



Study on children's involvement in judicial proceedings – contextual overview for administrative justice – Malta

July 2014 (Research carried out
between July 2013 and January 2014)

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Abbreviations

COCP Code of Organization and Civil Procedure

DPA Data Protection Act

Introduction

Introduction and context

The promotion and protection of the rights of the child is one of the objectives of the EU on which the Treaty of Lisbon has put further emphasis. This report is part of a study 'to collect data on children's involvement in judicial proceedings in the EU' which supports the implementation of the Commission Communication of 15 February 2011 '[An EU Agenda for the rights of the child](#)', which identified the lack of reliable, comparable and official data on the situation of children in the Member States (MS). This deficiency is a serious obstacle to the development and implementation of evidence-based policies and is particularly evident in the context of child friendly justice and the protection of children in vulnerable situations. Making the justice system more child friendly in Europe is a key action of the EU Agenda. It is an area of high practical relevance where the EU has, under the Treaties, competences to turn the rights of the child into reality by means of EU legislation. Improved data is crucial to the framing of such legislation.

The objective of this study is:

- to establish statistics and collect data based on structural, process and outcome indicators on children involved in administrative judicial proceedings for the years 2008-2010 (and 2011 if available) for all 28 EU Member States;
- to provide a narrative overview of children's involvement in administrative judicial proceedings in the EU. The report describes the situation in each Member State as at 1 June 2012.

This report examines the safeguards in place for children involved in **administrative judicial proceedings**. The [Council of Europe Guidelines on child-friendly justice](#) serve as a basis for the analysis of the provisions affecting children in civil judicial proceedings in each Member State.

Structure and scope

This report describes the national administrative justice system insofar as children's involvement is concerned. The scope of this report is **limited to judicial proceedings**, which include proceedings before judicial or other authorities competent to judicially decide on the matter. The rules applicable to proceedings before administrative authorities do not fall within the scope of this study. In addition to general administrative judicial proceedings, this report reviews the safeguards in place for children in seven specific sectors:

- General rules applying to administrative judicial proceedings including judicial proceedings reviewing administrative authorities' decisions;
- Judicial proceedings in the sector of asylum;
- Judicial proceedings in the sector of migration;
- Judicial proceedings in the sector of education;
- Judicial proceedings in the sector of health;
- Judicial proceedings in the sector of placement into care;
- Judicial proceedings in the sector of administrative sanctions;
- Judicial proceedings regarding offences committed by children below the age of criminal responsibility (MACR).

Depending on the Member State, judicial proceedings in those seven sectors may be dealt with by different courts through administrative, civil or criminal judicial proceedings. For example, in one Member State, decisions in the health sector may be dealt with by juvenile courts through civil judicial proceedings while in another Member State such decisions may be dealt with by administrative courts through administrative judicial proceedings. However, for the sake of clarity and completeness, and consistency from one country report to another, the rules applying to the judicial proceedings

falling within the sectors mentioned above will be described in this administrative justice overview no matter whether they are dealt with through civil or administrative judicial proceedings.

Chapter 1 provides an overview of the Member State's approach to children in administrative judicial proceedings and judicial proceedings in the above sectors. It includes a description of the competent authorities and services.

Chapter 2 of this report is divided into sections (2.1, 2.2, etc.) according to the different safeguards examined (e.g. the right to be heard, the right to information, etc.). Each of these sections is divided into subsections describing the different rules applying to children involved in those judicial proceedings. The first subsection describes the general rules applying to judicial proceedings (including judicial proceedings reviewing administrative authorities' decisions).

NOTE:

If specific rules exist for children involved in judicial proceedings in one of the seven specific sectors, e.g. asylum, migration, education, those rules will be described in further separate subsections. On the contrary, if no specific rules exist in those sectors, the general rules described in the first subsection will be the only rules described.

According to each Member State's legislation, there might be **cross references between civil procedural rules and administrative procedural rules**. Therefore it should be noted that:

- General rules and principles codified in a substantive or procedural law code (e.g. Civil Code, Civil Procedural Code, Judicial Code) may apply to any proceeding before any court (e.g. rules concerning procedural capacity are likely to be described in the Civil Procedural Code, however those rules also apply to administrative judicial proceedings). These general rules and principles may be supplemented by sector specific procedural or substantive rules.
- Specific sections of Civil, Civil Procedural and Judicial Code may include rules specifically regulating administrative judicial proceedings or proceedings before other authorities competent to judicially decide on the matter (e.g. Chapter X of Civil Procedural Code laying down provisions on judicial review of administrative decisions).
- Specific Administrative Code, Administrative Procedural Code or administrative procedural laws may apply to administrative judicial proceedings or proceedings before other authorities competent to judicially decide on the matter.

The table below summarises the relevant proceedings and competent court in the sectors mentioned above. For the sake of completeness, the table includes the relevant judicial proceedings and the competent court in the field of family law and employment law, which are described in the [overview for civil justice](#).

Type of judicial proceedings and court competence per sector ¹										
	Contextual overview for civil justice ²	Contextual overview for civil justice	Contextual overview for administrative justice	Contextual overview for administrative justice	Contextual overview for administrative justice	Contextual overview for administrative justice	Contextual overview for administrative justice	Contextual overview for administrative justice	Contextual overview for administrative justice	Contextual overview for administrative justice
Sectors:	Family	Employment	Asylum	Migration	Education	Health	Placement in care	Administrative sanctions	Offences < MACR ³	
Type of proceeding applying in the sector	Civil judicial proceedings	Civil judicial proceedings	Civil judicial proceedings	Civil judicial proceedings	Civil judicial proceedings	Civil judicial proceedings	Civil judicial proceedings	Criminal judicial proceedings	Social services are presumably competent to take decisions in this sector.	
Competent court(s)	Civil Court (Family Section)	Civil courts	Refugee Appeals Board	Immigration Appeals Board	Civil courts	Civil courts	Civil courts	Criminal courts	No courts seem to be competent to decide in this sector. Presumably social services are competent to take decisions in this sector.	

¹ This table provides an indicative summary of competent courts and relevant proceedings. However, please check [Section 1](#) for a complete overview of the competent courts or sections/divisions within the competent courts.

² This study on Children's involvement in judicial proceedings is composed by three contextual overviews i.e. contextual overview for criminal justice, contextual overview for civil justice, contextual overview for administrative justice. The rules applying to judicial proceedings in the sectors of family and employment are described in the contextual overview for civil justice.

³ (MACR) Minimum Age of Criminal Responsibility – see [Table 3.1 of the EU Summary of contextual overviews on children's involvement in criminal judicial proceedings](#) on MACR in EU28 as at 1 June 2012.

1 Overview of Member State's approach to children in administrative Judicial proceedings and specialised services dealing with such children

1.1 Brief description of judicial system and institutions

Introduction

Malta does not have an administrative code or code of administrative procedure. Rather a number of Acts of Parliament are classified as administrative law, e.g. the [Administrative Justice Act](#)⁴, [Immigration Act](#)⁵, [Ombudsman Act](#)⁶, and [Refugees Act](#)⁷.

It must be noted at the outset that not all proceedings involving children in the areas covered in this stage of the study fall within a special administrative procedure in Malta:

- Matters related to **education and health are dealt with through civil proceedings** and are therefore not covered separately by this study. Judicial review of administrative decisions in these areas is exercised by the civil courts and the **general procedural rules apply**.
- Matters related to children below the minimum age of criminal responsibility are not dealt with through judicial proceedings. They should therefore be dealt with by the social services⁸. However, no rules concerning the possibility to appeal against a decision taken by the social services were found.
- Administrative sanctions are not relevant in the Maltese context as the relevant conduct (road traffic offences and socially harmful acts) constitute criminal offences subject to a criminal sanction under Maltese law. Criminal offences are divided into crimes and contraventions (that is, minor offences such as traffic violations)⁹. These are therefore dealt with under criminal proceedings.

Malta's approach to children in administrative proceedings is very limited. With the exception of proceedings in which the court makes decisions about the care of a child (namely, where a care order is issued to place a child in the care of the Minister responsible for social welfare), special provisions related to children are extremely sparse¹⁰.

Review of administrative action in Malta can take two forms: either judicial review of the legality of the administrative action or an appeal (which normally reviews both the legality and the merits of the case) to one of the various ad hoc tribunals for specialised areas as described below. There is typically a right of appeal from the decisions of these tribunals, normally on points of law only, to the Court of Appeal. Where no such right of appeal to a court is provided for, the decision of the tribunal is itself subject to judicial review of its legality before the ordinary courts¹¹.

The following paragraphs describe the general and special institutions or bodies that are relevant to children's involvement in proceedings for appeals from administrative decisions.

⁴ Chapter 490 of the Revised Laws of Malta.

⁵ Chapter 217 of the Revised Laws of Malta.

⁶ Chapter 385 of the Revised Laws of Malta.

⁷ Chapter 420 of the Revised Laws of Malta.

⁸ No information on the matter was found in legislation or through stakeholder consultation

⁹ Article 2 of the [Criminal Code](#), Chapter 9 of the Revised Laws of Malta. The punishments that may be awarded for crimes are imprisonment, solitary confinement, interdiction, fine (*multa*). The punishments that may be awarded for contraventions are detention, fine (*ammenda*), reprimand or admonition (Article 7 of the Criminal Code).

¹⁰ The relevant laws are the [Children and Young Persons \(Care Orders\) Act](#), Chapter 285 of the Revised Laws of Malta; the [Children and Young Persons \(Care Orders\) Regulations](#), Legal Notice 49 of 1985; the [Juvenile Court Act](#), Chapter 287 of the Revised Laws of Malta.

¹¹ [Administrative Justice in Europe, Replies to Questionnaire by Malta](#), p. 7-8.

Courts of civil jurisdiction

The courts that handle appeals against any decision, act or omission of entities exercising administrative authority in Malta are the ordinary courts of civil jurisdiction. According to the **Code of Organization and Civil Procedure** (COCP)¹², the civil courts may enquire into the validity of any administrative act or declare such act null, invalid or without effect¹³.

The courts of justice of civil jurisdiction for Malta are either superior or inferior. The superior courts are the Civil Court, the Court of Appeal and the Constitutional Court. The inferior courts are the Court of Magistrates (Malta) for the Island of Malta and the Court of Magistrates (Gozo) for the Islands of Gozo and Comino. Judges sit in the superior courts and magistrates sit in the inferior courts¹⁴.

The Civil Court deals with all cases of a civil and commercial nature, and all cases that are expressly assigned to it by law¹⁵. There are three sections in the Civil Court: the Family Section, the Voluntary Jurisdiction Section and a general jurisdiction section referred to as the First Hall of the Civil Court¹⁶.

The **Civil Court (Family Section)**¹⁷ deals with cases relating to matters regulated by the Civil Code provisions on the law of persons, filiation and parental authority; the **Maintenance Orders (Facilities for Enforcement) Ordinance**¹⁸; the **Maintenance Orders (Reciprocal Enforcement) Act**¹⁹; the **Marriage Act**²⁰ and the **Child Abduction and Child Custody Act**²¹.

The **Civil Court (Voluntary Jurisdiction Section)** is assigned applications falling within the competence of the Civil Court and which relate to matters regulated by the Civil Code provisions on adoption, minority and tutorship, majority, guardianship, incapacitation and by the procedural rules for the court of voluntary jurisdiction stipulated in the COCP²².

The **Civil Court, First Hall** is assigned all cases within the competence of the Civil Court and not assigned to the Family Section or the Voluntary Jurisdiction Section²³. In addition, judicial review of the legality of administrative actions, including in the areas covered by this study, is exercised at first instance by the Civil Court, First Hall composed of one judge. **Judicial review** is the process by which a decision of a government department, authority or agency may be reviewed and ultimately revoked by the courts if found to be illegal. The action is available to anyone who is aggrieved by a governmental decision or action which concerns them and therefore also to children through their legal representatives (see **Section 2.1** for further details).

The courts of justice of civil jurisdiction may enquire into the validity of an administrative act or declare such act null, invalid or without effect in the following cases²⁴:

- where the administrative act is in violation of the **Constitution of Malta**;
- when the administrative act is *ultra vires* (i.e. beyond the power assigned to the authority) on any of these grounds: (i) the act emanates from a public authority that is not authorised to perform it; or (ii) when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations; or (iii) the administrative act constitutes an abuse of the public authority's power; or (iv) the administrative act is otherwise contrary to law²⁵.

¹² Chapter 12 of the Revised Laws of Malta.

¹³ Article 469A of the COCP.

¹⁴ Articles 2 to 4 of the COCP.

¹⁵ Articles 32 and 33 of the COCP.

¹⁶ Regulations 2 and 3 of the **Civil Courts (Establishment of Sections) Order**, Legal Notice 396 of 2003 (Subsidiary Legislation 12.19).

