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Meeting: 1507th meeting (September 2024) (DH)

Item reference: Updated Action Plan (27/06/2024)

Communication from Malta concerning the case of A.D. v. Malta (Application No. 12427/22)

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Réunion : 1507^e réunion (septembre 2024) (DH)

Référence du point : Plan d'action mis à jour (27/06/2024)

Communication de Malte concernant l'affaire A.D. c. Malte (requête n° 12427/22) (**anglais uniquement**)

EXECUTION OF JUDGEMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS



ACTION PLAN

CASE OF A.D. v. MALTA

APPLICATION NUMBER 12427/22

Judgement delivered on 17 October 2023 and became final on 17 January 2024

I. DESCRIPTION OF THE CASE

1. The case concerns the holding of the applicant, who arrived in Malta irregularly on 24 November 2021, in different detention centres for different purposes over several months, despite his allegedly being a minor and suffering from health problems. The Court found a violation under Article 3 (prohibition of inhuman or degrading treatment) and Article 5 § 1 (right to liberty and security) of the Convention, as well as under Article 13 (right to an effective remedy) in conjunction with Article 3 of the Convention.

II. INDIVIDUAL MEASURES

Just Satisfaction

2. The just satisfaction awarded by the Court in respect of non-pecuniary damages, as well as costs and expenses, has been paid and evidence previously supplied.

Other Measures

3. The applicant AD is a failed asylum seeker and is therefore subject to return proceedings. Whereas after his arrival in Malta and during the asylum procedure the applicant claimed to be an undocumented minor migrant from Ivory Coast, following an identification mission held by the competent Ivorian authorities in February 2024, it resulted that the applicant had claimed a false nationality during the examination of his asylum application and in return proceedings. Indeed, the competent Ivorian authorities confirmed that the applicant is not from Ivory Coast but that he is likely to be a national of Mali. It furthermore resulted, following an age assessment test conducted on the applicant after his arrival, that

the applicant was almost 19 years old upon arrival in Malta. The applicant's age was confirmed upon appeal by the Immigration Appeals Board.

4. The applicant was released from detention on 6 July 2022 and was thereupon offered accommodation in an open centre, which he accepted. As a failed asylum seeker, the applicant's contract with the Agency for the Welfare of Asylum Seekers (AWAS) was terminated on 14 May 2024.
5. Throughout his stay the applicant was examined by five medical doctors, none of whom made reference to any mental health concerns. The applicant failed to show up for a medical appointment with a psychiatrist on 22 March 2023 and for another appointment with a psychologist on 28 September 2023. When the Detention Services Agency (DSA) sought a psychiatric evaluation regarding the applicant it was remarked that no mental health conditions were present, and therefore it was concluded that there was no mental health illness diagnosis. Additionally, the assessment by the relevant officials monitoring the case, including at supervisory level, was that the various claims made by the applicant concerning his mental health were without basis.
6. In view of his illegal status, the applicant was provided with information on voluntary return assistance to his country of origin through free return counselling sessions. Financial support and a free flight ticket were also offered to the applicant.

III. GENERAL MEASURES

Legislative and administrative measures regarding detention of minors

7. Maltese legislation¹ provides for the detention of migrants in certain circumstances, provided that their needs can be managed within a detention context and that the appropriate reception conditions and procedural safeguards are in place. Nonetheless, **confirmed minors are not detained but are accommodated within a dedicated centre for minors**, administered by the Agency for the Welfare of Asylum Seekers (AWAS).

¹ S.L. 420.06, Reception of Asylum Seekers Regulations, and S.L. 217.12, Common Standards and Procedures for returning Illegally Staying Third-Country Nationals Regulations.

8. Irregular migrants who were issued with a detention order and who originally declared themselves to be adults following disembarkation in Malta, but who subsequently claim to be minors, are accommodated separately from adults in a compound for alleged minors within the Safi Detention Centre, which is administered by the Detention Services Agency (DSA).
9. As soon as an irregular migrant claims to be an unaccompanied minor, AWAS initiates the process to assess his/her age, unless the person is visibly a minor in which case s/he is declared to be a minor by the assigned social-worker. In ambiguous cases, the age-assessment takes on average around 3-4 days to be completed, and if the migrant concerned is found to be a minor he/she is immediately released from detention. It should be noted that the age-assessment test has been designed with the support of the European Union Asylum Agency (EUAA) and therefore meets EU standards (see paragraph 60 below).
10. A migrant has the right to file an appeal if he/she does not agree with the outcome of the age assessment, as the applicant AD did in this case. Such appeals are heard by the Immigration Appeals Board. Currently the Maltese authorities are working on legislative amendments aimed at expediting the appeal process.
11. Both minors and alleged minors are followed up by AWAS' psychosocial team.

