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FOLLOW-UP REPORT ON MALTA (2003-2005)

**Assessment of the progress made
in implementing the recommendations of
the Council of Europe Commissioner for Human Rights**

**For the attention of the Committee of Ministers
and the Parliamentary Assembly**

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Introduction

1. The Commissioner for Human Rights, Mr Alvaro Gil-Robles, visited Malta on 20 and 21 October 2003 at the Maltese Government's invitation. The Commissioner would like to repeat his thanks to the Maltese authorities for their co-operation during the visit and the facilities extended to the members of his Office¹ who conducted a follow-up visit on 30 November and 1 December 2005. The first report² raised a number of matters to do with the treatment received by asylum seekers and foreigners in an irregular situation, administration of justice, and the detention conditions of some prisoners at Corradino Prison.
2. The purpose of the present report is to assess changes which have been made further to the 2003 findings. It follows the order of the recommendations which the Commissioner made in his first report.
3. The present report is based on material and information supplied by the Maltese authorities concerning developments as regards observance of human rights since the first report, reports by national and international NGOs and international organisations, coverage in the media and the findings and conclusions of the follow-up visit by the delegation from the Commissioner's Office³.
4. To preface the report, and in line with my responsibility as Commissioner to support and reinforce human-rights institutions, I should like to salute Parliament's election on 12 December 2005 of a new Ombudsman, Mr Joseph Said Pullicino, who takes over from Mr Joseph Sammut on expiry of the latter's second term of office. In December 2003 the Maltese authorities likewise introduced a Children's Ombudsman, the first holder of the post being Ms Sonia Camillieri.

1. Situation regarding asylum seekers and irregular migrants at detention centres

1.1 Use of detention

5. In his report the Commissioner stated his disagreement with the practice of unlimited detention of all irregular migrants – including families with children – whether or not they were asylum seekers. He recommended the enactment of legislation providing that detention of asylum seekers be authorised only in exceptional circumstances and preventing the unlimited detention of irregular migrants.

¹ The delegation from the Commissioner's Office was composed of Mr Manuel Lezertua and Mr Julien Attuil.

² Report by the Commissioner for Human Rights, Mr Alvaro Gil-Robles, 12 February 2004, CommDH (2004)4, on his visit to Malta on 20 and 21 October 2003.

³ The visit included meetings with the Permanent Secretary (Ministry of Justice and Home Affairs), the Commissioner of Police, the Chief Justice, the Attorney General, the Commander of the Detention Service, the Commissioner for Children, representatives of the Ministry of Foreign Affairs, the Ministry for the Family and Social Solidarity and the Office of the Ombudsman, members of the Maltese delegation to the Council of Europe Parliamentary Assembly, the Refugee Commissioner, Judge Franco Depasquale, representatives of the Bar, NGOs and the UNHCR consultant in Malta. Visits were made to the Safi barracks (the detention facility for irregular aliens/asylum seekers), the Marsa open centre, the centre for unaccompanied minors and the prison.

Development of the situation and measures taken

1.1.1 Basic rule

6. In December 2003, immediately after the Commissioner's visit, the Maltese authorities released a number of migrants, particularly migrants with families, who had been in detention for a long time. The administrative practice was subsequently adopted of releasing migrants who had been in detention for more than 18 months. This unwritten criterion applied to all foreigners, whether asylum seekers or irregular migrants.
7. That practice was officialised, in 2004, when the Ministry of Justice and Home Affairs and the Ministry for the Family and Social Solidarity adopted a policy document on irregular immigrants, refugees and integration. Section 5 of the document states that irregular immigrants are to remain at closed reception centres until their identity is established and their asylum request processed. However, no immigrant is to remain in detention longer than 18 months.
8. During the follow-up visit, the Maltese authorities explained that according to a further administrative practice the authorities would nowadays release asylum seekers after 12 months' detention. It was explained that that measure had been adopted to bring the situation in Malta into line with the European directive on minimum standards for reception of asylum seekers, which required that, on certain conditions, member states grant asylum seekers access to their labour markets after a year's proceedings⁴. The Maltese authorities interpreted that provision as containing an indirect obligation to end asylum seekers' detention after 12 months.
9. Thus, the detention of foreigners is currently governed by the following rules: after one year's detention, asylum seekers are to be released; in all other cases foreigners are kept in detention for a maximum of 18 months. These limits to detention are merely administrative practices which are not laid down in any binding legislation and therefore cannot be relied upon before a court. They are thus more in the nature of an administrative concession than a set standard. Releases, then, are not automatic and it is for the chief immigration officer, in this case the Maltese Commissioner of Police, to take decisions concerning release of the individual foreigner. In fact, there have been occasional allegations of non-observance of the maximum length of detention in that, in some cases, releases were made after the time-limit.

1.1.2 Rule applicable to vulnerable groups

10. While the general rule is that the foreigner will be released after 12 or 18 months of detention, the Maltese authorities have introduced a speeded-up release procedure for "vulnerable" persons. A policy which is applicable to families, sick persons and pregnant women has been introduced gradually in response to cases and problems actually observed. It has led the various services involved – immigration, the police, health and welfare – to adopt procedures to facilitate speedy releases. Firstly the detention authorities report the presence of any potentially vulnerable individual or persons: families with children, pregnant women, people with disabilities (and their

⁴ See Article 11(2) of the European Union Council Directive laying down minimum standards for the reception of asylum seekers, No.2003/9/EC of 27 January 2003.

families) or elderly people. The administrative authorities then register the persons concerned – indicating whether they have an asylum application – and conduct a medical examination. When a medical certificate states that they are free of any contagious disease, they can be immediately released. Official rules, adopted at Ministerial level, will soon ratify this practice.

11. In absence of legal instrument laying down the responsibilities of individual administrative authorities and setting time-limits for drawing up the necessary documents, the waiting time for members of vulnerable groups remains haphazard. For instance, shortly before the Office delegation visited Malta, 35 children and their parents spent over eight weeks in detention before permission for their release was issued. According to various government representatives, this length of detention had been required to obtain the results of lung X-rays necessary to detect potential cases of tuberculosis. Others explained that detention had been protracted by unavailability of places for families at open reception centres. Be that as it may, it would seem that a two-month wait for all the necessary permissions is common.
12. The policy of relatively quick release has been in operation since 2004 for families with children. However, the situation regarding pregnant women is quite different. The Jesuit Refugee Service⁵ has mentioned cases of pregnant women kept in detention, including those who were close to term⁶. During the December 2005 visit, the Maltese authorities stated that such detentions no longer occurred and that pregnant women now qualified for speedier release once pregnancy was medically ascertained.
13. Older people and people with disabilities should, in theory, qualify for similar treatment. However, in the absence of a clear definition of vulnerable categories, it is for the detention authority to make its own assessment in each individual case, which leaves doors open to discretionary practices and differences of treatment.

Conclusions

14. The Commission notes that undoubtedly the Maltese authorities have made progress with regard to detention of asylum seekers and aliens in an irregular situation. Detention is no longer unlimited as it was in 2003 but the current periods of maximum detention still appear excessive and inappropriate. Committee of Ministers Recommendation (2003)5 states clearly that detention measures “should be specific, temporary and non-arbitrary and should be applied for the shortest possible time”⁷. Once again it must be pointed out that asylum seekers and irregular migrants have not committed any offence or been tried by any court, yet their systematic arrest and detention for as long as 18 months resembles a prison sentence in all but name.
15. The Commissioner further welcomes the special arrangements applied to vulnerable groups but stresses the need for the Maltese authorities to apply them transparently to all persons requiring specific attention.

⁵ Jesuit Refugee Service, Malta, *Reception of Asylum Seekers in Malta*, Policy recommendations, 3 February 2005.

⁶ On 31 January 2005, at least seven pregnant women were in detention according to JRS.

⁷ Recommendation Rec(2003)5 of the Committee of Ministers of the Council of Europe to member states on measures of detention of asylum seekers, 16 April 2003.

16. The Commissioner finally regrets that, contrary to his recommendation, no legislation on the subject has been passed. The new measures now in place are the result of administrative practice albeit confirmed to varying extent by government documents. It is clear that such practices are often introduced after the event, in an attempt to remedy some occurrence. A more proactive policy on the question, particularly enshrined in a piece of legislation, might greatly contribute to clarify the situation.

1.2 Judicial review of detention

17. In his report the Commissioner recommended that detentions, in particular of asylum seekers, be subject to judicial control. At the time of the visit, no specific remedy for challenging aliens' detention was available apart from *habeas corpus* (Article 409 A of the Criminal Code).

Development of the situation and measures taken

18. Since the Commissioner's visit the Maltese Parliament has adopted an amendment to the Immigration Act empowering the Immigration Appeals Board to rule on excessive length of detention of asylum seekers and people awaiting deportation. Since 1 February 2005 the Board has been able to grant release from custody, but only where "in its opinion the continued detention of such person is, taking into account all the circumstances of the case, unreasonable as regards duration or because there is no reasonable prospect of deportation within a reasonable time"⁸. The act does not define "unreasonable" and the maximum length of detention currently applicable seems not to be regarded as unreasonable. The act severely restricts the cases in which the Immigration Appeals Board can authorise an alien's release. Article 25 (A) (11) even lays down cases in which an alien cannot be released⁹. Statutory restrictions of that kind appear to run counter to the purpose of the Immigration Appeals Board, which is to rule on the need for detention of migrants who apply to it. It should be said, however, that this is a relatively new remedy whose full value and possible weaknesses in practice remain to be evaluated.

19. In addition, the judicial nature of the Immigration Appeals Board has been questioned. Set up under the Immigration Act, the Board does not fall within the organisation chart of the Maltese court system. Its members are appointed for a renewable three-year term by the President of Malta on the advice of the Minister of Justice. They are "a lawyer who shall preside, a person versed in immigration matters and another person"¹⁰. Unlike Maltese magistrates and judges, they are not appointed for life, do not meet the same

⁸ Article 25 (A) (10) of the Immigration Act.

⁹ When identity and nationality have yet to be verified, when elements relating to the asylum procedure cannot be determined without detention, and where the applicant's release could pose a threat to public security or public order.

¹⁰ Article 25 (A) (1) (a) of the Immigration Act.

recruitment and appointment criteria, and can be removed from office by the President. The introduction of such a body, which now has sole powers to determine cases relating to length of migrants' detention, might be an attempt to avoid a further burdening of the ordinary courts, which already have, as pointed out below, an extremely heavy caseload.

Conclusions

20. The Commissioner notes that a special body has been given competence to rule on the length of aliens' detention and to release them in appropriate cases. The application of this Act in practice will have to be carefully monitored in particular with regard to the protection of the aliens' rights, who are sometimes detained for over a year. The Commissioner recalls that detention of migrants in irregular situation is governed by Article 5(4) of the European Convention on Human Rights, which requires national legal systems to provide them with the possibility of challenging the lawfulness of detention before a "court". Lastly, it should, once again, be pointed out that detention of asylum seekers should be warranted only in special circumstances and last as short as possible.