¹⁷ Regulation 4 of the **Civil Courts (Establishment of Sections) Order**.

¹⁸ Chapter 48 of the Revised Laws of Malta.

¹⁹ Chapter 242 of the Revised Laws of Malta.

²⁰ Chapter 255 of the Revised Laws of Malta.

²¹ Chapter 410 of the Revised Laws of Malta.

²² Regulation 5 of the **Civil Courts (Establishment of Sections) Order**.

²³ Regulation 6 of the **Civil Courts (Establishment of Sections) Order**.

²⁴ Article 469A(1) of the COCP.

²⁵ An action to impugn an administrative act on these grounds must be filed within a period of six months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier (Article 469A(3) of the COCP).

Judicial review by the civil courts does not apply where the mode of contestation or of obtaining redress with respect to any particular administrative act before a court or tribunal is provided for in any other law²⁶.

Any party aggrieved by a judgement of the Civil Court, First Hall can appeal to the Court of Appeal²⁷. However, appeals from decisions of the Civil Court, First Hall on judicial review of delegated (subsidiary) legislation (that is, legislation enacted by an executive authority in the exercise of powers conferred by the Parliament through primary legislation) fall within the jurisdiction of the Constitutional Court. The Constitutional Court also hears appeals from judgements of the Civil Court, First Hall in its constitutional jurisdiction, concerning allegations that an administrative act violates a human right.

Specialised administrative tribunals and the Administrative Review Tribunal

In addition to the ordinary courts, review in the form of a full appeal on the law and the merits is sometimes granted to **specialised administrative tribunals** with varying degrees of competence. The jurisdiction of these tribunals is established by different Acts of Parliament. In almost all cases there is also a right of appeal from the decisions of these tribunals, normally on points of law only, to the Court of Appeal. In such appeal proceedings, the Court of Appeal is normally composed of one judge (referred to as the Court of Appeal (Inferior Jurisdiction)), but it could also be composed of three judges (referred to as the Court of Appeal (Superior Jurisdiction)), depending on what the Act of Parliament constituting the particular tribunal provides. If there is no such right of appeal, the decisions of these tribunals are subject to judicial review of their legality by the ordinary superior civil courts²⁸.

In proceedings for a review in the sense of a full appeal on both law and merits to an ad hoc administrative tribunal, the tribunal can in most cases reverse the decision of the administrative authority, but it all depends on the powers granted to the particular tribunal by the relevant Act of Parliament²⁹.

In the context of the proceedings covered by this study reference must be made to two such administrative tribunals competent in the field of **immigration** and **asylum**, namely, the Immigration Appeals Board and the Refugee Appeals Board.

The **Immigration Appeals Board** (set up by the **Immigration Act**) has jurisdiction to hear and determine appeals or applications regarding provisions of the Immigration Act or regulations made thereunder. Any person aggrieved by a decision of the competent authority under regulations made under the Act, or in virtue of the provisions on residence permits, removal orders or the responsibility of sea or air carriers may appeal against such a decision and the Board can hear and determine such appeals³⁰. The Board also has jurisdiction to hear and determine applications made by persons in custody in virtue only of a deportation or removal order to be released from custody pending the determination of any application under the Refugees Act or otherwise pending their deportation. The Board's decisions are final except with respect to points of law decided by the Board regarding decisions affecting EU citizens, from which an appeal will lie within 10 days to the Court of Appeal (Inferior Jurisdiction).

The Immigration Appeals Board is also competent to hear appeals by asylum seekers who feel aggrieved by administrative decisions taken in relation to their reception conditions³¹.

The **Refugee Appeals Board** (set up by the **Refugees Act**) decides appeals against recommendations of the Refugee Commissioner in relation to asylum applications³². It also hears appeals by persons who have been excluded from the benefit of temporary protection or family reunification³³.

²⁶ Article 469A(4) of the COCP.

²⁷ Article 41(5) of the COCP.

²⁸ *Administrative Justice in Europe, Replies to Questionnaire by Malta*, p. 4.

²⁹ *Administrative Justice in Europe, Replies to Questionnaire by Malta*, p. 8.

³⁰ Articles 25A(1)(c) and 25A(5) of the Immigration Act.

³¹ Regulation 16 of the **Reception of Asylum Seekers (Minimum Standards) Regulations** (Legal Notice 320 of 2005).

³² Article 7(1) of the Refugees Act.

³³ Regulation 28 of the **Temporary Protection for Displaced Persons (Minimum Standards) Regulations** (Legal Notice 131 of 2005).

The decision of the Board is final and conclusive and may not be challenged. There is no right of appeal before any court of law³⁴.

In addition to the various ad hoc tribunals, the **Administrative Justice Act**³⁵ set up the **Administrative Review Tribunal** with the purpose of reviewing administrative acts³⁶ and to take over jurisdiction from a number of pre-existing administrative tribunals³⁷. It is an independent and impartial tribunal applying the principles of good administrative behaviour³⁸ and presided over by a Chairperson. It is competent to review administrative acts of the public administration on points of law and points of fact. It is also competent to decide disputes referred to it unless any court or other administrative tribunal is already seized of such dispute³⁹. The Administrative Review Tribunal has the same powers as are vested in the Civil Court, First Hall by the COCP⁴⁰ in those cases when it is designated as the competent body.

Any party to proceedings before the Administrative Review Tribunal who feels aggrieved by a decision may appeal to the Court of Appeal sitting either in its superior or inferior jurisdiction.

The Administrative Justice Act also imposes a number of rules which ad hoc administrative tribunals must follow and lists the administrative tribunals which respect these principles of good administrative behaviour. These tribunals include the Immigration Appeals Board and the Refugees Appeals Board⁴¹.

Juvenile Court

The Minister responsible for social welfare is the authority that can issue a care order to place a 'child or young person' (defined as a person under 16 years of age – see below) in need of care, protection or control in his care. Children under 16 years of age are deemed to be in need of care, protection or control if they are beyond the control of their parents or guardian or are not receiving such care, protection and guidance as a good parent may reasonably be expected to give and (i) they are falling into bad associations or are seriously exposed to moral danger or (ii) the lack of care, protection or guidance is likely to cause unnecessary suffering or seriously affect their health or proper development⁴².

Objections to care orders are referred to the Juvenile Court (set up by the **Juvenile Court Act**) which will review the case and decide whether the child or young person is in need of care, protection or control and will confirm or revoke the order⁴³.

The Juvenile Court is not competent with respect to other cases falling within the scope of this study.

³⁴ Article 7(9) of the Refugees Act. This provision is without prejudice to Article 46 of the Constitution and Article 4 of the **European Convention Act** (Chapter 319 of the Revised Laws of Malta), that is, it does not apply with respect to proceedings for the enforcement of fundamental rights and freedoms.

³⁵ Chapter 490 of the Revised Laws of Malta.

³⁶ Article 5 of the **Administrative Justice Act**.

³⁷ Article 24 of the **Administrative Justice Act**.

³⁸ The principles of good administrative behaviour are described in Article 3(2) of the **Administrative Justice Act** and include: a requirement for administrative tribunals to respect the parties' right to a fair hearing; a requirement for the time in which an administrative tribunal takes its decision to be reasonable in the circumstances of the case; ensuring that there is procedural equality between the parties to the proceedings; that proceedings are conducted in public and that reasons are given for the judgement.

³⁹ Article 7 of the **Administrative Justice Act**.

⁴⁰ Article 20(1) of the **Administrative Justice Act**.

⁴¹ First Schedule to the **Administrative Justice Act**.

⁴² Article 7 of the **Children and Young Persons (Care Orders) Act**.

⁴³ Article 4 of the **Children and Young Persons (Care Orders) Act**.

1.2 General approach towards children under administrative law: evolving capacities, best interests of the child, principle of non-discrimination

The definition of ‘child’

Maltese law has a variable approach to the definition of ‘child’. The **Civil Code** defines a ‘minor’ as a person of either sex who has not yet attained the age of 18⁴⁴. Majority is fixed at the completion of the eighteenth year of age i.e. on their eighteenth birthday. A person over 18 years of age is capable of performing all the acts of civil life, subject to the restrictions contained in other special provisions of law⁴⁵.

Children are subjected to the parental authority of their parents. The parents jointly represent their children in all civil matters⁴⁶. Parental authority ceases in a number of cases including on the death of both parents; when the child attains 18 years of age and when the child gets married⁴⁷. A person can get married at the age of 16. However until the age of 18 s/he requires the consent of the parents or tutors, as the case may be⁴⁸. After the age of 18, a person may freely enter into marriage.

Any child, whose parents have died or have forfeited parental authority and who has not married, is subject to be placed under tutorship until s/he reaches 18 years of age or gets married. A tutor is appointed by the court on the demand of any person. Where among the child’s relatives there are competent persons, the court will appoint a relative, giving preference, subject always to the child’s best interests, to the nearest relative by consanguinity⁴⁹. The tutor will have the care of the child; represent him/her in all civil matters, and administer his/her property as *a bonus paterfamilias*⁵⁰.

The **Commissioner for Children Act**⁵¹ defines ‘child’ as any person who has not attained majority i.e. 18 years of age⁵². This is consistent with the Civil Code definition of ‘minor’. However, some legal instruments for example, the law dealing with care orders, refer more specifically to the ‘child or young person’ and this is defined as a person who is under the age of 16 years⁵³. In such situations, persons between 16 and 18 years of age are not considered as children.

Within the context of asylum cases it is pertinent to refer to the definition of ‘unaccompanied minor’ as found in the Refugees Act and regulations issued thereunder. This term refers to any person below 18 years of age who arrives in Malta unaccompanied by an adult responsible for him/her, for as long as s/he is not effectively taken into the care of such a person and includes a child who is left unaccompanied after s/he has entered into Malta⁵⁴. Recognised unaccompanied minors are placed under the care of the Minister responsible for social welfare through a care order.

The child’s best interests

Generally, the main objective for children’s involvement in judicial proceedings is to ensure that their best interests are taken into account. However, there are hardly any references to the best interests of the child in administrative law instruments, especially as regards their involvement in appeals to administrative decisions.

As regards children under **care orders**, the Minister responsible for social welfare has the duty to exercise his/her powers with respect to the care and custody of children under 16 years of age so as to further their best interests and to afford them the opportunity for the proper development of their character and abilities. However, if it appears to the Minister that it is necessary for the purpose of

⁴⁴ Article 157 of the **Civil Code**.

⁴⁵ Article 188 of the **Civil Code**.

⁴⁶ Article 135 of the **Civil Code**.

⁴⁷ Article 150 of the **Civil Code**.

⁴⁸ Article 3 of the **Marriage Act**, Chapter 255 of the Revised Laws of Malta,

⁴⁹ Articles 158 to 160 of the **Civil Code**.

⁵⁰ That is, a ‘good father of the family’; Article 172 of the **Civil Code**.

⁵¹ Chapter 462 of the Revised Laws of Malta.

⁵² Article 2 of the **Commissioner for Children Act**.

⁵³ Article 2 of the **Juvenile Court Act** and Article 2 of the **Children and Young Persons (Care Orders) Act**.

⁵⁴ Article 2 of the **Refugees Act**; Regulation 2 of the **Reception of Asylum Seekers (Minimum Standards) Regulations**; Regulation 2 of the **Temporary Protection for Displaced Persons (Minimum Standards) Regulations**.

protecting members of the public, to exercise his/her powers in relation to a particular child in his/her care in a manner that is not consistent with his general duty, the Minister may act in that manner⁵⁵.

The law does not specify who decides or describes what the best interests of the child would be or how this would be determined. Similarly, there are no checklists or protocols in place to determine the child's best interests. However, the courts will typically consider the best interests of the child to be a paramount consideration. Usually several professionals such as psychologists and social workers will be appointed to make recommendations which the court will take into account. The child would be given the opportunity to talk to these professionals⁵⁶.

There is no specific measure stating how the best interests of each child are separately assessed, where more than one child is involved in the same procedure or case, however, children can be assessed separately or together⁵⁷.

The child's dignity and evolving capacity

There are no specific measures in place to ensure that the child is treated with dignity and respect. However, it may be noted that one of the guiding principles of the Commissioner for Children is that all children are to be treated with dignity, respect and fairness⁵⁸. There are no measures in place to ensure respect for the child's evolving capacity in the context of administrative proceedings. There are no minimum age limits with respect to when a child may be heard.

Protection from discrimination

Children are granted a general protection from discrimination of any kind through the general prohibition of discrimination in the [Constitution of Malta](#), the [European Convention Act](#) and other legal instruments. There are no specific provisions on discrimination against children. Similarly, there is no special protection for more vulnerable children. Such children could be granted the same assistance that is available to all children through *Aġenzija Appoġġ* (the national welfare agency for children) and other institutions as described in [Section 1.3](#) below.