Assessment of vulnerability in detention

12. The Migrant Health Service (MHS) works closely with AWAS to assist Asylum Seekers who show possible signs of vulnerabilities. Migrants are medically screened immediately upon arrival by the Migrant Health Service and an admission sheet is completed for each arrival. This sheet also binds the health professional conducting the assessment to report on any possible signs of ill-treatment. If such cases are reported, the doctors are bound to follow up the case. Furthermore, the Welfare Officer within the DSA also triages for any possible psychological issues. An internal referral system was also created for added accountability. This system is being used for the referral of cases and continued follow-ups between AWAS and DSA, and internally within DSA between the Welfare Officer and the Migrant Health Service.

13. The Migrant Health Service Psychiatrist also plays a key role in these assessments. The psychiatric service includes a Crisis Clinic and regular follow-ups. This service operates around the clock on a needs basis. Recommendations by the psychiatrists are forwarded to the relevant authorities following an inter-agency discussion on a case-by-case basis.
14. Apart from ensuring regular monitoring and adequate support, it is important to highlight that whenever it is established that an asylum seeker has a vulnerability that cannot be managed within a detention context, he/she would be released and accommodated in an open centre administered by AWAS.

Measures to improve conditions of detention

15. The applicant was initially held at Hal Far Initial Reception Centre (hereinafter 'HIRC') upon his arrival in Malta on 24 November 2021 and was subsequently moved to Safi Detention Centre around 30 December 2021, following a period spent in hospital between 17 and 22 December 2021. The applicant was released from Safi Detention Centre in July 2022 and was offered accommodation at the Hal Far Open Centre.
16. The national authorities have implemented various measures to improve the conditions of detention at Hal Far Initial Reception Centre and Safi Detention Centre, including maintenance and extensive refurbishment works, the introduction of the Welfare Officer and the bolstering of human resources, as shall be outlined below. The efforts made to improve facilities at Safi Detention Centre were commended by the UNHCR in a letter addressed to the Head of DSA dated 23 March 2023.
17. In 2020, the number of personnel in the maintenance section at Safi Detention Centre was increased threefold, from 4 to 12. This has allowed the DSA (which runs the Safi Detention Centre) to embark on new projects to improve the conditions of the detention facilities, whilst still carrying out ordinary maintenance works.
18. Since the last quarter of 2020, the national authorities have carried out extensive refurbishment and upgrading works throughout the Safi Detention Centre. As a result, all persons residing at the Safi Detention Centre today are living in refurbished or brand-new

compounds, making the accommodation more comfortable, modernised, and resistant to vandalism. Certain security aspects are however required in order to prevent instances of absconding, as has occurred in the past. Hence certain security measures, such as barred windows, are required since past experience has shown that without such measures there is a real risk that migrants may abscond from the detention centres *en masse*.

19. As part of the refurbishments in question, wherever possible, all occupied buildings have been furnished with vandal-proof systems to prevent incidents of vandalism, which naturally lead to the interruption of facilities. Thus, electricity and plumbing fittings have been installed out of reach, where possible. Shower heads have also been replaced to make them resistant to vandalism attempts, and all buildings have been repainted with a type of paint that allows graffiti to be wiped away easily. Furthermore, backup systems are being installed to prevent any unnecessary downtimes in the provision of essential services within the Safi Detention Centre. Thus, whereas in the past the Centre only used electric water heaters, a new heat pump has now been installed so that the electric water heaters serve as a backup in case of equipment failure. Similarly, mechanical and electrical systems have been designed in ways that ensure that if a particular circuit trips, the rest of the building is not left without essential facilities.
20. Furthermore, additional security measures have been taken to ensure the safety of DSA staff, detainees and visitors. CCTV cameras have been installed on-site as well as in vehicles used to transport migrants, thereby ensuring security and accountability as well as the well-being of all involved. In addition, a new Control Room was opened to complement the extensive investment in CCTV systems that were installed. Efforts have also been expended to improve the communication of detainees with the outside world. International calls with family members are possible in all sections of the closed detention centres. All living areas have access to a telephone set which allows for unlimited incoming calls. With regard to outgoing calls, each detainee receives one telephone voucher per month free of charge and has the possibility to procure additional vouchers. A Communication with the Outside World Protocol was also drawn up.
21. Following a fire which broke out during a riot in 2019, House 2 at the Safi Detention Centre was heavily damaged. In the process of carrying out the necessary repairs, the building has been split into two sections, which has led to the creation of two separate accommodation

