

I assent.

(L.S.)

**DOLORES CRISTINA**

**Acting President**

10th March, 2015

**ACT No. VI of 2015**

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

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

Short title.

**1.** The short title of this Act is the Refugees (Amendment) Act, 2015, and this Act shall be read and construed as one with the Refugees Act, hereinafter referred to as "the principal Act".

Cap. 420.

General amendment.

**2.** In this Act, for the word "asylum" wherever it occurs in the principal Act, with the exclusion of the words "first country of asylum" and "asylum procedures", there shall be substituted the words "international protection".

Amendment of article 2 of the principal Act.

**3.** Article 2 of the principal Act shall be amended as follows:

(a) for the definition "applicant for asylum" there shall be substituted the following:

" "applicant" means a third country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken by the Commissioner or the Refugees Appeals Board;"

(b) for the definition "application for asylum" there shall be substituted the following:

" "application for international protection" means

a request made by a third country national or a stateless person which can be understood as a request for international protection unless the third country national explicitly requests another kind of protection outside the scope of this Act that can be applied for separately;"

(c) immediately after the definition "application for international protection" there shall be added the following new definition:

" "applicant in need of special procedural guarantees" means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Act or any subsidiary legislation made thereunder, is limited due to individual circumstances;"

(d) immediately after the definition "applicant in need of special procedural guarantees" there shall be added the following new definition:

" "beneficiary of international protection" means a person who has been granted refugee status or subsidiary protection status in accordance with article 8 and article 17;"

(e) in the definition "Convention", for the word "Convention" there shall be substituted the words " "Convention" or "Geneva Convention" ";

(f) the definition "dependent members of the family" shall be deleted;

(g) in the definition "Directives", for the words "Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted", there shall be substituted the words "Council Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted";

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

" "family members" means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in Malta in relation to the application for international protection:

(a) the spouse of the beneficiary of international protection, or his or her unmarried partner in a stable relationship where recognised by law;

(b) the minor children of the spouse or partner or of the beneficiary of international protection referred to in paragraph (a) above, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;

(c) the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried;"

(i) for the definition "final decision" there shall be substituted the following:

" "final decision" means a decision on whether the third country national or stateless person be granted refugee status or subsidiary protection status which is not subject to appeal, irrespective of whether such decision has the effect of allowing the applicants concerned to remain in Malta pending its outcome;"

(j) immediately after the definition "the High Commissioner" there shall be added the following new definition:

" "international protection" means refugee status or subsidiary protection;"

(k) for the definition "manifestly unfounded application" there shall be substituted the following:

" "manifestly unfounded application" means an application in relation to which:

(a) the applicant, in submitting his or her application and presenting the facts, has only raised

issues that are not relevant to the examination as to whether such applicant qualifies as a beneficiary of international protection; or

(b) the applicant has given clearly insufficient details or evidence to substantiate his claim and his story is inconsistent, contradictory or fundamentally improbable; or

(c) the applicant has based his application on a false identity or on forged or counterfeit documents which he maintained as genuine when questioned about them; or

(d) the applicant has misled the authorities by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision; or

(e) the applicant made false representations of a substantial nature; or

(f) the applicant has, without reasonable cause and in bad faith, destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim, either in order to establish a false identity for the purpose of his application or to make the consideration of his application by the authorities more difficult; or

(g) the applicant, having had ample earlier opportunity to submit an application for international protection, submitted the application in order to forestall an impending removal order from Malta, and did not provide a valid explanation for not having applied earlier; or

(h) the applicant is from a safe country; or

(i) the applicant refuses to comply with an obligation to have his or her fingerprints taken in accordance with the relevant legislation; or

(j) the applicant may, for serious reasons, be considered a danger to the national security or public order, or the applicant has been forcibly expelled for serious reasons of public security or public order

under national law;"

(l) immediately after the definition "the Minister" there shall be added the following new definition:

" "minor" means a third country national or stateless person below the age of eighteen years;"

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

" "person eligible for subsidiary protection" means a third country national who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his country of origin, would face a real risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail himself of the protection of that country, and has not been excluded from being eligible for such protection under article 17(1);"

(n) in paragraph (b) of the second proviso to the definition "refugee", for the words "in a similar manner as in paragraph (a);" there shall be substituted the words "in a similar manner as in paragraph (a).", and immediately thereafter there shall be added the following:

"For the purpose of paragraph (a), "acts of persecution" means:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory manner;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for

exclusion as set out in article 12(2);

(f) acts of a gender-specific or child-specific nature:

Provided that refugee status on the grounds of fear of persecution shall only be granted if there is a connection between the reasons for persecution mentioned in regulation 18 of the Procedural Standards in Examining Applications for International Protection Regulations and the acts of persecution referred to in this definition;"

(o) in the definition "remain", immediately after the words "or is being examined;" there shall be added the words "the right to remain shall not constitute an entitlement to a residence permit;"

(p) immediately after the definition "remain" there shall be added the following new definition:

" "representative" means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in asylum procedures with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of a representative in respect of the unaccompanied minor;"

(q) immediately after paragraph (e) in the definition "safe third country", there shall be added the following new paragraph:

"(f) there is no risk of serious harm as defined in this article;"

(r) immediately after the definition "serious harm" there shall be added the following new definition:

" "subsequent application" means a further application for international protection made after a final decision has been taken on a previous application;"

(s) for the definition "withdrawal of refugee status" there shall be substituted the following:

" "withdrawal of international protection" means the decision by the Commissioner to revoke, end or refuse to renew the refugee or subsidiary protection status of a person."

Amendment of article 7 of the principal Act.

**4.** Immediately after sub-article (1) of article 7 of the principal Act there shall be added the following new sub-article:

"(1A) For the purpose of this article, an appeal on both facts and points of law may be permitted against:

(a) a recommendation taken on an application for international protection, including a decision;

(i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;

(ii) considering an application to be inadmissible pursuant to article 24;

(iii) not to conduct an examination pursuant to article 24(1)(c);

(b) a refusal to reopen the examination of an application after the discontinuation in accordance with regulation 13 of the Procedural Standards in Examining Applications for International Protection Regulations;

(c) a withdrawal of international protection."

Substitution of article 7A of the principal Act.

**5.** Article 7A of the principal Act shall be substituted by the following:

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

Provided that such application shall only be considered on the presentation of new elements or findings, relating to the examination of whether the 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.

(2) The person submitting a subsequent application shall:

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

(b) submit such new information within fifteen days from the day on which the person making the subsequent application obtained such information.

(3) 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 his right for an appeal.

(4) For the purpose of taking a decision on the admissibility of an application pursuant to article 24, a subsequent application shall be 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.

(5) If the preliminary examination referred to in sub-article (4) concludes that new elements or 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:

Provided that 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.

(6) When a subsequent application is not further examined pursuant to this article, it shall be considered inadmissible, in accordance with article 24(1)(f).

(7) The procedure referred to in this article may also be applicable in the case of:

(a) a dependent who lodges an application after he has, in accordance with article 24(1)(g), consented to have his case be part of an application lodged on his behalf;

(b) an unmarried minor who lodges an application after an application has been lodged on his behalf.

(8) For the purpose of this article, the Refugee Commissioner shall ensure that:



(a) the preliminary examination referred to in this article will consist of examining whether there are facts relating to the dependent's or the unmarried minor's situation which justify a separate application;

(b) that the applicant whose subsequent application is subject to a preliminary examination enjoys the guarantees provided for in regulation 4 of the Procedural Standards in Examining Applications for International Protection Regulations;

(c) that the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, if the application is not to be further examined, of the reasons why and the possibilities for seeking an appeal or review of the decision.

(9) 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."

Amendment of article 8 of the principal Act.

**6.** Article 8 of the principal Act shall be amended as follows:

(a) sub-article (3) thereof shall be renumbered as sub-article (4); and

(b) immediately after sub-article (2) thereof, there shall be added the following new sub-article:

"(3) For the purpose of this article, 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."

Amendment of article 9 of the principal Act.

**7.** In the proviso to sub-article (1) of article 9 of the principal Act, for the words "can no longer be regarded as well-founded.", there shall be substituted the words "can no longer be regarded as well-founded:", and immediately thereafter there shall be added the following new proviso:

"Provided further that paragraphs (d) and (e) shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality or, being a

stateless person, of the country of former habitual residence."

**8.** The heading of Title II in Part IV of the principal Act shall be substituted by the following.

Substitution of heading of Title II in Part IV of the principal Act.

"Title II - Actors of persecution or serious harm, actors of protection, internal protection, *non-refoulement* and resettlement".

**9.** Article 17 of the principal Act shall be amended as follows:

Amendment of article 17 of the principal Act.