Children are not competent to start a legal action by themselves and therefore a curator will need to be appointed to represent the child in discrimination and other cases as described in [Section 2.1](#) below.

1.3 Monitoring mechanisms, multidisciplinary approach and training

The Office of the Commissioner for Children

The [Commissioner for Children Act](#) set up the Office of the Commissioner for Children to promote the welfare of children and compliance with the UN Convention on the Rights of the Child⁵⁹, and other international treaties, conventions or agreements relating to children. The Commissioner for Children is assisted by a Council for Children which has the function of monitoring compliance with these instruments⁶⁰.

The establishment of this Office was a significant step in recognising the rights of the child at national level. It focuses on the protection of children, the promotion of children's rights and the provision of necessary services for children. The Office acts as a focal point monitoring the social and cultural situation relating to children in Malta, so that it can contribute to coordination across all sectors in order to have family-friendly policies that are also child-oriented⁶¹.

⁵⁵ Article 9 of the [Children and Young Persons \(Care Orders\) Act](#).

⁵⁶ Information provided in this paragraph obtained through interview with lawyer.

⁵⁷ Information obtained through interview with lawyer.

⁵⁸ Article 10(b) of the [Commissioner for Children Act](#).

⁵⁹ Ratified by Malta on 26 January 1990.

⁶⁰ Article 12(6)(a) of the [Commissioner for Children Act](#).

⁶¹ [Website of the Office of the Commissioner for Children](#).

The Commissioner for Children must seek to ensure that the rights and interests of children are properly taken into account by government departments, local authorities, other public bodies and voluntary and public organisations when decisions on policies affecting children are taken⁶². The Commissioner has a number of functions aimed at promoting and safeguarding the best interests of children. In particular, the Commissioner must collect information and investigate any alleged breaches of the rights of children, including the death of any child, if the Commissioner considers an investigation to be necessary; ensure that legislation relating to the protection of the child's best interests is observed; advise the government and propose to the government measures that may be required in order to provide for the rights and interests of children⁶³.

Although it is acknowledged that the role of the Commissioner for Children is central to the protection of children's rights, the Commissioner does not have the powers to initiate and/or support legal action, and to intervene in court cases on behalf of children⁶⁴.

Aġenzija Appoġġ (welfare agency for children)

Aġenzija Appoġġ is the national agency for children and families in need. It offers community-based and specialised social welfare services with the ultimate aim of providing professional care and support to those in need⁶⁵. Its Children, Young Persons and Support Services aim at working with children and their families, in order to promote their well-being, protect their rights and enhance their potential. With the involvement and participation of children themselves, workers in this field develop care plans, take action to promote and protect children's rights and ensure that the well-being of children is given the highest priority⁶⁶.

Multidisciplinary measures

Multidisciplinary measures aimed at ensuring close cooperation between different professionals in order to obtain a comprehensive understanding of the child are rather limited. Nevertheless, it would seem that in practice the different professionals cooperate in order to obtain a comprehensive understanding of the child, and assess his/her legal, psychological, social, emotional, physical and cognitive situation with full respect for the child's right to private and family life. The draft National Children's Policy encourages professionals working with children to operate in multidisciplinary teams, with the objective of understanding the respective role and responsibilities of each, and organising services around the needs of the child. It is recognised that vulnerable children may interact with a number of professionals from different spheres and should not receive conflicting messages from the persons who are intended to offer guidance and support. Hence, effective dialogue and information sharing should be central⁶⁷.

However, there is no legal obligation on the court to obtain such a multi-disciplinary understanding of the child and any coordination procedures for professionals working in different government departments and agencies with or for children are not formalised. There are no common assessment frameworks for these professionals. However, with respect to **care orders** it is noted that the law specifically states that in discharging his/her functions, the Minister for social welfare must be advised by the Children and Young Persons Advisory Board. The Board includes a mother and a person who, in the Minister's opinion, has an adequate knowledge of psychology. The Board advises the Minister on the best methods of dealing with every child or young person (persons under 16 years of age) taken in his/her care, to exercise general supervision over such children and, in general, to promote their welfare⁶⁸. In making recommendations to the Minister on the best methods of dealing with every child under a care order, the Board will have available a report from the key social worker of the child establishing a care plan for the child⁶⁹.

No formalised operational cooperation procedures to facilitate the interactions between the relevant organisations involved in criminal, civil and/or administrative proceedings were identified.

⁶² Article 9(f) of the Commissioner for Children Act.

⁶³ Article 11 of the Commissioner for Children Act.

⁶⁴ Draft National Children's Policy, p. 38.

⁶⁵ Government of Malta, *Aġenzija Appoġġ (national welfare agency)*.

⁶⁶ Government of Malta, *Children & Young Persons' Support Services*.

⁶⁷ Draft National Children's Policy, p.58.

⁶⁸ Article 11 of the *Children and Young Persons (Care Orders) Act*.

⁶⁹ Regulation 8 of the *Children and Young Persons (Care Orders) Regulations*.

Training

The relevant actors who are in contact with the child during the proceedings such as judges, lawyers and social workers will have fulfilled the relevant basic qualification training requirements for admission to their profession e.g. judges and lawyers would have studied procedural law as part of their obligatory basic training. No information concerning training on rights of the child or on communicating with children/child development was found.

The Civil Court, First Hall is presided over by various judges, and any one of them can hear and determine an action for judicial review of the legality of an administrative act. There is no specialised division of the court for actions against the administration⁷⁰. In order to qualify to be appointed as a judge, a person must have either practised as a lawyer in Malta or served as a magistrate in Malta for not less than 12 years. In order to be appointed as an adjudicator of an ad hoc tribunal, a person must satisfy the requirements specified in the Act of Parliament establishing the tribunal in question. In practice the adjudicators who sit on administrative tribunals should preferably have an extensive knowledge of the subject which falls within the competence of each respective tribunal, but this is not normally a legal requirement⁷¹. In addition, there is no requirement that they should be trained on how to treat children and young people. For example, the Immigration Appeals Board consists of a lawyer who presides, a person versed in immigration matters and another person⁷²; the Refugee Appeals Board consists of a chairperson and two other members appointed by the Prime Minister from amongst persons of known integrity who appear to be qualified by reason of having had experience of, and shown capacity in, matters deemed appropriate for the purpose. At least one of the members of the Board must be a person who has practised as a lawyer in Malta for not less than seven years⁷³. The Chairperson of the Administrative Review Tribunal must be a person who holds or has held the office of a judge or a magistrate in Malta⁷⁴.

On the other hand, the Juvenile Court consists of a magistrate assisted by two persons, one of whom must be a woman, whom the court may consult in any case and in open court. These persons are appointed from amongst persons who have previous experience and special qualification for dealing with problems of children⁷⁵. This is relevant with respect to care orders.

The draft National Children's Policy considers multi-agency training to be central to the protection of children. It recommends that practitioners working with children receive specialised training in child protection, to complement the training already received in their field of work. Moreover, it is recommended that at university, social work students are asked to specialise in the first year of their studies. Professionals are to ensure that they are adequately trained in the legal framework related to children, and that they understand the importance of adopting a child-focused approach which involves children directly⁷⁶.

No specific measures were identified to ensure that professionals working with and for children are subjected to regular vetting to ensure their suitability to work with children.

⁷⁰ Administrative Justice in Europe, Replies to Questionnaire by Malta, p. 4.

⁷¹ Administrative Justice in Europe, Replies to Questionnaire by Malta, p. 6.

⁷² Article 25A(1) of the Immigration Act.

⁷³ Article 5(1) of the Refugees Act.

⁷⁴ Article 8 of the Administrative Justice Act.

⁷⁵ Article 4 of the Juvenile Court Act.

⁷⁶ Draft National Children's Policy, p.58.

2 Child-friendly justice in administrative judicial proceedings

2.1 The child as an actor in administrative judicial proceedings

2.1.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, education, health, administrative sanctions and offences below the MACR.

The rules described below apply to judicial proceedings in all sectors mentioned above. Proceedings involving administrative sanctions are not covered by the general rules, as these cases are heard by criminal courts within criminal judicial proceedings. It seems that proceedings concerning children below MACR committing offences are not dealt with through judicial proceedings but presumably only by the social services through administrative proceedings.

The child as a plaintiff/defendant

According to Maltese law, children cannot sue or be sued, except in the person of the parent exercising parental authority, or, in the absence of such parent, of a tutor or a curator (see [Section 2.6](#) for further details)⁷⁷.

Children cannot start a legal action, including an appeal to a court against an administrative decision, by themselves. A parent can represent the child as long as the parent's interests do not conflict with the child's. A curator can also be appointed to represent the child. The child him/herself can file an application for a curator to be appointed.

The curator *ad litem* may also be appointed by the court before which the action has been brought, or is about to be brought to protect the interest of the child in that specific proceeding, upon the application of any interested person. The application for the appointment of a curator to represent a child wishing to sue may be made by any person. The court will refuse an application for the appointment of a curator if the person in respect of whom such appointment is applied for is already represented by a tutor⁷⁸ or a curator, unless the action is against such tutor or curator⁷⁹.

If the parent exercising parental authority, owing to absence or for other reasons, is unable or refuses to appear for the child, or is unable or refuses to give his/her assent for the child to sue, the requisite authority may be granted by the court of voluntary jurisdiction. In these cases the court of voluntary jurisdiction can grant the child a general authorisation to sue or be sued in any action which may be pending at the time, or which may thereafter be brought. The court may grant such authorisation under such conditions as it deems proper, according to circumstances⁸⁰. Therefore, the court has a degree of discretion to grant dispensation to a child to bring a case before a court. No legislation or other measures in relation to how a child would be assisted in obtaining this authorisation from the court was identified.

Any judicial act performed by, or against, any person who does not have the capacity to sue or be sued, and is not duly authorised for the purpose, is null. Nullity resulting from minority may only be alleged by the child him/herself or his/her heir. Any nullity from lack of the parent's assent, may only be alleged by the parent and only whilst the child is still subject to parental authority. The defect of nullity may be cured, if the parent exercising parental authority or the curator affirms the acts⁸¹.

⁷⁷ Article 781(a) of the COCP.

⁷⁸ A tutor is a person appointed to take care of a child whose parents have died or have forfeited parental authority and who has not married, until s/he becomes of age or marries (Articles 158 and 159 of the Civil Code).

⁷⁹ Article 783 of the COCP.

⁸⁰ Article 784 and 785 of the COCP.

⁸¹ Articles 787 and 788 of the COCP.

The law does not specify what happens when a child reaches the age of 18 during the proceedings. A person over 18 years of age is capable of performing all the acts of civil life. It would therefore seem that the child can continue with proceedings in his/her own right.

The child as a witness/subject of proceedings

Children can participate in judicial proceedings as witnesses. In fact, all persons of sound mind can be admitted as witnesses, unless there are objections against their competency. There is no minimum age stated in the law and age does not constitute a ground of inadmissibility. The only requirement is that the witness understands that it is wrong to give false testimony⁸². There is no provision stating that the agreement of the parent/guardian is necessary for the participation of the child in the proceedings as a witness. Nor are there special provisions for child witnesses.

Witnesses, including child witnesses, are examined in open court and *viva voce* (i.e. orally) and may not be assisted or advised by any person. Witnesses must answer any question allowed by the court and the court can compel them to do so by committing them to detention until they have sworn and answered. However, witnesses cannot be compelled to answer questions the answer to which may subject them to criminal prosecution. The court can also decide that a witness is not bound to answer a particular question on the ground that the answer might expose him/her to his/her own degradation⁸³. The law does not contain any statement, additional to these general rules, as to the conditions in which a child can refuse to be a witness.

As regards proceedings before the Administrative Review Tribunal, the Tribunal may summon any person, including a child, to appear before it and give evidence and produce documents and the Chairperson has the power to administer the oath⁸⁴.

In proceedings regarding objections to care orders, the Juvenile Court can require further evidence besides that submitted by the Minister for social welfare or the person objecting to the care order and for this purpose it may, *ex officio*, summon any person to give evidence and order any document to be produced. The Juvenile Court may not require any evidence that would otherwise be inadmissible in a civil court⁸⁵.

No other provisions regulating how a child may participate in proceedings in other roles were found.

Child protection cases

Child protection cases can be started by the legal department of *Aġenzija Appoġġ* or by a private lawyer. Usually *Aġenzija Appoġġ* takes care of these matters and children are taken away from their home and a care order is issued by the Children and Young Persons Advisory Board⁸⁶.

2.2 Provision of information

2.2.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, education, health and placement into care

The rules described below apply to judicial proceedings in all sectors mentioned above. Proceedings involving administrative sanctions are not covered by the general rules, as these cases are heard by criminal courts within criminal judicial proceedings. It seems that proceedings concerning children below MACR committing offences are not dealt with through judicial proceedings but presumably only by the social services through administrative proceedings. Where sector specific rules apply, they are described in separate subheadings below.

