



GOVERNMENT OF MALTA
PARLIAMENTARY SECRETARIAT
FOR REFORMS AND EQUALITY

Migrants and Citizenship

Integration Mapping Research

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Sustainable Management of Migration Flows



Summary

“[T]he concept of citizenship has far more layers of meaning than legal citizenship. Nowadays “citizenship” is much more than a legal construction and relates – amongst other things – to one’s personal sense of belonging, for instance the sense of belonging to a community which you can shape and influence directly”.

Compass: Manual for Human Rights Education with Young People, Council of Europe



This project is part-financed by the Asylum, Migration and Integration Fund.

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The removal of barriers to naturalisation allows for the enjoyment of the rights afforded to Maltese as well as those afforded to citizens of the European Union (EU)



1. Importance of Citizenship and Documentation

Integration is a two-way process that requires active participation from migrants, nationals, state and non-state actors in order to allow for the economic, social and political participation of third-country nationals (TCNs) in Maltese society¹. The process of integration includes the granting of rights and responsibilities to TCNs and, over time, gaining rights on a similar level to citizens, which should eventually result in permanent residence rights, and then citizenship².

Facilitating access to nationality can significantly increase naturalisation rates and boost integration outcomes³. The removal of barriers to naturalisation allows for the enjoyment of the rights afforded to Maltese as well as those afforded to citizens of the European Union (EU). These include political rights, such as the right to stand and vote in local, national and EU elections, and referendums. Nationality policies are a major area of weakness in most European countries, including Malta where the highly discretionary, expensive path to citizenship often discourages, rather than encourages, migrants to apply⁴.

Policies on dual nationality⁵, birth right citizenship⁶ and the legal and procedural requirements⁷ to naturalise strongly influence how accessible naturalisation is for migrants. Inclusive policies can increase the acceptance⁸, socio-economic status⁹, political participation¹⁰, sense of belonging¹¹ and trust¹² of migrants in their host countries. Removing the obstacles to citizenship that migrants face around the world is helping migrants not only to become national citizens, but also to feel more like equal members of society in which they belong.

- 1 Migrant Integration Policy Index 2020, Malta, <https://www.mipex.eu/malta> <accessed 20 June 2022>.
- 2 UN High Commissioner for Refugees (UNHCR), Global Consultations on International Protection/Third Track: Local Integration, 25 April 2002, EC/GC/02/6.
- 3 Ibid.
- 4 Migrant Integration Policy Index 2020, Malta, <https://www.mipex.eu/malta> <accessed 20 June 2022>.

- 5 Vink, M. P., Prokic-Breuer, T., & Dronkers, J. (2013). Immigrant naturalization in the context of institutional diversity: Policy matters, but to whom? *International Migration*, 51(5), 1–20. <https://doi.org/10.1111/imig.12106>.
- 6 Stadlmair, J. (2017). Which policies matter? explaining naturalisation rates using disaggregated policy data. *Österreichische Zeitschrift Für Politikwissenschaft*, 46(1). <https://doi.org/10.15203/ozp.1585.vol46iss1>.
- 7 Huddleston, T., & Falcke, S. (2019). Nationality policies in the books and in practice: Comparing immigrant naturalisation across Europe. *International Migration*, 58(2), 255–271. <https://doi.org/10.1111/imig.12656>.
- 8 Kaya, S. (2017). Social consequences of securitizing citizenship: Two-tiered citizenry and anti-immigrant attitudes. *Canadian Ethnic Studies*, 49(3), 27–49. <https://doi.org/10.1353/ces.2017.0020>.
- 9 Hoxhaj, R., Vink, M., & Prokic-Breuer, T. (2019). Immigrant naturalisation, employment and occupational status in Western Europe. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3337679>.
- 10 Hunger, S. No naturalization, no participation?. *Z Vgl Polit Wiss* 12, 279–296 (2018). <https://doi.org/10.1007/s12286-017-0373-6>.
- 11 Sarrasin, O., Green, E.G.T. & Van Assche, J. Consensual Versus Heterogeneous Conceptions of Nationhood: The Role of Citizenship Regimes and Integration Policies Across 21 European Countries. *Soc Indic Res* 148, 987–1004 (2020). <https://doi.org/10.1007/s11205-019-02222-9>.
- 12 Ethnic Diversity and European's Generalised Trust: How Inclusive Immigration Policy Can Aid a Positive Association by Anna Zimdars and Gindo Tampubolon King's College London Sociological Research Online, 17 (3) 15 <http://www.socresonline.org.uk/17/3/15.html> 10.5153/sro.2643.

Malta is regarded as having one of the most exclusionary citizenship processes in Europe

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Citizenship

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2. Pathways to Citizenship for Third-Country Nationals

Access to citizenship has always been regarded as one of the most important indicators of integration into a host country, bridging important legal gaps between foreign nationals and citizens, especially for TCNs¹³. Malta is regarded as having one of the most exclusionary citizenship processes in Europe, with such strict requirements that prevents the possibility of many beneficiaries of international protection from ever becoming Maltese citizens by naturalisation¹⁴.

