

Country factsheet Malta

Based on its 2010 Work Programme, the European Union Agency for Fundamental Rights (FRA) carried out a study on access to justice for asylum seekers. This study illustrates the perspective of asylum seekers on two specific issues relating to the asylum procedure, namely information on the procedure itself and access to remedies against a negative decision.

The FRA interviewed almost 900 asylum seekers throughout the European Union. The information received has been analysed taking into account the relevant national legal provisions and the responses to a questionnaire on information received from national asylum authorities. The research has resulted in two comparative reports, the first on the duty to inform and the second on access to effective remedies.

This factsheet complements these two comparative studies by providing some basic background information, including statistics and relevant domestic legal provisions relating to the issues covered in the two reports.

1. Statistics

Statistics on asylum applications (Total and top 10 nationalities)

2009 Top 10 Nationalities		2008 Top 10 Nationalities	
Total	2,385	Total	2,605
Somalia	1,445	Somalia	1,080
Nigeria	280	Ivory Coast	260
Eritrea	270	Nigeria	220
Mali	105	Mali	210
Ivory Coast	45	Eritrea	175
Sudan	40	Ghana	105
Ethiopia	35	Ethiopia	95
Bangladesh	25	Niger	95
Burkina Faso	20	Togo	70
Guinea	20	Gambia	45

Statistics on first instance asylum decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian ¹	Rejected	Total number of decisions	Total positive decisions	Recognition rate ² %
Total	20	1,660	10	885	2,575	1,690	65.6
Somalia	0	1,445	0	125	1,570	1,445	92.0
Eritrea	5	190	0	20	220	195	88.6
Sudan	0	20	0	25	45	20	44.4
Mali	0	0	5	135	140	5	3.6
Ethiopia	5	0	0	15	20	5	25.0

Statistics on final decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian ¹	Rejected	Total number of decisions	Total positive decisions	Recognition rate ² %
Total	0	0	0	475	475	0	0.0
Nigeria	0	0	0	95	95	0	0.0
Ivory Coast	0	0	0	85	85	0	0.0
Mali	0	0	0	75	75	0	0.0
Somalia	0	0	0	50	50	0	0.0
Ghana	0	0	0	45	45	0	0.0

Notes: These tables are based on categories used by Eurostat. The way Eurostat presents its data may not necessarily correspond to categories used at national level. This can particularly be the case with statistics provided under 'humanitarian status'. For a more detailed understanding of the data, the reader is invited to consult national statistics at: <http://www.mjha.gov.mt/page.aspx?pageid=160>.

Data has been rounded to the nearest 5. Due to the rounding, the sum of individuals may not necessarily match the given total. 0 means less than 3; n.a. = not available.

¹ Covering persons granted authorisation to stay for **humanitarian reasons** under national law by administrative or judicial bodies. It includes persons who are not eligible for international protection as currently defined in the first stage legal instruments but are nonetheless protected against removal under the obligations that are imposed on all Member States by international refugee or human rights instruments or on the basis of principles flowing from such instruments.

² The **recognition rate** corresponds to the proportion of positive first instance or final on appeal decisions out of the total number of decisions in 2009. Positive decisions include the provision of refugee status, subsidiary protection and humanitarian protection (where data is available).

Source: [Eurostat](#), Data extracted on 01 September 2010.

2. Background Information

Asylum legislation¹

[Refugees Act \(Chapter 420\)](#)

[Procedural Standards in Examining Applications for Refugee Status Regulations \(2008\)](#)

Asylum authorities

First instance authority

[Office of the Commissioner for Refugees](#) – Ministry for Justice and Home Affairs

Second instance authority

Refugee Appeals Board

3. Duty to inform asylum seekers

The applicant shall be informed in time of the procedure to be followed and of his rights and obligations during the procedure in a language, which he/she may reasonably be supposed to understand (Article 4(2), Procedural Standards in Examining Applications for Refugee Status Regulations). Furthermore, the asylum seeker shall be informed about the possible consequences of not complying with his/her obligations and not cooperating with the authorities. The asylum seeker has the right to consult the UNHCR (Article 8(1)).

In August 2010, the Office of the Refugee Commissioner provided the following information to the FRA as regards written information materials.

Written information materials	Information leaflet translated into 10 languages.
Provided when?	At the time of lodging the asylum application and during the interview.
Provided by whom?	Office of the Refugee Commissioner.
Has an evaluation of information tools been carried out?	No.