1.3 Detention conditions

1.3.1 General conditions

21. In his report the Commissioner recommended taking the necessary measures to guarantee adequate conditions of detention in all the centres in which migrants are detained, especially as regards overcrowding and sanitation. He also recommended allowing the use of handcuffs only when strictly necessary.

Development of the situation and measures taken

22. At the time of the Commissioner's visit in October 2003 the various detention centres for aliens held over 1,000 people. At the time of the follow-up visit, at 1 December 2005, 1,234 aliens were held at the four centres (Safi Barracks, Lyster Barracks, the "Depot" and Ta'kandja). It is worth noting that in the period from January to November 2005 the Maltese authorities rescued at sea and took in 1,822 irregular migrants, a record in comparison with previous years. Between the two visits the Council of Europe Committee for the Prevention of Torture (CPT) made visits in January 2004 and June 2005 in connection with the same centres.
23. In its report on the visit made in 2004¹¹, the CPT said that, apart from the Hal Far detention centre, the establishments had never been intended for use as detention centres or, more particularly, to accommodate such large numbers. The sanitary facilities and rooms were therefore not adapted for detention, and especially not for lengthy detention. The report further stated "Most of the establishments visited were slightly refurbished immediately before the CPT's visit ... However, more than cosmetic change is needed to meet the CPT's criteria as regards accommodation for immigration detainees, as set out in its 7th General Report". Those findings accord with the conditions observed and information received during the follow-up visit in December 2005.

¹¹ Report of the visit from 18 to 22 January 2004, CPT/Inf (2005) 15, § 39.

24. Ending the policy of systematic, indefinite detention, combined with the opening (or re-opening) of detention centres, has considerably lessened the overcrowding. At 1 December 2005, over 200 places were vacant out of the 1,498 available, and other facilities were shortly to be opened. It must nevertheless be noted that nearly a third of the places – 416, to be precise – are in a tented section of the Lyster military camp. According to the authorities, the tents are suitable for lengthy detentions and their occupants have all the amenity necessary in terms of space and sanitary facilities.
25. As regards the Ta’Kandja centre, it should be noted that it had previously been closed further to comments from, in particular, the CPT, which found the building to be unfit for detentions. Due to the lack of facilities for keeping foreigners in custody, this centre was, however, re-opened and held 78 foreigners on 1 December 2005. According to NGOs the conditions there remain extremely difficult despite expenditure before it was re-opened.
26. During the follow-up visit the delegation from the Commissioner’s Office was able to visit the Hal Safi military camp. At that time the detention centre for foreigners had maximum capacity of 632 places and actually held 526 detainees. Since 2003, two new buildings – Warehouses 1 and 2 – have been opened, on 31 July and 22 November 2005 respectively. Each has a capacity of approximately 240 places.
27. In Warehouse 1, which we visited, 235 foreigners were being held. Although it had not long been open, conditions there appeared difficult. Although numbers were below the building’s maximum capacity of 240, the delegation gained an impression of overcrowding. The fact that all the detainees are in a single structure without full dividing walls to cut down noise, together with the absence of windows at human height,¹² adds to the feeling of crampedness. In addition, even inside the “rooms”, the detainees have no real privacy. They have an outside yard, to which there is unrestricted access, and a basketball court. Most of the sanitary facilities were already out of use and there was not enough hot water for all the detainees. Lastly, the migrants complained of the cold and damp and the lack of winter protection (heating, proper blankets and warm clothing).
28. Still at Hal Safi Barracks, B-block remained in the same physical condition as at the time of the Commissioner’s 2003 visit, or indeed had deteriorated. The occupants still had only very limited access to an outside area, generally for two hours a day, though that was subject to variations according to availability of military personnel. There, too, the sanitary facilities were in poor condition and seemed unimproved since 2003. However, there was no longer the overcrowding found in 2003. The rooms were now occupied by appropriate numbers.
29. The delegation was also shown round buildings under construction which are to come into service in 2006. These new buildings are designed to provide foreign detainees with rooms of a more acceptable size, an adequate number of toilets and showers. These new structures seemed to provide for more decent detention conditions. It is nonetheless a pity that the open air areas for activities are relatively small, in particular the yards adjoining each block.

¹² The windows are immediately under the roof, 3.5 metres from the ground.

30. Lastly, there was still a tented area near the hangar which the Commissioner visited in 2003, which had then “housed” 60 foreigners. The tents were empty and the delegation was assured that they would not be used in future and that the area was shortly to be used for a new building.

Conclusions

31. The Commissioner welcomes the investment and progress made, in particular towards relieving the overcrowding. Nonetheless, considerable efforts still need to be made urgently if migrants held at these detention centres are to have decent conditions in buildings protected from the vagaries of the climate and with clean, working sanitary facilities. In spite of the effort made sanitary conditions had scarcely improved, and in some cases had even deteriorated.

1.3.2 Medical situation

32. The question of access to medical care is basic to any assessment of conditions at the centres for foreigners: in addition to poor sanitation and hygiene, detained migrants are faced with restricted access to medical services as there is no doctor or medical team permanently present at each centre. During the visit to Warehouse 1, many of the detainees complained of gastric conditions and spread of worm infections. A doctor is present three mornings a week whereas there are over 500 migrants detained at Hal Safi Barracks alone. In comparison, the prison, with around 400 inmates, has three doctors, a psychiatrist and two nurses, all of them full time.
33. For treatment of the most serious conditions migrants are taken to the hospital emergency service, where they are given priority over the Maltese population. However, that preferential treatment in hospital cases does not make up for the poor care arrangements at the detention centres. The impossibility, or at least difficulty, of quickly seeing a doctor is clearly harmful to detainees’ health and increases the risk of sickness spreading to healthy detainees. The situation also makes it completely impossible to take preventive measures.
34. The head of the detention service told us that bids had been invited for provision of outsourced medical services to foreigners under contract. He hoped that the services – with presence of a doctor every weekday morning – would start in the first half of 2006.
35. Despite the traumas which the migrants experience and the psychological frailty caused by what is regarded as unjustified detention, there is no provision for on-the-spot psychiatric care. Only the most serious psychiatric conditions are treated, on an in-patient or out-patient basis at the psychiatric hospital. Significant numbers of migrants have been transferred to Monte Carmeli Psychiatric Hospital, and there have been suicides and attempted suicides. These examples of personal crisis tend to show that insufficient attention is being paid to foreign detainees’ mental health.
36. Lastly, during the visit to Hal Safi Barracks, the delegation from the Commissioner’s Office noted that four migrants with tuberculosis were being held with other aliens without any physical separation or health precautions. Military personnel attempted to be reassuring by saying that that form of tuberculosis was not unduly contagious or dangerous. The delegation saw, however, the written instructions addressed to guards to

limit contact with the four persons concerned as far as possible. It is therefore surprising that similar precautions were not taken to prevent healthy foreign detainees from being in close contact with the four sick detainees affected by the illness.

Conclusions

37. The Commissioner invites the Maltese authorities to establish a permanent medical service appropriate to aliens' needs at detention centres and to provide the same kind of psychological care as at Corradino Prison. A solution is urgently needed for migrants suffering from serious or contagious diseases or medical conditions and the present arrangements for vulnerable people should be applied to them.

1.3.3 Establishment of an aliens detention service and management of the centres

38. At the time of the Commissioner's visit in 2003, detention centres for aliens were under the control of the authorities which owned the premises – the army and the police. That situation caused differences with regard to the treatment and rights granted to foreigners in detention, and inevitable difficulties stemming from law-enforcement personnel's lack of training.

Development of the situation and measures taken

39. Following the national conference on immigration in February 2005, the Government decided to set up a "Detention Service" in which police and military would be under a joint command in charge of the detention centres for foreigners. The head of the service was appointed recently: he is the army commander who was previously in charge of the Hal Safi detention centre.
40. At present there are 170 police officers and military personnel employed in running and guarding detention centres for foreigners. Ultimately the intention is that the detention service should have a staff of 220 - 250. In the Official Gazette of 27 September 2005 the Ministry of Justice and Home Affairs announced a procedure to recruit 14 detention service officers. Paragraph 11 of the call for applications said that applicants should be retired members of the Maltese armed forces or police and of a good moral character. The job description shows the security emphasis of the posts advertised: detention officers' responsibilities include guarding closed centres with the aim of preventing escape attempts, and ensuring that irregular immigrants fulfil their obligations while in custody. These include keeping their accommodation clean and maintaining good order and discipline¹³. The advertisement likewise refers to duties such as frisking visitors and

¹³ Article 10 i. and iv, "Engagement of casual detention service officers", 27 September 2005, Official Gazette of the Government of Malta.

handling migrants' requests. No mention is made of contact with the migrants, or lending them a sympathetic ear, or respect for their rights. Despite the security emphasis, new recruits received training with HCR, local NGOs and similar services in other European Union countries. According to the Maltese authorities, recruitment of detention service officers should be stepped up in 2006.

41. Management, organisation and planning of activities at the different centres employ methods which are often modelled on military practices and seldom geared to migrants' interests. For example, exercise periods in some buildings depend on availability of military personnel and take little account of migrants' needs or wishes. In the event of escapes, collective punishment of all inmates of a particular building is sometimes used. Despite the Commissioner's recommendation, handcuffing is still systematic when detainees are transferred outside the centres. During the follow-up visit, the authorities stressed that the practice was deliberate, being deemed essential for warden's safety and to eliminate all risk of escape.
42. As regards maintenance of order, shock tactics are also used. For example, during the visit to B block at Hal Safi, the detainees complained of searches which had recently been carried out to confiscate potentially dangerous items. The searches had been made at dawn, when the migrants were still asleep, by soldiers in law-enforcement gear, and had lasted several hours. While the searches were going on, the foreign detainees were kept handcuffed outside the building. Some potentially dangerous instruments and knives were seized, but the searches mainly confiscated items which the migrants used as cooking utensils in improving the fare provided. While it is not disputed that security has to be ensured both for the foreign detainees and the warders, it must be pointed out, once again, that foreigners are not criminals and that the methods used with them should be non-violent and non-traumatising.
43. During the follow-up visit the authorities stated that they were working on an information document for detained migrants. At the moment, no official information is provided to foreigners held at the centres except as regards the asylum procedure. That is also the case when migrants are released. This absence of communication and information generates rumours and misconceptions that merely stoke the tensions between migrants and the authorities.
44. Lack of resources and of adapted facilities, together with centre management by the armed forces and police, also affect the activities available to the foreigners in detention. The only activity facilities available are an exercise area, open on certain conditions, a television set which receives local and Italian channels, and sometimes a sports ground, this for detainees who may spend up to 18 months at the closed centres. There is no intellectual, language, cultural or educational activity on offer, and the detention service does not have any social workers. Detainees are therefore reduced to virtually total idleness.

Conclusions

45. The Commissioner welcomes the establishment of a unified detention service dealing with foreigners, as a genuine step forward in improved provision for foreign detainees. It is now for the Maltese authorities to allow the service to recruit the range of professional

staff necessary for decent detention conditions, in particular social workers as an addition to the necessary security staff. Speedy progress needs making as regards maintenance of discipline and order. Use of handcuffs should be non-systematic.