⁸² Articles 563 and 564 of the COCP.

⁸³ Articles 577 to 590 of the COCP.

⁸⁴ Article 20(3) of the [Administrative Justice Act](#).

⁸⁵ Regulation 4(6) of the [Children and Young Persons \(Care Orders\) Regulations](#).

⁸⁶ Information obtained through interview with lawyer.

The child as a plaintiff/defendant

There do not seem to be any specific legal requirements/policies in place to ensure that children are informed of their rights by social services or other competent authorities when they come into contact with them. Likewise, no provisions on the right of a child to receive information about the right to appeal against an administrative decision in his/her own right were identified. Consequently, there is no designated responsible body for providing this information.

No provisions on the child's right to information in particular with respect to rights, systems and procedures involved, consequences of the procedure, time and place of court procedures, general progress and outcome of the procedure, etc. were identified.

This information is typically provided by lawyers and will therefore depend on the lawyer in question.

No guidance for court authorities, law enforcement agents, defence counsels, etc. to ensure that children are informed of the availability of support services were identified.

The general rules relating to the service of written pleadings and other acts of procedure apply also in judicial review cases involving children. This includes the procedures for the service of documents on plaintiffs containing information on the claim and the determination of the time and place of procedures.

Written pleadings before the ordinary courts may be filed by the person pleading in a representative capacity as the parent of the children placed under his/her parental authority, or as the tutor or curator⁸⁷. Service of the written pleadings takes place by the delivery of a copy of the pleading to the person on whom the pleading is to be served or by leaving such copy at the place of residence or business or place of work or postal address of such person, with some family or household member or with some person in his/her service or his/her attorney or person authorised to receive his/her mail. It is not lawful to leave such copy with a person under 14 years of age⁸⁸.

Once the written pleadings are concluded, the case is set down for pre-trial or trial hearings and must be brought to a conclusion as expeditiously as possible. At the first hearing of both the pre-trial stage and the trial stage, the court will plan in advance, after consulting with the lawyers of the parties, all the sittings to be held as well as the projected date of judgement and will also direct the parties on what evidence and submissions it expects to be made at each sitting. In general all cases must be appointed for hearing within two months⁸⁹.

The service of judicial acts for the Administrative Review Tribunal is carried out in the same manner as provided for the service of judicial acts in the COCP⁹⁰.

No other information rights were identified.

Support services

As regards ensuring that children receive information on the availability of support services (psychological, social and other) and the means of accessing such services, reference may be made to *Supportline 179* and other services provided through *Agenzija Appoġġ*. However, these services are not established by law.

Supportline 179 is the national freephone helpline offering support, information about local social welfare services and other agencies, and a referral service to callers in times of difficulty or crisis. The primary mission of *Supportline 179* is to provide, on a national level, immediate unbiased help to those seeking information, support and/or referral to social service agencies⁹¹.

Kellimni is a joint effort between SOS Malta, *Agenzija Żgħażaġħ*, Salesians of Don Bosco and *Agenzija Appoġġ*, under the guidance of Child Helpline International. The service offered encompasses mainly e-mail, chat and forum online support targeting children, youths and adolescents through www.kellimni.com⁹².

⁸⁷ Article 180(1)(a) of the COCP.

⁸⁸ Article 187 of the COCP.

⁸⁹ Article 195 of the COCP.

⁹⁰ Article 17 of the Administrative Justice Act.

⁹¹ Government of Malta, Children & Young Persons' Support Services.

⁹² Government of Malta, Children & Young Persons' Support Services.

Child-friendly material containing legal information is also made available to children through the website of the Office of the Commissioner for Children⁹³.

There are no measures in place stating how children receive information on special arrangements available in order to protect their best interests if they are resident in a different Member State.

The child as a witness/subject of proceedings

Child witnesses are summonsed to appear before the ordinary courts in the same way as adult witnesses, that is, by means of a subpoena issued on the application of the interested party. The subpoena must contain an order to appear at a stated place and time, for the purpose of giving evidence, whether before the court, arbitrators, or before referees, or before one or more officers authorised by law to examine witnesses. A witness is bound to appear in court on the date and time prescribed in the subpoena provided that s/he is served with the subpoena four days before such date, which period is to run from the date of service of the subpoena. In urgent cases, the court can order any witness to appear from day to day, or from hour to hour, or even only within such interval of time as may be necessary for him to appear in court⁹⁴.

The support services described above with regard to child plaintiffs and defendants are also available to child witnesses.

No other information rights were identified with regard to child witnesses and subjects of proceedings.

2.2.2 Procedural rules applicable to children involved in proceedings for placement of children (under 16 years of age) into care

The child as a plaintiff/defendant

Before the sitting, the Registrar of the Juvenile Court must notify the parties of the date, hour and location of the hearing⁹⁵.

No other information rights were identified.

The child as a witness/subject of proceedings

The general procedural rules described above with regard to child witnesses/subjects of proceedings in judicial proceedings regardless of the sector concerned, also apply to child witnesses/subjects of proceedings in proceedings involving care orders.

2.2.3 Procedural rules applicable to children involved in migration and asylum proceedings

The child as a plaintiff/defendant

Asylum seekers must be informed in a language they may reasonably be supposed to understand of the procedure to be followed and of the rights and obligations during the procedure. They must also be informed of their right: to consult the United Nations High Commissioner for Refugees and to have legal assistance during all phases of the asylum procedure; to be granted the services of an interpreter; to be given notice of the decision which must be served on the applicant or his/her legal advisor; to be informed of the result of the decision in a language they may reasonably be supposed to understand, when they are not assisted or represented by a legal advisor and when free legal assistance is not available⁹⁶. Legislation does not differentiate between different age groups with respect to the provision of information.

⁹³ [Website of the Office of the Commissioner for Children.](#)

⁹⁴ Articles 568 to 572 of the COCP.

⁹⁵ Regulation 5(2) of the Children and Young Persons (Care Orders) Regulations.

⁹⁶ Regulation 4(2) of the Procedural Standards in Examining Applications for Refugee Status Regulations.

Appeals to the Refugee Appeals Board must be made within 15 days from the notification of the applicant of the recommendation of the Refugee Commissioner. Where the appeal is entered by the applicant a copy of the appeal must be served on the Minister responsible for immigration and the Commissioner. Where the appeal is entered by the Minister, a copy of the appeal must be served on the applicant and the Commissioner⁹⁷. The law does not specify whether the information is provided to the child or his/her parents or legal guardian in the case of a child applicant.

The Commissioner must provide the Refugee Appeals Board with observations in writing concerning any matter arising on the grounds of appeal whenever the Board requests and a copy of these observations will be given to the applicant and his/her legal representative. The Board will give the applicant and his/her legal representative copies of any written information or documentation that in the Board's discretion may be reasonably necessary for the applicant to fully present his/her case. The parties will be given notice of the oral hearing and the Board will normally hear only new evidence which it is satisfied was previously unknown or could not have been produced earlier when the case was examined by the Refugee Commissioner. The Board can ask any person whose evidence is required to appear before it on a specified date and at a time and place to give evidence and to produce a document or thing. It will make arrangements for an interpreter to assist at the hearings where this is necessary⁹⁸. The Board's decision and the reasons must be communicated to the applicant and his/her legal representative⁹⁹. Legislation does not indicate the timing or the manner of the provision of such information.

Children or young persons below the age of 18 years who are found under circumstances which clearly indicate that they are in need of care, will be allowed to apply for asylum, and will be assisted under the Children and Young Persons (Care Orders) Act¹⁰⁰. This means that unaccompanied minors will have the same rights, access to support and resources as Maltese children¹⁰¹. As soon as possible, and not later than 30 days from the issue of the care order it must be ensured that the appointed representative of the unaccompanied minor is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview. The representative will be present at the interview and may ask questions or make comments within the framework set by the person conducting the interview¹⁰². Where an unaccompanied minor has a personal interview on his/her application for asylum, that interview must be conducted and the decision prepared by a person who has the necessary knowledge of the special needs of children¹⁰³.

The child as a witness

The general procedural rules described above with regard to child witnesses in judicial proceedings regardless of the sector concerned, also apply to child witnesses in asylum proceedings. However, with respect to witnesses required to appear before the Refugee Appeals Board, the summons may be served by hand or by post. Where it is served by hand it must be left with a person over 16 years of age at the place of residence or of business of the person summonsed¹⁰⁴.

No other information rights were identified.

The child as a subject of proceedings

No rules with regard to child as a subject of proceedings were found.

⁹⁷ Article 7(2) of the Refugees Act.

⁹⁸ Article 7(4) of the Refugees Act.

⁹⁹ Regulation 5(1) of the Refugee Appeals Board (Procedures) Regulations.

¹⁰⁰ Article 13(3) of the Refugees Act.

¹⁰¹ European Migration Network, National Contact Point for Malta: 'Unaccompanied Minors in Malta: Their Numbers and the Policies and Arrangements for their Reception, Return and Integration', p. 19.

¹⁰² Regulation 15(1)(a) of the Procedural Standards in Examining Applications for Refugee Status Regulations.

¹⁰³ Regulation 15(1)(b) of the Procedural Standards in Examining Applications for Refugee Status Regulations.

¹⁰⁴ Regulation 6(4) of the Refugee Appeals Board (Procedures) Regulations.

2.3 Protection of the child's private and family life

2.3.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, education, health and placement into care

The rules described below apply to judicial proceedings in all sectors mentioned above. Proceedings involving administrative sanctions are not covered by the general rules, as these cases are heard by criminal courts within criminal judicial proceedings. It seems that proceedings concerning children below MACR committing offences are not dealt with through judicial proceedings but presumably only by the social services through administrative proceedings. If sector specific rules apply, they are described in separate subheadings below.

The child as a plaintiff/defendant/witness/subject of proceedings

Data protection and confidentiality

The general provisions of the **Data Protection Act¹⁰⁵** (DPA) providing for the protection of individuals against the violation of their privacy by the processing of personal data, apply also to data concerning children. The DPA sets out the requirements for processing of data. These requirements apply also in the context of judicial proceedings and the processing of information related to parties to a case. The controller of personal data¹⁰⁶ must *inter alia* ensure that personal data is processed fairly and lawfully and in accordance with good practice. Data can only be collected for specific, explicitly stated and legitimate purposes and no more personal data than is necessary for the given purpose must be processed. Personal data cannot be kept for a period longer than necessary for the purposes for which they are processed¹⁰⁷.

The DPA also sets out the criteria for the processing of personal data. Personal data may be processed only if, *inter alia*, the person to whom the personal data relates (data subject) has given his consent or processing is necessary for the performance of a contract to which the data subject is a party or processing is necessary for compliance with a legal obligation to which the controller is subject or in order to protect the vital interests of the data subject¹⁰⁸.

In addition, regulations adopted under the DPA, namely, the **Processing of Personal Data (Protection of Minors) Regulations¹⁰⁹** contain some general rules on the processing of personal data aimed at the protection of children. Where any information is obtained by any teacher, member of a school administration, or any other person acting in the place of the parents or in a professional capacity in relation to a child, such information may be processed by any of these persons if such processing is in the best interests of the child. The Regulations do not provide further details on the determination of the best interests of the child. Where personal data is being processed, the consent of the parents or other legal guardian of the child will not be required if this may be prejudicial to the best interests of the child. In such a case, the parent or other legal guardian will not have access to any personal data held in relation to such child¹¹⁰. This would apply also in relation to information obtained by persons acting in a professional capacity in judicial proceedings.

As regards information or personal data in the media, reference may be made to the **Code of Journalistic Ethics** which contains a specific provision on the reporting of court procedures. The Code was adopted by the Malta Press Club in 2000 on the basis that it was deemed essential that all those engaged in the dissemination of information through various channels of communication should regulate their own behaviour. It was published for the guidance and discipline of those engaged directly or indirectly in that activity and that profession¹¹¹. The Code states that any

¹⁰⁵ Chapter 440 of the Revised Laws of Malta.

¹⁰⁶ Defined by Article 2 of the Data Protection Act as a person who alone or jointly with others determines the purposes and means of the processing of personal data.

¹⁰⁷ Article 7 of the Data Protection Act.

¹⁰⁸ Article 9 of the Data Protection Act.

¹⁰⁹ Subsidiary Legislation 440.04, Legal Notice 125 of 2004.

¹¹⁰ Regulation 2 of the Processing of Personal Data (Protection of Minors) Regulations.

