where appropriate
- Audio recording of personal interviews

The International Protection Agency also has a code of conduct which is binding on all staff.

Interinstitutional cooperation

Internal cooperation between the International Protection Agency, the International Protection Appeals Tribunal, the Agency for the Welfare of Asylum Seekers, and the Detention Services Agency is coordinated by the Ministry responsible for migration and asylum.

Regular asylum procedure at first instance

Legal basis

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- documentation (article 5)
- the representation of unaccompanied minors for the asylum procedure (article 15).

Competent authority and stakeholders

The International Protection Agency is the competent authority for administering the asylum procedure and for receiving and assessing applications for international protection. Operational support is provided by the EUAA in the area of interpretation and translation until adequate national capacity is established.

Personal interview

The personal interview is regulated by article 10 and 11 of S.L. 420.07. Before a decision is taken by the International Protection Agency, the applicant shall be given the opportunity of a personal interview with a person competent to conduct an interview. Interviews are held at the offices of the IPA in Ħamrun or offices in the respective detention centres.

The IPA may initially provide that a personal interview on the admissibility of the application for international protection be conducted in accordance with article 24 (on inadmissible applications) of the International Protection Act.

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The law provides that personal interviews on the substance of the claim shall be conducted by personnel from the IPA, provided that when simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it impossible for the IPA to conduct timely interviews on the substance of each application, the IPA may provide that trained personnel of another authority be temporarily involved in conducting such interviews.

The law also provides that a legal adviser shall be allowed to assist the applicant in accordance with procedures laid down by the IPA and, where entitled to, free legal aid shall be provided to the applicant. In practice, the IPA has developed internal guidelines on the participation of legal advisers in personal interviews.

According to law, the personal interview may be omitted in the following cases:

- Where the IPA is able to make a positive recommendation on the basis of evidence available.
- Where it is not reasonably practicable, in particular, where the IPA is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control, provided that when in doubt, the IPA may require a medical or psychological certificate to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature. In the case where a personal interview is not conducted or where applicable, with the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

The absence of a personal interview in accordance with the law does not prevent the IPA from taking a decision on an application for international protection. Furthermore, when deciding on the application for international protection, the IPA may take into account the fact that the applicant failed to appear for the personal interview unless they had a valid reason for such failure.

Modalities

The personal interview shall take place under conditions which ensure appropriate confidentiality.

A personal interview shall take place without the presence of family member unless the IPA considers it necessary for an appropriate examination to have other family members present.

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The law states that a personal interview shall be conducted under conditions which allow the applicant to present the grounds for their application in a comprehensive manner and must:

- Ensure that the person who conducts the interview is sufficiently competent to take into account the person and general circumstances surrounding the application including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability.
- Ensure that the person who conducts the personal interview is properly trained and has the acquired knowledge of problems which might affect the applicant's ability to be interviewed (the law obliges the IPA to ensure that persons conducting interviews are trained by the EUAA).
- Ensure the presence of an interpreter who is able to give appropriate communication between the applicant and the person who conducts the interview. The communication shall take place in the language preferred by the applicant unless there is another language which they understand and in which they are able to communicate clearly.
- Ensure whenever possible that the person conducting the interview and interpreter are of the same sex of the applicant, if the applicant so requests, unless the IPA has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present his application in a comprehensive manner.
- Ensure that the person who conducts the interview on the substance of an application for international protection does not wear a military or law enforcement uniform.
- Ensure that interviews with minors are conducted in a child-appropriate manner.

The law also provides that the IPA may establish rules concerning the presence of third parties at a person interview. In practice, such rules are in the form of internal guidelines.

When conducting a personal interview on the substance of the application for international protection, the IPA shall ensure that the applicant is given an adequate opportunity to present elements needed to substantiate the application as completely as possible, including the opportunity to give an explanation regarding elements which may be missing and, or any inconsistencies or contradictions in the applicant's statements.

Reporting and recording of personal interviews

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According to law, the IPA shall ensure that either a thorough and factual report containing all substantive elements or a transcript is made of every personal interview. In practice, a transcript of the interview is provided to the applicant and their legal assistant at the end of the first instance procedure.

The law also stipulates that the IPA may provide for audio or audiovisual recording of the personal interview, provided that where such recording has been made, the IPA shall ensure that the recording or a transcript thereof is available in connection with the applicant's file. In practice, an audio recording of the interview is retained and may be access in case of disputes on the accuracy of the transcript.

National legislation also stipulates that it is the duty of the IPA to ensure that the applicant has the opportunity to make comments and, or provide clarification, orally and, or in writing, with regard to any mistranslations or misconceptions appearing in the report or in the transcript, at the need of the personal interview or within a specified time limit before the IPA takes a decision, containing all substantive elements of the personal interview. Furthermore, the IPA shall ensure that the applicant is fully informed of the content of the report or the transcript containing all substantive elements and where necessary with the assistance of an interpreter.

The IPA shall request the applicant to confirm that the content of the report or the transcript correctly reflects the interview. However, when the personal interview is recorded in accordance with the law and the recording is admissible as evidence in the appeals procedure, the IPA need not request the applicant to confirm that the content of the report or the transcript correctly reflects the interview or to make comments on and, or provide clarification of the transcript. Where the applicant refuses to confirm that the content of the report of the transcript correctly reflects the personal interview, the reasons for their refusal shall be entered in the applicant's file, and the refusal to confirm the content of the report or transcript shall not prevent the IPA from taking a decision on the application.

The law stipulates that the applicant and their legal adviser shall have timely access to the report of the transcript and where applicable, the recording of the personal interview, before a decision on the application is taken by the IPA. When both a transcript and a recording of the personal interview are provided, the IPA need not provide access to the recording in the procedures at first instance, but shall nevertheless provide access to the recording in the appeals procedures.

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In the case of applications examined under the accelerated procedure in accordance with the law, access to the report or the transcript, and where applicable, the recording may be granted at the same time as the decision is made.

Assessment of an application

The assessment of an application is regulated by article 8 and 9 of S.L. 420.07, which sets out the following rules.

1. Applications for international protection cannot be neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.
2. When examining applications for international protection, the International Protection Agency (IPA) shall first determine whether the applicants qualify as refugees and if such applicants do not qualify, determine wither the applicants are eligible for subsidiary protection.
3. Decision on applications for international protection are to be taken after an appropriate examination and that –

- Applications are examined and decisions are taken individually, objectively and impartially;
- Precise and up-to-date information is obtained from the EUAA and UNHCR as well as other relevant international human rights organisations as to the general situation prevailing in the countries of origin of the applicants and, where necessary, in countries through which they have transited and that such information is made available to the personnel responsible for examining applications and taking decisions. Such information should also be accessible to the International Protection Appeals Tribunal (IPAT) for the purpose of taking a decision on an application for international protection.
- The personnel examining applications and taking decisions have acquired the appropriate knowledge in the field of asylum and refugee law.
- The IPA has the possibility to seeks advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.
- The IPA provides the rules concerning the translation of documents relevant for the examination of applications.