areas and a decrease in the occupancy of the building. The sanitary facilities per capita have doubled as a direct result of the works. Furthermore, during the works a secure space was created within the building and the compound is now managed by the Detention Services from the inside, as opposed to the previous situation where this was being done from the outside. The fact that the officers are now stationed inside the compounds has also improved communication between officers and detainees. Furthermore, in 2021 two more compounds were opened at the Safi Detention Centre to ensure that detainees are not overcrowded, thus alleviating the risk of tensions between the detainees and ensuring a more peaceful environment.

22. Since 2021, Block A has also been extensively refurbished. The works in this block were completed by the last quarter of 2023, and included the installation of brand-new mechanical and electrical systems in all areas, with vandal-proof light fittings to avoid issues of vandalism and the risks related with deliberate tempering of the installed fittings. The hot water system was also replaced for improved efficiency. The building is now managed from two new central guard rooms which operate from the heart of the building, and enable improved communication between DSA personnel and detainees. Furthermore, changes have been made to improve access to the external yards, and a daily timetable for all accommodation areas was created. Outdoor access has increased well over the minimum of one hour stipulated by law and in the CPT Fact Sheet on Immigration Detention, and the yards are open for a longer number of hours to facilitate such access. All living areas, guard rooms, external areas and common areas were equipped with CCTV cameras to promote accountability amongst all persons who reside, visit or work in the building. The CCTV system has also proven to be a very important tool against vandalism, inter-detainee violence and false allegations.

23. To alleviate the overcrowding that resulted from a surge of irregular migrant arrivals, during 2020 two new accommodation blocks were constructed at the Safi Detention Centre. The first Block (“Block C”) was inaugurated in the last quarter of 2020. The layout of the block also permits for increased outdoor time and persons who reside in this unit have access to the yard from sunrise until sunset. The second Block was inaugurated in 2021 and is split into two zones. Both buildings have brand new mechanical and electrical systems together with brand new hot water systems for the ablution blocks. CCTV systems were also installed inside these two blocks. During the COVID-19 pandemic another block was

opened to cater for the quarantine and treatment of migrants who tested positive for the virus. This building is currently being used as an initial reception centre for migrants who arrive by boat with the exception of any vulnerable groups, including but not limited to persons with disability, children and families. Although this building was opened in 2020, in 2023 the DSA embarked on a total renovation project starting from Zone A. This area was completed in September 2023 and the works shifted to Zone B, where they are expected to be completed by the end of April 2024. Works include brand new bathrooms, a new CCTV system, a new hot water system, new mechanical and electrical systems, new apertures and improved access to an outdoor area. A new yard is being built adjacent to Zone B with the works expected to be ready by Summer 2024. All accommodation areas have constant access to potable water (both hot and cold) for drinking and coffee/tea making. Persons who possess the necessary means are also allowed weekly shopping for confectionery items and tobacco products.

24. In the first quarter of 2021, the Migrant Health Service was launched within the Detention Centres. This, together with the creation of a new clinic, has resulted in a drastic improvement in the standard of healthcare provided to all detainees. The Migrant Health Service project is directly supported by the Primary Health Care (PHC) Department within the Ministry for Health. The PHC Department has offered the services of a full time Specialist in Family Medicine together with all the material supplies required for the running of the clinics. This has led to the development of a medical facility which is at par to what is offered to the general population at the local health centres. Furthermore, this has led to the digitalisation of medical records through the Electronic Patients Record system used by the PHC. The launch of the Migrant Health Service has resulted in a reduction by around 80% of referrals to local health centres and by around 90% of referrals to the Accident and Emergency Department at the national hospital. The Migrant Health Service also hosts specialist clinics for medical and surgical specialities most required by detainees, including Psychiatric, Ophthalmic, Infectious Disease, Dermatology and Sexual Health Specialists. This has resulted in enhanced screening and treatment of the persons residing in detention centres.
25. All persons who reside in facilities under the responsibility of the DSA receive all the treatment prescribed to them, irrelevant of their legal status in Malta. Asylum Seekers have access to free healthcare and treatment in Malta, whereas Failed Asylum Seekers and TCNs

who are found overstaying in the country are only eligible for emergency healthcare. For the latter instances, the DSA procures all the medicinal products prescribed by health professionals accordingly.