EU Member States have the unrestricted right to establish their nationality laws, and upon acquiring citizenship to an EU Member State, one acquires EU citizenship and the rights that follow. However, the view of the European Commission on Member State prerogative to regulate its own citizenship legislation has recently become more nuanced and has open infringement proceedings against Malta and Cyprus for its “Golden Passport” schemes, explained in more detail below¹⁵. This is because the European Commission felt that *“the granting of EU citizenship in return for pre-determined payments or investments, without any genuine link to the Member State concerned, is in breach of EU law”*¹⁶.

The importance of the possibility of acquiring citizenship in a migrant’s host country has been recognised as a key incentive for integration¹⁷ and, as such, barriers to citizenship can be seen as barriers to the integration of migrants in Malta. The citizenship by naturalisation application process in Malta has been called-out by international monitoring bodies as being lengthy, non-transparent and not subject to judicial review¹⁸. The restrictive citizenship policies render it extremely difficult or practically impossible for many TCNs, particularly beneficiaries of international protection, to acquire Maltese citizenship.



EU Member States have the unrestricted right to establish their nationality laws, and upon acquiring citizenship to an EU Member State, one acquires EU citizenship and the rights that follow



13 Migrant Integration Policy Index (2011), Huddleston T., et al., 2011.

14 Migrant Integration Policy Index 2020, Malta, <https://www.mipex.eu/malta> <accessed 20 June 2022>.

15 Investor citizenship schemes: European Commission opens infringements against Cyprus and Malta for “selling” EU citizenship, 20 October 2021, https://ec.europa.eu/commission/presscorner/detail/hu/ip_20_1925

16 ‘Golden passport’ schemes: Commission proceeds with infringement case against Malta, 6th April 2022, https://ec.europa.eu/commission/presscorner/detail/EN/IP_22_2068.

17 Common Basic Principles for Immigrant Integration Policy in the European Union, established by the 2618th Council Meeting, Justice and Home Affairs, 2004, 14615/04.

18 Human Rights Council Working Group on the Universal Periodic Review Thirty-first session, Summary of Stakeholders’ submissions on Malta, A/HRC/WG.6/31/MLT/3, 2018 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/257/06/PDF/G1825706.pdf?OpenElement>.

Naturalisation rate of foreign citizens, 2019 (%)

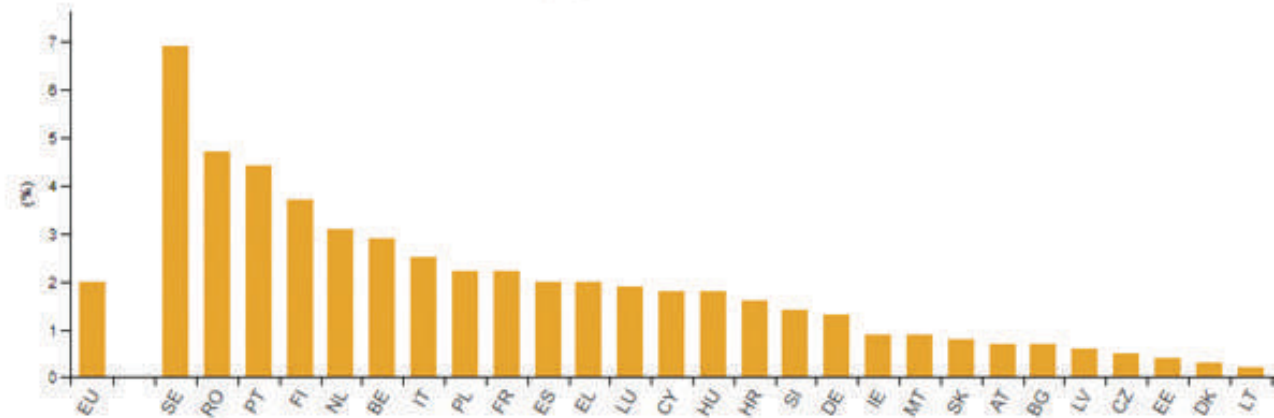


Figure 1: Naturalisation Rates of foreign citizens, 2019 (%) (Source Eurostat)

In fact, as can be seen in the above figure, Malta was one of the Member States that granted citizenship by naturalisation to the lowest number of foreign nationals in 2019. Whereas Sweden recorded the highest number of naturalised migrants with 6.9%, Malta recorded a mere 0.9% naturalisation rate¹⁹. It should be noted that the naturalisation rate is calculated as the total number of people granted citizenship relative to the total number of foreign citizens living in a country, and not the rate of naturalisation relative to the total number of residents, including nationals, living in a particular country.

¹⁹ The naturalisation rate is calculated as the total number of people granted citizenship relative to the total number of foreign citizens living in a country, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Naturalisation_rate.

Malta falls below the EU standard for citizenship policies, according to the Migrant Integration Policy Index (MIPEX), stating:

“Malta has not updated its citizenship policy to reflect its transformation from a country of emigration to immigration. Malta’s short and simple naturalisation requirements on paper are highly discretionary in practice, without citizenship entitlements for children born or raised in Malta”²⁰.

²⁰ Migrant Integration Policy Index 2020, Malta, <https://www.mipex.eu/malta> <accessed 20 June 2022>.