46. The Commissioner calls on the Maltese authorities to stop using military methods of conducting searches – use of handcuffs, early-morning searches, etc. – and to respect detainees’ human dignity.
47. Information leaflets about the reasons for detention, its possible duration and foreigners’ rights after release would be an undoubted improvement to detainees’ conditions. Lastly the Commissioner points out the importance of providing proper activities for foreign detainees, in particular educational and integration-related ones, so that the detainees, some of whom will spend anything from a year to a year and a half in detention, are physically and mentally occupied.

1.3.4 Events of 13 January 2005

48. On Thursday 13 January 2005 a peaceful demonstration took place at the Hal Safi military detention centre. The demonstrators – 90 or so immigrants – were protesting against their detention conditions and length of detention. One hour after the start of the demonstration a large number of soldiers in law-enforcement gear took up position around the demonstrators. A detachment of soldiers ordered the immigrants to return quietly to the barracks. When the demonstrators refused to do so, the soldiers charged them and violently put down the demonstration, in particular targeting the presumed ringleaders.
49. Officially, 26 foreigners were taken to hospital for examination and treatment, 12 of them being kept in hospital for more than a day because of the severity of their injuries. Concussion, injuries to lower and upper limbs, and multiple fractures were found. Two soldiers were likewise taken to hospital.
50. Four days after the events, on Monday 17 January, the Prime Minister expressed shock at the photographs of soldiers striking migrants. He appointed a retired judge, Franco Depasquale, to conduct a public enquiry into the events as speedily as possible¹⁴.
51. On 12 December 2005 the Maltese Government published Mr Depasquale’s 97-page report. The report’s publication 11 months after the events and the content of the report met with both approval and criticism from national¹⁵ and international organisations¹⁶ and triggered debate in Maltese society. The scope of the report, and in particular the need to justify government policy on alien detention and its length or return procedures were much commented upon. The report was criticized on the way it describes migrants or on the responsibility put on NGOs, media and even UNHCR regarding the events¹⁷.

¹⁴ The remit was mainly to shed light on the circumstances which had led the military to use force on the detainees ; establish whether the use of force had been justified in the circumstances and not excessive; and look into all questions ancillary to these matters and make recommendations in the light of the findings.

¹⁵ Emigrant’s Commission & Jesuit Refugee service (Malta), “Position Paper on the report of the Board of inquiry nominated by the Prime Minister on January 17, 2005, in terms of Article 4 of the Inquiries Act, dated December 9, 2005”, 22 December 2005.

¹⁶ See, in particular, Amnesty International, *Malta: investigation of incidents at Hal-Safi detention centre finds excessive use of force and ill-treatment of detainees by armed forces*, 22 December 2005, EUR 33/002/2005.

¹⁷ See Emigrant’s Commission & Jesuit Refugee Service (Malta), Position Paper, *prec. cit*

However, it is not for this report to go into national debate as to whether a document which the Prime Minister requested from a prominent figure should have gone into this or that matter. It does require, however, to underline some findings of the enquiry. Among the causes of the violent episode, Mr Depasquale's report mentions that the soldiers were ill-trained in dealing with situations of that kind, the lack of clear orders, and a degree of disorganisation. It states that, generally speaking the use of force was justified but indicates also that excessive force was used by some soldiers. The report clearly identifies at least one soldier responsible for undue violence; there were other culprits whom it was not possible to identify. The armed forces must now make as thorough and speedy an internal enquiry as possible in order to identify the other culprits and take appropriate disciplinary measures.

Conclusions

52. The Commissioner was greatly concerned by the events of January 2005 and thus welcomes publication, albeit late, of Mr Depasquale's extremely detailed report, which is the outcome of taking evidence from 170 witnesses. The Commissioner invites the Maltese authorities to take administrative measures as speedily as possible, prosecute those already identified as responsible for the use of excessive violence and conduct a thorough investigation with the view to persecuting any additional culprits which have not yet been identified. The publication of Mr. Depasquale report should likewise prompt the authorities to improve training and supervision of members of the armed forces dealing with detention of foreigners.

2. Open centres for refugees and regular and irregular aliens

53. In his report the Commissioner recommended providing alternatives to detention for irregular migrants and asylum seekers.

Development of the situation and measures taken

54. As described above, shortly after the Commissioner's visit, the Maltese authorities began releasing asylum seekers, particularly families, more systematically. Open reception facilities were therefore set up to meet the needs of those newly released – asylum seekers, refugees and migrants in an irregular situation.
55. The facilities are of different types. Firstly there are centres directly run by NGOs or charities such as Peace Laboratory or the Emigrant Commission. Former closed centres have been converted into open centres run by state authorities (the armed forces, the police or the Ministry for the Family and Social Solidarity). Lastly, the Ministry for the Family has concluded a service contract with an NGO for running a centre at Marsa which was opened in spring 2005. At these centres foreigners receive two or even three meals a day free of charge, plus accommodation. Allocation to the centres is based on availability of places and the intended use of the particular centre – some of them have better facilities for families or lone women than others, for example. According to NGOs, the conditions vary greatly, the government centres often being below minimum reception standards, particularly one of them, Hal-Far. According to one NGO, some foreigners have encountered better conditions at closed centres than at open ones.

56. The centres' aggregate capacity exceeds 1,000 places and the next stage of conversion work at some of them should bring capacity to 1,200. That increase would seem essential, as this is long-term accommodation until people find accommodation of their own and available places are very limited. In addition, further places will be needed for foreigners currently in detention. However, it is worth mentioning, that some migrants, recently released and after having spent some time in open centres, found private accommodations. These individual initiatives receive full support from Maltese authorities.
57. The delegation visited the Marsa centre and talked to its director. Unlike the state-run centres, the Marsa centre is on the edge of Valletta, and inmates can easily go into Valletta on foot or by public transport. The conditions there are decent even though the rooms are sometimes very small and the sanitary facilities seemed inappropriate to the number of people living at the centre. Nevertheless the organisation running the centre is to be congratulated on its work and the approach which it has adopted, which encourages self-reliance, individual initiative and personal development. A cyber-cafe and a restaurant have opened at the centre, for instance, and 360 of the 400 residents were in registered employment at the time of the visit. English-language courses and courses on European cultures are also available to them. This approach, aimed at personal fulfilment and access to the labour market, is the first stage towards integration into Maltese society.
58. The ministry likewise pays an allowance to the foreigners, whatever their status, for two months after release. That period is sometimes extended on an ad hoc basis to meet the needs of some families. In theory, each adult is entitled to two Maltese pounds (Lm) per day and one Maltese pound for each child. In practice, apparently, the foreigners do not always receive those sums in full. After the two-month period they are required to have found some means of subsistence.

Conclusions

59. The Commissioner congratulates the Maltese authorities on their efforts to accommodate migrants at open centres, and asks them to open further centres modelled on the Marsa one and provide decent conditions and sufficient places for the foreign detainees released from the closed centres. He also invites the authorities to develop the accommodation of these persons in private apartments in order to further their integration into Maltese society.

3. Asylum procedure

3.1 The Refugee Commissioner

60. In his report the Commissioner recommended providing the bodies responsible for examining asylum applications with adequate permanent staff as soon as possible in order to accelerate treatment of cases..

Development of the situation and measures taken

61. In 2003 the Refugee Commissioner was assisted only by one lawyer in his decision making. Since then his office has been greatly enlarged to bring it up to appropriate size. At 30 November he had a deputy and seven staff working on first-instance processing of asylum requests. It should be noted that five of these administrative staff were recruited at the end of 2005 and that the fruits of their work are not yet fully reflected in the 2005 statistics. In 2005 the Refugee Commissioner delivered 1,238 asylum decisions, 34 of which granted refugee status and 544 humanitarian protection. Although the rate of recognition of refugee status for that period (2.74 %) is relatively low, particularly compared with 2003 (8.8 %) and 2004 (5.6 %), it must be noted that in 2005 over half the asylum seekers were granted protection by the Maltese authorities. The number of decisions handled has increased from 557 in 2003 to 1,238 in 2005¹⁸. As a corollary of the larger number of decisions, the length of proceedings fell significantly and is now less than a year.

62. On the legislative side, Parliament amended the Refugees Act on 6 December 2005. The main object of the amendment, according to its drafters, was to speed up procedure for repatriation of persons not qualifying for protection under the act¹⁹. The amended act adds a further ground on which an application may be found manifestly ill-founded (“which is substantially the same as one already submitted by the applicant or by another applicant and which was, after examination, refused by a Commissioner”)²⁰. The new act also allows, if necessary, appointment of a number of Refugee Commissioners and a Senior Refugee Commissioner²¹. Lastly and above all, the new act removes the suspensory effect of appeals and allows repatriation of asylum seekers whose application is rejected as soon as the Refugee Commissioner’s decision at first instance is taken.

Conclusions

63. The Commissioner welcomes the increase in the Refugee Commissioner’s staff and the positive impact which this has had on processing time for asylum requests. The institution of Refugee Commissioner now seems adequately staffed to cope with forthcoming asylum requests if the number of requests remains at the present level.

64. The Commissioner has more reservations about the changes to the Refugees Act, notably as regards the risks created by the new admissibility criterion for asylum requests. The

¹⁸ Source: statistics of the Refugee Commissioner and an article in *The Times of Malta* of 31 December 2005, “Refugee status to 34 migrants”.

¹⁹ See the section, *Objects and reasons*, at the end of the draft amendment to the Refugees Act.

²⁰ Article 2 (k) of the Refugees Act (amended).

²¹ Article 4 (1) of the Refugees Act (amended).

Refugee Commissioner and the appeal body will have to apply that criterion in accordance with the principles governing individual treatment of asylum requests and with the rights guaranteed by the Geneva Convention on Refugees and the European Convention on Human Rights. Lastly, if asylum seekers have their applications rejected, the Commissioner asks the Maltese authorities, in actual practice, to keep them on national territory until the decision of the Refugee Appeals Board.

3.2 The Refugee Appeals Board

65. In his report the Commissioner recommended providing legal aid to asylum seekers during the appeal procedure in accordance with domestic law, and that decisions of the Refugee Appeals Board should give factual and legal reasons.

Development of the situation and measures taken

66. Since November 2004 the Maltese authorities have introduced a system of free legal aid for asylum seekers at the appeal stage, as provided for in domestic law. The arrangement, which is similar to the ordinary one for Maltese citizens, allows all asylum seekers to have their interests represented by a lawyer before the Refugee Appeals Board. Having previously had only one lawyer, the system comprised three lawyers at the time of the follow-up visit. The lawyers concerned are paid a flat rate of 30 Lm per case defended.

67. On 6 August 2004 an amendment to the Refugees Act introduced Article 5(4) making it possible to set up several chambers of the Refugee Appeals Board. A second chamber was created at that point to speed up processing of cases. Each chamber is composed of three members and the board as a whole is served by a three-person secretariat.