26. There are different ways in which a detainee may request medical assistance; including by asking a detention officer to call the nurses, by asking the nurses during one of their three daily medical runs in every Block and through a medical request form that can be posted in a letterbox which is available in every zone. Asylum seekers can also request medical assistance during their sessions with AWAS Professionals. In this regard there is a formal referral system in place between the Migrant Health Service and AWAS.
27. The mental health service is an integral part of the Migrant Health Service. Most complaints relating to mental health are dealt with and treated internally without the need for hospitalisation. It is also pertinent to note that instances of deliberate self-harm amongst detainees have reduced drastically and are now negligible. Furthermore, since 2020 the number of admissions to Mount Carmel Hospital has reduced by over 95%. This is thanks to the regular follow-ups being conducted by the Welfare Officer, augmented by the services offered to asylum seekers by AWAS and the Migrant Health Service.
28. Detention Officers have also generally adopted a more humanitarian approach in dealing with detainees, which has also led to positive results. In the 24 months following April 2024, all Detention Officers are to receive accredited training on Mental Health First Aid offered by the Richmond Foundation.² Furthermore, Detention Officers are also receiving training on cultural sensitivity offered by the UNHCR.

Improved sanitary conditions

29. The Detention Services Agency operates a system of shared responsibility with regard to the daily cleaning of the facilities. Maintaining a clean and organized living environment is an Activity of Daily Living (ADL) which is strongly advocated by the DSA. Living in a closed centre could lead to potential institutionalisation, which is preventable by maintaining and advocating ADLs whenever possible. Detention Officers assist with the

² The Richmond Foundation is a local NGO involved in the provision of mental health services. Apart from offering therapeutic care, the Foundation provides tailored support services ranging from support groups and assisted living solutions to educational programmes and counselling services.

upkeep of the centres and with the collection of garbage daily, whereas the residents in the compounds are expected to carry out the day-to-day cleaning. The DSA provides all cleaning materials and equipment needed for this purpose. Pest control measures are also implemented in all compounds by professionals.

30. All residents at Safi Detention Centre have round-the-clock access to showers and ablution facilities to ensure personal hygiene. Body soap is provided to all persons upon admission and in monthly rations. Furthermore, all detainees are offered brand new clothing upon admission and are provided with more than one set of clothing to allow them to wash their clothes on a regular basis, which may be done within the facility itself. For this purpose, detainees are provided with the necessary detergents, and clothes-drying facilities (tumble driers) have been installed in all living quarters.

Ventilation and increased outdoor activities

31. All compounds under the responsibility of the DSA, including the prefabricated units, have windows overlooking outdoor areas. The facade of Block A is a large terrace-type area which allows for ample ventilation of the whole building. Under current arrangements, all persons residing at the Safi Detention Centre are allowed **at least three hours of daily access to outdoor space**. Residents of Block B and Block C have continuous access to an outdoor space from sunrise until sunset. All bedrooms have windows overlooking an outdoor area which can be opened and closed at the discretion of the occupants. Mechanical ventilation is also provided by high velocity fans that are normally used during the warmer months.
32. Persons residing in the Close Monitoring Unit and in all prefabricated units have mechanical ventilation through the means of an air conditioning unit. There are only 2 areas that make use of prefabricated units: Zone 8 and the Female Section. Apart from being equipped with an air conditioning unit, these areas also have windows overlooking the outside and are equipped with ensuite facilities. Following renovation works on the outdoor spaces, during 2024 the DSA will furnish the outdoor areas with vandal proof furniture for further improvement of these areas.

33. As regards the prefabricated units, including the one in which the applicant AD was accommodated for a period of nearly 75 days, the national authorities emphasise and reiterate the fact that such units do have windows, ensuite facilities and air-conditioning. These prefabricated units have always had natural light and ventilation and there are no units in use which do not have windows, showers and natural light, as well as an electrical system and television unit. Any detainees residing in such prefabricated units are also subject to a fixed daily routine, which includes a minimum of three hours in an outdoor area.
34. In the last quarter of 2021, the Detention Services Agency and the Malta Football Association jointly introduced the '*Ballun Project*'. By means of this initiative, professional football coaches provide weekly football sessions which are available to all detainees. It is envisaged that during 2024 the DSA will also organise an English Literacy training course for a group of detainees.

