



# ADMINISTRATIVE (IMMIGRATION) DETENTION

In Malta, administrative detention can be ordered against:

- asylum-seekers pending the determination of their application for international protection;
- “*prohibited migrants*” to forcibly return them to their country of origin. This group includes rejected asylum-seekers and people in breach of immigration rules, such as persons who overstayed their visa;
- persons denied entry at the border. This generally includes persons reaching Malta International Airport but who do not fulfil the conditions of entry, for example in cases where documents are missing or falsified.

## WHAT IS ADMINISTRATIVE DETENTION?

Administrative detention is when a person is deprived of their liberty without trial and without the individual having committed any criminal offence. It is called ‘administrative’ because it is ordered and imposed by an entity that is not judicial. This usually includes immigration police, public health authorities, and mental health professionals.

For this reason, individuals held under administrative detention should not be detained in the same premises as people who were convicted of a criminal offence.

If a person in administrative detention is found guilty of having committed a criminal offence, then they will be detained in Corradino Correctional Facility (CCF) in Paola and not in a detention centre.



## WHERE CAN I BE DETAINED IN MALTA?

In Malta, the law establishes **10 places of detention**. Currently, 4 are used for immigration detention:

- The **Hal Far Initial Reception Centre (HIRC)**, commonly referred to as, '[China House](#)' is used to detain migrants immediately following arrival by boat. Malta claims this is necessary to conduct health checks on detained persons. Once the detainees are medically cleared, they are either transferred to the Safi Detention Centre or offered accommodation in an Open Centre. From our observations, it seems that single adult men are generally detained here upon arrival.
- The **Marsa Initial Reception Centre (MIRC)**, which is partly a closed centre and partly an open centre. Like with 'China House', the MIRC is used to detain newly-arrived persons for the purpose of health checks. From our observations, we understand that families and children are detained here upon arrival.
- The **Safi Detention Centre**, housed within [Safi Barracks](#) of the Armed Forces of Malta, is used as the primary detention centre in Malta. It is used to detain asylum-seekers and "*prohibited migrants*", including rejected asylum-seekers pending removal to their country of origin. People are brought here after the initial period of detention, and are usually single men. Children pending a determination of their age and, on some occasions, women are also detained here.
- **Police custody** at the Malta International Airport. This is generally used for persons not allowed to enter Malta, as mentioned above, and detained as they are waiting to be immediately returned.

## WHAT IS THE LEGAL BASIS TO DETAIN?

Currently there are 4 possible detention regimes for migrants:

- 'Restriction of Movement Order' based on Article 13 of the [Prevention of Disease Ordinance](#). **This detention regime is likely to be illegal<sup>1</sup> and we strongly advise you to contact a lawyer and challenge this detention!**
- Detention of asylum-seekers based on Regulation 6 of Malta's laws on asylum, [Subsidiary Legislation 412.06 of the Laws of Malta](#);

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<sup>1</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Maltese Government on the visit to Malta carried out by the CPT from 17 to 22 September 2020, CPT/Inf (2021) 1, 10 March 2021,



- Detention of “*prohibited Migrants*” based on Article 14(2) of the [Immigration Act](#) and Regulation 11(6) of [Subsidiary Legislation 217.12 of the Laws of Malta](#);
- Detention at the airport on the basis of Article 10 of the [Immigration Act](#). This Fact Sheet does NOT give too many details about this detention regime.

### HOW DO I KNOW ON WHICH LEGAL BASIS I AM BEING DETAINED?

The law states that anybody who is being detained should be provided with a **written order** explaining clearly the reasons in fact and in law for the detention, in a **language** which they can understand.

The order must clearly indicate **where** and **how** to challenge the detention. In Malta, you could be issued with the following documents:

- ‘Restriction of Movement Order’ for asylum-seekers who just arrived by boat. **This is likely to be illegal and we advise you to contact a lawyer and challenge your detention;**
- ‘Detention Order’ for asylum-seekers;
- ‘Return Decision’ and ‘Removal Order’ for “*prohibited migrants*”, including rejected asylum-seekers;

If you do not have any document or you have been issued with the wrong document, your detention is unlawful. You must speak with a lawyer to challenge this immediately.

### FOR HOW LONG CAN I BE DETAINED?

The length of detention differs greatly depending on the individual circumstances of the person and the grounds for detention.

- Asylum-seekers can only be detained for a maximum of **9 months**;
- “*Prohibited migrants*” can be detained up to **6 months**, and in exceptional cases this can be extended by a further period of **12 months** (so for a total of **18 months**) but this **must** be justified accordingly.

These timings are calculated from the date you are issued with the orders and not automatically from the date of your arrival at the detention centre.

If you are reaching the legal limit of 9 months under a Detention Order or 18 months under a Removal Order, you may provide the inspector in charge with details of a host

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para. 50, available at <https://www.coe.int/en/web/cpt/-/council-of-europe-s-anti-torture-committee-calls-on-malta-to-improve-the-treatment-of-detained-migrants>



in Malta who will provide you with accommodation to facilitate your release. These details must include: the name of the host, the host contact number, the host's ID card number or police number and the address where you will be staying. **Note that this is not obligatory and you must be released once the maximum time period is reached.**

Additionally, if you are being detained on a Removal Order, the Police must show that there is a **reasonable chance** that they can return you to your country of origin. The steps of the return procedure include a confirmation of your identity by the Embassy of your country of origin and the issuance of a temporary travel document. If this is not done within the first 6 months of your detention you might be unlawfully detained. It is therefore important to keep asking the Police to present evidence that they are truly working on your removal and that this is likely to happen.