¹¹¹ Section 1 of the Code of Journalistic Ethics.

publication involving the naming of children is prohibited. All reports of court proceedings must be strictly factual and a clear distinction should be made and explained between the facts and the expression of opinion. Once it is decided to report on any matter connected with judicial proceedings, that reporting must be complete, that is, both the beginning and the conclusion of those proceedings must be given and treated with the same prominence¹¹². The Code also contains a general provision on children which states that journalists are obliged to respect children. Except in matters connected with sports, no child is to be interviewed unless the consent of his/her parents, guardian or tutor is obtained¹¹³. Whenever, after due process, the Press Ethics Commission¹¹⁴ finds that a journalist has violated one or more of the rules of the Code, it may impose one or more of the following sanctions in accordance with the gravity of the offence: disapproval, censure or grave censure. In appropriate cases, the decision may be given whatever publicity the Commission deems fit. In all cases, the Commission also communicates its decision to the Organisational Head of the journalist concerned¹¹⁵.

Professionals, such as lawyers and judges, involved with children would typically be bound by confidentiality. In addition, the Commissioner for Children and its staff are bound by secrecy in respect of all personal matters that come to their knowledge in the exercise of their powers and the carrying out of their duties and functions. The only exception to the non-disclosure of information is in cases where this is necessary for an investigation, or prosecutions for an offence against a child¹¹⁶.

Publicity of hearings and judgements

There is no general provision requiring court hearings involving children to be held behind closed doors. Proceedings for judicial review of the legality of administrative action are held in public and the parties can take part in proceedings by attending the sittings and by presenting written submissions. However, the court can order that a case be heard with closed doors, should decency or good morals so require. The court can also order that the case be heard with closed doors in any other case at the request of both parties, upon good reason being shown¹¹⁷.

Judgements are delivered in public. The court delivering the judgement reads out the operative part which is to be included in the concluding part of the judgement. The operative part of the judgement includes a reference to the claims or pleas which have been decided upon and every declaration intended to be conclusive or binding¹¹⁸.

The provisions on the publicity of proceedings and judgements apply also before the Administrative Review Tribunal¹¹⁹.

No statutory/policy provisions on the powers of judges to limit the information which is reported were identified.

2.3.2 Procedural rules applicable to children involved in migration and asylum proceedings

The child as a plaintiff/defendant/witness/subject of proceedings

In the case of an appeal before an ad hoc administrative tribunal, it is the Act of Parliament constituting the relevant tribunal that determines whether the hearing is conducted in public or behind closed doors, and the manner in which the parties can take part in the hearing¹²⁰. Therefore, the Refugees Act specifies that in proceedings before the Refugee Appeals Board, sittings of the Board are held *in camera* provided that all the parties agree to this¹²¹.

¹¹² Sections 6 to 8 of the Code of Journalistic Ethics.

¹¹³ Section 11 of the Code of Journalistic Ethics.

¹¹⁴ The Press Ethics Commission is established by Section 1 of the Code of Journalistic Ethics. It is competent to consider any complaints made to it against any journalist for any alleged breach of ethical behaviour outlined in the Code.

¹¹⁵ Section 12 of the Code of Journalistic Ethics.

¹¹⁶ Article 13 of the Commissioner for Children Act.

¹¹⁷ Article 22 of the COCP.

¹¹⁸ Article 23 of the COCP.

¹¹⁹ Article 15(1) of the Administrative Justice Act.

¹²⁰ Administrative Justice in Europe, Replies to Questionnaire by Malta, p. 18.

¹²¹ Article 7(6) of the Refugees Act.

It is also noted that as regards information concerning applications for refugee status, it is specifically provided that this must remain confidential¹²².

2.3.3 Procedural rules applicable to children involved in proceedings for placement of children (under 16 years of age) into care

The child as a plaintiff/defendant/witness/subject of proceedings

The **Juvenile Court Act** is relevant with respect to care orders and contains some requirements that are aimed specifically at protecting children. In proceedings involving a child or young person (that is, a person under 16 years of age) only the following persons can be present at a court sitting or in any place adjacent to the room in which the hearing of the case is held:

- Officials of the court;
- The parties to the case and their counsel or other members of the legal profession;
- Representatives of the Ministry responsible for social welfare;
- Witnesses or other persons directly concerned in the case;
- The parent or other relative or the guardian of the child or young person concerned in the proceedings; and
- Good faith representatives of newspapers.¹²³

Newspaper reports or broadcasts relating to proceedings cannot reveal the name, address or school, or include any particulars calculated to lead to the identification of any child or young person concerned in the proceedings. The publication of pictures of the child or young person is also prohibited. These prohibitions can be fully or partially removed if the court finds it appropriate to do so in order to avoid injustice to a child or young person.¹²⁴

Whenever the child or young person in respect of whom the care order has been made is required by the parties or by the Juvenile Court to give evidence, the Court may order the parents and the guardian, including the person making the objection and any other relative of the child to withdraw from the Court while his/her evidence is heard. If the person so excluded is the person objecting to the care order, the Juvenile Court will inform him/her of the substance of any allegation made against him/her or against any of his/her close relatives by the child in his/her deposition¹²⁵.

No further measures were identified with regard to the support provided by specialised services to avoid adverse consequences of the judicial proceedings on family relations.

2.4 Protection from harm during proceedings and interviews and ensuring a child friendly process

2.4.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, education, health and placement into care

The rules described below apply to judicial proceedings in all sectors mentioned above. Proceedings involving administrative sanctions are not covered by the general rules, as these cases are heard by criminal courts within criminal judicial proceedings. It seems that proceedings concerning children below MACR committing offences are not dealt with through judicial proceedings but presumably only by the social services through administrative proceedings. If sector specific rules apply, they are described in separate subheadings below.

¹²² Regulation 10 of the Procedural Standards in Examining Applications for Refugee Status Regulations.

¹²³ Articles 7 and 11(1) of the **Juvenile Court Act**.

¹²⁴ Article 8(1) and Article 11(2) of the **Juvenile Court Act**.

¹²⁵ Regulation 4(6) of the Children and Young Persons (Care Orders) Regulations.

The child as a plaintiff/defendant/subject of proceedings

Court delays

There is no provision requiring cases involving children to be fast tracked or prioritised. As a general rule, the date and time for the hearing must be determined at least two months before the date fixed for the hearing. The court may decide, either where it deems appropriate or after consultation with the lawyers of the parties or in any other case where the case is to be heard with urgency, to fix an earlier date. Where such date and time have been fixed, no suspension of the hearing will be granted except for grave and exceptional reasons. In cases which are to be heard with urgency the period of two months will not apply. In addition, where a case has been pending trial before a particular court for three or more years, any party to the case may, personally, and without the need of representation by any lawyer, present an application to the Chief Justice requesting that, for the simple reason that the case has taken so long, the presiding judge be changed. The decision of the Chief Justice is taken *in camera* and is final and conclusive. The same procedure is available where a case has been pending for judgement before a particular court for 18 months or more. The court can decide a case on the day fixed for first hearing where the claim is not contested or the court is satisfied that the plaintiff has no claim or the defendant has no valid defence¹²⁶.

The Office of the Commissioner for Children receives a number of complaints regarding the negative emotional and psychological effects on children due to delays in court procedures¹²⁷ (see **Section 1.3** for further details on the role of the Office of the Commissioner for Children).

There is no mechanism to monitor the implementation of the urgency principle in respect of proceedings involving children.

Child friendly premises and measures

No statutory/policy provisions to assist the child in communications during proceedings or to protect the child from harmful images or information were identified.

Whilst certain measures are in place to avoid the need for the child's presence during criminal proceedings, such as video conferencing, no such measures were identified with respect to administrative proceedings involving children.

There do not seem to be any special legal requirements/policies in place in relation to how a child is interviewed or gives testimony.

Legal requirements/policies in place to ensure that the premises and places where children are involved in proceedings are non-intimidating and child-friendly are very limited. No measures aimed at ensuring that a child is interviewed or gives testimony in a child-friendly environment were identified.

On the other hand, psychological, practical and other support to help the child to cope with proceedings, can be made available through *Aġenzija Appoġġ* (welfare agency for children). Children can access the services of *Aġenzija Appoġġ* in their own right. *Aġenzija Appoġġ* can also provide support after the judgement, particularly through supervised access visits, that is, supervised contact between children and non-custodial parents and other members of their family. This helps to provide a safe, beneficial and child focused contact, where the child can maintain a relationship with his/her family. Supervised access visits are offered to children who are under a care order, to children whose parents are undergoing separation and also cases on a voluntary basis¹²⁸. Support services are not limited to highly conflictual cases. Rather access to such services seems to be unlimited.

As regards precautionary and interim measures, no rules specifically regarding such measures for children involved in appeals from administrative decisions were identified. As a general procedural rule, an interim measure may result from a court order made at the beginning of or pending court proceedings upon request of the applicant to prevent the other party from acting in a way that will prejudice the rights of the applicant in the course of proceedings. There are also specific precautionary measures that are available under Maltese law. These include: the warrant of description (issued to secure a right over movable things); warrant of seizure (issued to seize from the possession

¹²⁶ Article 195 of the COCP.

¹²⁷ Office of the Commissioner for Children, Annual Report 2011, p. 28.

¹²⁸ Government of Malta, Children & Young Persons' Support Services.

of the debtor, property equal in value to the sum claimed by the creditor); garnishee order (issued to attach in the hands of a third party monies or movable property claimed to be due or belonging to a debtor); warrant of prohibitory injunction (issued to restrain a person from certain conduct)¹²⁹.

The same provisions on the admissibility of information/evidence in court that apply to adults, apply to children. There are no special legal measures to ensure that the special needs of children and their age and maturity are taken into account while gathering information/evidence. Age does not constitute a ground of inadmissibility of evidence. The only requirement is that the person giving evidence understands that it is wrong to give false testimony¹³⁰.

There are no legal provisions requiring that children receive assistance and are prepared for or supported when attending proceedings such as interviews, court sessions, etc. In practice, children will typically be accompanied by the parent/s or other person charged with their care. It will depend on the circumstances of each case whether the child will be heard alone or in the presence of the parent/s. Similarly, there are no rules aimed at ensuring that the number of interviews is as limited as possible and that their length is adapted to the child's age and attention span. It will be up to the professionals involved to carry out interviews in a child friendly manner.

No guidance for court staff and judicial authorities to ensure the observance of child-friendly measures was found and no materials that provide support or guidance to children involved in the proceedings seem to exist.

The child as a witness

In addition to the above rules, child witnesses, similarly to adult witnesses, cannot be compelled to answer questions the answer to which may subject them to criminal prosecution. The court also has the discretion to decide that a witness, including a child witness, is not bound to answer a particular question on the ground that the answer might expose him/her to his/her own degradation¹³¹. Child witnesses must take an oath before they are examined¹³².

2.4.2 Procedural rules applicable to children involved in proceedings for placement of children (under 16 years of age) into care

The child as a plaintiff/defendant/witness/subject of proceedings

Court delays

In addition to the general rules described above, with specific reference to care orders, it is noted that the Director of the Department responsible for social welfare must refer the case to the Juvenile Court, not later than seven days from becoming aware of any objection to a care order by the person exercising parental authority over a child or the guardian of a child¹³³.

The Juvenile Court is required to hold a sitting to review a case as soon as may be, but in any case not later than seven days from when the Registrar of the Juvenile Court received the communication from the Director. The Juvenile Court must deal with the case as expeditiously as possible, and must in any case reach its decision not later than 21 days from the date of the first sitting¹³⁴.

Child friendly premises and measures

As regards child friendly measures in the Juvenile Court, see [Section 2.3](#) above.

¹²⁹ Article 830 of the COCP.

¹³⁰ Articles 563 and 564 of the COCP.

¹³¹ Articles 589 and 590 of the COCP.

¹³² Article 577(3) of the COCP.

¹³³ Article 4(3) of the [Children and Young Persons \(Care Orders\) Act](#) and Regulation 4(1) of the [Children and Young Persons \(Care Orders\) Regulations](#).

¹³⁴ Regulation 5(2) and (3) of the [Children and Young Persons \(Care Orders\) Regulations](#).

2.4.3 Procedural rules applicable to children involved in migration and asylum proceedings

The child as a plaintiff/defendant/witness/subject of proceedings

Court delays

Administrative tribunals are required to respect and apply the principles of good administrative behaviour and these include the principle that the time within which an administrative tribunal takes its decisions must be reasonable in the light of the circumstances of each case. The decision must be delivered as soon as possible and for this purpose the tribunal must deliver one decision about all matters involved in the case whether they are of a preliminary, procedural or of a substantive nature¹³⁵. This principle applies also to the Refugee Appeals Board and Immigration Appeals Board. No other relevant rules were identified in the context of migration and asylum proceedings and the general issues as described above apply in this context too.

Child friendly premises and measures

No special child-friendly measures were identified in this context. The general situation described above applies.