Examination of facts and circumstances

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The IPA may lay down the rules and guidelines applicable to the procedure for the determination of an application. The law states that it shall examine the application as soon as possible and shall, endeavour to gather all relevant information that will enable it to make a recommendation taking due account of the applicant's cooperation in the proceedings.

The applicants should submit as soon as possible all elements needed to substantiate the application for international protection. These consist of the applicant's statements to the IPA and all the documentation at the applicant's disposal regarding their age, background, including that of relevant relatives, identity, nationality, country and place of previous residence, previous applications for international protection, travel routes, travel documents and the reasons for applying for international protection. All these elements can be retained as long as necessary. The IPA then assesses the relevance of these elements in relation to the application for international protection.

1. When aspects of the applicant's statements are not supported by documentation or other evidence, such aspects shall not need confirmation if:
2. The applicant has made a genuine effort to substantiate their application.
3. All relevant elements at the applicant's disposal have been submitted and a satisfactory explanation has been given regarding any lack of other relevant elements.
4. The applicant's statements are found to be coherent and plausible and do not run counter to specific and general information available and relevant to the applicant's case.
5. The applicant has applied for international protection at the earliest possible time, unless the applicant demonstrates good reasons for not having done so.

The general credibility of the applicant has been established.

- The law further stipulates that the assessment of the application for international protection shall be carried out on an individual basis taking into account:
- All relevant facts as they relate to country of origin at the time of taking the decision on the applications, including laws and regulations of the country of origin and the manner in which they are applied;
- The relevant statements and documents presented by the applicant including information on whether the applicant has been or may be subject

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to persecution or serious harm;
- The individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
- Whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;
- Whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

The law also authorises the IPA to arrange for a medical examination for the applicant concerning signs that might indicate examination for the applicant concerning signs that might indicate past persecution or serious harm if it deems it relevant for the assessment of an application and subject to the applicant's consent. Such medical examinations shall be paid for out of public funds and shall be carried out by qualified medical professionals. The results of the examination shall be submitted to the IPA as soon as possible. The applicant's refusal to undergo such a medical examination does not prevent the IPA from taking a decision on the application.

Where the IPA does not arrange for a medical examination, it shall inform the applicant that they may, on their own initiative and at their own expense, arrange for a medical examination concerning signs that might indicate past persecution or serious harm. The IPA shall then assess the results of the medical examination along with the other elements of the application.

Scope and outcomes of a decision

Decisions on applications for international protection can have the following possible outcomes:

- The application may be accepted, in which case the applicant is recognised as a refugee and is granted refugee status.
- The application may be rejected, but the applicant is granted subsidiary protection.

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- The application may be rejected and not granted any form of protection.
- The application may be rejected and granted temporary humanitarian protection according to Article 17A of the International Protection Act.

In terms of Article 14 of S.L. 420.07, the decision on the eligibility for refugee status or subsidiary protection shall be made in writing following the determination of the application. The decision shall indicate the reasons in fact and in law and in case of a negative decision, it shall also include information clarifying the reasons for such decision as well as an explanation on how such a negative decision can be challenged.

An applicant who has been recognised as being in need of international protection shall, as soon as possible after the respective refugee status or subsidiary protection status has been granted to him, have access to information on the rights and obligations relating to the status in a language which they understand or may be reasonably supposed to understand. Where such information was provided at an earlier stage, the IPA need not include such information with the decision.

When an application is lodged on behalf of dependants and whenever such an application is based on the same grounds, the IPA may take a single decision, covering all dependants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise their interests (e.g. cases involving gender, sexual orientation, gender identity etc.). In such cases, a separate decision is issued to the applicant concerned.

Temporary humanitarian protection is a national form of protection and is granted to applicants who do not qualify for refugee status or subsidiary protection status, but who is deemed to qualify for protection on humanitarian grounds. Temporary humanitarian protection may be granted to:

- Unaccompanied minors who cannot be returned to their country of origin pursuant to the principle of the best interests of the child;
- Applicants who are terminally ill or suffer from a severe or life-threatening medical condition that cannot be treated in the applicant’s country of origin or in the country of former habitual residence for persons who are recognised as being stateless, or if treatment is available, they would not have access to such treatment;
- Applicants who cannot be returned in view of other humanitarian considerations. Such considerations may include, among other things, cases of serious disability that significantly affect the applicant’s ability to conduct

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a normal life.

Once a decision has been taken, the applicant is provided the following documents:

- a copy of the written decision;
- a copy of the interview transcript;
- a copy of the full evaluation report indicating the reasons in fact and in law that led to IPA's decision; and
- a notification concerning the right to appeal against the decision to the International Protection Appeals Tribunal (IPAT), if applicable. Information on how to challenge a negative decision is given in writing to those applicants whose application was rejected with regard to refugee status and/or subsidiary protection status.

The applicant is also asked to sign a declaration confirming that he/she was notified of the decision and received all the aforementioned documentation.

According to article 13 of S.L. 420.07, service of any document relating to the asylum procedure shall be made by delivery to the applicant either in person, or via electronic mail, or by post to his last known address. When the applicant is assisted by a legal advisor or representative, service of any document relating to the asylum procedure can be made with their legal advisor or representative.

Return decisions are issued by the immigration authorities and are regulated by the Immigration Act, Chapter 217 of the Laws of Malta and relevant subsidiary legislation.

Withdrawal of an application

Competent authority to withdraw an application

The responsible authority for dealing with the withdrawal of applications for international protection is the International Protection Agency (IPA), the same authority which is responsible for lodging applications.

Implicit withdrawal

According to Article 13 of S.L. 420.07, when an applicant has implicitly withdrawn or abandoned their application, the International Protection Agency (IPA) shall

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ensure that a decision is taken to either discontinue the examination or, provided that such application is deemed to be unfounded on the basis of an adequate examination of its substance, to reject the application. Where the IPA decides to discontinue the examination without taking a decision, a notice to such effect shall be entered in the applicant's file.

The IPA may assume that the applicant has implicitly withdrawn or abandoned their application for international protection when it is ascertained that:

- they have failed to provide information essential to their application or have not appeared for a personal interview unless they demonstrate, within a reasonable time, that their failure was due to circumstances beyond their control;
- they have absconded or left without authorisation the place where they lived or were held, without contacting the competent authorities within a reasonable time or they have not, within 30 days, complied with reporting duties or other obligations to communicate, unless they demonstrate that this was due to circumstances beyond their control.

An applicant who reports again to the IPA after a decision to discontinue the examination, is entitled to request their case to be re-opened or to make a new application which shall not be a subsequent application. Such application shall be made in writing stating the reasons supporting the request. Where the applicant reports again to the IPA after 9 months of the decision to discontinue the examination, the applicant's case can no longer be reopened, and the new application may be treated as a subsequent application. Where the examination of the application has been discontinued, the applicant's case may be reopened only once, and the IPA may decide to resume the examination at the stage where the examination has been discontinued.