68. The quality of Refugee Appeals Board decisions, which was questioned during the Commissioner's visit in 2003, seems greatly improved. With regard both to the facts and the merits, the decisions now contain full statements of reasons. Criticisms continue, however, a particular bone of contention being that, since October 2001, only two of the refugee commissioner's decisions have been overturned. Lastly, it seems that, even in cases regarded as serious, the Board has confined itself to purely written proceedings and has not held any hearings, although the act allows it to do so.

Conclusions

69. The Commissioner welcomes the introduction of an effective arrangement that provides free legal aid to asylum seekers challenging an adverse decision of the Refugee Commissioner, and is also pleased to note the improvement regarding statements of reasons for the Board's decisions. However, he cannot but regret that free legal aid is not available to asylum seekers before the Refugee Commissioner.

4. Access to education for irregular foreign children

70. During his visit to Malta in 2003 the Commissioner noted that foreign children were being detained with their parents at closed centres. Like unaccompanied minors, though to a lesser extent, they had problems obtaining schooling. He accordingly recommended that the authorities finance schooling arrangements for migrant children, and that these arrangements be made as soon as possible after a child's arrival.

Development of the situation and measures taken

71. With introduction of the policy of early release of vulnerable persons, in particular families, the schooling situation regarding foreign children who enter the country irregularly has greatly improved. Children have quick access, free of charge, to the schools in the state system and school heads are even officially encouraged to provide them with free school uniforms. The children are assigned to different classes according to age and assumed educational level. They then have to adapt to Maltese language and culture with their teachers' help. Inevitably this integration approach has created some difficulties with Maltese parents on account of cultural differences, not to say a degree of racism towards foreign children receiving financial or welfare help which is not always available to nationals.

72. Unaccompanied foreign minors, once age has been assessed (which can take from a few weeks to several months), are released from closed centres and moved into adapted facilities. The Maltese authorities' objective is to give such children an environment helpful to personal development, with individual supervision and, if appropriate, psychological care. The Ministry for the Family and Social Solidarity has adopted a detailed programme designed to meet these highly vulnerable children's needs. With that in mind, these children are allowed considerable freedom to come and go and are even given pocket money for personal spending. Educationally, virtually all such adolescents, rather than entering the school system, attend vocational training courses and language (mainly English) courses. The overall aim is rapid integration, socially and economically, into Maltese society.

Conclusions

73. The Commissioner welcomes the efforts by the Maltese authorities to make schooling more readily available to the children, and in general to enable them to integrate better. He also welcomes the work being done for and with unaccompanied minors. It is to be hoped that the tensions here and there over what is sometimes perceived as preferential treatment for foreign children in the school system can be quickly defused so as to avert any upsurge of racism or xenophobia.

5. Functioning of the justice system

74. In his report the Commissioner recommended adopting appropriate measures to reduce the backlog in the courts, particularly the civil courts, and ensure proper administration of justice. He likewise advised that the possibility of increasing the number of judges and magistrates should not be ruled out.

Development of the situation and measures taken

75. In the criminal sphere, various changes have been made to facilitate or speed up case handling. For example, the length of jury trials has fallen thanks to better session management and more systematic use of computerisation. The practice of automatically transcribing all the evidence in a criminal file for the purpose of an appeal has now been dropped, and such transcription is now only carried out at the request of one of the parties. In addition, conversion of certain unpaid fines into prison sentences no longer requires the intervention of judge or a magistrate. These recent changes have speeded up certain proceedings and kept the case backlog from increasing.
76. In civil litigation, the Maltese authorities have overhauled the workings of the court system, though without recruiting any more judges or magistrates²². For example, a family affairs court (with two judges) has been set up. The aim of setting up a specialist court is to speed up case handling and facilitate alternatives – such as mediation – to judicial proceedings. Civil procedure as a whole has likewise been simplified.
77. The Maltese authorities have also set about “outsourcing” a proportion of petty civil disputes to non-professional judges. Some types of dispute have been transferred to arbitration, notably road accidents causing purely material damage. More worryingly, the Small Claims Tribunal, composed of lawyers, is being assigned a growing caseload. In 1995 a small claim was regarded as one worth less than 100 Lm. The limit is now 1,500 Lm²³ and apparently the intention is shortly to double that ceiling. Consequently the non-professional judges are being required to handle cases of growing importance. To discourage vexatious litigation, the tendency is also to increase the court tax. In an ordinary case the registration fee is 360 Lm. It should, however, be noted that in human-rights cases the fee is reduced to 80 Lm.
78. These reforms have not achieved any substantial reduction in the length of civil proceedings. Nearly 10% of civil cases, representing 1,200 cases, have been pending for over ten years. At the time of the follow-up visit, in November 2005, over 12,600 civil cases were pending before the Maltese civil courts. It should, however, be noted that that figure is 18% down on 2004.
79. Lastly, pensions of judges and magistrates were mentioned as a possible way to jeopardize their independence. Indeed judicial pensions are by large inferior to judicial salaries. Therefore it has been mentioned that this situation could create a temptation, or the perceived temptation by outsiders, that when a judge or a magistrate is approaching retirement he/she could be more “indulgent” towards the Executive power. It could be a kind of strategy in order to be appointed member of a national commission, board, body or an independent authority after retirement and therefore receive the salary attached to that position in addition to the retirement pension. Without entering into such debate or

²² Of whom there were 33 at the time of the follow-up visit.

²³ Just under 3,500 €

confirming the veracity of those assertions or perceptions, one should recall that the State has the responsibility of safeguarding the independence of the judiciary and should prevent any risk of collusion, or impression of collusion, between the Executive power and the judiciary.

Conclusions

80. The Commissioner welcomes the reforms undertaken to improve the effectiveness and speed of Maltese justice. However, such action must not be at the expense of protection of the individual's rights, in particular basic rights. The Commissioner accordingly repeats his recommendation to consider recruiting more judges and magistrates. The independence of the judiciary should be fully guaranteed.

6. Detention conditions of some prisoners

81. During his 2003 visit to Corradino Prison, the Commissioner found that sexual offenders and homosexual prisoners were being kept in a separate wing so as to avert any risk of attack or violence from other prisoners. That building, the former women's section, had cells which received no direct light and were extremely damp. In his report he recommended transferring those prisoners to a vacant part of the prison offering better detention conditions.

Development of the situation and measures taken

82. Generally speaking, the delegation from the Commissioner's Office found, the situation at Corradino quite satisfactory with relatively new premises, clean and well-equipped cells. However the situation of prisoners requiring special attention remains unchanged, in spite of the fact that the prison had nearly 100 places available²⁴. This small group of prisoners lives separately from the other prisoners, in a kind of community where only a few of them have opportunities to work. The prisoners met by the delegation complained of the constant humidity and one prisoner with breathing problems said he was badly affected by the temperature and humidity in his cell, which made his condition more painful. The heating problems are made worse by the fact that the cells have no windows, so that all circulation of air is prevented. Lastly, it has to be borne in mind that these prisoners are mostly serving relatively long sentences and the conditions make their detention doubly difficult for them.

83. It should be noted that specially converted parts of buildings (or separate buildings in some cases) have been provided for vulnerable or special groups such as women, children and life prisoners. In this connection NGOs did not omit to point out that, apart from presidential pardon, there was no provision for early or conditional release of life prisoners. At the time of the follow-up visit, there were eight prisoners serving life sentences.

²⁴ 304 prisoners as against a maximum capacity of 400.

Conclusions

84. The Commissioner regrets that no substantial changes have been made to improve the living and detention conditions of vulnerable prisoners held in the former women's wing. He repeats his suggestion that this small group of prisoners be moved to another part of the prison where detention conditions would be more in line with the recent recommendation on the European Prison Rules²⁵ so as to allay all suspicion that their harsh conditions are being allowed to continue because of the nature of their offences.

7. Undertakings on protection of human rights

85. In his report the Commissioner invited the Maltese authorities to sign and ratify the Third Protocol to the European Social Charter allowing for collective complaints, together with the Revised Social Charter.

Development of the situation and measures taken

86. On 27 July 2005 Malta signed and ratified the Revised European Social Charter and agreed to be bound by most of its articles. It should, however, be noted that the Maltese authorities did not accept Article 19 (the right of migrant workers and their families to protection and assistance), Article 30 (the right to protection against poverty and social exclusion) and Article 31 (the right to housing).

87. As regards ratification of the Third Protocol on collective complaints, the authorities whom the delegation met during the follow-up visit showed open-mindedness and interest in the matter without being able to state any date for a forthcoming ratification. They did, however, indicate a desire, as a first stage, to fully implement the recently ratified Revised Social Charter before going ahead with signature and ratification of the further instrument.

Conclusions

88. The Commissioner welcomes the signature and ratification of the Revised Social Charter and of nearly all of its articles. He urges the Maltese authorities to do likewise regarding the Third Protocol to the European Social Charter providing for a system of collective complaints, which must be seen not just as an international instrument but also as a useful tool for negotiation and dialogue with civil society and trade unions in the country.

²⁵ Recommendation of the Committee of Ministers of the Council of Europe on the European Prison Rules, Rec(2006)2, 11 January 2006.

ANNEX 1

COMMENTS OF THE MALTESE AUTHORITIES CONCERNING THE FOLLOW-UP REPORT BY THE COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

The comments of the Maltese authorities, to the Council of Europe Commissioner for Human Rights, follow-up report on Malta (2003-2005) – assessment of progress made in implementing the recommendations of the Commissioner for Human Rights, follow the order of the contents of the said report. This report is based on feedback received from the Ministry for Justice and Home Affairs, the Ministry for the Family and Social Solidarity (Annex 1 refers), the Office of the Chief Justice, the Office of the Ombudsman (Annex 2 refers) and the Office of the Commissioner for Refugees.

1. Situation regarding asylum seekers and irregular migrants at detention centres

1.1 Use of detention

In the recently published report by UNHCR for 2005, Malta is ranked second in the world in terms of asylum applications per capita. Moreover, it is to be noted that a significant percentage of those reaching our shores are economic migrants seeking better pastures, often after spending a number of years working in Libya. Due to Malta's particular circumstances, to which unfortunately the follow-up report makes little or no reference, including extremely high population density; the paucity of the human, financial and physical resources that the government can allocate to ease this problem; the country's small size and its inability to withstand a large influx of migrants and asylum seekers; the social tensions that complete freedom of these people in a small country may be expected to give rise to and the extent of response by foreign governments to Malta's request for solidarity and assistance, the Government cannot afford to allow undocumented and unscreened irregular immigrants roaming about freely on the streets. Thus national interest obliges the authorities to tread cautiously and the present detention regime, which by way of policy is a maximum 12 months for asylum seekers and 18 months for rejected asylum seekers cooperating with the authorities, is considered the best approach at this point in time. The Maltese Government's position on its detention policy also carries the consensus of the Opposition and given the present circumstances whereby the influx of irregular immigrants is increasing year on year, with all reliable sources indicating that this trend will persist for the foreseeable future, a change in policy is not warranted.