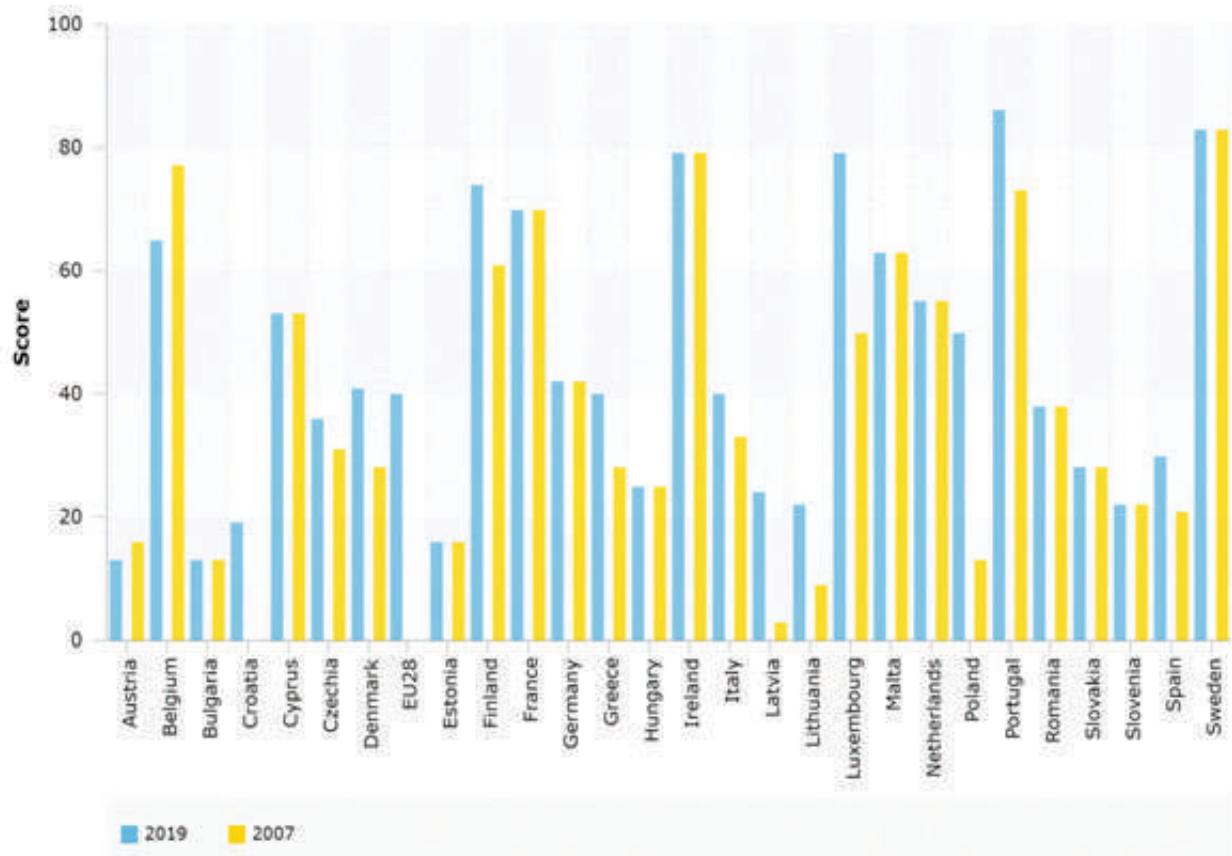


Figure 2: Maltese Citizenship Policies vs Other EU Member States (Source: MIPEX 2020 Data)

The pathways to citizenship for migrants in Malta are regulated by the Constitution²¹ and the Citizenship Act²². The main pathway to citizenship is by birth, through

parents or ascendants who are Maltese citizens, as Malta follows the doctrine of *ius sanguinis* (citizenship by bloodline), rather than *ius soli* (citizenship by birth), that grants citizenship to persons born in Malta²³. Maltese citizenship can also be acquired through adoption, through marriage after 5 years, by registration²⁴, by

21 Chapter III of the Constitution of Malta, 1964.

22 Maltese Citizenship Act, Chapter 188 of the Laws of Malta, <https://legislation.mt/eli/cap/188/eng/pdf>.

23 Ibid.

24 This applies to former citizens who lost their citizenship, or persons born outside Malta before 1989 whose parents are Maltese.

investment and by naturalisation²⁵. The pathway to citizenship by investment, also known as the Golden Passport scheme, was introduced in 2014²⁶, whereby Maltese citizenship could be granted to eligible persons, above 18 years of age, under the Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment Regulations²⁷. Under this scheme, after a substantial investment into residential real estate, government-approved philanthropic organisation(s), and the national development fund, citizenship can be acquired as soon as 1 year, depending on the investment²⁸. For most migrants, who do not have familial ties to Malta, or the wealth to acquire citizenship by investment, the only option is by naturalisation.