Introduction of a Close Monitoring Unit

35. In 2021, the Close Monitoring Unit (CMU) was established within the Safi Detention Centre. The CMU was created with a view to providing separate accommodation for high-risk persons, for persons with medical conditions requiring them to be accommodated separately from others, or for persons who require separate accommodation to protect their mental well-being. The CMU is therefore also used in circumstances such as the applicant's – namely where the detainee in question is having issues with other detainees and, therefore, requests to be accommodated separately. A specific protocol regulating the CMU was drawn up. The staff to detainee ratio of the CMU is 1:2.
36. The CMU is made up of three (3) single bedrooms and two (2) double bedrooms. The area is also fully covered by CCTV. Detainees accommodated in this unit have daily access, amounting to around 12 hours, to an external area which is partly covered to allow for some shade.
37. The use of the CMU is regulated by an internal policy. Persons admitted to the CMU are either referred by the doctor for medical reasons or by the Chief Executive Officer or his

designated representative for security reasons. Any detainee who is accommodated within the CMU may only reside there for a short timeframe as stipulated in the admission sheet. Where the individual has been placed in the CMU for a medical reason, he or she will be required to reside there until they have received medical clearance and are therefore allowed to join the general population in the compounds. Thus, the length of stay would be determined by a medical doctor. Where an individual is accommodated in the CMU for security reasons, the length of stay is normally a short one, until arrangements have been made for the individual to be moved to another part of the centre.

38. It is important to emphasise that, although the individual in question would be accommodated separately in the CMU, this does not mean that he or she would be subject to a measure of solitary confinement or isolation. A measure of isolation is only applied in exceptional cases on the instructions of the lead doctor, where the individual in question is suffering from an infectious disease that is in its communicable phase. All other persons accommodated in the CMU can move around the section freely and have access to the external area and living space. It should also be noted that detainees placed under medical isolation still have meaningful human contact for most of the day whilst at the CMU.

Designated Space for Alleged Minors

39. As was noted above, irregular migrants who were issued with a detention order and who declared to be adults following disembarkation in Malta but subsequently claim to be minors, are accommodated separately from adults in a compound for alleged minors within the Safi detention centre, pending their age-assessment. This area was visited by the Commissioner for Children who commended the works being done by the DSA.

The Welfare Officer

40. In the last quarter of 2020, the DSA introduced the role of the Welfare Officer. The Welfare Officer is subject to an indefinite contract of employment within the Maltese public service. The role of the Welfare Officer is to maintain close contact with the persons residing in Detention Centres, to receive and deal with any complaints or issues they may have, and thus to help ensure that all rights and obligations of residents are respected.

41. The Welfare Officer works in close coordination with the lead doctor at the Migrant Health Unit to help tackle medical issues. Additionally, he maintains close contact with other pertinent entities and stakeholders, such as the Psychosocial Support Team within the Agency for the Welfare of Asylum Seekers, the Health Department, Mental Health Services and non-Governmental Organisations. The Welfare officer also maintains close contact with local migrant communities, to help assist with particular situations relating to cultural factors that may arise in detention. An example of such collaboration is the donation of food supplies provided to detainees during Ramadan by the Muslim Community in Malta, led by the local Imam. Following the donation, the Imam also carried out religious sermons in the living areas.
42. A complaints system was put in place under the remit of the Welfare Officer in 2021. Complaint forms and envelopes are disseminated in every compound. Any detainee wishing to raise a complaint may do so by filling in the complaint form, which can be sealed and handed over to the Welfare Officer for review and investigation. The Welfare Officer is in charge of the entire implementation of the complaints mechanism, whereby he receives the complaint, carries out an investigation and produces a report on each complaint. The report is then handed over to the Chief Executive Officer of the DSA for the necessary follow-up and remedial action as appropriate. Should there be an allegation of ill-treatment, a report is filed with the Police for necessary investigation. Complaints that relate to matters of nutrition and accommodation are directly acted upon and resolved by the Welfare Officer.
43. Whilst there is currently one person carrying out the role of Welfare Officer, there are plans in place to recruit an additional person to the same role in the future. Being a warranted mental health professional, the Welfare Officer also assists with the screening, mental health assessments and vulnerability assessments of detainees in conjunction with the Psychiatrist.
44. The Psychiatrist also plays a key role in these assessments. The psychiatric service includes a Crisis Clinic and regular follow-ups. The psychiatric service operates around-the-clock on a needs basis. Recommendations by the psychiatrist are forwarded to the relevant authorities following an inter-agency discussion on a case-by-case basis.