According to Article 7(1A)(b) of the International Protection Act, applicants may appeal against a decision by the IPA to refuse to reopen the examination of an applications after the discontinuation as described above. In such cases, the International Protection Appeals Tribunal (IPAT) shall conduct a full and ex nunc examination of both fact and points of law. However, such appeals to the same rules as other types of appeals, meaning that the appeal from a decision to refuse to reopen the examination of an application must be made within 15 days of the notification of such a decision to the applicant. This also applies to appeals from decisions on implicit withdrawal of applications, meaning that applicant has 15 days to file an appeal from the date of notification of the decision. In practice, if the applicant has abandoned or left the place of residence without informing

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the IPA they may not be able to appeal within the 15-day time limit provided for in the law.

Explicit withdrawal

Article 13 of S.L. 420.07 states that when an applicant explicitly withdraws his application, the International Protection Agency shall decide either to discontinue the examination or reject the application. A notice to such effect shall be entered in the applicant's file.

An applicant who reports again to the IPA after a decision to discontinue the examination, is entitled to request their case to be re-opened or to make a new application which shall not be a subsequent application. Such application shall be made in writing stating the reasons supporting the request. Where the applicant reports again to the IPA after 9 months of the decision to discontinue the examination, the applicant's case can no longer be reopened, and the new application may be treated as a subsequent application. Where the examination of the application has been discontinued, the applicant's case may be reopened only once, and the IPA may decide to resume the examination at the stage where the examination has been discontinued.

According to Article 7(1A)(b) of the International Protection Act, applicants may appeal against a decision by the IPA to refuse to reopen the examination of an applications after the discontinuation as described above. In such cases, the International Protection Appeals Tribunal (IPAT) shall conduct a full and ex nunc examination of both fact and points of law. However, such appeals to the same rules as other types of appeals, meaning that the appeal from a decision to refuse to reopen the examination of an application must be made within 15 days of the notification of such a decision to the applicant.

Personal interview

Competent authority: Interviewers

Protection officers at the International Protection Agency (IPA) are primarily responsible for assisting applicants at Front Desk, assisting applicants lodge their application for international protection, providing information on the asylum procedure, assisting with the implementation of the Dublin Regulation procedure,

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interviewing applicants, conducting legal analysis of the applicant's claim, and drafting a decision on the application. Specifically in relation to the personal interview, protection officers have the duty to:

- Interview applicants for international protection according to established guidelines and standards.
- Carry out the necessary research in relation to the legal analysis relating to the granting of international or national protection.
- Conduct a legal analysis of the applicant's claim according to applicable legislation and guidelines.
- Draft decisions relating to the granting and withdrawal of international or national protection, or relating to the discontinuation of an application, according to established legislation, guidelines, and standards.

Qualifications of protection officers are determined by the IPA and aside from the necessary requirements relating to citizenship, legal residence, employment licenses, character requirements etc, protection officers are required to have:

1. An excellent knowledge of English.
2. Be in possession of a Level 6 (bachelor's degree) in any of the following subjects/disciplines awarded by an accredited institution: law, migration, international relations, European studies, political science, sociology, anthropology, youth and community studies, criminology, history, gender studies, Mediterranean studies, Middle Eastern studies, social policy.
3. Proven knowledge of international asylum law, the Common European Asylum System, and the national framework for asylum.
4. Demonstrated ability to work under pressure and with strict timeframes.
5. Demonstrated ability to work within a high-standard and professional work environment.
6. Demonstrated willingness to work in a multicultural and diverse environment.
7. Proven ability to use databases and other electronic means of recording data.

Advantageous criteria are:

1. Proven professional experience of at least one year full-time in the field of migration and/or asylum.
2. Proficiency in the Maltese language.
3. Proficiency in any one of the following languages: Arabic, French, Spanish.

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Recruitment procedures are conducted by the IPA and involve the identification of eligible applicants, the evaluations during an interviewing process (which includes a written test), and the establishment of a placement list which remains valid for a period of one year.

Special procedural guarantees during the interview

Article 13 of the International Protection Act states that a person seeking international protection shall be interviewed by the International Protection Agency (IPA) as soon as practicable. Applicants in need of special procedural guarantees are those whose ability to benefit from the rights and comply with the obligations provided for the law, is limited due to individual circumstances. Minors and unaccompanied minors are considered to be in need of special procedural guarantees. The IPA must conduct interviews under conditions which allow the applicant to present the grounds for their application in a comprehensive manner and must ensure that interviews with minors are conducted in a child-appropriate manner (Article 10(10((f) of S.L. 420.07).

Minors who are accompanied by an adult responsible for them are generally not interviewed by the IPA unless they are at least 14 years old. In such cases, they are interviewed in the presence of the adult responsible for them or in the presence of a trusted family member.

National legislation regulates aspects of the procedure for unaccompanied minors. Article 6(8)(b) of S.L. 420.07 states that the IPA may decide to prioritize an examination of an application for international protection where the applicant is vulnerable or is in need of special procedural guarantees, in particular unaccompanied minors.

In terms of Article 13 of the International Protection Act, unaccompanied minors shall be assisted by a representative appointed by the Chief Executive Officer of the Agency for the Welfare of Asylum Seekers (AWAS). Article 18 of S.L. 420.07 sets out specific rules on how aspects of the personal interview for unaccompanied minors should be conducted. Action shall be taken as soon as possible, and not later than 30 days form the issue of the care order issued in accordance with Article 13 of the International Protection Act.

The unaccompanied minor shall be represented and assisted by a representative, appointed by the CEO of AWAS, during all phases of the asylum procedure.

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The unaccompanied minor shall be informed immediately of the appointment of a representative, who shall perform their duties in the best interest of the minor and shall also have the necessary knowledge of the special needs of the minor.

The person acting as representative shall be changed only when necessary.

The appointed representative of the unaccompanied minor should be given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare for the personal interview. The representative shall be present at the interview and may ask questions or make comments within the framework set by the person who conducts the interview.

Unaccompanied minors shall be provided with legal and procedural information, free of charge in accordance with relevant provisions on legal assistance.

Where an unaccompanied minor has a personal interview on his application for international protection, that interview is to be conducted and the decision prepared by a person who has the necessary knowledge of the special needs of minors.

Other categories of vulnerable persons also benefit from special procedural guarantees according to Article 7 of S.L. 420.07. The IPA has an obligation to ensure that where an applicant has been identified as an applicant in need of special procedural guarantees, such applicant will be provided with adequate support throughout the whole procedure. The IPA uses internal standards and guidelines to implement practical aspects relating to special procedural guarantees for such persons, e.g. persons who submit applications for international protection on the basis of their sexual orientation and/or gender identity. The IPA also liaises with AWAS and civil society organisations offer specialised services in specific cases involving applicants with specific vulnerabilities.

Possibility to omit the personal interview

Positive decision	Yes (Article 10 of S.L. 420.07). There is a possibility to omit the personal interview if the determining authority is able to make a positive recommendation on the basis of evidence available.