Moreover, as highlighted by the Ombudsman in his comments to the follow up report, detention for reasonable time is also in the interest of the irregular immigrant. He will clearly find himself in a very difficult situation that could lead to further tragedy if he was given freedom of movement on his arrival in Malta, without means of subsistence or a roof above his head, in a country which was totally alien, if not hostile, to him. One important point needs to be stressed. This is that practically the totality of all irregular migrants arriving to Malta never intended to come here. They do not wish to remain in Malta and their only ambition is to reach the European mainland. They in fact feel thwarted by destiny because they were rescued by Maltese servicemen rather than by Italian ones. This clearly means that as soon as they are freed from detention most of them will be doing their utmost to find ways and means of reaching Italian shores. They were more likely to turn for help to unscrupulous criminal organisations that it is now proved operate in this field. Rather than insisting on the discontinuance of the detention policy, emphasis should be made on the need to ensure as much as possible, and hence the urgent need of EU financial assistance, adequate conditions of detention in all centres.

In these past four years Malta has made remarkable progress to set up from scratch the legal framework and administrative capacity necessary to address this issue. One should not overlook the effort to build administrative capacity with the increase of personnel at the Office of the Refugee Commissioner, the setting up of a Second Chamber of Appeals, the increase of lawyers providing legal aid to asylum seekers and physical improvements to the accommodation and hospitality facilities. Improvements in all respects are continuously being made to address changing scenarios. These came at no small cost to the people of Malta who have found themselves in such a situation which is not of their own devise. These irregular immigrants had no intention of coming to Malta, their objective is to reach mainland Europe because they believe they can have a better life than the one they left. Notwithstanding, the Maltese Government is committed to assist those deserving protection whilst being strict with those abusing the asylum procedure and it is the latter category only, that serve the full eighteen months in detention.

It should also be stated that that the European Union Directive laying down minimum standards for the reception of asylum seekers has been transposed into national law and therefore the understanding that access to the labour market means that the migrant cannot be retained in custody automatically implies that legislation does exist in this regard. It can therefore be argued that the 12 month maximum detention period for asylum seekers is in reality backed by legislation. Moreover, recent amendments to the Refugee Act enable the Principal Immigration Officer to retain in detention those **rejected** asylum seekers who do not cooperate with the immigration authorities in their efforts to have them repatriated.

Moreover it should be emphasised that the law provides for redress before the Immigration Appeals Board to any immigration detainee for release if he considers that his detention is no longer justified; this remedy has been used with success by immigrants. It is therefore not fair to state that there is an arbitrary capping of eighteen months for detention; that is only an internal policy rule should everything else fail in matters of release.

Thus, overall it is felt that the follow-up report on Malta (2003-2004) gives credit to the Maltese Government on the improvements made relating to Human Rights. There is obviously always room for improvement, particularly in a crisis situation that has come upon Malta so suddenly and unexpectedly. However, with all due respect, it is felt that certain criticism is unjustified

As already emphasised, the Maltese situation is a special one considering our extremely high population density, small size and the limited resources available. It is obvious that Malta cannot release irregular migrants from detention within a few weeks of their arrival, as this can have tremendous social repercussions considering the small size of the Island and may also prejudice our economic stability, especially if a big and sudden influx of irregular migrants is allowed into Malta. As quite rightly, emphasized by the Ombudsman in his feedback to the follow-up report, it should be stressed that, in the years under review, the problem of the influx of asylum seekers and foreigners in an irregular situation reaching Malta's shores has escalated and has reached proportions that could not have been foreseen five years ago. Indications are that the situation which has already reached crisis point will continue to worsen. There is little hope that the problem will be solved or indeed cushioned by initiatives at the points of departure of these irregular immigrants. Solutions have therefore mostly to be found at the receiving end through initiatives taken by Malta in collaboration with the international community particularly the European Union. Hopefully there is a growing awareness that Malta and other receiving countries should not alone bear the brunt of this humanitarian problem. That burden should be shouldered also by other EU countries in proportion to their larger territorial size and greater economic prosperity.

1.1.1 Basic Rule

1.1.2 Rule applicable to vulnerable groups

The Report notes that progress was made in this area. It should be stated that further progress has been registered following the introduction of a new procedure in order to obtain medical clearances for pregnant women thus further reducing the detention period of these persons. As for elderly persons, these have been defined as those over 60 years of age. Detailed procedures regarding the social

welfare of vulnerable adult irregular immigrants are being reproduced in Annex I. These procedures are set out with a view to safeguarding the social welfare of vulnerable adult irregular immigrants (as established in *Irregular Immigrants, Refugees and Integration*, Policy Document, 6, and Council Directive 2003/9/EC of 27 January 2003). The key principle underpinning these procedures is that all cases of vulnerable persons should be fast tracked to ensure their departure from closed centres within the month.

At the time of the visit by UNHCR several family units were still in detention. This situation has today improved considerably and the quoted two month wait for medical clearances is highly uncommon.

1.2 Judicial review of detention

Para. 17: The *habeas corpus* remedy is not the only judicial remedy available. In fact, depending on the alleged ground of the unlawfulness of the detention an ordinary civil action can be instituted requesting a declaration from the court that the detention is contrary to law. Moreover an action for judicial review under article 469A of the Code of Organization and Civil Procedure and ultimately constitutional redress could also be available in appropriate circumstances.

Para. 19: It is not quite clear by whom the judicial nature of the Immigration Appeals Board has been questioned. It is not quite clear what “the organization chart of the Maltese court system” refers to. The Appeals Board is certainly not a court. It does not decide on civil rights or criminal charges. The members of the Board, however, are independent of the Executive and of the parties. They exercise their functions impartially. While it is true that they can be removed by the President they can be so removed only on grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming a member of the Board. It should be pointed out that in Malta even magistrates and judges are not appointed for life but are up for retirement on reaching retirement age. They do not need to meet the same recruitment and appointment criteria as judges because they are not judges. However, they have the necessary attributes to qualify as “judicial” officers within the meaning of the case-law of the Strasbourg court. The “judicial nature” of the Board, therefore, is beyond doubt.

Finally the report makes reference to the fact that the changes made to the Refugee Act allow for deportation pending appeal. It is obvious, that this is resorted to in cases of MANIFESTLY unfounded applications.

1.3 Detention conditions

1.3.1 General conditions

Para. 25: Conditions at Ta’ Kandja are the same as at any of the other Closed Accommodation Centres. Indeed, there are fewer immigrants at Ta’ Kandja than at any other centre. It is worth noting that NGOs rarely visit Ta’ Kandja.

Para. 27: Warehouse Compound, Safi – the windows are 2 metres above ground level and not 3.5 metres as reported. Warehouse 1 has large windows all round, thus allowing natural light to enter the compound and the air to circulate easily.

The amount of sanitary facilities is more than adequate. Sanitary facilities are maintained periodically given that wilful damage and wastage is a general practice by irregular immigrants. Enough hot water is provided but immigrants tend to leave the water taps open even after having finished washing. Thus the demand for hot water can never meet the supply. Electric heaters have since been provided. More than enough blankets were given to each immigrant and the amount of warm clothing provided to each immigrant is considered substantial as quantities of clothing are thrown away by immigrants almost on a daily basis.

Para. 30: The tented area has since been cleared up and is being rehabilitated for Army use.

Para. 31: Sanitary facilities – it must be pointed out that all places where irregular immigrants are accommodated were handed over to the immigrants in a good condition. Cleaning materials have always been given to the immigrants to maintain the desired level of hygiene. In fact, cleaning materials (including disinfectants) are given to immigrants every two weeks. However, immigrants have rarely shown any interest in keeping their accommodation clean and maintaining the sanitary conditions to an acceptable level.

1.3.2 Medical situation

Para. 32: The medical system is due to be revamped with the provision of private medical services which will be made available at all Closed Accommodation Centres every weekday. These services shall consist of a doctor and a nurse at each centre – relative tender for the provision of medical/nursing services has already been issued.

Para. 35: Psychiatric treatment given to irregular immigrants is the same as that provided to any Maltese national. If a doctor diagnoses an irregular immigrant as suffering from mental illness, the immigrant is referred for further treatment at Mount Carmel Psychiatric Hospital.

Para. 36: Immigrants diagnosed with tuberculosis are first kept in hospital until the required treatment is administered. They are released when the Health authorities deem it safe that they can live within one of the centres.

At this stage one simply cannot ignore the improvements made over former years, especially following the deployment of doctors at the detention centres themselves, so much so that the frequency of persons in custody calling at health clinics has decreased substantially.

With regard to psychiatric treatment, all necessary precautions are taken when migrants are even suspected of needing such assistance. It is to be noted that in the vast majority, the cases referred to the psychiatric hospital result to be of migrants who simply want to temporarily change their place of detention to the hospital ward and not because they truly suffer from mental illness.

1.3.3 Establishment of an aliens detention service and management of the centres

Para. 41: Collective punishment is not an option.

Para. 42: Searches are conducted only when there is proof that immigrants are in possession of weapons. In fact, during the last search, a number of cutting instruments, including knives and home made blades, were elevated. Searches are an essential measure in keeping the centres safe given that the safety of immigrants within is of a paramount importance. Searches are never performed at dawn but in the morning.

Para. 43: A booklet entitled *Your Entitlements, Responsibilities and Obligations While in Detention* has been compiled and was distributed to every immigrant. The booklet explains the reasons for detention, its duration and immigrants' rights as well as their entitlements and responsibilities.

Finally a comment regarding the issue of handcuffing. The report indicates that this is still systematic – this is not completely correct since this is mostly decided on a case by case basis. The fact is that the difficulties encountered by the Police/Army officers to escort such people are becoming more and more frequent and this is evident from the frequency of escapes experienced. Hence the need to unfortunately resort to such security measures

1.3.4 Events of 13th January 2005

The Depasquale Report was drawn up in Maltese and those who drew up the Robles Follow up Report might not have grasped well its contents; however some inaccuracies or innuendos make one suspect that these might not be only the result of lack of understanding.

Para 48: The Robles Report refers to the action of the migrants in the morning of the 13th January 2005 as “a peaceful demonstration” while the Depasquale Report concludes that it had been organised and prepared by the ringleaders for a number of days and suggests that its organisation was well known to various people outside the barracks; the press were present at the main gate of the compound practically at the same time that the migrants had forced open the gate of the area they were being kept in. The Report concludes that the protest was not spontaneous but it was premeditated and planned in all its details. Some days before, to a sick detainee who was reluctant to go out with the others, the organisers: “told me that I should go out and then the Red Cross people would take me to hospital” (66). The Report also deals with the actions of some migrants during the scuffles which indicate that the nature of the protest could be better described using a different word. The local press also referred to it as a peaceful demonstration, but during the evidence it turned out that they did not even know that the detainees had forced their way out of the place assigned to them and that when the soldiers intervened, the migrants were in an area where they should not have been and well outside their compound.