Maltese citizenship can also be acquired through adoption, through marriage after 5 years, by registration, by investment and by naturalisation



25 Maltese Citizenship Act, Chapter 188 of the Laws of Malta, <https://legislation.mt/eli/cap/188/eng/pdf>.

26 First amended in 2013 through an amendment to Chapter 188 of the Maltese Citizenship Act, and then re-introduced in 2020 under Legal Notice LN437.

27 Granting of Citizenship for Exceptional Services Regulations, S.L. 188.05, <https://legislation.mt/eli/sl/188.6/eng>

28 Schengen Visa Info, Malta Golden Visa & Passport, <https://www.schengenvisainfo.com/eu-golden-visas/malta-golden-visa/> <accessed 20 June 2022>.

3. Maltese Citizenship by Naturalisation

The Maltese Citizenship Act (Cap. 188)²⁹ outlines who may become a citizen of Malta by naturalisation, as long as they are eligible to do so. The acquisition of citizenship on the basis of residence in Malta is regulated by Article 10(1) of Cap. 188³⁰, and the acquisition of Maltese Citizenship by minors is regulated by Article 11³¹. The Minister responsible for citizenship matters has absolute discretion to grant or refuse the application under these provisions.

3.1 Eligible Applicants

Foreign nationals or stateless persons are eligible to submit an application for citizenship by naturalisation provided they are over 18 years of age, and if they:

- Have resided in Malta throughout the 12 months immediately preceding the date of application; and
- Have resided in Malta for an aggregate period of a minimum of 4 years, during the 6 years preceding the above period of 12 months;
- Are of good character;
- Have adequate knowledge of Maltese or English language³²; and

29 Maltese Citizenship Act, Chapter 188 of the Laws of Malta, <https://legislation.mt/eli/cap/188/eng/pdf>.

30 Article 10(1) of the Citizenship Act, Chapter 188, <https://legislation.mt/eli/cap/188>.

31 Article 11 of the Citizenship Act, Chapter 188, <https://legislation.mt/eli/cap/188>.

32 This requirement shall not apply to any person of full age but not of full capacity on behalf of whom an application is submitted with the authorisation of the Civil Court (Voluntary Jurisdiction).

- Would be a suitable citizen of Malta³³.

While Malta accepts dual or multiple citizenship, potential applicants are advised to verify whether their country's citizenship law permits dual or multiple citizenship since the voluntary acquisition of another citizenship may lead to the loss of their current one³⁴. Family units cannot apply for citizenship by naturalisation together, and each family member must apply individually³⁵ if they are over the age of 18.

3.2 Application Forms and Fees

In order to apply for naturalisation, the applicant may complete Form E³⁶, and for applications on behalf of a child, Form J³⁷. The fee to submit the application form is €450, and if the application is accepted, a further €50 fee is required upon collection of the certificate at the end of the process. Other fees, if applicable, include an additional €15 on first re-naturalisation, an additional €20 on second re-naturalisation, and an additional €25 on

33 Article 10(1) of the Citizenship Act, Chapter 188, <https://legislation.mt/eli/cap/188>.

34 Community Malta Agency, Acquisition of Citizenship, <https://komunita.gov.mt/en/services/acquisition-of-citizenship/> <accessed 20 June 2022>.

35 Article 10(1) of the Citizenship Act, Chapter 188, <https://legislation.mt/eli/cap/188>.

36 FORM CEA/6 E – Application for Naturalisation as a Citizen of Malta, <https://komunita.gov.mt/wp-content/uploads/2020/11/Form-E.pdf>.

37 FORM CEA/10 J – Application for Naturalisation as a Citizen of Malta of a Minor Child, <https://komunita.gov.mt/wp-content/uploads/2020/11/Form-J.pdf>.

For refugees, the requirements for certain documents, such as birth certificates or passports, can be waived if the applicants are not in possession of the original documents



third re-naturalisation³⁸.

There is an additional fee of €10 (each) if an Oath of Allegiance is sworn at the offices of Community Malta Agency in front of a person duly authorised to act as a Commissioner for Oaths. A further €10 (each) applies if an affidavit is sworn at the offices of Community Malta Agency in front of a person duly authorised to act as a Commissioner for Oaths. Finally, an additional €10 (each) is required if declaration is affirmed at the offices of Community Malta Agency in front of a person duly authorised to act as a Commissioner for Oaths³⁹.

3.3 Applying for Citizenship by Naturalisation on Behalf of a Child

Family units are unable to submit a collective application, and applications for citizenship by naturalisation cannot be submitted by minors in their own name. Applications for a minor child can only be submitted by a parent who were non-Maltese at the time of their child's birth and later acquired Maltese citizenship⁴⁰. In special circumstances where a child was born and resided solely in Malta, a legal advisor of the minor can submit the application in addition to a letter of recommendation highlighting any humanitarian issues or other arguments in favour of the minor's naturalisation⁴¹. The application can only be submitted by the individual upon reaching maturity, without having to wait until the passing of the required residency periods after reaching the age of 18.