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Previous meeting - essential information	No
Issues raised are not relevant or of minimal relevance	No
Safe country of origin	No
Safe third countries	No
Inconsistent, contradictory, improbable, insufficient representations	No
Subsequent application	Yes
Application to merely delay/frustrate enforcement	No
Not reasonably practical to conduct it	Yes (Article 10 of S.L. 420.07)
Applicant unfit or unable to be interviewed	Yes (Article 10 of S.L. 420.07)

According to law, the personal interview may be omitted in the following cases:

- Where the IPA is able to make a positive recommendation on the basis of evidence available.
- Where it is not reasonably practicable, in particular, where the IPA is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control, provided that when in doubt,

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> the IPA may require a medical or psychological certificate to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature. In the case where a personal interview is not conducted or where applicable, with the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

The absence of a personal interview in accordance with the law does not prevent the IPA from taking a decision on an application for international protection. Furthermore, when deciding on the application for international protection, the IPA may take into account the fact that the applicant failed to appear for the personal interview unless they had a valid reason for such failure.

Organisational aspects

According to Article 13(1) of the International Protection Act, an applicant for international protection shall be interviewed by the International Protection Agency as soon as practicable.

The law also stipulates that the person who conducts the interview be sufficiently competent to take into account the person and general circumstances surrounding the application including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability. Furthermore, the person who conducts the personal interview should be properly trained and have the acquired knowledge of problems which might affect the applicant's ability to be interviewed. The law also obliges the International Protection Agency (IPA) to ensure that persons conducting interviews are trained by the EUAA.

In practice, Protection Officers at the IPA have immediate access to the applicant's file as soon as the case is assigned to them. IPA Protection Officers normally consult EUAA country of origin information reports in preparation for the interview with the applicant as well as other internal guidance relevant to the case at hand.

Information provision (before the personal interview)

The applicant is informed of the date of personal interview when a date is set by the IPA. Applicants are informed by various means, primarily with a phone call, by email or by letter, or through their legal representative where applicable.

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The applicant is provided information about the interview and its purpose, their rights and obligations including the consequences of non-cooperation and non-compliance with the obligations, the right to an interpreter, the roles of those present during the interview and on the procedure after the interview. The information is provided verbally and in writing during lodging of the application, and again verbally prior to the interview through the use of interpreters.

Modalities of carrying out the interview

Personal interviews are held either at the International Protection Agency (IPA) premises in Ħamrun or, if the applicant is detained, at the Safi compound where the IPA also has offices. Interviews are not normally conducted remotely.

Choice of gender of the interviewer/interpreter

The applicant may express a preference as regards the gender of the interviewer and/or interpreter, however there is no legal obligation to adhere to the request. The law states that the personal interview shall take place under conditions which ensure appropriate confidentiality (Article 10(9) of S.L. 420.07).

Objecting to the interviewer/interpreter

The law states, in Article 10(10)(d) of S.L. 420.07, that the IPA must ensure whenever possible that the person conducting the interview and the interpreter are of the same sex of the applicant, if the applicant so requests, unless the IPA has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present their the grounds of their application in a comprehensive manner.

There is no specific legal provision regulating objections to a particular interviewer and/or interpreter. However, in practice it is possible to object to a particular interview and/or interpreter provided that the applicant gives valid reasons for doing so. There is no legal obligation for the International Protection Agency to accommodate the objection. Refusing to do the personal interview after expressing an objection to a particular interviewer and/or interpreter without providing valid reasons may be considered as a lack of cooperation on the part of the applicant.

Language and interpretation

Article 10(10)(c) of S.L. 420.07 states that the International Protection Agency must ensure the presence of an interpreter who is able to give appropriate

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communication between the applicant and the person who conducts the interview. The communication shall take place in the language preferred by the applicant unless there is another language which they understand and in which he is able to communicate clearly.

The applicant declares their language/s upon lodging of the application, and in principle all applicants are interviewed with an interpreter unless the applicant expresses the wish to be interviewed in English or any other language spoken by the interviewer.

Interpretation services are currently being provided by the EUAA as part of its operational support to Malta. Interpreters providing services for the IPA are bound by the same code of conduct for all IPA staff members.

Persons present during the interview During the interview, the following persons are present: the applicant, the interviewer, the interpreter, the legal adviser (if the applicant has one), the AWAS representative in the case where the applicant is an unaccompanied minor.

In terms of Article 12(4) of S.L. 420.07, the International Protection Agency shall allow an applicant to bring with them to the personal interview a legal adviser. The legal adviser may only intervene at the end of the personal interview. The absence of a legal adviser shall not prevent the IPA from conducting or continuing the personal interview with the applicant. Furthermore, according to Article 18(1)(d) of S.L. 420.07, it shall be ensured that the appointed representative of the unaccompanied minor applicant is present at the interview and may ask questions or make comments within the framework set by the person who conducts the interview. Family members are generally not permitted to be present in the personal interview.

Structure/steps of the interview

The interview structured according to internal guidelines set by the International Protection Agency (IPA). Applicants are provided with information on the procedure, the rights and obligations of the applicant, and the principle of confidentiality. The applicant is also informed of the possibility to submit documents which are relevant to the assessment of the application and any other relevant information at their disposal. Applicants are required to answer questions asked by the interviewer as well as provide their own statements regarding the reasons for requesting international protection and why they cannot return to their country of origin.

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Audio/Video recording and written report

The interview is audio-recorded, and the applicant is informed of this prior to the interview. During the interview, the interviewer also takes notes on the questions and replies and after the interview produces a verbatim written report which is given to the applicant at the end of the first instance procedure. In the case where clarifications on statements made by the applicant are required, the audio recording can be referred to in the appeals proceedings.

Postponing the personal interview

Interviews can be postponed for valid reasons either by the International Protection Agency or by the applicant. However, postponements by the applicant require reasons to be given in writing and need to be related to serious grounds, e.g. medical emergencies or situations.

Failure to appear

Article 10(7) of S.L. 420.07 states that when deciding on the application for international protection, the International Protection Agency (IPA) may take into account the fact the applicant failed to appear for the personal interview unless there was a valid reason for such failure. Furthermore, Article 13(3)(a) of the same legislation states that the IPA may assume that the applicant has implicitly withdrawn or abandoned their application for international protection when it is ascertained that they have failed to provide information essential to their application or has not appeared for a personal interview unless the applicant demonstrates, within a reasonable time, that their failure was due to circumstances beyond their control.

In practice, the IPA has developed internal policies regulating failure to appear for the personal interview in order to ensure the efficient closure of pending applications.

Other aspects

The International Protection Agency may invite the applicant for further interviews when the collection of additional information is necessary for the assessment of the application. Such decisions are generally at the discretion of the officer responsible for the assessment of the application.