Allegations of Ill-treatment

45. The Welfare Officer conducts investigations on cases of alleged ill-treatment. The necessary information is gathered from all persons involved, including those filling in the report. The Welfare Officer also has full access to all CCTV footage required. Referrals for medical reviews of the persons involved are made to independent primary health medical doctors. Decisions are then drawn up and provided to the DSA CEO for the necessary action.

Complaints about food quality

46. Following complaints, the Welfare Officer contacted the contracted supplier to improve the food quality and food presentation within the centres. Subsequently, no further complaints about this issue were reported.

Medical Complaints

47. The Welfare Officer has referred a number of cases for medical or psychiatric reviews.

Inter-Detainee Arguments

48. The Welfare Officer has recommended a number of transfers of detainees following reports of inter-detainee arguments which could not be solved amongst the detainees themselves.

Measures to reduce overcrowding

49. The migrant population within the reception centres has steadily decreased over recent years, due to a decline in irregular arrivals. Overcrowding has also been addressed through the building of new compounds. In 2021, two new compounds were opened at the Safi Detention Centre to reduce the risk of overcrowding, whilst at the same time alleviating the risk of tensions between detainees and ensuring a more peaceful environment.

50. During the COVID-19 pandemic another block was opened to cater for the quarantine and treatment of migrants found to be infected with the virus. At present this building is being

used as an initial reception centre for migrants who arrive irregularly by sea, excluding any vulnerable groups such as persons with disability, children and families.

51. A Contingency Plan in case of a sudden afflux of migrants is available and has been tested through a desk-based simulation exercise conducted by Frontex in October 2022.

Reports of the monitoring board

52. As required under Subsidiary Legislation 217.08, the Monitoring Board for Detained Persons submits an annual report to the Minister at the end of each year concerning the state of the detention centres and their administration and, generally, the carrying out of its own functions. These documents can be made public at the discretion of the Minister.

Training of officers in the detention units

53. Upon recruitment, all Detention Officers receive mandatory basic training on the following subjects:

- Overview of the detention centre rules
- Overview of the SOPs
- Use of communication within the DSA
- Overview of the Human Rights Act and the European Convention on Human Rights
- Mental Health Awareness
- Diversity Training including cultural awareness
- Interpersonal skills and communication
- Report Writing and Incident Reports
- Data protection, information management and all relevant legislation
- First Aid at Work
- Dealing with challenging behaviour
- Identifying drugs and illicit substances
- Responding to crises
- Body searches, control and restraint training
- Health and safety at work
- Fire awareness and dealing with emergencies

Furthermore, additional complementary training is also provided with the assistance of the Academy for Disciplined Forces within the Ministry for Home Affairs, Security and Employment. This training is mainly comprised of modules on de-escalation techniques, detainee handling and use of force, and is in line with training that the Malta Police Force and other disciplined forces undergo. An MOU with the same Academy was also signed in this regard.

54. Furthermore, officers are now also being trained in Immediate Life Support, Mental Health, First Aid, Cultural Sensitivity and Detainee Handling. Such training is provided by the Malta Resuscitation Council, the Migrant Health Service, the Richmond Foundation, UNHCR and the DSA Management respectively. Training is mandatory for all officers.

Measures to redress the shortcomings in the age-assessment procedure of alleged minor migrants

55. A significant improvement in the age assessment procedure was made in 2020 with the overhaul of the legal guardianship system. Formerly, the appointment of legal guardians was characterized by bureaucratic delays as legal guardians were directly appointed by the Courts, which created a backlog. The reform ensured that legal guardians provided by AWAS can be swiftly appointed through interim care orders, expediting the entire process. This modification has led to a more expedited age-assessment process for alleged minors.
56. In a collaborative effort between the European Union Agency for Asylum (EUAA) and AWAS, the Age Assessment and Vulnerability Assessment processes were last updated in 2022 and they now stand as an example of best practice in the immigration and asylum procedures at EU level. Furthermore, new legal amendments are underway to reduce the duration of appeal proceedings vis-à-vis the outcome of age assessments, with the introduction of precise timeframes to guarantee procedural efficiency. These changes show a commitment to foster a more humane and efficient process.
57. AWAS has two specialized units to deal with the situation of (alleged) unaccompanied minors: the UMAS Protection Services and the Assessment Team. Before conducting an Age Assessment, social workers from the UMAS Protection Services meet with alleged minors to explain their role, the assessment process, the role of a representative during the

assessment, and the appointment with the Age Assessment Panel. Appointments with alleged minors are conducted in both the Initial Reception Centre and in closed centres. The same social worker continues to support the alleged minor until the case is resolved. If the case concludes with the individual being recognized as a minor, the social worker continues to provide support to the minor in an open centre. If the case concludes with the individual being recognized as an adult and there is an appeal, the same social worker continues to support the appellant, whether the person concerned is in an open or closed centre.