(a) sub-article (2) thereof shall be renumbered as sub-article (3); and

(b) immediately after sub-article (1) thereof, there shall be added the following new sub-article:

"(2) For the purpose of this article, a real risk of suffering serious harm may be based on events which have taken place after the applicant has left his country of origin or activities engaged in by applicant since leaving the country of origin, except when based on circumstances which the applicant has created by his own decision since leaving the country of origin."

**10.** Article 18 of the principal Act shall be substituted by the following:

Substitution of article 18 of the principal Act.

"18. The following may be considered as actors of persecution or serious harm:

(a) the State;

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

(c) non-State actors, if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including international organizations, are unable or unwilling to provide protection against such acts of persecution or serious harm."

**11.** Article 19 of the principal Act shall be amended as follows:

Amendment of article 19 of the principal Act.

(a) in paragraph (b) of sub-article (1) thereof, for the words "or a substantial part of the territory of the State.", there shall be substituted the words "or a substantial part of the territory of the State:", and immediately thereafter there shall be

added the following new proviso:

"Provided that, for the purpose of this article, actors of protection referred to in paragraphs (a) and (b) are willing and able to offer protection in accordance with sub-article (2).";

(b) immediately after sub-article (1) thereof there shall be added the following new sub-article:

"(1A) For the purpose of this article, when assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in sub-article (2), account shall be taken of any guidance provided for in any other relevant provision of national law, any European Union Act or relevant documentation issued by the High Commissioner.";

(c) sub-article (2) thereof shall be deleted; and

(d) immediately after sub-article (1A) thereof, there shall be added the following new sub-article:

"(2) Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is provided when the entities mentioned in sub-article (1) take reasonable steps to prevent the acts mentioned in article 17(1) by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.".

Substitution of  
article 20 of the  
principal Act.

**12.** Article 20 of the principal Act shall be substituted by the following:

"20. (1) As part of the assessment of the application for international protection, the Refugee Commissioner may determine that the applicant is not in need of international protection if, in the exercise of his functions, he deems that in a part of the country of origin, the applicant:

(a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or

(b) has access to protection against persecution or serious harm as mentioned in article 19,

and the applicant can safely and legally travel to and gain admittance to that part of the country of origin and can reasonably be expected to settle there.

(2) In examining whether a part of the country of origin is in accordance with sub-article (1), the Refugee Commissioner shall at the time of taking the decision on the application, have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

(3) For the purposes of this article, the Refugee Commissioner shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office."

13. In the proviso to article 21 of the principal Act for the words "no longer faces a real risk of serious harm.", there shall be substituted the words "no longer faces a real risk of serious harm:", and immediately thereafter there shall be added the following new proviso:

Amendment of article 21 of the principal Act.

"Provided further that the provisions of this article shall not apply to a beneficiary of subsidiary protection who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence."

14. Immediately after article 23 of the principal Act, there shall be added the following new article:

Addition of new article to the principal Act.

"Accelerated procedures.

23A. An unaccompanied minor may be examined under accelerated procedures, in accordance with this article, when:

(a) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin, within the meaning of this Act;

(b) the applicant has introduced a subsequent application for international protection which is not inadmissible in accordance with article 24;

(c) 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."

Amendment of article 24 of the principal Act.

**15.** Article 24 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) The application of any person in Malta seeking international protection and who falls under any one of the following conditions, shall be inadmissible if:

(a) another Member State has already granted him international protection in terms of Council Regulation No. 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person;

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

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

(d) the applicant 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;

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

(f) the applicant has been recognized in a country which is not a Member State as a refugee and

can still avail himself of that protection or otherwise enjoys sufficient protection in that country including benefiting from the principle of *non-refoulement*, and such person can be re-admitted to that country; or

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

(b) sub-article (2) thereof shall be substituted by the following new sub-article:

"(2) The provisions of article 23(2), (3), (4) and (5) shall apply *mutatis mutandis* to inadmissible applications.";

(c) sub-article (3) thereof shall be renumbered as sub-article (4); and

(d) immediately after sub-article (2) thereof there shall be added the following new sub-article:

"(3) The Commissioner shall allow applicants to present their views, with regard to the application, of the grounds referred to in this article before a decision on the admissibility of an application has been taken. A personal interview on the admissibility of the application shall also be conducted.".

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Passed by the House of Representatives at Sitting No. 245 of the 3rd March, 2015.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*