Special asylum procedures at first instance

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Admissibility procedure

Legal basis and grounds

Article 24(1) of the International Protection Act states that an application shall be inadmissible if:

- Another Member States has already granted them international protection; or
- A country which is not a Member State is considered as a first country of asylum of the applicant; or
- A country which is not a Member State is considered as a safe third country for the applicant; or
- The applicant made a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection have arisen or have been presented by the applicant in accordance with relevant provisions relating to subsequent applications (Articles 7A(4) and (5) of the International Protection Act).
- A dependant of the applicant loges an application after consenting to have their case part of an application made on their behalf, and there are no facts relating to the dependant's person's situation which justify a separate application; or
- The applicant has been recognised in a country which is not a Member State as a refugee and can still avail themselves of that protection or otherwise enjoy sufficient protection in that country including benefitting from the principle of non-refoulement, and such person can be re-admitted to that country.

Competent authority and other stakeholders

The International Protection Agency (IPA) determines whether an application is admissible into the asylum procedure. The International Protection Appeals Tribunal (IPAT) hears appeals from decisions made by the International Protection Agency as regards the admissibility of an applications.

Procedural aspects

With regards to procedure, the law states, in Article 24(2) of the International Protection Act, that the rules pertaining to accelerated procedures shall apply

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mutatis mutandis (with the necessary changes) to inadmissible applications. In this respect, applications which are inadmissible may be subject to the same steps as the accelerated procedure. Where the International Protection Agency (IPA) is of the opinion, at whichever stage, that the application is inadmissible, the Chief Executive Officer shall examine the application within 3 working days and shall, where applicable, decide that the application is inadmissible (Article 23(2) of the International Protection Act).

In practice, personal interviews are not conducted in the cases of applicants who already enjoy international protection in another Member State. Personal interviews in other cases likely to lead to an inadmissibility decision (e.g. first country of asylum or safe third country) are normally conducted on a case-by-case basis. Some applications may not necessarily be processed through the accelerated procedure when deemed inadmissible following a regular procedure (which would include the personal interview). In such cases the interview arrangements and process are the same as in the regular procedure. The personal interview may be omitted if the application is considered to be unfounded.

Decision and time limits to decide

A decision is always issued in writing. Depending on whether the application is channeled into the accelerated procedure, the time limit is 3 working days. In the regular procedure, the applicable time limits apply (see Time limit for a decision and length of the procedure).

Appeal

The inadmissibility decision shall be immediately be referred to the Chairperson of the International Protection Appeals Tribunal (IPAT) who shall examine and review the decision of the IPA within 3 working days (Article 23(3) of the International Protection Act). The decision of the Chairperson of the IPAT on whether the application is inadmissible shall be final and conclusive and, notwithstanding the provisions of any other law, no appeal or form of judicial review shall lie before the IPAT or before any other court of law (Article 23(4) of the International Protection Act). Where the application is confirmed to be inadmissible by the IPAT, the Chairperson of the IPAT shall send a copy of the decision with the grounds for inadmissibility to the Minister and the IPA (Article 23(5) of the International Protection Act).

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However, in terms of Article 22(1) of S.L. 420.07, the applicant has a right to appeal against the inadmissibility of their application on the basis of the safe third country concept if they can show that, should they be returned to such country, they will be subjected to torture, cruel, inhuman or degrading treatment or punishment. During the appeal the applicant my also challenge the existence of a connection between the applicant and the third country as well as challenge the application of the safe third country concept on grounds that the third country is not safe.

Impact on reception conditions

There is no legal provision specifically addressing reception conditions and/or modalities of applicants whose application is still being considered in terms of admissibility to the asylum procedure. In practice, authorities may issue a detention order on the basis of Article 6 of the Reception of Asylum Seekers Regulations S.L. 420.06 if the applicant comes from a safe country of origin and their application is being channelled through the accelerated procedure (or otherwise fast tracked). Applicants issued with a detention order are detained in places of detention designated in the Places of Detention Designation Order, S.L. 217.03 (delegated legislation under the Immigration Act, Chapter 217 of the Laws of Malta).

Accelerated procedure

Legal basis and grounds

According to Article 23(1) of the International Protection Act, a person seeking international protection in Malta shall be examined under accelerated procedures when the application appears to be manifestly unfounded.

Furthermore, an unaccompanied minor may be examined under accelerated procedures when:

- The applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of the (see Safe country of origin);
- The applicant has introduced a subsequent application for international protection with is not inadmissible in accordance with article 24 (on inadmissible applications);

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- The applicant may for serious reasons be considered a danger to the national security or public order of Malta or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.

In terms of Article 23(8) of the International Protection Act, the Chief Executive Officer of the IPA retains the discretion of channeling the application into the accelerated procedure where, in the process of examining any application submitted, they arrive 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 (relating to the Status of Refugees, 1951) and the (EU) Directives.

Where the applicant holds a travel document issued by a safe third country pursuant to the Convention (relating to the Status of Refugees) and the EU Directives, they may be declared to have been safe from persecution in such State and their application shall be dealt with under accelerated procedures (Article 23(9) of the International Protection Act).

Without prejudice to provision relating to the withdrawal of the application for international protection (Article 13 of S.L. 420.07), the IPA may only consider an application to be unfounded, if it has established that the applicant does not qualify for international protection. The IPA shall consider an application to be manifestly unfounded if it has established that the applicant does not qualify for international protection, and that the application falls under the definition of "manifestly unfounded" in terms of the International Protection Act (Article 2).

Competent authority and other stakeholders

The International Protection Agency (IPA) is responsible for administering accelerated procedures.

Procedural aspects

Where the IPA is of the opinion, at whichever stage, that the application is manifestly unfounded, the Chief Executive Officer shall examine the application within 3 working days and shall, where applicable, decide that the application is manifestly unfounded (Article 23(2) of the International Protection Act).

Any interview with the applicant shall, where necessary, be conducted in private and with the assistance of an interpreter. The applicant shall be informed of his

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right to obtained the services of a legal adviser to assist them during accelerated proceedings and to consult with UNHCR (Article 23(6) of the International Protection Act). Where the application is considered not to be manifestly unfounded, such application shall be examined under the normal procedures provided in the International Protection Act (Article 23(7) of the International Protection Act).

Where the decision confirms that the application is manifestly unfounded, it shall be immediately be referred to the Chairperson of the International Protection Appeals Tribunal (IPAT) who shall examine and review the decision of the IPA within 3 working days (Article 23(3) of the International Protection Act). The decision of the Chairperson of the IPAT 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 IPAT or before any other court of law (Article 23(4) of the International Protection Act). Where the application is confirmed to be rejected as manifestly unfounded by the IPAT, the Chairperson of the IPAT shall send a copy of the decision with the grounds for inadmissibility to the Minister and the IPA (Article 23(5) of the International Protection Act).

Decision and time limits to decide

Where the IPA is of the opinion, at whichever stage, that the application is manifestly unfounded, the Chief Executive Officer shall examine the application within 3 working days and shall, where applicable, decide that the application is manifestly unfounded (Article 23(2) of the International Protection Act). There are no legal consequences if the 3 working days are not adhered to and the decision may still be that the application is manifestly unfounded.