58. Cases where alleged minors are visibly minors are resolved without any Age Assessment. In such cases, the assigned social worker conducts an initial assessment with the minor and informs him/her of the decision.

59. The age assessment process can be confusing and traumatic for Unaccompanied Minor Asylum Seekers (UMAS), who might not understand why it is necessary. They may feel as if they are being treated with suspicion or accused of dishonesty. Prior to commencing the assessment, UMAS are provided with all relevant information on the age assessment procedure in a language they understand. This information is provided orally with the assistance of an interpreter, if necessary. In order to avoid misunderstandings, interpreters are also briefed on the purpose of the age assessment. These measures aim to provide further support to unaccompanied minors throughout the various stages of their accommodation. Alleged unaccompanied minors are requested to provide their written consent to undergo the age assessment procedure.

60. Age Assessments are conducted by a panel consisting of professional social workers and other specialists such as counsellors and/or therapists. All members undergo observation and training before joining the panel. The result of the age assessment test, which also includes information on the right to appeal, is issued in writing and handed directly to the (alleged) minor him/herself. The following is an outline of the procedure adopted for Age assessments:

Phase 1: This phase involves a comprehensive psychosocial assessment using the age assessment tool. It consists of two parts: Part 1 involves gathering necessary information such as family history, education, employment and an account of the alleged UMAS's

journey to Malta. Part 2 includes observations of physical appearance, age-indicative facial and body characteristics, voice, language and demeanour.

Phase 2: This phase consists in an in-depth psychosocial assessment, which is conducted only where necessary and where the case could not be concluded in Phase 1. It involves gathering comprehensive information regarding the country of origin, cultural identity, childhood, likes/dislikes, and any further necessary information concerning the alleged UMAS. This phase is highly sensitive as traumatic memories or unpleasant experiences may arise. Safeguarding measures are implemented and the emotional state of the individual is always considered. Social workers and a professional child psychologist may be involved during this phase.

Phase 3: This phase is considered as a last resort option if Phases 1 and 2 do not provide conclusive information on the age of the alleged UMAS. It involves a Skeletal Assessment of the Hand (wrist bone test) conducted by local medical authorities, providing a scientific age range. This test is conducted solely by a medical professional since it involves exposure to radiation.

Phase 4: Final decision. The outcome of these assessments, along with an explanation of the right to appeal, are documented, translated and handed to the (alleged) minor in person, ensuring transparency. The decision is communicated within 3 working days from the closure of the case, with the assistance of an interpreter if necessary.

Legal aid

61. The Ministry for Home Affairs, Security and Employment (MHSE) provides free legal assistance during second instance procedures before the relevant administrative bodies as per pertinent legislation, that is, during the appeals process for cases wherein a negative decision has been issued in relation to detention orders, removal orders, age assessment, asylum applications and Dublin transfers. Besides the appeals process, free legal advice is provided on a request basis. During the first instance procedure, the migrant may appoint a private lawyer of his/her choice to provide advice in relation to the pertinent procedure. In this particular case, the applicant AD was assisted during the procedure by a private lawyer from the Aditus Foundation.