2.5 Right to be heard and to participate in administrative judicial proceedings

2.5.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, education, health and placement into care

The rules described below apply to judicial proceedings in all sectors mentioned above. Proceedings involving administrative sanctions are not covered by the general rules, as these cases are heard by criminal courts within criminal judicial proceedings. It seems that proceedings concerning children below MACR committing offences are not dealt with through judicial proceedings but presumably only by the social services through administrative proceedings. Where sector specific rules apply, they are described in separate subheadings below.

No general provisions aimed specifically at ensuring that children are heard in all matters that affect them where they have a sufficient understanding to be heard were found. Similarly, there do not seem to be any provisions to ensure that children are consulted on the manner in which they wish to be heard or to allow children to enforce their legal rights in proceedings.

The child's procedural capacity, in particular, the right legal counsel and to make submissions is dealt with in [Section 2.6](#) below. Reference should also be made to assistance available through welfare agencies and representation by the parents or curators as described in [Section 1, 2.1](#) and [2.4](#).

Where a party to proceedings does not understand the language in which the oral proceedings are conducted, such proceedings will be interpreted by the court or by a sworn interpreter¹³⁶.

No provisions were identified with regard to any other support aimed at removing obstacles for children to access courts.

¹³⁵ Article 3(2)(b) of the [Administrative Justice Act](#).

¹³⁶ Article 21(2) of the COCP.

2.5.2 Procedural rules applicable to children involved in asylum proceedings

The child as a plaintiff/defendant/witness/subject of proceedings

As stated above, there are no general provisions to facilitate children being heard in asylum proceedings. However, the Refugee Appeals Board must make arrangements for an interpreter to assist at the hearings if the case requires this¹³⁷. In addition, it is noted that unaccompanied minors enjoying temporary protection are represented in asylum proceedings by legal guardians or, where necessary, by an organisation which is responsible for the care and well-being of children or any other appropriate representation¹³⁸.

2.6 Right to legal counsel, legal assistance and representation

2.6.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, education, health and placement into care

The rules described below apply to judicial proceedings in all sectors mentioned above. Proceedings involving administrative sanctions are not covered by the general rules, as these cases are heard by criminal courts within criminal judicial proceedings. It also seems that proceedings concerning children below MACR committing offences are not dealt with through judicial proceedings but presumably only by the social services through administrative proceedings. Where sector specific rules apply, they are described in separate subheadings below.

The child as a plaintiff/defendant

Children's procedural capacity and capacity to communicate with the court

There are no specific provisions in place to ensure that children have access to legal counsel, to legal assistance and in general to be represented in administrative proceedings. Since children are not parties to proceedings in their own right, they cannot choose their lawyer. However, they can participate in proceedings through their parents, tutor or curator (see heading below on curators) to whom the general procedural rights apply.

As a general rule, the parties, either personally or through their lawyer have the right to make their submissions in writing or orally as the court may decide, by the plaintiff submitting his case and the defendant making his answer. When the trial of the case is closed, no further evidence will be allowed, except for just cause and with the court's permission. The court is empowered to rule out from the oral pleading all matters which, in its opinion, may be calculated to cause useless delay, or consists in repetition, or is irrelevant or extraneous to the case. Where the parties are assisted by a lawyer, they can only make submissions through their lawyer, unless the court grants permission. The court may order the party who is not assisted by a lawyer to engage one if, in its opinion, the party is unable adequately to plead the case. If such party fails to engage a lawyer, the court will appoint an official curator (see below) selected according to the turn on the rota. If the party refuses to give the necessary information to the appointed lawyer, the court may dispose of the case after hearing such evidence as it considers necessary¹³⁹.

As regards proceedings in the ordinary courts for judicial review of the legality of administrative acts, written pleadings have to be signed by a lawyer.

As regards proceedings of appeal before ad hoc administrative tribunals, legal assistance is not normally required by law. However, in practice, a lawyer or some other professional specialised in the

¹³⁷ Article 7(4) of the Refugees Act and Regulation 5(1)(j) of the Refugee Appeals Board (Procedures) Regulations.

¹³⁸ Regulation 17(1) of the Temporary Protection for Displaced Persons (Minimum Standards) Regulations.

¹³⁹ Articles 204 and 205 of the COCP.

particular area of law concerned is very often engaged¹⁴⁰. In practice in nearly all cases the party is assisted by a lawyer during the oral hearing.

The parties may appear before the Administrative Review Tribunal in person or be represented and assisted through a lawyer, a legal procurator or another person¹⁴¹.

In most cases where children have an interest in the outcome of the case, children have to rely on the goodwill of adults, mainly judges or parents involved in the particular case to be granted legal representation. The present law does not have a provision entitling the child to access legal representation independently¹⁴².

There is no guidance for lawyers who represent children to ensure they treat the child as a fully fledged client whose opinions are taken into account.

In case of conflicting interests between the children or between the children and either parent, the competent court must appoint one or more special curators. It is lawful for either parent to decline to represent any of their children against another of their children or against the other parent¹⁴³. The same applies in case of conflicting interests between children subject to the same tutors¹⁴⁴, or between them and the tutors¹⁴⁵.

Curators

The court can appoint curators to appear in and defend proceedings in any of the superior courts in the interest of any child not legally represented¹⁴⁶. Only where the child is eligible for legal aid will s/he not have to pay for such services (see below for further details on legal aid). The curators are appointed by the court on a demand made by an application filed together with the act whereby the action is commenced. Curators may also be appointed on an application during the course of the proceedings or even on a verbal demand made during the hearing of the suit¹⁴⁷. The curators must use their best diligence for the benefit of the interest which they represent. Their duties include: (a) to fully inquire as to the rights of persons they represent and to identify these rights; (b) to take the measures necessary to safeguard these rights; (c) to contact at once the persons they represent; (d) to inform persons they represent of any judicial act and of its contents; (e) to obtain the necessary information to defend the interests of persons they represent; (f) to continue looking after the interests of persons they represent with regard to pending matters although the period of appointment may have expired; and (g) to keep the court regularly informed of all actions taken in the execution of their duties. The curators are liable for damages and interest occasioned by their negligence¹⁴⁸.

There do not seem to be mechanisms in place to monitor the appointment and quality of service provided by curators to children involved in judicial proceedings.

Legal aid

The Minister responsible for justice nominates panels of lawyers and other experts to perform the duties of curators, lawyers or legal procurators *ex officio* and experts in the Courts of Malta and Gozo¹⁴⁹. Where either both parties or the party at whose request their selection was made have or has been granted legal aid, the curators will give their services for free. This does not affect their right to the remuneration expressly allowed to them by the COCP out of the amount or property recovered¹⁵⁰. For legal aid to be granted, the applicant must confirm on oath that: s/he has reasonable

¹⁴⁰ Administrative Justice in Europe, Replies to Questionnaire by Malta, p. 14.

¹⁴¹ Article 14 of the [Administrative Justice Act](#).

¹⁴² Draft National Children's Policy, p.47.

¹⁴³ Article 139 of the [Civil Code](#).

¹⁴⁴ A tutor is a person appointed by the court on the demand of any person to take care of a child whose parents have died or have forfeited parental authority and who has not married, until s/he becomes of age or until s/he marries (Articles 158 and 159 of the Civil Code).

¹⁴⁵ Article 162 of the Civil Code.

¹⁴⁶ Article 929(a) of the COCP.

¹⁴⁷ Article 930 of the COCP.

¹⁴⁸ Article 936 of the COCP.

¹⁴⁹ Article 89(1) of the COCP.

¹⁵⁰ Article 95 of the COCP.

grounds for being a party to proceedings; that s/he does not possess property the net value¹⁵¹ of which amounts to, or exceeds, EUR 6,988.12¹⁵²; and that his/her yearly income is not more than the national minimum wage¹⁵³. Persons benefitting from legal aid are exempt from the payment of all fees¹⁵⁴. Presumably, for cases involving children it is the property of the parents that is assessed.

The provisions of the COCP relating to the benefit of legal aid apply also to parties to proceedings before the Administrative Review Tribunal who are entitled to such benefit within the meaning of those provisions¹⁵⁵.

Legal aid can also be granted in proceedings of appeal to the ad hoc administrative tribunals, if the Act of Parliament grants the benefit of legal aid, but this is not usual. Where this benefit is granted by law, the request has to be made to the Civil Court, First Hall. The aggrieved party can in any case request the First Hall to grant him/her legal aid if s/he wishes to appeal from the decision of the ad hoc tribunal to the Court of Appeal, if such right of appeal is granted by the relevant law.

The child as a witness/subject of proceedings

Rules concerning assistance by a legal representative or a legal counsel do not apply to child witnesses and subjects of proceedings.

2.6.2 Procedural rules applicable to children involved in proceedings for placement of children (under 16 years of age) into care

The child as a plaintiff/defendant

The person objecting to a care order can be represented by a lawyer and the lawyer may examine or cross-examine witnesses, produce evidence and make in support of or against the care order any other submissions that the Juvenile Court may consider admissible¹⁵⁶. These proceedings before the Juvenile Court are deemed to be civil proceedings and the burden of proving that the care order should be confirmed will lie with the Minister responsible for social welfare. There is a specific provision on the child's right to representation by a lawyer. In all cases a child or young person under the Minister's care has the right to be represented by a lawyer appointed by the Minister for the purpose of examining or cross-examining witnesses, producing evidence and making any other submissions deemed necessary¹⁵⁷.

The child as a witness/subject of proceedings

Rules concerning assistance by a legal representative or a legal counsel do not apply to child witnesses and subjects of proceedings for placement of children (under 16 years of age) into care.

2.6.3 Procedural rules applicable to children involved in asylum proceedings

The child as a plaintiff/defendant

In proceedings before the Refugee Appeals Board, the Board must enable the applicant to be present at the hearing and present his/her case to the Board in person or through a legal representative¹⁵⁸ or other authorised person¹⁵⁹.

¹⁵¹ In calculating the net value, no account is taken of the principal residence of the applicant or of any other property, immovable or movable, which forms the subject matter of court proceedings.

¹⁵² This does not include everyday household items that are necessary for the use by applicant and his/her family.

¹⁵³ Article 912 of the COCP.

¹⁵⁴ Article 920 of the COCP.

¹⁵⁵ Article 18 of the [Administrative Justice Act](#).

¹⁵⁶ Regulation 5(4) of the Children and Young Persons (Care Orders) Regulations.

¹⁵⁷ Regulation 6 of the Children and Young Persons (Care Orders) Regulations.

¹⁵⁸ According to Regulation 2 of the Refugee Appeals Board (Procedures) Regulations, 'legal representative' means the person appointed to give free legal aid to represent appellant before the Board in terms of Article 7(5) of the Refugees Act.

¹⁵⁹ Regulation 5(1)(i) of the Refugee Appeals Board (Procedures) Regulations.

With respect to appeals before the Refugee Appeals Board, appellants have the right to free legal aid under the same conditions applicable to Maltese nationals¹⁶⁰.

In asylum proceedings, an applicant can consult at his/her own expense a legal advisor in relation to the asylum application. In the event of a negative decision on the asylum application, free legal aid to appeal the decision will be granted under the same conditions applicable to Maltese nationals. A legal advisor who assists an applicant following a decision will enjoy access to such information in the applicant's file as is liable to be examined by the Refugee Appeals Board in so far as the information is relevant to the examination of the application. The Refugee Commissioner can allow the applicant to bring a legal advisor to the personal interview but the absence of a legal advisor does not prevent the Commissioner from conducting or continuing the personal interview with the applicant¹⁶¹.

In cases where an unaccompanied minor placed under a care order appears before the Juvenile Court, legal assistance is provided by the Jesuit Refugee Service or, if not available, through legal aid¹⁶².

The Jesuit Refugee Service in Malta seeks to accompany, serve and defend the rights of asylum seekers and forcibly displaced persons who arrive in Malta¹⁶³. It is a non-governmental organisation providing voluntary services.

The child as a witness/subject of proceedings

Rules concerning assistance by a legal representative or a legal counsel do not apply to child witnesses and subjects of proceedings in asylum proceedings.

2.7 Restrictions on liberty

Detention is possible only in the field of asylum and migration and mental health. Therefore only these sectors are described.

2.7.1 Procedural rules applicable to children involved in migration and asylum proceedings

The child as a plaintiff/defendant

Statutory provisions allowing for detention of children during administrative proceedings were identified in the context of asylum and migration proceedings. Whilst in principle, the detention of children is prohibited under Maltese law and international law, children of migrants and asylum seekers and their families are usually placed in 'open centres' where they have greater freedom of movement than traditional detention centres. However, most unaccompanied children, including adolescents from countries affected by armed conflict, are housed with adults pending the outcome of the procedure for determining their age. During this time, such children are at risk of violence and exploitation. Furthermore, many young migrants do not declare their status as children, either out of fear or because they lack information on the benefits they are entitled to¹⁶⁴. National law does not place a time limit on detention.