Appeal

Where the decision confirms that the application is manifestly unfounded, it shall be immediately be referred to the Chairperson of the International Protection Appeals Tribunal (IPAT) who shall examine and review the decision of the IPA within 3 working days (Article 23(3) of the International Protection Act). The decision of the Chairperson of the IPAT 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 IPAT or before any other court of law (Article 23(4) of the International Protection Act). Where the application is confirmed to be rejected as manifestly unfounded by the IPAT, the Chairperson of the IPAT shall send a copy of the decision with the

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grounds for inadmissibility to the Minister and the IPA (Article 23(5) of the International Protection Act).

Impact on reception conditions

There is no legal provision specifically addressing reception conditions and/or modalities of applicants whose application is being assessed in the accelerated procedure. In practice, authorities may issue a detention order on the basis of Article 6 of the Reception of Asylum Seekers Regulations S.L. 420.06 if the applicant comes from a safe country of origin and their application is being channelled through the accelerated procedure (or otherwise fast tracked). Applicants issued with a detention order are detained in places of detention designated in the Places of Detention Designation Order, S.L. 217.03 (delegated legislation under the Immigration Act, Chapter 217 of the Laws of Malta).

Border procedure

Legal basis and grounds

Malta does not apply any border procedures.

Competent authority and other stakeholders

Malta does not apply any border procedures.

Procedural aspects

Malta does not apply any border procedures.

Decision and time limits to decide

Malta does not apply any border procedures.

Appeal

Malta does not apply any border procedures.

Impact on reception conditions

Malta does not apply any border procedures.

Subsequent application procedure

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Legal basis and grounds

Subsequent applications are regulated by Article 7A of the International Protection Act. A person who has applied for international protection may make a subsequent application after a final decision provided that the application shall only be considered on the presentation of new elements or findings, relating to the examination of whether the person making the subsequent application qualifies as a beneficiary of international protection, and of which the applicant could not have been aware or which he could not have submitted (Article 7A(1) of the International Protection Act). The person submitting a subsequent application shall indicate facts and provide evidence which justify the procedure (Article 7A(2) of the International Protection Act).

Competent authority and other stakeholders

The International Protection Agency is responsible for administering procedures for subsequent applications.

Procedural aspects

In terms of Article 7A(3) of the International Protection Act, the examination may be conducted on the sole basis of written submissions and the person making the subsequent application is to be informed of the outcome of the examination and of their right to appeal the decision.

For the purpose of taking a decision on the admissibility of the subsequent application in terms of Article 24(1)(d) of the International Protection Act, a subsequent application is subject to a preliminary examination as to whether new elements or findings have arisen or have been presented since the lodging of the first application. Therefore, the admissibility examination in the case of a subsequent application entails a preliminary examination as to whether new elements or findings have arisen or have been presented since the first lodging of the application (Article 7A(4) of the International Protection Act). The preliminary examination may be conducted on the sole basis of written submissions and the person making the subsequent application is to be informed of the outcome of the preliminary examination (Article 7A(9) of the International Protection Act).

The applicant whose subsequent application is subject a preliminary examination enjoys the same guarantees found in Article 4 of S.L. 420.07 (Article 7A(8)(b) of the International Protection Act). The applicant also needs to be informed in an appropriate manner of the outcome of the preliminary examination and, if the

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application is not to be further examined, of the reasons why and the possibilities for seeking an appeal or review of the decision (Article 7A(8)(c) of the International Protection Act).

The same procedure applies in the case of:

- A dependent who lodged an application after they have consented to have their case be part of an application lodged on their behalf;
- An unmarried minor who lodges an application after an application has been lodged on their behalf.

In the two cases mentioned above, the preliminary examination consists of examining whether there are facts relating to the dependent's or the unmarried minor's situation which justify a separate application.

Decision and time limits to decide

Where the preliminary examination concludes that new elements of findings have arisen or have been presented by the applicant which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection, a further examination of the application shall be carried out. However, an application shall only be further examined if the applicant concerned was, through no fault of his own, incapable of concluding that new elements or findings have arisen (Article 7A(5) of the International Protection Act).

When a subsequent application is not further examined, it shall be considered inadmissible, in accordance with Article 24(1)(d) of the International Protection Act.

The applicable time limits are the same as those limits applicable in the case of accelerated procedures (3 working days if the subsequent application is being channelled through the accelerated procedure). For the further examination in the case that the subsequent application is considered to be admissible after a preliminary examination concludes that there are new elements or findings, the applicable time limits would be the same as those for the regular procedure (see Time limit for a decision and length of the procedure). There are no legal consequences for not adhering to the time limits.

Appeal

For information on appeals lodged against decisions in a subsequent application procedure see here.

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Impact on reception conditions

There is no legal provision specifically addressing reception conditions and/or modalities of applicants who submitted a subsequent application. In practice, authorities may issue a detention order on the basis of Article 6 of the Reception of Asylum Seekers Regulations S.L. 420.06 if the applicant comes from a safe country of origin and their application is being channelled through the accelerated procedure (or otherwise fast tracked). Applicants issued with a detention order are detained in places of detention designated in the Places of Detention Designation Order, S.L. 217.03 (delegated legislation under the Immigration Act, Chapter 217 of the Laws of Malta).

Last-minute application pending removal

Last-minute applications lodged by first time applicants pending a removal

Occurrence: Since a first-time application or a subsequent application can be lodged at any time, this phenomenon occurs at all steps as the returnee tries to stall the return procedure in any way possible.

Profile of returnee: In the majority of cases, this phenomenon mainly concerns males. Regarding nationalities, there is no indication that this phenomenon is limited to specific nationalities.

Practical aspects and consequences: Late minute applications are generally prioritised by the Maltese determining authority in order to ensure a swift determination process.

Communication between asylum- return authority: Immigration Police and the International Protection Agency both have access to a shared IT database (National Asylum Seekers Management System).

Data: Last minute applications are very frequent in case of forced returns following a return decision. Even though the majority of cases are subsequent applications, lately an increase in the number of first time applications lodged after the issuance of a removal order is noticed.

Last-minute applications lodged as subsequent applications pending a removal

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Occurrence: Since a first time application or a subsequent application can be lodged at anytime, this phenomenon occurs at all steps as the returnee tries to stall the return procedure in any way possible.

Profile of returnee: In the majority of cases, this phenomenon mainly concerns males. Regarding nationalities, there is no indication that this phenomenon is limited to specific nationalities.

Practical aspects and consequences: Last minute applications are generally prioritised by the Maltese determining authority in order to ensure a swift determination process.

Communication between asylum- return authority: Immigration Police and the International Protection Agency both have access to a shared IT database (National Asylum Seekers Management System).

Data: Last minute applications are very frequent in case of forced returns following a return decision. The majority of cases are subsequent applications.

Safe country concept

Safe country of origin

The International Protection Act, Chapter 420 of the Laws of Malta, defines “safe country of origin” as a country of which the applicant, for the purpose of international protection: (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 (Article 2).