### CAN I CHALLENGE MY DETENTION BEFORE A COURT?

You have the human right to challenge your detention before a Court! Note the following points:

- You can file an appeal before the **Immigration Appeals Board** within **3 days** of the date you receive the Detention Order or the Removal Order. If you wish to file an appeal, we advise you to say so immediately, including to the guards or staff at the detention centre you are at;
- An **automatic** review of your detention should happen **every 2 months** if you are detained on a Detention Order. If this does not happen automatically, you have the right to request for the **review** of your detention. This should be done by the Immigration Police under the supervision of the Immigration Appeals Board.
- An **automatic** review of your detention should happen **every 3 months** if you are detained on a Removal Order. If this does not happen automatically, you have the right to request for the **review** of your detention. This should be done by the Immigration Police under the supervision of the Immigration Appeals Board.

You can also challenge your detention before the Court of Magistrates of Malta through a special and extremely fast procedure called *habeas corpus*<sup>2</sup>. This procedure is particularly important if you were not provided with any documents to justify your detention or if you have been given a 'Restriction of Movement Order'.

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<sup>2</sup> Article 409A of the Criminal Code, Chapter 9 of the Laws of Malta.



**CAN I BE  
ASSISTED BY A  
LAWYER?**

You are entitled to **free legal assistance** for the procedures before the Immigration Appeals Board.

You can also choose to hire a private lawyer or request assistance from any of the **Supporting Organisations**<sup>3</sup>.

We understand that it might be difficult for you, in detention, to call for a lawyer. Ask the guards for a lawyer, as they should assist you.

**WHAT SHOULD  
HAPPEN WHEN I  
CHALLENGE MY  
DETENTION?**

When challenging your detention before a Court, a hearing must be held in the presence of your lawyer and an interpreter, if you need one.

You must be provided with a written decision from the Court explaining the reasons in fact and in law for the decision.

The law also says that these proceedings should be fast!

**As a general rule, we advise you to refuse any proceedings which would not be conducted according to the above as this would be in breach of your right to a fair hearing.**

**BUT WHY  
SHOULD I BE  
DETAINED?**

You are right! In fact, the law states that detention can only be ordered if other less coercive measures cannot be applied. This means that if the authorities can impose other measures on you that are not as harsh as detention, then they should.

Less coercive measures to detention can include reporting to the Police station at regular intervals, surrendering your identity documents to the Police, placing a money deposit and/or providing a guarantor, among others.

If you have an address in Malta, you can request to be released under less coercive measures. You must comply with any less coercive measure ordered by the Police or the Court. Breach of such could result in re-detention.

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<sup>3</sup> See [Fact Sheet No. 21](#) for a list of Supporting Organisations.



## VOLUNTARY RETURN TO YOUR COUNTRY OF ORIGIN

If you wish to return to your country of origin you can apply for [voluntary return with the Government](#) or opt to return with the [International Organization for Migration \(IOM\)](#).

We strongly advise you to obtain full information on these procedures and on all your options before taking such an important decision.

## TREATMENT OF VULNERABLE PEOPLE

If you suffer from a medical condition or are vulnerable, you can request to see a doctor at the detention centre where you are held. You might also be entitled to free psychosocial support depending on your case.

We advise you to inform the authorities as soon as possible and to contact a Supporting Organisation if you are not being treated.

Vulnerable people should generally not be detained! This includes minors, persons with a disability, elderly people, pregnant women, single parents with minor children, victims of human trafficking, LGBTIQ+ individuals, persons with serious illnesses, persons with mental health issues, and persons who have been subjected to torture, rape or other serious forms of psychological physical or sexual violence, such as victims of female genital mutilation.

If you belong to any of the categories above, you should **inform the authorities as soon as possible** and contact a Supporting Organisation<sup>4</sup> for further assistance.

We also advise you to inform the Court if you have a hearing about your detention as it might impact its decision.

## HOW SHOULD I BE TREATED IN DETENTION?

For the entire period of detention, wherever this happens, you should be treated with dignity and in full respect of your fundamental human rights.

This means that the area where you are detained must be clean, in a good and functioning condition, and spacious enough to allow for privacy. The centre should provide you with enough clothes and bedding to keep you warm in winter, as well as sufficient soap and other personal hygiene materials. You should be allowed fresh air and outside time, including for leisure activities, as well as the possibility to keep contact with the outside world.

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<sup>4</sup> See [Fact Sheet No. 21](#) for a list of Supporting Organisations



**WHAT HAPPENS  
AFTER MY  
RELEASE FROM  
DETENTION?**

Once released, the Police should return any items they took from you such as your mobile phone, documents and money.

If you are an asylum-seeker, you will be offered accommodation in the Open Centres, you will be allowed to work and also receive financial support<sup>5</sup>.

Make sure to request your **Asylum Seeker Document** to the responsible entity and indicate your address and personal contact details to the International Protection Agency (IPA) or the International Protection Appeals Tribunal (IPAT) if you are at appeal stage. If any changes are made to your personal details, you must inform the authorities accordingly. **You must renew this document on the date indicated.**

If you were detained on the basis of a Removal Order and then released, this does not mean that your removal may not take place but that the Police cannot keep you detained. You are still considered a “*prohibited migrant*” and your rights are limited. You will be issued with a temporary document from the Immigration Police, which **you must renew according to the date stipulated.**

**IF I HAVE  
PROBLEMS IN  
DETENTION,  
WHO CAN I  
COMPLAIN TO?**

At all times, and in all detention centres, you can ask the guards to be visited by the following organisations:

- Monitoring Board for Detained Persons;
- United Nations High Commissioner for Refugees;
- Your lawyer.

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**Need more info? Contact aditus on +356 2010 6295 | [www.aditus.org.mt](http://www.aditus.org.mt) | [info@aditus.org.mt](mailto:info@aditus.org.mt)**

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<sup>5</sup> See [Fact Sheet No 15](#) for an overview of your rights as an asylum-seeker