It is noted that after interviews, immigrants, including claimant unaccompanied minors are taken on to detention centres. Age assessment is done by a team of social workers. However, pending their decision, unaccompanied minors are kept in detention. It is reported that if age is not disputed, unaccompanied minors are released from detention within a fortnight, transferred to a residential home and a legal guardian appointed. On the other hand, if age is disputed, release from detention could take months. The detention of children for at least some time means they are treated as adults and

¹⁶⁰ Article 7(5) of the Refugees Act.

¹⁶¹ Regulation 7 of the Procedural Standards in Examining Applications for Refugee Status Regulations.

¹⁶² European Migration Network, National Contact Point for Malta: 'Unaccompanied Minors in Malta : Their Numbers and the Policies and Arrangements for their Reception, Return and Integration', p. 28.

¹⁶³ Website of the Jesuit Refugee Service – Malta.

¹⁶⁴ Humanium: Help the Children, 'Children of Malta: Realizing Children's Rights in Malta'.

given only minimal support and care¹⁶⁵. However, in the implementation of the provisions relating to material reception conditions and health care, account must be taken of the situation of vulnerable persons, including children and in the implementation of the provisions referring to children, the best interests of the child must constitute a primary consideration¹⁶⁶. The law also specifically provides that an unaccompanied 'minor' aged 16 years or over may be placed in accommodation centres for adult asylum seekers¹⁶⁷.

The age assessment procedure is operated by the Agency for the Welfare of Asylum Seekers. Where the Age Assessment Team finds that the person is a minor, an application is made for the issue of a care order in respect of the minor. Once the care order is issued, the child concerned is released from detention¹⁶⁸ and placed into the care and custody of welfare services. No provisions were identified as to whether there is a possibility of appealing a negative decision of the Age Assessment Team.

The Immigration Appeals Board has jurisdiction to hear and determine applications made by persons, including children, in custody in virtue only of a deportation or removal order to be released from custody pending the determination of any application under the Refugees Act or otherwise pending their deportation. The Board will only grant this release from custody where in its opinion the continued detention of a person is unreasonable as regards duration or because there is no reasonable prospect of deportation within a reasonable time. Where a person, whose application for protection under the Refugees Act has been refused by a final decision, does not cooperate with the Principal Immigration Officer with respect to repatriation to his/her country of origin or to any other country which has accepted to receive him/her, the Board may refuse to order that person's release¹⁶⁹.

During the course of proceedings before it, the Immigration Appeals Board may, even on a verbal request, grant provisional release to any person who is arrested or detained and is a party to proceedings before it, under such terms and conditions as it may deem fit.

When an appeal before the Refugees Appeals Board is entered by the Minister responsible for immigration, an applicant who is in custody in virtue only of a deportation or removal order will be released pending the Board's decision¹⁷⁰.

There are no provisions dealing specifically with the right of a child to appeal an administrative decision to restrict a child's liberty. No independent system for monitoring the appropriate use of administrative detention was identified.

There are no statutory/policy provisions on the use by judicial authorities of detention as a measure of last resort and for the shortest possible time. There are no statutory/policy provisions setting maximum time-limits that a child can be held in detention.

The child as a witness/subject of proceedings

No rules on restrictions of liberty applicable to a witness/subject of proceedings were identified.

¹⁶⁵ European Migration Network, National Contact Point for Malta: 'Unaccompanied Minors in Malta: Their Numbers and the Policies and Arrangements for their Reception, Return and Integration', p. 15-16.

¹⁶⁶ Regulation 14(1) of the Reception of Asylum Seekers (Minimum Standards) Regulations.

¹⁶⁷ Regulation 15 of the Reception of Asylum Seekers (Minimum Standards) Regulations.

¹⁶⁸ Jesuit Refugee Service Malta, 'Becoming Vulnerable in Detention : National Report Malta' (Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union), p. 12. Several reports are highly critical of Malta's detention policy towards child asylum seekers, e.g. 'ECRI urges Malta to provide for alternatives to detention for migrants and asylum seekers' (25 October 2013); 'Malta : Migrant Detention Violates Rights' (Human Rights Watch, 18 July 2012).

¹⁶⁹ Article 25A(9) and (10) of the Immigration Act.

¹⁷⁰ Article 7(3) of the Refugees Act.

2.7.2 Procedural rules applicable to children involved in mental health proceedings

The child as a plaintiff/defendant

Children may be subjected to involuntary medical detention. Any decision or order of the Commissioner for the Promotion of Rights of Persons with Mental Disorders under the **Mental Health Act**¹⁷¹ can be appealed to the court of voluntary jurisdiction¹⁷². The general civil procedural rules described in other sections of this report apply.

The child as a witness/subject of proceedings

No rules on restrictions of liberty applicable to a witness/subject of proceedings were identified.

2.8 Remedies or compensation exist for violation of rights and failure to act

2.8.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, education, health and placement into care

The rules described below apply to judicial proceedings in all sectors mentioned above. Proceedings involving administrative sanctions are not covered by the general rules, as these cases are heard by criminal courts within criminal judicial proceedings. It seems that proceedings concerning children below MACR committing offences are not dealt with through judicial proceedings but presumably only by the social services through administrative proceedings.

The child as a plaintiff/defendant

There are no special provisions stating how a child can access any complaint or legal appeal mechanisms. The general procedural rules that apply to adults apply also to children. Children would have to exercise their right through the parent, tutor or curator. An appeal must be entered by means of an application filed in the registry of the Court of Appeal within 20 days from the date of the judgement¹⁷³.

As a general rule, a child cannot access such mechanisms in his/her own right but only through the parent or legal representative. No measures stating that the child's consent must be obtained in order to make submissions instead of the child or to appeal were identified.

There are no statutory/policy provisions on the provision of support to the child in order to access such mechanisms. In practice, support may be offered by the social welfare services or other professionals in the field.

No legal obligation on judicial authorities to secure the right of a child involved in judicial proceedings to claim compensation for damages caused by violation of rights was identified.

The actions the court or the child can take if there is a conflict of interests with his/her parents' interests are described in **Section 2.6** above.

An appeal may be entered not only by the contending parties but also by any person interested¹⁷⁴. It would therefore seem that a child care authority could in principle appeal against certain court decisions involving children.

¹⁷¹ Chapter 525 of the Revised Laws of Malta

¹⁷² Article 46 of the Mental Health Act.

¹⁷³ Article 226(1) of the COCP.

¹⁷⁴ Article 236 of the COCP.

As regards appeals from decisions of the Administrative Review Tribunal, any party who feels aggrieved by a decision of the Administrative Review Tribunal may appeal to the Court of Appeal. The appeal must be brought before the Court of Appeal by means of an application filed in the registry of the court within 20 days from the day on which the decision was delivered. The application of appeal must be filed in terms of the COCP. On receipt of the application, the Registrar of the Civil Courts and Tribunals will serve a copy of the application on the other party or parties. The respondent/s must file their reply to the appeal within 20 days of service of the appeal¹⁷⁵. The Court of Appeal has the power to revoke or alter the decision appealed against and to give such directions as it may deem appropriate. The provisions relating to the Court of Appeal in the COCP apply to the Court of Appeal when hearing appeals from decisions of the Administrative Review Tribunal¹⁷⁶.

Maltese law provides special rules on limitation periods for children. As a general rule, prescription does not run against children¹⁷⁷. Specific provisions state when limitation periods start to run in specific cases. Persons over 18 years of age can bring cases about violations of their rights that occurred when they were children as long as the action is not prescribed.

In an action for judicial review before the ordinary courts, the plaintiff may request payment of damages based on the alleged responsibility of the public authority in tort or quasi-tort¹⁷⁸, arising out of the administrative act. Such damages will not be awarded by the court where notwithstanding the annulment of the administrative act the public authority has not acted in bad faith or unreasonably or where the thing requested by the plaintiff could have lawfully and reasonably been refused under any other power¹⁷⁹.

The child as a witness/subject of proceedings

No rules on remedies or compensation for violation or rights or failure to act applicable to the child witness/subject of proceedings have been identified.

2.9 Legal costs

2.9.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, education, health and placement into care

The rules described below apply to judicial proceedings in all sectors mentioned above. Proceedings involving administrative sanctions are not covered by the general rules, as these cases are heard by criminal courts within criminal judicial proceedings. It seems that proceedings concerning children below MACR committing offences are not dealt with through judicial proceedings but presumably only by the social services through administrative proceedings.

The child as a plaintiff/defendant

There are no special legal measures specifically dealing with legal costs in cases involving children. The child would be represented for all purposes by the parents or curator and costs would be awarded according to the general rules against the parents or curators.

Besides the general provisions on legal aid as described in [Section 2.6](#), no provisions allowing the court fees to be waived in the case of a child were identified. Under Maltese law, every judgement must award costs. In proceedings for judicial review of the legality of administrative action, the court usually condemns the party losing the case to pay all the costs, including those of the opposite party. The court can however order that the costs are not taxed as between party and party when

¹⁷⁵ Article 22 of the [Administrative Justice Act](#).

¹⁷⁶ Article 23 of the [Administrative Justice Act](#).

¹⁷⁷ Article 2124(1) of the [Civil Code](#).

¹⁷⁸ That is a civil wrong that does not arise out of a breach of contract.

¹⁷⁹ Article 469A(5) of the COCP.

each party is cast in some of the points at issue, or when the matter at issue involves difficult points of law, or where there is any other good cause¹⁸⁰.

Child as a witness/subject of proceedings

Child witnesses and subjects of proceedings do not pay legal costs.

2.10 Enforcement of administrative court judgements

2.10.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, education, health and placement into care

The rules described below apply to judicial proceedings in all sectors mentioned above. Proceedings involving administrative sanctions are not covered by the general rules, as these cases are heard by criminal courts within criminal judicial proceedings. It seems that proceedings concerning children below MACR committing offences are not dealt with through judicial proceedings but presumably only by the social services through administrative proceedings.

The child as a plaintiff/defendant

Decisions involving children are enforced in the same way as decisions involving adults. Judgements of the courts of Malta are executive titles¹⁸¹ and the COCP rules apply with respect to their enforceability. There are no measures in place to ensure that decisions which concern children specifically are directly or immediately enforceable. However it is relevant to note that some judgements may be enforced after the lapse of 24 hours from delivery, including judgements ordering the supply of maintenance¹⁸². Any other definitive judgement which condemns a debtor to pay a liquidated sum, or to deliver up or surrender a specific thing, or to perform or fulfil a specific act or obligation, may be enforced after two days from the day of its delivery¹⁸³. Nevertheless, in urgent cases, the court may order the enforcement of any judgement even before the expiration of these times. The order for such enforcement may be made in the judgement itself¹⁸⁴.

Decisions of the Administrative Review Tribunal are enforced in the same manner as judgements of the civil courts as described in the COCP and the enforcement vests in the Tribunal itself¹⁸⁵.

No statutory/policy provisions requiring the child to be informed about the decision of the court and the enforcement of such decision were identified. In practice, the curator, lawyer or other representative of the child will provide this information. There are no established procedures regarding how the child's lawyer or legal representative communicate and explain the given decision or judgement to the child. There are no requirements that the language used should be adapted to the child's level of understanding and there are no guidance documents/codes of conduct for professionals to ensure that information is communicated in a child-friendly manner.

There are no provisions aimed specifically at protecting children from harm during enforcement, from any individual involved in the proceedings or related to the case. The general precautionary act of the warrant of prohibitory injunction could be relevant in such cases. The object of a warrant of prohibitory injunction is to restrain a person from doing anything which might be harmful to the person requesting the warrant. The court will only issue this warrant where it considers it necessary in order to preserve any right of the person seeking the warrant, and that *prima facie* such person appears to have such right. The court cannot issue any such warrant against the Government or authority established by the Constitution or any person holding a public office in their official capacity. However, where the authority or person against whom the warrant is demanded confirms

¹⁸⁰ Article 223 of the COCP.

¹⁸¹ Article 253(a) of the COCP.

¹⁸² Article 255(c) of the COCP.

¹⁸³ Article 256(1) of the COCP.

¹⁸⁴ Article 257 of the COCP.

¹⁸⁵ Article 20(2) of the Administrative Justice Act.

in court that the thing sought to be restrained is in fact intended to be done and the court is satisfied, that unless the warrant is issued the harm caused to the person seeking the warrant would be disproportionate when compared with the actual doing of the thing sought to be restrained, the court can issue this warrant¹⁸⁶.

No statutory/policy provisions on the use of force as a measure of last resort in cases when children are involved were identified.

Child as a witness/subject of proceedings

Child witnesses and subjects of proceedings are not involved in the enforcement of judgements.

¹⁸⁶ Article 873 of the COCP.