Para 50: The Follow-up Report states: “Four days after the events, on Monday 17 January, the Prime Minister expressed shock at the photographs of soldiers striking migrants. He appointed a retired Judge, Franco Depasquale, to conduct a public enquiry into the events as speedily as possible”. This must have been stated by someone who had not read the Report. It is definitely not correct to state that the Prime Minister saw the photographs and expressed his shock “four days after the events”.

The Report gives a different version in clear words: “The operation of the soldiers in Hal-Safi was almost still in progress when the pictures were brought to the attention of the Hon. Prime Minister, and it appears that these really worried him; it was still lunch time when the Chairman was contacted at his home by the office of the Prime Minister and informed that the Prime Minister wanted to talk to him. The Chairman did not know anything of what had happened and what was still happening at Hal-Safi but the Prime Minister told him that he had been just shown some photographs of the operation of the soldiers involving detainees in Hal-Safi and these had worried him a lot; he asked the Chairman whether he was ready to conduct an enquiry which, after consulting the Minister of the Interior, he intended to appoint; this was hardly one or two o'clock in the afternoon”(89).

It is not possible for anyone who had read the report to state that: “four days after the events, on Monday 17 January, the Prime Minister expressed shock at the photographs of soldiers striking migrants”. As far as the actual appointment is concerned, this was formally made on the Monday since the incidents happened on Thursday and the necessary documents had to be drawn up.

The Robles Report in para 50 states that the Prime Minister appointed the Chairman “to conduct a public enquiry” when this was not the case; this seems strange because in the report a detailed explanation was given concerning the way the enquiry was conducted and why it was preferred not to hold a public enquiry. If the Prime Minister had wanted public hearings the Chairman could not have disregarded such instructions. This undoubtedly is evident and clear from the contents of the Report itself.

In the Robles Report reference to the casualties among the migrants; it states: “Officially, 26 foreigners were taken to hospital...”; the word “officially” appears at least, gratuitous in view of the fact that the Report analysed all casualties and confirmed that it had interviewed for hours on end every single migrant who was hospitalised. The inclusion of the word “officially” might give the impression that there was some doubt as to how many had in fact been injured. On this point the Report clearly states that: “the management of the Hospital provided the Board with copies of the files relative to all injured and these could be assessed during the course of the enquiry”.

It may be added that shortly before concluding his assignment the Chairman had sent a letter to the detainees by means of the Jesuit Refugee Centre’s representative asking them whether there was any one of them who was not heard and desired to give his views on the incidents; no one said he wanted to be heard but a letter of appreciation was sent to the Chairman. This is why the inclusion of such a remark is at least strangely gratuitous.

The Robles Follow-up Report also mentions that: “concussion, injuries to lower and upper limbs and multiple fractures were found”, and also:” twelve of them being kept in hospital for more than a day because of the severity of their injuries”; such an assertion is at least misleading since according to

the Report this is clearly not correct. In the Report it is stated that of the 26 admitted, 14 were discharged after treatment that same day while nine were discharged the next day. He asked about these nine and it was clearly explained by all doctors involved that since they had doubts mainly due to the language problem, any one of the migrants who mentioned his head being in any way hit, he was not returned to the centre but detained for the necessary time for head-charting; these were released the next day because nothing abnormal was detected. There was not one case where concussion was reported.

Apart from the detainee who was seriously injured in his lower jaw, no multiple injuries were reported during the hearing. This detainee was interviewed at length and the Report covered his case in great detail.

Unless the authors of the Robles Report were supplied with information and details which failed to reach the Chairman, these references to “concussion” and to “multiple injuries” were out of place.

Para 51: The Robles Report says that the publication and content of the report met with both approval and criticism from national and international organisations and triggered debate in Maltese society; unfortunately it failed to be specific on any point. It however says that one of its scopes was: “in particular the need to justify government policy on alien detention and its length”. It is not fair to imply that the scope of the Depasquale Report was in any way to “justify Government policy on alien detention”; the Report considered this aspect and came to the conclusion that in the circumstances prevailing “and as long as the present circumstances prevail” Government should retain the present periods and make this position clear. The Report explains that it came to this conclusion because there were many who were almost instigating detainees to react because their protests could make Government change its policy and reduce the detention period; such hopes could encourage them to organise more similar manifestations.

The Robles Follow-up Report failed to refer to the various parts of the Report where it was very clearly stated that its main conclusions were directed towards those migrants who had no right for a refugee status, “because as far as these (refugees) are concerned the doors should be kept as open as possible”.

Concerning its aside “as to whether a document which the Prime Minister requested from a prominent figure should have gone into this or that matter”, the Robles Follow-up Report could have given clearly its views. This failure becomes even more apprehensive in the light of the specific terms of reference which also instructed the Chairman, “after examining every ancillary question relative to what happened (at Hal-Safi), to make his recommendations in the light of the conclusions he would have arrived at”.

In its conclusions the Robles Report: “welcomes publication, albeit late, of Mr Depasquale’s detailed report”; it is not clear whether the qualification “albeit late” refers to the submission or to the publication. The Report was submitted on the 9th and was published on the 13th of the month. It is to be noted that a few days later a leading local paper wanted to know who was responsible for this delay of four days. The Robles Report probably did not refer to this delay in publication but rather to the alleged delay in submitting the Report. It is true that it mentioned that the Board of Enquiry had heard 170 witnesses but it could have perhaps explained that these included 39 detainees the evidence of most of whom lasted between three and four hours each, 42 doctors and 68 soldiers – all contained in 1018 pages of typed depositions. The words: “albeit late” could have been better explained or qualified. Apart from this comment on these two words there is nothing to add concerning the conclusion which is perfectly in line with the Report.

It also has to be emphasised that soon after the incidents, and after the publication of the Inquiry, the Armed Forces took note of the lessons learnt. Indeed this was the first time for members of the Armed Forces to be faced with such a situation. Besides other measures, clear guidelines have since been issued regarding the use of force and rules of engagement in situations where the Armed Forces are required to assist the civil powers. In its annual training programme for its soldiers the AFM has included security tasks related to the maintenance of law and order.

The soldier who was identified, through photographic evidence, as using more force than was strictly required in the circumstances was duly disciplined by the military authorities.

Regarding the reference to the setting up of new structures to deal with the day to day management of these centres, in August 2005 Government established the Detention Service, under one unified structure and command, which is made up of personnel from the Armed Forces and the Police as well as civilian casual detention service officers. It is envisaged that eventually adequately trained civilians will replace the soldiers and policemen who could therefore resume their respective Force's core functions. Soldiers of the Armed Forces will only act on the direction of higher authority and if requested by the Detention Service to give support and will intervene only in those instances when the Detention Service personnel cannot cope with a given situation.

2. Open centres for refugees and regular or irregular aliens

A number of remarks are contained under this title and these mostly concern the lack of proper facilities at open centres described as below the minimum reception standards. This seems to ignore the improvements carried out at open centres, particularly the one at Marsa, during these last years. Moreover, although the authorities do their utmost to keep such centres in the best manner possible, unfortunately it is generally difficult to keep it to the standards one would desire in view of the difference in the mentality and attitudes of those present.

3. Asylum procedure

3.1 The Refugee Commissioner

The Office of the Refugee Commissioner is making the following clarifications regards part 3.1 of the report:

- i. The Office of the Refugee Commissioner had no lawyer in its staff up to December 2003.
- ii. The Refugee Commissioner does not have "a deputy" but an "Assistant Refugee Commissioner".
- iii. The length of proceedings varies from case to case. For instance, the Office of the Refugee Commissioner is currently interviewing and concluding cases of asylum seekers who arrived in Malta during August 2005. The pre-August 2005 applications have been concluded - except for certain cases which require deeper examination for various reasons.

3.2 The Refugee Appeals Board

Para 66: It is questionable whether reference to the payment of Lm30 to lawyers is appropriate in this report.

4. Access to education for irregular foreign children

Para 70: It should be noted that immigrants with children have all been released. As a matter of policy, immigrants with children shall not be detained more than one month after their arrival during which time they are medically screened.

5. Functioning of the justice system

In this regard, according to the Chief Justice, the practice of transcribing all the evidence given in a trial by jury for the purpose of an appeal has been dropped, and only that evidence requested by the parties, or specifically requested by the Court of Criminal Appeal, is now transcribed, the Appeal Court relying for the rest on the dossier prepared in the committal (inquiry) stage of the criminal proceedings. Moreover the statement 'conversion of unpaid fines into prison sentences no longer requires starting a special procedure and can be decided by the court itself' is not entirely correct. What has happened in the last couple of years is that certain fines do not require the direct intervention of the judge or

magistrate for conversion, but are automatically converted into imprisonment or detention if unpaid after a week, and the prison ticket is issued, on the strength of the judgement, by the registrar. With reference to the statement '*these recent changes have speeded up certain proceedings and kept the case backlog relatively low*' the Chief Justice feels that these procedures have kept the backlog from "increasing" rather than kept the "backlog relatively low". It is not uncommon, for instance, for an ordinary case of theft, bodily harm or whatever before the Magistrates Courts to take up to two years from the date of first arraignment to be decided. The problem seems to be compounded by the length of the "inquiry" stage of the criminal proceedings, with the record going back and forth between the Court of Criminal Inquiry and the Attorney General's Office, and by the sheer volume of cases which both the Magistrates Courts and the Office of the Attorney General have to handle.

The Chief Justice also feels that the statement '*in civil litigation, the Maltese authorities have overhauled the workings of the court system, though without recruiting any more judges or magistrates*²⁶. *For example, a family affairs court (with two judges) has been set up*' is somewhat imprecise. What has happened is that the Civil Court has been divided into sections, and one section has been designated the Family Section. This section has been assigned all cases dealing with family matters, including marriage annulment procedure. It originally started with one judge, but because of the sheer volume of cases, the Chief Justice had to remove one judge from the General Jurisdiction Section and assign him to the Family Section. This has meant one judge less in the General Jurisdiction Section.

All in all, it is felt that a solution is not to be found simply in the recruiting of more Judges and Magistrates. Moreover, the independence of the judiciary in Malta is definitely not in question and thus with all due respect one does not understand why it seems to be suggested that measures are required in this regard.

6. Detention conditions of some prisoners

Efforts are underway so that prisoners being kept at the ex-female section will be removed to another division. The problem is that the only division which can allocate them houses 48 cells and thus is too big for the relatively small number of sexual offenders involved.

Indeed, for the record, none of the prisoners kept at the ex-female ever complained because of the reported humid conditions. Any inmate who suffers from any medical condition are given due attention by the Facility's medical team, composed of three doctors, three nurses, one chemist, one consultant psychiatrist and a forensic psychologist.

It is to be pointed out that all inmates (like practically all the other CCF prisoners) being kept at the ex-female spend most of their time outside their cells, namely from 7.45am to 12.30pm and from 2.00pm up to 8.30pm. Apart from this these inmates are given the opportunity to perform work inside CCF under constant supervision.

ANNEX 2: Comments by the Ministry for the Family and Social Solidarity
ANNEX 3: Comments by the Ombudsman

²⁶ Of whom there were 33 at the time of the follow-up visit.