62. With regard to this free legal aid service, the legal aid pool is contracted directly by MHSE following an open call for applications which is advertised widely on local newspapers and on the Ministry's website. All applicants are selected, provided that they hold a warrant to practise as an advocate before the Courts of Malta in accordance with relevant national legislation. Where necessary, MHSE provides free interpretation services in order to assist both the lawyer and the appellant to prepare and present the written submissions. Interpretation, where necessary, is provided both during meetings between the lawyer and the appellant and during open hearings before the International Appeals Board or the International Protection Appeals Tribunal.
63. A SoP between DSA, AWAS and MHSE relating to the notification of age-assessment decisions and the subsequent notification of an appeal is in place. The SoP explains how the appellant is to be notified of a negative decision and how free legal aid may be accessed. Following the applicant's notification of his/her right to avail him/herself of free legal aid, MHSE assigns a lawyer and sets an appointment between the lawyer and the appellant.
64. Changes to existing legislation are underway to reduce the duration of the appeal process and thus improve the overall procedure. In particular, the legislative amendments that are scheduled to be finalized in the near future will include clear time-frames for the conclusion of appeal proceedings. In this regard, it is important to highlight the fact that in certain cases the applicants' lawyers tend to seek to prolong the appeals process through frivolous actions, such as by missing sittings and/or asking for a rescheduling of open hearings, in a bid to prolong the applicant's stay in Malta for as long as possible.
65. In cases where an unaccompanied minor is not entitled to international protection, and it is established that he/she cannot be returned to his/her country of origin (e.g. due to lack of documentation), the International Protection Agency, after considering the best interest of the child, proceeds to grant the minor in question temporary humanitarian protection until he/she reaches adulthood. The minor is followed closely by AWAS. Close to age of majority, AWAS ensures that the minor receives the necessary support during his/her transition to adulthood.

Measures to ensure a legal basis in domestic law concerning detention for health considerations

66. Work is currently underway on draft legislation concerning the restriction of movement on public health grounds. The aim of such legislation is to safeguard the health and interests of the general public, as undetected infectious diseases pose a risk to everyone. The incidence of Tuberculosis is prevalent in most migrants who are disembarked in Malta following a search and rescue operation, besides other communicable diseases which are frequently detected following disembarkation, which can be treated. These include but are not limited to Scabies and Varicella viruses, amongst others.
67. Following delivery of the judgment in *A.D. v Malta*, several meetings were held with stakeholders to address this matter, including with the Superintendent of Public Health, officials from the Ministry for Home Affairs, the Agency for the Welfare of Asylum Seekers (AWAS) and the Detention Services Agency (DSA).
68. Following such meetings, it has been decided to proceed with drafting a Subsidiary Legislation to be issued under the Public Health Act in order to address legal certainty concerns. Works are currently underway on a preliminary draft of the Subsidiary Legislation, which will subsequently be sent for internal consultation with relevant stakeholders. The intention is for such S.L. to better regulate: 1) situations where a restriction of movement order (“RMO”) may be issued; 2) how it may be revoked; 3) content to be included in the RMO; and 4) to introduce the possibility of contesting the RMO. Such legislation shall, inter alia, specify the criteria for detention for health reasons and establish appropriate legal safeguards.

Shortening of delays for medical clearances and medical screenings

69. It is furthermore intended to prevent unnecessary delays for medical clearances and medical screenings. From a medical point of view, medical clearances require thorough investigation and treatment which may take a considerable amount of time. However, safeguards shall be established to ensure that, as soon as conclusive negative medical tests

and the completion of treatment are attained, the restriction of movement order shall be revoked without any delay.

70. Since 2021, the Health Authorities have amended their notification forms which are now individualized, more detailed and are provided in a language the individual understands. These forms are handed to each migrant on the day of arrival following the initial assessment. The professional staff of the Migrant Health Service is made up mostly of foreign nationals who speak a number of different languages, thus facilitating communication with migrants and detainees. Furthermore, when translation is required the Migrant Health Service within the DSA makes use of an on-demand online interpretation service which employs professional interpreters.

71. In recent years the DSA has invested heavily in its health service (see paragraphs 24 – 27 above). Furthermore, the X-Ray device used for Health Screening has been relocated to Safi Detention Centre for increased efficiency. Screening of migrants is done within the first week of arrival with results being issued immediately.

Publication and dissemination

72. The judgement has been disseminated to members of the judiciary and to the Ministry for Home Affairs, Security and Employment, including entities falling under the responsibility of the said Ministry, including the Corrective Services Agency (which administers the Corradino Correctional Facility), the Detention Services Agency (which administers Safi Detention Centre) and the Immigration Police.

73. In view of the nature of the judgement, it is believed that the publication and dissemination of the judgement forms an integral part and an important aspect of the full execution thereof.

74. The judgement also received media coverage, including in the following newspaper article: <https://newsbook.com.mt/en/maltas-detention-regime-lambasted-by-european-court-of-human-rights/>

IV. GOVERNMENT'S CONCLUSIONS

75. The Government notes that the national authorities have already taken significant steps to give full effect to the Court's judgement, as evidenced above. The Government will continue to assess what further measures may be taken to fully execute this judgement and undertakes to provide an updated Action Plan by end of February 2025.