According to Article 23 of S.L. 420.07, a third country may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if:

- He or she has the nationality of that country; or
- He or she is a stateless person and was formerly habitually resident in that country, and he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiaries of international protection in accordance with article 8

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(qualification for refugee status) and 17 (qualification for subsidiary protection status) of the International Protection Act.

The law also states that the concept of safe country of origin can only be applied to those countries which have been designated as safe countries by the International Protection Agency and included in the Schedule to the International Protection Act.

The following is the list of designated safe countries of origin according to the International Protection Act

1. EU Member States
2. EEA countries
3. Algeria
4. Australia
5. Bangladesh
6. Benin
7. Botswana
8. Brazil
9. Canada
10. Cabo Verde
11. Chile
12. Costa Rica
13. Egypt
14. Gabon
15. Ghana
16. India
17. Jamaica
18. Japan
19. Morocco
20. New Zealand
21. Senegal
22. Tunisia
23. Uruguay
24. USA

The list was updated in 2020 through Legal Notice 198 of 2020 to include Algeria, Bangladesh, Egypt, Morocco and Tunisia. Prior to this, it was amended in 2017 to replace the names of the countries from the European Economic Area (EEA) with the wording: "EEA countries"

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In terms of Article 24(4) of the International Protection Act, by regulation the minister may amend the list of safe countries of origin, provided that only countries which in his opinion are countries of safe origin may be listed in the Safe Country of Origin Schedule. The minister shall remove from the schedule any country which in his opinion is no longer a safe country of origin.

Safe countries of origin are designated as such on the basis of the general political situation and information on whether such a country is generally a refugee-producing country.

According to Article 2 of the International Protection Act, applications from people from a safe country of origin constitute a manifestly unfounded application.

In terms of Article 23 of the International Protection Act, when applications are considered to be manifestly unfounded (such as in the case of applicants from designated safe countries of origin) the application is examined under accelerated procedures. The law states that where the IPA is of the opinion, at whichever stage, that the application is manifestly unfounded, the Chief Executive Officer shall examine the application within 3 working days and shall, where applicable, decide that the application is manifestly unfounded (Article 23(2)). Furthermore, in terms of Article 23(3) on manifestly unfounded applications, when the Chief Executive Officer of the IPA decides that an asylum application is manifestly unfounded, the decision must be immediately referred to the Chairperson of the International Protection Appeals Tribunal (IPAT) who will examine and review the decision within 3 working days. The decision of the Chairperson of the IPAT on whether the application is manifestly unfounded is final and conclusive, notwithstanding the provisions of any other law, no appeal or form of judicial review will lie before the tribunal or any other court of law. Subsequently, when an application is rejected as manifestly unfounded, the Chairperson of the IPAT must send a copy of the decision with the grounds to the minister and the International Protection Agency.

Safe third country

Article 2 of the International Protection Act defines a safe third country as a country of which the applicant is not a national or citizen and where:

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

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- The principle of *non-refoulement* in accordance with the Convention (relating to the Status of Refugees, 1951) is respected;
- 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;
- The possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Convention;
- The applicant has resided for a meaningful period of time prior to their entry in Malta;
- There is no risk of serious harm as defined in the (i.e. death penalty or execution; or torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict).

Article 22(1) of S.L. 420.07 states that the International Protection Agency may apply the safe third country concept only where it is satisfied that the applicant will be treated in accordance to the principles listed in article 2 of the International Protection Act (above).

The International Protection Act also states that an application shall be inadmissible if a country which is not a Member State (of the EU) is considered as a safe third country for the applicant (Article 24(1)(c)). In determining an application as inadmissible on the basis that a country is considered as a safe third country for the applicant the IPA shall:

- Ensure that there is a connection between the applicant and the third country so that the applicant can reasonably be considered as able to go to that country;
- Ensure that the safe third country concept can be applied to a particular country or applicant and that a case-by-case consideration of the safety of the country has been carried out;
- Ensure that the safety of the third country is assessed on an individual basis, taking into account any analysis made by reputable international organisations that may be available from time to time, including UNHCR.

The appeal may appeal against the inadmissibility of an application on the basis of safe third country if they can show that, should they be returned to such country, they will be subjected to torture, cruel, inhuman or degrading treatment or punishment. The applicant may also challenge the existence of a connection

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between themselves and the third country as well as challenge the application of the safe third country concept on the grounds that the third country is not safe (Article 22(1) of S.L. 420.07).

Where the IPA decided that the application is inadmissible on the basis of the safe third country concept, it shall inform the applicant of its decision and provide them with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

Where the third country does not permit the applicant to enter its territory, the IPA shall ensure that the applicant has access to the procedure for the examination of his application according to law (Article 22(3) of S.L. 420.07).

First country of asylum

The concept of the first country of asylum is defined in the International Protection Act. Article 2 of the International Protection Act states that a first country of asylum refers to that country where an applicant for international protection:

- Has been recognised in that country as a refugee and he can still avail himself of that protection; or
- They otherwise enjoy sufficient protection in that country including benefitting from the principle of non-refoulement and subject to re-admission to that country.

Article 24(1)(b) of the International Protection Act also states that an application is inadmissible if a country which is not a Member State (of the EU) is considered as a first country of asylum for the applicant. There is no further mention in the law of the concept of first country of asylum.

European safe third country

The concept of European safe third country is not applied in the Maltese context.

Assessment of an application at first instance

Legal provisions relevant for an assessment

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The following are the legal provisions relevant to the assessment of an application for international protection:

International Protection Act, Chapter 420 of the Laws of Malta

- Article 8 (Qualification for refugee status)
- Article 12 (Exclusion from refugee status)
- Article 17 (Qualification for subsidiary protection status)
- Article 17A (Temporary Humanitarian Protection)
- Article 18 (Actors of real or serious threat)
- Article 19 (Actors of protection)
- Article 20 (Internal protection)

Procedural Standards for Granting and Withdrawing International Protection Regulations, S.L. 420.07

- Article 6 (Time limits for the examination procedure)
- Article 8 (Requirements for examination of applications)
- Article 9 (Examination of facts and circumstances)
- Article 14 (Decision by the International Protection Agency)
- Article 19 (Assessing the reasons for persecution for the granting of refugee status)

Competent authority for the assessment

Protection officers at the International Protection Agency (IPA) are primarily responsible for assisting applicants at Front Desk, assisting applicants lodge their application for international protection, providing information on the asylum procedure, assisting with the implementation of the Dublin Regulation procedure, interviewing applicants, conducting legal analysis of the applicant's claim, and drafting a decision on the application. Specifically in relation to the personal interview, protection officers have the duty to:

- Interview applicants for international protection according to established guidelines and standards.
- Carry out the necessary research in relation to the legal analysis relating to the granting of international or national protection.
- Conduct a legal analysis of the applicant's claim according to applicable legislation and guidelines.

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- Draft decisions relating to the granting and withdrawal of international or national protection, or relating to the discontinuation of an application, according to established legislation, guidelines, and standards.