38 Citizenship Regulations, S.L. 188.01 <https://legislation.mt/eli/sl/188.1/eng>.

39 Ibid.

40 Article 11 of the Citizenship Act, Chapter 188, <https://legislation.mt/eli/cap/188>.

41 Community Malta Agency, Acquisition of Citizenship, <https://komunita.gov.mt/en/services/acquisition-of-citizenship/> <accessed 20 June 2022>.

additional documents may be requested by the Agency in the application process



3.4 Process and Documentation

Formerly under the Department for Citizenship and Expatriate Affairs (DCEA), the government agency now responsible for all administrative functions and duties in citizenship related matters is the Community Malta Agency⁴².

The applicant must submit the CEA/6 Form E⁴³, together with copies of their birth certificate, passport, identity card, proof of ownership or rental of property, and a clean police conduct certificate. Applicants are also required to provide evidence of their entire period of residence in Malta, such as work permits, FS3s, utility bills or bank statements. It should be noted that in certain cases, additional documents may be requested by the Agency in the application process.

For refugees, the requirements for certain documents, such as birth certificates or passports, can be waived if the applicants are not in possession of the original documents⁴⁴. Once the Agency reviews the documents submitted, the applicant will verify the content and

42 Community Malta Agency Website: <https://komunita.gov.mt/en/> <accessed 20 June 2022>.

43 FORM CEA/6 E – Application for Naturalisation as a Citizen of Malta, <https://komunita.gov.mt/wp-content/uploads/2020/11/Form-E.pdf>.

44 JRS Malta, aditus foundation, Integra Foundation, Long-Term Residence and Citizenship by Naturalisation: A Necessity for Integration, 2018 https://aditus.org.mt/Publications/pipublicationltrcitizenship_2018.pdf.

sign the duly filled application form. It is recommended to have a legal advisor submit a cover letter with the application to provide details on the application⁴⁵. In order to complete the application process, the application form must be signed by 2 non-naturalised Maltese sponsors who are not relatives and who have known the applicant for a minimum of 2 years. Where the sponsors have known the applicant more than 2 years, it is advised to put down the exact number of years. The sponsors' signatures need to be witnessed and countersigned by another person.

An applicant may choose any of the following persons as their first sponsor:

- A member of Parliament;
- A judge;
- A magistrate;
- An advocate;
- A notary public;
- A legal procurator;
- A medical practitioner;
- A public officer not below the rank of principal;
- A police officer not below the rank of inspector;
- An officer of the Armed Forces of Malta not below the rank of captain;
- A parish priest.

The second sponsor can be any citizen of Malta, not listed above, provided that they did not acquire Maltese citizenship by naturalisation and that they are over 18 years of age.

Applicants then submit their completed application form to the Community Malta Agency for processing, with rejected applications given no right to appeal.

⁴⁵ Ibid.

Successful applicants will be considered citizens of Malta from the date on the certificate of naturalisation, which will be collected after communication with the Agency and payment of the €50 fee. If the applicant was born abroad, the Agency will address a letter to the Director of Public Registry so that their birth certificate may be registered at the Public Registry Office. Applicants must present this letter to the Public Registry along with their original birth certificate, (and an official translation in English or Maltese)⁴⁶. A list is annually published in the Government Gazette which contains the full name of all those persons who were naturalised as citizens of Malta during the preceding year.



Where the sponsors have known the applicant more than 2 years, it is advised to put down the exact number of years.



⁴⁶ Community Malta Agency, Acquisition of Citizenship, <https://komunita.gov.mt/en/services/acquisition-of-citizenship?> <accessed 20 June 2022>.

4. Barriers to Citizenship by Naturalisation in Malta

4.1 The Family Unit and Children

There are substantial barriers in the process of citizenship through naturalisation that render the policies and laws uncondusive to the family unit. Firstly, applications are only accepted from individuals, and not from family units, increasing the cost significantly and furthering the unfavourable conditions of citizenship by naturalisation in Malta. Secondly, the Community Malta Agency prioritises the applicant's employment history, looking unfavourably on persons who have been unemployed for long periods of time⁴⁷. This practice can be seen as discriminatory against, primarily, women who have worked as a full-time homemakers without the opportunity or necessary qualifications to seek other work. This creates an imbalance within the family unit where women are made more dependent, and possibly more vulnerable, due to having to rely on the financially stable applicant to then apply for naturalisation by registration as a spouse, and/or child of a Maltese citizen. This practice also penalises persons who were, or are, unable to work due to various circumstances, such as those persons who have a disability or mental health problems⁴⁸.

The inability for family units to apply collectively for citizenship, or for applications to be submitted by minors in their own name, creates major barriers to access

nationality for children who call Malta home, especially after being born and raised solely in Malta. Barriers to access nationality for children include the adoption of *ius sanguinis*, which only grants automatic citizenship rights to children of Maltese citizens, and not for children born and raised long-term in the country⁴⁹. Many countries have started to adopt a hybrid system mixing both *ius sanguinis* and *ius soli* principles.

Of particular concern relates to those children who were born in Malta and/or reside in Malta on the basis of their parents' status who turn 18. Aged 18, the child loses the right of residence based on their parents and are then required to either return to their country of origin or apply for a residence permit based on work or study.