4. Effective Remedy

Type of procedures

In addition to the regular procedure, the Refugee Act provides for an accelerated procedure in its Article 23. This is used when the application appears *prima facie* to be manifestly unfounded or inadmissible; applications are considered inadmissible in case of safe third country, safe country of origin, or if the Dublin II Regulation applies (Article 24). The

¹ The legal information in this factsheets has been updated to reflect the situation on 1 September 2010.

Commissioner shall decide on the admissibility or on the rejection as manifestly unfounded within three working days.

A person may make a subsequent application after a final decision has been issued. Such application will only be considered if new facts or findings are submitted to the Refugee Commissioner (Article 7A), otherwise the application shall be considered as unfounded (Article 5(5)(c), Procedural Standards in Examining Applications for Refugee Status Regulations). Identical subsequent applications are to be considered as inadmissible (Article 24(1)(f)).

Duty to state reasons for rejection and procedure to appeal

The asylum seeker shall be given notice, in a reasonable time, of the decision on his/her application. He/she shall be informed of the result of the decision, in a language that he/she may reasonably be supposed to understand, when the asylum seeker is not assisted or represented by a legal adviser and when free legal assistance is not available (Article 4(2)(e), Procedural Standards in Examining Applications for Refugee Status Regulations). The decision shall indicate in writing the reasons in fact and in law for a rejection of the application and shall include information for the applicant on his/her right to challenge the decision before the Refugee Appeals Board (Article 9(2), Procedural Standards in Examining Applications for Refugee Status Regulations). In case of subsequent applications, the applicant has to be informed of the outcome of the examination and of his/her right of appeal (Article 7A(3)).

Time limits for appeal

Appeals against recommendations issued by the Commissioner shall be lodged with the Refugee Appeals Board within 15 days from the notification of the recommendation (Article 7(2)).

The recommendation made by the Commissioner to consider the application as manifestly unfounded or as inadmissible has to be submitted to the Chairman of the Refugee Appeals Board, who shall examine the case within three working days. The Chairman's decision on the application as manifestly unfounded or inadmissible is final, without any possibility to appeal (Article 23(4) in conjunction with Article 24(2)). Where the application is considered not to be manifestly unfounded, it shall be examined under the regular procedure with 15 days time limit for lodging an appeal.

Type of procedure	Time limits	Right to remain
Regular procedure	15 days	Automatic suspensive effect
Accelerated procedure, including Dublin	Automatic referral	Case is forwarded <i>ex officio</i> to the Refugee Appeals Board which decision is final, without any possibility for appeal
Procedure on subsequent applications ²	15 days	Automatic suspensive effect

² There are no specific legislative provisions regulating the time limit and the right to remain of the asylum seeker once a negative decision has been rendered by the determining authority in the procedure on subsequent applications. Therefore, it is assumed that in such cases the procedure will follow the provisions applicable for the regular procedure.

Right to remain in the country during appeal

Except where a subsequent application will not be further examined, an applicant shall not be removed from the territory before his/her application is finally determined and such applicant shall be allowed to enter or remain in the territory pending a final decision of his/her application (Article 12(1), Procedural Standards in Examining Applications for Refugee Status Regulations).

Legal Aid

In general terms, the asylum seeker has the right to have legal assistance during all the phases of the asylum procedure (Article 4(2), Procedural Standards in Examining Applications for Refugee Status Regulations). He/she may consult a legal adviser in relation to the asylum application at his/her own expenses and in an effective manner. However, an applicant shall have the right to free legal aid under the same conditions applicable to Maltese nationals before the Refugee Appeals Board, (Article 7(5), Refugees Act).

The asylum seeker shall have, upon request, timely access to a written report of the personal interview, issued by the Commissioner, allowing an appeal to be prepared and lodged in due time (Article 6(2), Procedural Standards in Examining Applications for Refugee Status Regulations).

Language assistance

The Refugee Appeals Board shall, as the particular case may require, make arrangements to provide for the attendance of an interpreter to assist at the hearings (Article 7(4)).

Hearing

The Board shall, where appropriate, following a notice to the parties concerned, hold an oral hearing. The Board shall normally hear only new evidence regarding which it is satisfied that such evidence was previously unknown or could not have been produced earlier (Article 5(1)(h)), [Refugee Appeals Board \(Procedures\) Regulations](#)).