Conclusions

Overview of Member State's approach to children in administrative judicial proceedings and specialised services dealing with such children

Malta does not have an administrative code or code of administrative procedure. Rather a number of Acts of Parliament are classified as administrative law, e.g. the [Administrative Justice Act](#), [Immigration Act](#) and [Refugees Act](#).

Not all proceedings involving children in the areas covered by this study fall within a special administrative procedure in Malta, for example, matters related to education and health are dealt with through civil proceedings. The courts that handle appeals against any decision, act or omission of entities exercising administrative authority in Malta are the ordinary courts of civil jurisdiction. According to the [Code of Organization and Civil Procedure](#) (COCP), the civil courts may enquire into the validity of any administrative act or declare such act null, invalid or without effect.

Judicial review of the legality of administrative actions, including in the areas covered by this study, is exercised at first instance by the Civil Court, First Hall. It is the process by which a decision of a government department, authority or agency may be reviewed and ultimately revoked by the courts if found to be illegal. In addition to the ordinary courts, review in the form of a full appeal on the law and the merits is sometimes granted to specialised administrative tribunals. In almost all cases there is also a right of appeal from the decisions of these tribunals, normally on points of law only, to the Court of Appeal. Two such administrative tribunals are competent in the field of immigration and asylum, namely, the Immigration Appeals Board (set up by the Immigration Act) and the Refugee Appeals Board (set up by the Refugees Act). In addition to the various ad hoc tribunals, the Administrative Justice Act set up the Administrative Review Tribunal with the purpose of reviewing certain administrative acts.

The Minister responsible for social welfare can issue a care order to place a 'child or young person' (defined as a person under 16 years of age) in need of care, protection or control in his care. Objections to care orders are referred to the Juvenile Court (set up by the [Juvenile Court Act](#)) which will review the case and decide whether the child or young person is in need of care, protection or control and will confirm or revoke the order.

Maltese law has a variable approach to the definition of 'child'. The [Civil Code](#) defines a 'minor' as a person who has not yet attained the age of 18. A person over 18 years of age is capable of performing all the acts of civil life, subject to the restrictions contained in other special provisions of law. Children are represented by their parents in all civil matters. The [Commissioner for Children Act](#) defines 'child' as any person under 18 years of age. This is consistent with the Civil Code definition of 'minor'. However, some legal instruments for example, the law dealing with care orders, refer more specifically to the 'child or young person' and this is defined as a person who is under 16 years of age.

Generally, the main objective for children's involvement in judicial proceedings is to ensure that their best interests are taken into account. However, there are hardly any references to the best interests of the child in administrative law instruments, especially as regards their involvement in appeals from administrative decisions.

The child as an actor in administrative judicial proceedings

According to Maltese law, children cannot sue or be sued, except in the person of the parent exercising parental authority, or, in the absence of such parent, of a tutor or a curator. Children cannot start a legal action by themselves. A parent can represent the child as long as the parent's interests do not conflict with the child's. A curator can also be appointed to represent the child. The child him/herself can file an application for a curator to be appointed.

Children can participate in judicial proceedings as witnesses. There is no minimum age stated in the law and age does not constitute a ground of inadmissibility. The only requirement is that the witness understands that it is wrong to give false testimony.

Provision of information to children

The general rules relating to the service of written pleadings and other acts of procedure apply also in cases involving children as plaintiffs or defendants. Service of the written pleadings is effected by the delivery of a copy of the pleading to the person on whom it is to be served or by leaving such copy at the place of residence or business or place of work or postal address of such person, with some member of his/her family or household or with some person in his/her service or his/her lawyer or person authorised to receive his mail. It is not lawful to leave such copy with any person under the age of 14 years. Child witnesses would be summoned in the same way as adult witnesses, that is, by means of a subpoena issued on the application of the party interested.

In proceedings relating to appeals from care orders, before the sitting, the Registrar of the Juvenile Court must notify the parties of the date, hour and location of the hearing.

Asylum seekers must be informed in a language they may reasonably be supposed to understand of the procedure to be followed and of the rights and obligations during the procedure. They must also be informed of their right: to have legal assistance during all phases of the asylum procedure; to be granted an interpreter; to be given notice of the decision; to be informed of the result of the decision in a language they may reasonably be supposed to understand.

As regards appeals to the Refugee Appeals Board, a copy of the appeal must be served on the Minister responsible for immigration and the Refugee Commissioner or on the applicant as relevant. The Board will give the applicant and his/her legal representative copies of any written information or documentation that in the Board's discretion may be necessary for the applicant to present his/her case. The parties will be given notice of the oral hearing. The Board can ask any person whose evidence is required to appear before it to give evidence. The Board's decision and the reasons must be communicated to the applicant and his/her legal representative.

With respect to witnesses required to appear before the Refugee Appeals Board, the summons may be served by hand or by post. Where it is served by hand it must be left with a person over 16 years of age at the place of residence or of business of the person summoned.

Protection of the child's private and family life

There is no general provision requiring court hearings involving children to be held behind closed doors.

The general provisions of the [Data Protection Act](#) protecting individuals against violations of their privacy by the processing of personal data, apply also to data concerning children. In addition, regulations adopted under the Act, namely, the [Processing of Personal Data \(Protection of Minors\) Regulations](#) contain general rules on the processing of personal data aimed at protecting children. As regards information or personal data in the media, the [Code of Journalistic Ethics](#) contains a specific provision on the reporting of court procedures.

Protection from harm during proceedings and interviews and ensuring a child friendly process

As regards precautionary and interim measures, no rules specifically regarding such measures for children involved in appeals from administrative decisions were identified.

Right to be heard and participate in administrative proceedings

No general provisions aimed specifically at ensuring that children are heard in all matters that affect them where they have a sufficient understanding to be heard were found. Similarly, there do not seem to be any provisions to ensure that children are consulted on the manner in which they wish to be heard or to allow children to enforce their legal rights in proceedings.

Right to legal counsel, legal assistance and representation

Since children are not parties to judicial proceedings in their own right, they cannot choose their lawyer or waive the right to legal representation. However, they can participate in proceedings through their parents, tutor or curator to whom the general procedural rights apply.

Restrictions on liberty

Statutory provisions allowing for detention of children during administrative proceedings were identified in the context of asylum and migration proceedings. Whilst in principle, the detention of children is prohibited under Maltese law and international law, children of migrants and asylum seekers and their families are usually placed in 'open centres' where they have greater freedom of movement than traditional detention centres. However, most unaccompanied children, including adolescents from countries affected by armed conflict, are housed with adults pending the outcome of the procedure for determining their age.

The Immigration Appeals Board has jurisdiction to hear and determine applications made by persons, including children, in custody in virtue only of a deportation or removal order to be released from custody pending the determination of any application under the Refugees Act or otherwise pending their deportation.

During the course of proceedings before it, the Immigration Appeals Board may, even on a verbal request, grant provisional release to any person who is arrested or detained and is a party to proceedings before it, under such terms and conditions as it may deem fit.

There are no provisions dealing specifically with the right of a child to appeal an administrative decision to restrict a child's liberty. No independent system for monitoring the appropriate use of administrative detention was identified.

There are no statutory/policy provisions on the use by judicial authorities of detention as a measure of last resort and for the shortest possible time. There are no statutory/policy provisions setting maximum time-limits that a child can be held in detention.

With regard to medical detention, any decision or order of the Commissioner for the Promotion of Rights of Persons with Mental Disorders under the [Mental Health Act](#) can be appealed to the court of voluntary jurisdiction. The general civil procedural rules described in other sections of this report apply.

Remedies and compensation for violation of rights and failure to act

There are no special provisions stating how a child can access any complaint, legal appeal or judicial review mechanisms. The general procedural rules that apply to adults apply also to children. As a general rule, a child cannot access such mechanisms in his/her own right but only through the parent or legal representative.

Legal costs

There are no measures specifically dealing with legal costs in cases involving children.

Enforcement of judgements

Decisions involving children are enforced in the same way as decisions involving adults. Judgements of the courts of Malta are executive titles and the COCP rules apply with respect to their enforceability.

Strengths and gaps

Malta's approach to children in administrative proceedings is very limited. With the exception of proceedings in which the court makes decisions about the care of a child, special provisions related to children are extremely sparse.

Whereas the Civil Code and the Commissioner for Children Act define 'minor' and 'child' respectively as any person under 18 years of age, the Juvenile Court Act and Children and Young Persons (Care Orders) Act refer more specifically to the 'child or young person' as a person under 16 years of age. This creates a gap in certain situations whereby persons between 16 and 18 years of age are not considered as children.

The law does not specify who decides or describes what the best interests of the child would be or how this would be determined.

It is a gap in the current system that there is no legal obligation on the court to obtain such a multi-disciplinary understanding of the child. There are no common assessment frameworks for the relevant professionals.

A related gap is the absence of requirements for relevant professionals to be trained on how to treat children and young people.

No measures aimed at ensuring that children are interviewed in a child-friendly environment or at protecting the child during interviews were identified. Whilst certain measures are in place for children involved in criminal proceedings, such as video conferencing and prohibition of the presence of the press and the public, no such general measures or prohibitions were identified with respect to administrative proceedings involving children. Similarly, no rules are in place to protect children from images and information that can be harmful to their welfare. Moreover, there is no requirement for court hearings involving children to be held behind closed doors. Under the general procedural rules, proceedings are held in public although it is possible for a case to be heard with closed doors.

Another weakness of the system relates to court delays as cases involving children are not fast tracked. The Office of the Commissioner for Children receives a number of complaints regarding the negative emotional and psychological effects on children due to delays in court procedures¹⁸⁷.

As regards the right to participate in judicial proceedings, one positive aspect of the Maltese system is the special provision on limitation periods whereby prescription does not run against children.

Another strength is the fact that children or young persons from a third country below the age of 18 years who are found under circumstances which clearly indicate that they are in need of care will be allowed to apply for asylum, and will be assisted under the Children and Young Persons (Care Orders) Act.

¹⁸⁷ Office of the Commissioner for Children, Annual Report 2011, p. 28

List of legislation

- Mental Health Act, Chapter 525 of the Revised Laws of Malta, 10 October 2013
- Administrative Justice Act, Chapter 490 of the Revised Laws of Malta, 15 June 2009
- Procedural Standards in Examining Applications for Refugee Status Regulations, Legal Notice 243 of 2008 (Subsidiary Legislation 420.07), 3 October 2008
- Reception of Asylum Seekers (Minimum Standards) Regulations, Legal Notice 320 of 2005 (Subsidiary Legislation 420.06), 22 November 2005
- Temporary Protection for Displaced Persons (Minimum Standards) Regulations, Legal Notice 131 of 2005 (Subsidiary Legislation 420.05), 6 May 2005
- Processing of Personal Data (Protection of Minors) Regulations, Subsidiary Legislation 440.04, Legal Notice 125 of 2004, 12 March 2004
- Civil Courts (Establishment of Sections) Order, Legal Notice 396 of 2003 (Subsidiary Legislation 12.19), 16 December 2003
- Commissioner for Children Act, Chapter 462 of the Revised Laws of Malta, 5 December 2003
- Data Protection Act, Chapter 440 of the Revised Laws of Malta, 15 July 2003
- Refugees Appeals Board (Procedures) Regulations, Legal Notice 252 of 2001 (Subsidiary Legislation 420.01), 29 October 2001
- Refugees Act, Chapter 420 of the Revised Laws of Malta, 1 October 2001
- Child Abduction and Child Custody Act, Chapter 410 of the Revised Laws of Malta, 1 August 2000
- Ombudsman Act, Chapter 385 of the Revised Laws of Malta, 25 July 1995
- European Convention Act, Chapter 319 of the Revised Laws of Malta, 19 August 1987
- Children and Young Persons (Care Orders) Act, Chapter 285 of the Revised Laws of Malta, 29 November 1985
- Children and Young Persons (Care Orders) Regulations, Legal Notice 49 of 1985 (Subsidiary Legislation 285.01), 29 November 1985
- Juvenile Court Act, Chapter 287 of the Revised Laws of Malta, 25 July 1980
- Maintenance Orders (Reciprocal Enforcement) Act, Chapter 242 of the Revised Laws of Malta, 17 April 1978
- Marriage Act, Chapter 255 of the Revised Laws of Malta, 1 October 1975
- Immigration Act, Chapter 217 of the Revised Laws of Malta, 21 September 1970
- Constitution of Malta, 21 September 1964
- Maintenance Orders (Facilities for Enforcement) Ordinance, Chapter 48 of the Revised Laws of Malta, 8 April 1921
- Civil Code, Chapter 16 of the Revised Laws of Malta, 22 January 1874
- Code of Organization and Civil Procedure, Chapter 12 of the Revised Laws of Malta, 1 August 1855
- Criminal Code, Chapter 9 of the Revised Laws of Malta, 10 June 1854

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