4.2 Length of Residence

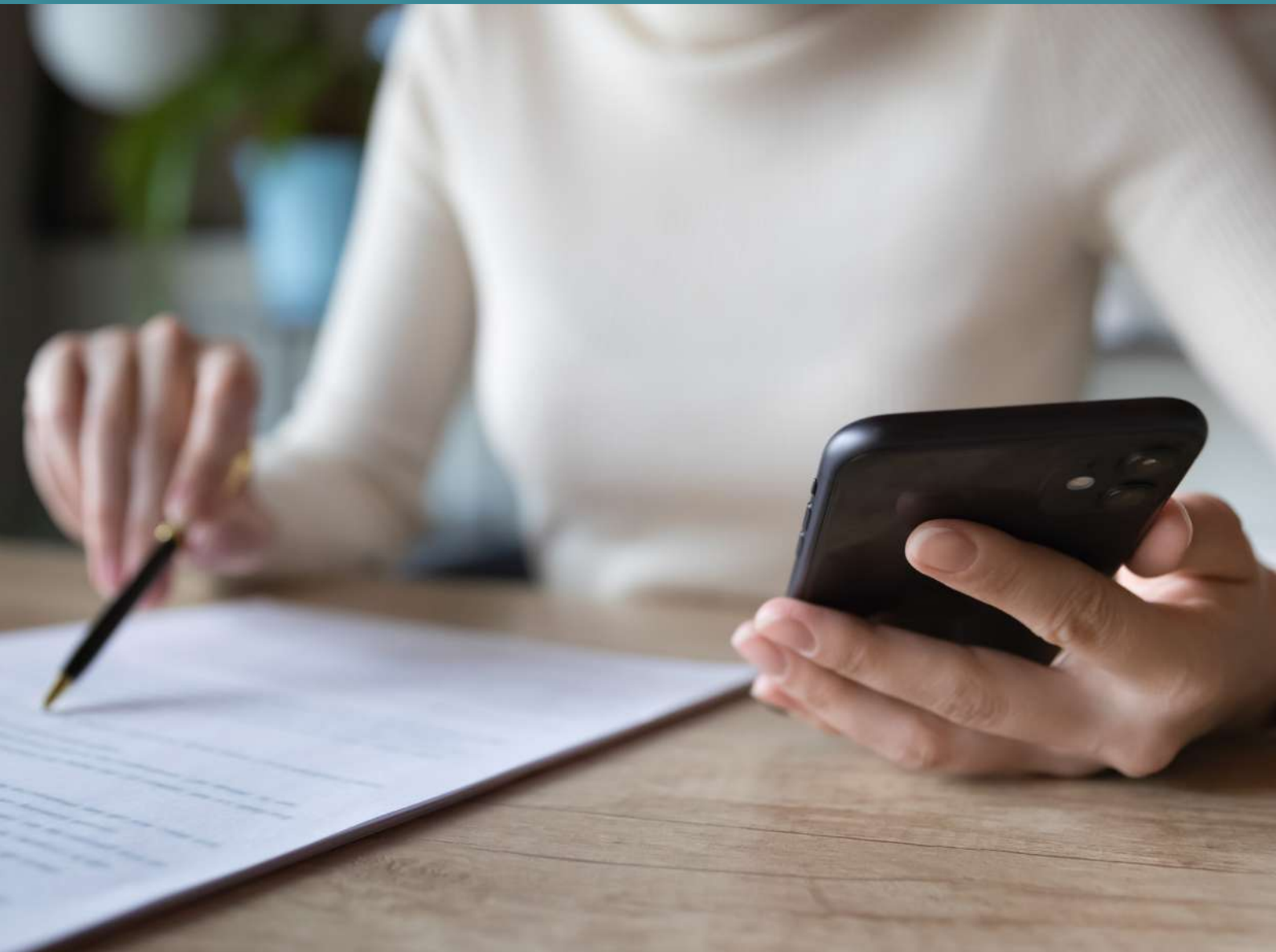
Although the legislation contains one set of criteria for all eligible applicants, including a minimum residence in Malta of 5 years, internal government policy makes a distinction between refugees and persons with subsidiary protection. The Community Malta Agency will typically only consider applications from persons with refugee status after a 10-year residence period in Malta, and only consider applications from beneficiaries of subsidiary

47 JRS Malta, aditus foundation, Integra Foundation, *Long-Term Residence and Citizenship by Naturalisation: A Necessity for Integration, Project Integrated Publication*, 2018 https://aditus.org.mt/Publications/pipublicationltrcitizenship_2018.pdf.

48 Ibid.

49 Maltese Citizenship Act, Chapter 188 of the Laws of Malta, <https://legislation.mt/eli/cap/188/eng/pdf>.

Another issue in the application process of citizenship by naturalisation is the use of extremely subjective and vague terms in the eligibility criteria



protection after having resided in Malta for 20 years⁵⁰. The 10-year residency requirement is long, while the 20 years requirement is egregiously disproportionate and ignorant to the substantial investment made by such persons in integrating into Maltese society. Furthermore, the residence period, regardless of the required amount, is calculated from when the person is granted international protection and not from the date of entry in Malta.