Qualifications of protection officers are determined by the IPA and aside from the necessary requirements relating to citizenship, legal residence, employment licenses, character requirements etc, protection officers are required to have:

- An excellent knowledge of English.
- Be in possession of a Level 6 (bachelor's degree) in any of the following subjects/disciplines awarded by an accredited institution: law, migration, international relations, European studies, political science, sociology, anthropology, youth and community studies, criminology, history, gender studies, Mediterranean studies, Middle Eastern studies, social policy.
- Proven knowledge of international asylum law, the Common European Asylum System, and the national framework for asylum.
- Demonstrated ability to work under pressure and with strict timeframes.
- Demonstrated ability to work within a high-standard and professional work environment.
- Demonstrated willingness to work in a multicultural and diverse environment.
- Proven ability to use databases and other electronic means of recording data.
- Advantageous criteria are:
- Proven professional experience of at least one year full-time in the filed of migration and/or asylum.
- Proficiency in the Maltese language.
- Proficiency in any one of the following languages: Arabic, French, Spanish.

Recruitment procedures are conducted by the IPA and involve the identification of eligible applicants, the evaluations during an interviewing process (which includes a written test), and the establishment of a placement list which remains valid for a period of one year.

Training:

Protection Officers undergo training by the EUAA. They are required to complete a minimum number of training courses before they can proceed to assume responsibility for conducting interviews and assessing applications.

Grounds

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Regarding qualification for refugee status, Article 8 of the International Protection Act states that a person may apply to the International Protection Agency and shall be granted refugee protection where it is established that they face a well-founded fear of persecution in their country of origin or habitual residence in terms of the Convention relating to the Status of Refugees, 1951. A well-founded fear of persecution may be based on events which have taken place after the applicant has left their country of origin or activities engaged in by the applicant since leaving the country of origin, except when based on circumstances which the applicant has created on their own decision since leaving the country of origin. A previous persecution or serious harm or a direct threat of such persecution or harm shall be considered as a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or previous harm will not be repeated. Where the Chief Executive Officer of the International Protection Agency (IPA) decided that the applicant is eligible for refugee status, a declaration to this effect shall be made.

In terms of Article 19 of S.L. 420.07, when considering an application for refugee status, in assessing the fear of persecution, the following elements needs to be taken into account:

- The concept of race shall in particular include considerations of colour, descent, or memberships of a particular ethnic group;
- The concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- The concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- A group shall be considered to form a particular social group where in particular:
    - Members of that group share an innate characteristics, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and

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- That group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society; and
- Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic or sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in Malta. Gender and sex related aspects, including gender identity, gender expression and sex characteristics, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;
- The concept of political opinion which shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution which include the State, parties or organizations controlling the State or a substantial part of the territory of the State and non-State actors if it can be demonstrated that the other actors are unable or unwilling to provide protection against persecution or serious harm, and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

When assessing if an applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

With regards to subsidiary protection, this status may be granted to an applicant for international protection whose application has been dismissed but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of origin, or in the case of a stateless persons, to their country of former habitual residence, would face a real risk of suffering serious harm, and the IPA shall continue to be able to take such a decision in cases where the real risk of suffering serious harm arises even after a decision not to grant subsidiary protection has been taken.

Guidelines for case officers

Article 9(1) of S.L. 420.07 states that the International Protection Agency (IPA) may, from time to time, lay down the rules and guidelines applicable to the procedure for the determination of an application. In practice, the IPA has

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developed internal guidelines for its Protection Officers to follow when conducting an assessment of an application for international protection. Such guidelines include thematic guidelines covering aspects relating to specific profiles of applicants as well as country guidance.

Credibility assessment

In terms of Article 9(2) of S.L. 420.07, the International Protection Agency shall examine the application as soon as possible and shall, in the assessment of the credibility of an applicant's claim, endeavour to gather all relevant information that will enable it to take a decision taking due account of the applicant's cooperation in the proceedings.

The applicant shall submit as soon as possible all elements needed to substantiate the application for international protection. Such elements shall consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality, country and place of previous residence, previous applications for international protection, travel routes, travel documents and the reasons for applying for international protection. All such elements shall be retained for as long as necessary (Article 9(3) and (4) of S.L. 420.07).

National legislation regulates the manner in which the assessment of an application for international protection must be conducted. In Article 9(6) of S.L. 420.07, it is stated that the assessment must be carried out on an individual basis taking into account the following:

- all relevant facts as they related to the country of origin at the time of taking a decision on the application, including laws and regulations in the country of origin and the manner in which they are applied;
- the relevant statements and documents presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
- the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
- whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary

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conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;
- whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

Assessment of facts and circumstances when aspects of the applicant's statements are not supported by documentary or other evidence

The IPA shall assess the relevance of all the elements submitted by the applicant to substantiate their application. When aspects of the applicant's statements are not supported by documentary or other, such aspects shall not need confirmation if (Article 9(5) of S.L. 420.07):

- The applicant has made a genuine effort to substantiate their application;
- All relevant elements at the applicant's disposal have been submitted and a satisfactory explanation has been given regarding any lack of other relevant elements;
- The applicant's statements are found to be coherent and plausible and do not run counter to specific and general information available and relevant to the applicant's case;
- the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and
- the general credibility of the applicant has been established.

Time limit for submitting evidence during credibility

Time limits for submitting evidence are set by the International Protection Agency depending on the case.

COI research

Article 9(6)(a) of S.L. 420.07 states that the assessment of the application for international protection shall be carried out on an individual basis taking into account all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied.

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The International Protection Agency (IPA) has received support from the EUAA COI helpdesk in recent years. IPA uses a variety of open sources, including EUAA COI reports.

Decision and outcomes

Once a decision has been taken, the applicant is provided the following documents:

- a copy of the decision document stating the outcome of the application;
- a copy of the interview transcript;
- a copy of the full evaluation report indicating the reasons in fact and in law that led to the IPA's decision; and
- a notification concerning the right to appeal against this decision to the International Protection Appeals Tribunal (IPAT), if applicable. Information on how to challenge a negative decision is given in writing to those applicants whose application was rejected with regard to refugee status and/or subsidiary protection status.

The applicant is also asked to sign a declaration confirming that they were notified of the decision and received all of the aforementioned documentation.

Unaccompanied minors are notified of the outcome of the decision through their legal representative.

COI units

Background information

COI unit: The International Protection Agency (IPA) has received support from the EUAA COI helpdesk in recent years. IPA uses a variety of open sources, including EUAA COI reports.

Legal basis: Article 9(6)(a) of S.L. 420.07 states that the assessment of the application for international protection shall be carried out on an individual basis taking into account all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied.

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Structure and capacity

No information is currently available.

COI products

The International Protection Agency develops internal country of origin guidance documents. Such documents include both country of origin information and guidance or policy to be adopted by its offers when assessing applications for international protection.

Other aspects of COI units

Information is currently not available.

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