ANNEX 2

COMMENTS BY THE MINISTRY FOR THE FAMILY AND SOCIAL SOLIDARITY

SOCIAL WELFARE OF VULNERABLE ADULT IRREGULAR IMMIGRANTS

These procedures are set out with a view to safeguarding the social welfare of vulnerable adult irregular immigrants (see *Irregular Immigrants, Refugees and Integration*, Policy Document,6, and Council Directive 2003/9/EC of 27 January 2003). The key principle underpinning these procedures is that all cases of vulnerable persons should be fast tracked to ensure their departure from closed centres within the month.

1.

(a) At the point of arrival of an irregular immigrant on national territory or in any of the closed centres, the Police Immigration Branch or Detention Services may note or be informed (by the persons concerned themselves or by others) of:

- (i) pregnant women,²⁷
- (ii) persons with a disability, and family groups where one/or both members has a disability,
- (iii) elderly persons (defined as persons aged 60 and over),
- (iv) families with children.²⁸

(b) As soon as possible, this information is to be forwarded by the Police Immigration Branch or Detention Service (depending on who becomes aware of the case first) to:

- (i) the Refugee Service Area at *Agenzija Appogg*,
- (ii) the Public Health Department (via Dr Analita Pace Ascjak and Dr Joseph Portelli Demajo) to fast track the medical clearance procedure.
- (iii) the Refugee Accommodation Officer at MFSS.

2.

Once this information is made available to all parties concerned, within a week the following process will be set in motion:

- (i) the Refugee Service Area at *Agenzija Appogg* will interview the person/s concerned so that a care plan can be formulated, and information about the asylum seeking process distributed;
- (ii) the Detention Service ensures that the person/s concerned receives the Preliminary Questionnaire;
- (iii) the Refugee Service Area at *Agenzija Appogg* requests the Refugee Commissioner to fast track the request for asylum;
- (iv) the Public Health Department liaises with the Detention Service for the necessary appointments for medical clearance;
- (v) the Refugee Accommodation Officer at MFSS identifies the most appropriate open centre accommodation.

3.

The release of a vulnerable person from a closed centre is the first important step. Another important step concerns moving the person concerned to the appropriate open centre. The Refugee Service Area at *Agenzija Appogg*, the Refugee Accommodation Officer at MFSS, and the managements of the open centres will closely collaborate to find, as much as possible, the best solution in every instance.

²⁷ Medical clearance of pregnant women is carried out as per procedure drawn up with Department of Public Health (pp. 2-3).

²⁸ In the case of unaccompanied minors, see the relevant policy document (pp. 4-16).

Screening of pregnant irregular immigrants for tuberculosis in Malta

The pregnant female will be screened by 2 clinical procedures:

- The tuberculosis skin test, which is not contraindicated in pregnancy
- Clinical examinations of the patient for signs and symptoms of active tuberculosis disease. This is done at the Chest Clinic, St. Luke's Hospital.

If the tuberculosis skin test is negative or weakly positive¹ i.e. the patient is not infected (does not have the TB microbe) and the patient has no clinical signs of TB, the chest x-ray can be taken after pregnancy. The patient can be released immediately on public health grounds.

If the tuberculosis skin test is strongly positive¹ i.e. the patient is infected (has the TB microbe) but she has no clinical signs of TB, one has a clinical suspicion that the patient may have active TB disease. In this case the chest x-ray can be taken after the first trimester of pregnancy. During those first 3 months of pregnancy the patient is followed up at the Chest Clinic, St Luke's Hospital. The patient can be released after the first trimester of pregnancy if the chest x-ray is normal **.

If the patient refuses to take the chest x-ray she will continue to be followed up until termination of pregnancy. The chest x-ray will be taken after pregnancy and the patient can then be released if the chest x-ray is normal **, on public health grounds.

If the tuberculosis skin test is strongly positive¹ i.e. the patient is infected (has the TB microbe) and she also has clinical signs of TB, then the potential risk to the foetus of a chest radiograph will have to be weighed against the possibility that the patient could have active TB and its potential risk on the foetus, on the patient and on the community. In this case one has a strong clinical suspicion that the patient may have active TB, and the chest x-ray cannot wait after pregnancy but taken immediately. If the chest x-ray is normal **, the patient can be released.

If the patient refuses to do a chest x-ray she will be given empirical TB treatment because of the strong clinical suspicion of active TB disease. She will be released when she finishes the treatment for public health reasons.

**In all cases if the chest x-rays have abnormalities compatible with active pulmonary TB disease, the patient will be given curative TB treatment and will be released on termination of treatment, for public health reasons.

References

1. Centres for Disease Control (CDC) guidelines
2. Letter from the a / Director Radiology Department
3. Letter from the legal advisor of the Dept of Health, Dr. Brigitte Gafa
4. Control of Communicable Disease Manual by Abram S Benenson
5. Website: www.mayoclinic.com/health/chest-x-rays

SOCIAL WELFARE OF UNACCOMPANIED MINOR IRREGULAR IMMIGRANTS

- **Introduction**

In the Universal Declaration of Human Rights, the United Nations²⁹ proclaims that childhood is entitled to special care and assistance. Furthermore the Declaration of the Rights of the Child states that “the child, by reason of his physical and mental immaturity, needs special safeguard and care, including appropriate legal protection, before as well as after birth”.

Article 2 of the Convention on the Rights of the Child requires State Parties to “take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.” More specifically Article 3 of the same Convention requires State Parties to “ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.”

The Convention, in Article 22, makes particular reference to children seeking refugee status where it requires State Parties to “take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance.....”

In full cognisance of these international and other domestic law provisions³⁰ which require that minors be duly protected in view of their vulnerability because of minority age, this policy document shall provide the framework to ensure that throughout their stay in Malta, unaccompanied minor irregular immigrants are accorded the care and protection that they deserve. This policy which binds all those who are directly or indirectly involved with procedures and services concerning unaccompanied minor irregular immigrants, shall be reviewed by the Ministry for the Family and Social Solidarity as and when necessary to ensure that unaccompanied minor irregular immigrants are adequately protected at all times.

²⁹ Convention on the Rights of the Child, UN General Assembly, Document A/Res/44/25 (12 December 1989)

³⁰ Refugee Act, 2000 (Chapter 420); Legal Notice 253 of 2001; Children and Young Persons Act (Chapter 285)

The Refugee Act, 2000 (Chapter 420) requires that

“ Any child or young person below the age of eighteen years falling within the scope of this Act who is found under circumstances which clearly indicate that he is a child or young person in need of care, shall be allowed to apply for asylum, and for the purposes of this Act, shall be assisted in terms of the Children and Young Persons (Care Orders) Act, as if he were a child or young person under such Act” (Article 12)

Furthermore Legal Notice 253 of 2001 states that:

“Where it appears to the Commissioner that a child under eighteen years is seeking asylum and is not in the custody of any person, he shall immediately inform the competent authorities in terms of the Children and Young Persons (Care Orders) Act and the provisions of the said Act shall apply in relation to that child. His claim shall, in any case, be examined with due consideration to his particular needs, after a guardian has been appointed.” (Article 8)

Since unaccompanied minor irregular immigrants are considered to be more vulnerable than adult irregular immigrants and as they enjoy the same rights as a child or young person in terms of the Children and Young Persons (Care Orders) Act, the legal requirements quoted above basically highlight the need for the development of a policy that guides and regulates:

- a. Referrals and age verification
- b. Issuing and termination of Care Order
- c. Placements
- d. Guardianship
- e. Assessment and Monitoring
- f. Health
- g. Education, training and employment
- h. Social development and integration
- i. Attaining adulthood

(a) Referrals and age verification

Most irregular immigrants arrive in Malta in open boats without any documentation to prove their identity and age. Some of these immigrants claim to be under the age of 18 years and to be travelling alone. In view of their age and the absence of a parent or an adult who is legally responsible for them, such persons warrant State protection.

In the absence of proper documentation that shows actual age there shall be cases that raise doubt about the veracity of the minority age declared by the irregular immigrant. Since unaccompanied minor irregular immigrants are considered to be vulnerable and are accorded care and protection until such time when they reach 18 years of age, irregular immigrants falsely claiming to be unaccompanied minors will exert unjustifiable demands and pressures on minors living in Homes purposely designated for such a client group as well as on the resources that are specifically designed to promote and safeguard the welfare of unaccompanied minor irregular immigrants.

In order to protect unaccompanied minor irregular immigrants and validate, as far as possible, age claims:

- upon arrival, the Principal Immigration Officer shall inform the irregular immigrant claiming to be an unaccompanied minor, possibly in a language that he/she can understand, what age has been recorded in his/her regard;
- the Principal Immigration Officer shall, as soon as possible after arrival and in any case within five days following arrival, refer irregular immigrants claiming to be unaccompanied minors to the MFSS. Such referral may include the Principal Immigration Officer's opinion about irregular immigrant's declared age;
- the Ministry for the Family and Social Solidarity shall, through its Assessment Panel, interview the unaccompanied minor irregular immigrant and if it is satisfied that the immigrant is truly an unaccompanied minor, it shall refer the case for the issue of a Care Order;
- If the MFSS Assessment Panel has significant doubt about the minority age being claimed by the irregular immigrant, it shall recommend the issue of an interim care order and inform the Principal Immigration Officer accordingly;
- the MFSS Assessment Panel shall, in the absence of documentation on the part of the irregular immigrant to prove his/her age, inform him/her about the availability of an age verification test;
- the age verification procedure shall be explained by the MFSS Assessment Panel to the "unaccompanied minor" irregular immigrant, possibly in a language that he/she can understand;
- following the issue of an interim care order, the Principal Immigration Officer shall make the necessary arrangements with the Health authorities for the age verification test to be performed;
- the Principal Immigration Officer shall assign his staff to accompany the irregular immigrant claiming to be an unaccompanied minor for the age verification test;
- until such time that the age verification test is performed and reported the irregular immigrant will be under the responsibility of the Principal Immigration Officer;

- the outcome of the age verification test as communicated by the Health authorities to MFSS shall be binding , however any doubt arising from such a test shall be construed in favour of the irregular immigrant; and
- once the competent authorities are satisfied that the unaccompanied irregular immigrant whose minority age had previously been doubtful, is below the age of 18 years, MFSS shall initiate the procedure for the issue of a Care Order.

The procedure outlined above shall also be applied in those cases where, at any point during his/her stay in Malta, an irregular immigrant claims to be an unaccompanied minor.

(b) Issuing and termination of Care Order

Unaccompanied minor irregular immigrants are legally entitled to care and protection by the State against the issue of a Care Order. In view of their vulnerability, unaccompanied minor irregular immigrants shall be covered by a Care Order in the shortest time possible.