4.3 Discretionary and Subjective Decisions

Another issue in the application process of citizenship by naturalisation is the use of extremely subjective and vague terms in the eligibility criteria, such as “good character”, “suitable citizen” and “adequate knowledge” of Maltese or English⁵¹. There are no further legal definitions or eligibility requirements to guide applicants or their legal advisors⁵². In addition, there are no clear public policy guidelines on what these terms mean, how assessments are made or how to prove such qualities in an application. Subsequently, it is extremely difficult to assess the likelihood of the successful outcome of an application. Article 19 of the Citizenship Act stipulates that the Minister responsible for matters relating to

citizenship is not required to give any reasons for the granting or refusing of any application, and decisions are not subject to appeal or review in any court⁵³. These laws and practices contradict the legal principle relating to an effective remedy, that asserts the requirements for decisions to be motivated, providing reasons on which they are based, in a clear manner⁵⁴. Due to the discretionary nature of the decisions, and the lack of reasoning given for the refusal of their application, applicants are not granted the opportunity to improve or clarify any issue that may have been a deciding factor in the refusal.

The duty to give reasons is crucial for any decision, especially decisions by a judicial, quasi-judicial, or administrative body, as recognised time and again by our local courts⁵⁵. The lack of judicial oversight renders it impossible for applicants to demand accountability from parties guilty of misapplications of law or breach of procedure. The lack of a reasoned decision also prevents the applicant from verifying the accuracy of the reasons for their refusal, and if such reasons were in line with the law. This absolute discretionary power of the Minister responsible for such decisions rules out the possibility of

50 Human Rights Council Working Group on the Universal Periodic Review Thirty-first session, Compilation on Malta Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/31/MLT/2, 2018 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/259/82/PDF/G1825982.pdf?OpenElement>; Jesuit Refugee Service Malta, aditus foundation, Integra Foundation, *Long-Term Residence and Citizenship by Naturalisation: A Necessity for Integration*, Project Integrated Publication, 2018 https://aditus.org.mt/Publications/pipublicationltrcitizenship_2018.pdf.

51 Article 10(1) of the Citizenship Act, Chapter 188, September 1964 <https://legislation.mt/eli/cap/188>.

52 Jesuit Refugee Service Malta, aditus foundation, Integra Foundation, *Long-Term Residence and Citizenship by Naturalisation: A Necessity for Integration*, Project Integrated Publication, 2018 https://aditus.org.mt/Publications/pipublicationltrcitizenship_2018.pdf.

53 Article 19 of the Citizenship Act, Chapter 188, September 1964 <https://legislation.mt/eli/cap/188>.

54 Jesuit Refugee Service Malta, aditus foundation, Integra Foundation, *Long-Term Residence and Citizenship by Naturalisation: A Necessity for Integration*, Project Integrated Publication, 2018 https://aditus.org.mt/Publications/pipublicationltrcitizenship_2018.pdf.

55 *A.B. v. Kummissarju tat-Taxxi Interni*, Appell Nru. 2/07, 28 January 2008, Qorti ta' l-Appell (Sede Inferjuri). See also *Alfred Sant vs Kummissarju tat-Taxxi Interni*, 4 March 1992, *Qorti tal-Appell Civili*, *Cauchi Ltd vs Kummissarju tat-Taxxa fuq il-Valur Mizjud*, Appell, 6 October 2000, *Michael Gatt vs L-Awtorita` ta' l-Ippjanar*, Appell, 19 November 2001 u *Mary Zarb vs- Emma Azzopardi nomine*, Appell mit-Tribunal ghal Talbiet tal-Konsumaturi, 28 March 2007, *Teshome Tensea Gebremariam sive Teshome Berhanu Asbu vs Bord tal-Appelli dwar ir-Rifugjati*, Avukat Generali, 10 July, 2012, Prim Awla.



This can result in a naturalised Maltese citizen having their citizenship revoked for a misdemeanour, minor offence or pending criminal procedures, possibly left stateless

proper judicial review or decisions that may be unjust, erroneous or illegal⁵⁶.

4.4 Cost

In 2019, an amendment⁵⁷ to the Citizenship Regulations increased the total application fee from €34.94 to an exorbitant €450.00⁵⁸. The extraordinary increase in the cost of citizenship by naturalisation created a significant barrier for many migrants to obtain citizenship. The €450 required for the application is not refunded regardless of the decision, and the lack of reasoning and discretionary nature of the decision renders it impossible to know if applications would be accepted or rejected, often discouraging migrants from even applying.

Due to the fact that families cannot apply as a unit, families often cannot afford to apply for each individual family member to naturalise. The financial barriers to citizenship by naturalisation unfairly prevent low-income foreign nationals, especially beneficiaries of international protection, from being able to afford to

submit the citizenship application, hindering their full integration into Maltese society.

4.5 Criminal Records

Persons convicted of a crime and sentenced to imprisonment for more than 5 years, or charged with misdemeanours or minor offences, are ineligible to apply for naturalisation, and applicants must provide a clean police conduct certificate as part of their application requirements of eligibility. Additionally, Article 14(2)(c) of the Citizenship Act⁵⁹ gives the Minister the discretion to revoke citizenship if the person has, within 7 years after becoming naturalised or being registered as a citizen of Malta, been sentenced in any country to a punishment restrictive of personal liberty for a term of at least 12 months. This can result in a naturalised Maltese citizen having their citizenship revoked for a misdemeanour, minor offence or pending criminal procedures, possibly left stateless⁶⁰.

4.6 Statelessness

A stateless person is someone who has no nationality,

56 Ibid.

57 L.N. 214 of 2019 Maltese Citizenship Act (CAP 188) Citizenship (Amendment) Regulations, 2019.

58 Citizenship Regulations, S.L. 188.01 <https://legislation.mt/eli/sl/188.1/eng>.

59 Article 14(2)(c) of the Citizenship Act, Chapter 188, <https://legislation.mt/eli/cap/188>.

60 Migrant Integration Policy Index 2020, Malta, <https://www.mipex.eu/malta> <accessed 20 June 2022>.

meaning that no state has recognised such person as a national under the operation of its law. This can occur for various reasons, such as state succession gaps (for example, in the case of the dissolution of larger states), gaps or conflicts in nationality laws, and deliberate policies to strip people of nationalities. As a result, these individuals find themselves marginalised and at risk of discrimination and of rights violations.

In 2019, Malta acceded to the 1954 Convention relating to the Status of Stateless Persons⁶¹, but remains a non-party to the 1961 Convention on the Reduction of Statelessness⁶². Although there are some safeguards under Maltese legislation with an aim to protect against statelessness, these are largely considered to be inadequate⁶³. Most notably, Article 17(1)(a) of the Citizenship Act places a limitation on the automatic acquisition of citizenship to a child born in Malta to a Maltese father and a foreign mother if the couple are not married⁶⁴.

According to the Citizenship Act, a stateless person could apply for a certificate of naturalization as a citizen of Malta under certain conditions:

- That the child born stateless in Malta is and always has been stateless;
- That the applicant has been ordinarily resident in Malta throughout the 5 years preceding the application;
- That no conviction in any country against the security

61 Convention Relating to the Status of Stateless Persons, 1954, https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf.

62 Convention on the Reduction of Statelessness, 1964, https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf.

63 ENS Statelessness Index Survey 2020 <https://index.statelessness.eu/country/malta>.

64 Citizenship Act, Chapter 188, <https://legislation.mt/eli/cap/188>.

of the State is established; and

- That the applicant has not been sentenced in any country to a punishment restrictive of personal liberty for a term of not less than 5 years.

However, in practice this procedure is not made use of by the Maltese authorities, although they should ensure that children, or the guardian of such children, falling within this category are provided with enough information to allow them to invoke it⁶⁵.

Furthermore, although acceding to the 1954 Convention in 2019, Malta has still not set up a statelessness determination procedure in order to ensure the identification of stateless persons in its territory.

65 UNCHR, Mapping Statelessness in Malta, 2014: <https://www.parliament.mt/media/88410/08320.pdf>.

Amend the Citizenship Act to include clear and specific criteria which applicants are required to fulfil in order to be eligible for naturalisation



5. Recommendations

It is clear that the lack of clarity and consistency in the decisions regarding applications for citizenship by naturalisation, the restrictive eligibility criteria and internal policies and discriminatory practices are significant barriers to access to citizenship for migrants and their subsequent integration. The recommendations regarding citizenship by naturalisation in Malta policies and laws are detailed below.

5.1 Clarification of Eligibility Requirements

- Amend the Citizenship Act to include clear and specific criteria which applicants are required to fulfil in order to be eligible for naturalisation;
- Shorten the current eligibility timeframes to a maximum of 7 years residence in Malta;
- Give value to individual integration efforts when assessing applications;
- Do not require financial self-sufficiency and/or employment as an obligatory criterion for eligibility; and
- Remove distinction in length of residence between beneficiaries of subsidiary protection and refugees.

5.2 Introduction of Procedural Guarantees

- Amend the Citizenship Act to remove the unfettered discretionary power of the Minister responsible for Citizenship with a view to making the process more transparent;
- Introduce fixed timeframes within which a decision must be taken;
- Introduce an obligation for the duty, based on clear

provisions at law, to give reasons for the refusal of an application;

- Introduce the right to appeal any refusal to grant or withdraw citizenship in a court of law;
- Establish and publicise an objective and transparent assessment method to be adopted by the authorities in processing applications, at both admissibility and substantive stages; and
- Reduce the fees of citizenship applications by naturalisation.

5.3 Family Unit and Children

- Accept applications and assessments as family units, including minor children, for the naturalisation process;
- Introduce a joint *ius soli / sanguinis* system to allow children born and raised in Malta to non-Maltese parents to become citizens in a facilitating process;
- Introduce a facilitated naturalisation process for children who have been residing in Malta long-term; and
- Remove the discriminatory provision that does not provide the automatic conferral of Maltese citizenship to children of an unwed Maltese father.

5.4 Statelessness

- Set up a statelessness determination procedure in order to ensure the identification of stateless persons in Maltese territory; and
- Amend Maltese national legislation and policies in order to prevent statelessness.

Remove the discriminatory provision that does not provide the automatic conferral of Maltese citizenship to children of an unwed Maltese father



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Sustainable Management of Migration Flows





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