In order to ensure that State protection is accorded uniformly and expeditiously, the MFSS shall, where possible, communicate with the unaccompanied minor irregular immigrant in a language that he/she can understand and shall adopt the procedure outlined below:

- following receipt of a referral for the issue of a Care Order, the Assessment Panel appointed by MFSS shall, as soon as possible, meet the unaccompanied minor for the first time;
- the referred minor shall be assigned to a social worker who holds an initial meeting with the minor and collects preliminary information;
- the social worker shall, where necessary, hold a second meeting with the minor to counter-examine his/her original submissions and verify the information compiled in the first meeting;
- a social report about the referred minor shall then be drawn up and forwarded to the Minister for the Family and Social Solidarity for her consideration regarding the issue of a care order; and
- the Secretary to the Children and Young Persons Advisory Board shall notify all the authorities concerned about the issue of a Care Order.

The Foundation for Social Welfare Services shall, through its A;enzija Appo;;, be responsible for the process leading up to the issue of a Care Order. It shall ensure that the entire process from date of referral for the issue of a Care Order to date of presentation of documents to the Minister for the Family and Social Solidarity shall be completed within the shortest time possible.

Upon the issue of a Care Order, the unaccompanied minor irregular immigrant shall be bound by the same terms and conditions applicable in the case of a Maltese child or young person who has similarly been placed under the care and custody of the Minister for the Family and Social Solidarity. The rights and obligations emanating from the Care Order's terms and conditions shall be explained by the social worker to the unaccompanied minor irregular immigrant preferably in a language that he/she can understand.

The Care Order shall be terminated in those instances where:

- it transpires that the unaccompanied irregular immigrant is not actually below the age of 18 years;
- it emerges that in Malta the minor irregular immigrant is not really unaccompanied but has a parent and/or adult who is legally responsible for him/her;
- the unaccompanied minor irregular immigrant attains age 18 years; and
- the unaccompanied minor is adopted.

The Secretary to the Children and Young Persons Advisory Board shall notify all the authorities concerned about the termination of a Care Order.

(c) Placements

Following medical clearance and the issue of a Care Order, MFSS shall provide suitable accommodation for unaccompanied minor irregular immigrants. While the Ministry shall not exclude the eventual possibility of adoption if this is in the best interest of the unaccompanied minor irregular immigrant, it shall primarily consider placement in foster care or in a residential home, hostel or similar institution for the reception of unaccompanied minor irregular immigrants under a Care Order.

The MFSS shall ensure, as far as possible, that:

- siblings under the age of 18 years are placed together;
- in his/her placement, an unaccompanied minor irregular immigrant enjoys the same accommodation and maintenance safeguards and standards as those accorded to Maltese minors who are placed in care under the Children and Young Persons (Care Orders) Act (Chapter 285);
- minors who are legally entitled to work and who are in gainful employment shall contribute towards their upkeep in the residential home at a rate to be determined;

- all data pertaining to unaccompanied minor irregular immigrants is treated with confidentiality and in accordance with the Data Protection Act;
- staff are adequately trained to work with this heterogeneous young service user group;
- all unaccompanied minor irregular immigrants under a Care Order shall continue to be followed by a social worker until such time that they attain adulthood; and
- efforts are made to trace the family of the unaccompanied minor irregular immigrant with a view to place him/her again with kin if this is in the best interest of the child/young person.

Further to the above placement provisions, the MFSS may, in terms of Article 19 (2) of Council Directive 2003/9/EC (The Council of the European Union), also consider placing unaccompanied minors aged 16 years or over in accommodation centres for adult irregular immigrants or in any other accommodation that is suitable for minors.

On their part, unaccompanied minor irregular immigrants are to abide by the rules and regulations of their residential setting. [In this regard, residential homes for unaccompanied minors are to set up house rules that guide residents' behaviour and involve them in the day to day running of their home while at the same time promoting a community spirit among the young residents.](#)

(d) Guardianship

In terms of the Refugee Act, 2000 unaccompanied minor irregular immigrants are to be issued with a Care Order which places them in the care and custody of the Minister for the Family and Social Solidarity. However, further to this legal provision, Legal Notice 253 of 2001 stipulates that the Refugee Commissioner will only address the unaccompanied irregular immigrant's application after the appointment of a guardian. Such a guardian would be required to be present during unaccompanied minor irregular immigrant's interview/s with the Refugee Commissioner.

In view of the legal requirements referred to above, the MFSS shall take the necessary measures to create the mechanisms that regulate the appointment and allocation of a guardian within the shortest time possible so as not to unnecessarily delay the processing of the application for asylum filed by the unaccompanied minor irregular immigrant.

In this regard, the MFSS shall develop the necessary procedures and mechanisms to ensure that an unaccompanied minor irregular immigrant seeking asylum is allocated a guardian within a reasonable time from the issue of a Care Order.

In those instances where an unaccompanied minor asylum seeker is placed at Dar is-Sliem, the Management Committee of the said home shall:

- be entrusted with the identification of competent persons to act as guardians to unaccompanied minor irregular immigrants residing at Dar is-Sliem after the issue of a Care Order in terms of LN 253 of 2001;

- refer all relevant information about such potential guardians to the Children and Young Persons Advisory Board so as to make recommendations to the Minister for her consideration and approval or otherwise; and
- once Ministerial approval has been given, co-ordinate the allocation of guardians.

In those instances where an unaccompanied minor irregular immigrant seeking asylum is not placed at Dar is-Sliem, A;enzija Appo;; shall:

- follow the same procedure as the Management of Dar is-Sliem in terms of the identification and appointment of guardians; and
- be responsible for the identification of foster parents, their assessment and placement arrangements.

(e) Assessment and Monitoring

All unaccompanied minor irregular immigrants who are duly covered by a Care Order shall be regularly assessed and monitored.

In the best interest of the social welfare of unaccompanied minor irregular immigrants

- the Fostering Service within A;enzija Appo;; shall monitor the foster carers of unaccompanied minor irregular immigrants;
- unaccompanied minor irregular immigrants in foster care shall be assessed and monitored by social workers from A;enzija Appo;;
- unaccompanied minor irregular immigrants in residential care at Dar is-Sliem shall fall under the responsibility of the social worker specifically appointed by the Management Committee of the said Home for this service user group; and
- unaccompanied minor irregular immigrants placed in residential homes other than Dar is-Sliem or in foster care shall be catered for by the social workers from A;enzija Appo;;.
- In all placement settings, the social worker shall:
 - a) perform an initial assessment of the service user;
 - b) following the preliminary assessment, call a case conference where together with the unaccompanied minor irregular immigrant and the various professionals involved in the particular case, draw up a report and draft a care plan that focuses upon, but not necessarily be limited to, the unaccompanied minor irregular immigrant's health, education, contacts with family members and social integration;
 - c) forward this report to the Advisory Board for its views and recommendations; and
 - d) regularly monitor the unaccompanied minor irregular immigrant and update his/her care plan accordingly. In any case, the reviewed care plan shall be referred back for consideration by the Advisory Board and the renewed approval of the Minister every six months or earlier if deemed necessary.

The Children's and Young Persons' Advisory Board whose duty is to advise the Minister for the Family and Social Solidarity on the best methods of dealing with every child or young person who is committed to or taken into her care under the Children and Young Persons Care Orders Act, shall

- submit its recommendations in respect of the care plan proposed by the social worker for the consideration and approval or otherwise of the Minister responsible for the Family and Social Solidarity;
- following the Minister's approval, ensure that the respective Agency is duly informed and that the care plan is implemented; and
- regularly review the care plan every six months or more frequently if deemed necessary and every time seek the Minister's approval prior to implementation.

(f) Health

In full recognition of the obligation that no child shall be deprived of his or her right of access to health care and medical assistance³¹, the Ministry for the Family and Social Solidarity shall liaise with the Ministry of Health, Elderly and Community Care to ensure that all unaccompanied minor irregular immigrants:

- are medically screened upon arrival;
- are medically followed up as and when necessary; and
- have access to free medical care, medicines and hospitalisation

Furthermore, in view of the physical condition, health care and emotional needs of unaccompanied minor irregular immigrant pregnant girls, the Ministry for the Family and Social Solidarity shall liaise with the competent authorities so as to develop and implement pre-natal and post-natal classes for such young mothers, possibly in a language that they understand.

(g) Education, training and employment

In view of children's right to education³², unaccompanied minor irregular immigrants shall be given the opportunity to further their skills through formal training programmes so as to be better able to integrate themselves in the labour market and to eventually lead an independent life as responsible adults.

³¹ Convention on the Rights of the Child (1989) Article 24

³² Convention on the Rights of the Child (1989) Article 28

In order to promote the education opportunities and enhance the skills of unaccompanied minor irregular immigrants, the Ministry for the Family and Social Solidarity will:

- in liaison with Education authorities provide educational and vocational information and career guidance;
 - in conjunction with the MEYE try to identify the competencies, career preferences and training needs of minor irregular immigrants;
 - liaise with the education authorities and any interested teaching institutions with a view to identify training opportunities that are suitable for minor irregular immigrants;
 - liaise with the competent authorities with a view to issue the necessary permit to work that enables unaccompanied minor irregular immigrants to perform the practical part of their training programme; and
 - liaise with the teaching institutions so as to monitor the progress of this particular student group.

(h) Social development and integration

Unaccompanied minor irregular immigrants leave their homeland and family in search of a better future. They may either (a) succeed to settle in a third country away from their family, or (b) reunite with family members in a third country, or (c) choose to return to their country of origin and reintegrate in their community.

In order to promote the personal and social development of unaccompanied minor irregular immigrants and facilitate their integration, the Ministry for the Family and Social Solidarity shall liaise with competent authorities so as to:

- encourage unaccompanied minor irregular immigrants to participate in cultural, artistic, recreational and leisure activities. Such involvement should not only help these young people to familiarise themselves with national and European culture and traditions but to facilitate also their integration within the host society;
- develop training programmes that enhance the general life skills of unaccompanied minor irregular immigrants and improve their prospects of finding employment and securing a better future;
- promote the verbal communication skills of unaccompanied minor irregular immigrants through the teaching of the English language since this is widely spoken internationally;
- trace family members living in third countries and, as far as possible, help unaccompanied minor irregular immigrants re-unite with kin;

- assist unaccompanied minor irregular immigrants who wish to return to their homeland with a view to support and as far as possible ensure their safe return;
- address, as far as possible, the individual needs of unaccompanied minor irregular immigrants with a disability; and
- monitor the social involvement of unaccompanied minor irregular immigrants and immediately report any unjustified absence to the competent authorities.

(i) Attaining adulthood

Upon reaching age 18 years, the threshold of adulthood, irregular immigrants who originally arrived in Malta as unaccompanied minors, shall automatically forfeit all the care and protection emanating from a Care Order. Such immigrants will therefore no longer be allowed to remain in the residential facilities for unaccompanied minor irregular immigrants but will have to be transferred either to an open centre or to some other residential facility that caters for adults.

In the case of foster care, once the Care Order is terminated upon the minor's eighteenth birthday, fostering conditions shall no longer apply and the foster family is therefore no longer obliged to support the young irregular immigrant. However, unaccompanied minor irregular immigrants in foster care may, upon reaching age 18 years remain with their foster family provided that such a family is prepared to keep them. If not, such young irregular immigrants will, like their peers, have to be transferred either to an open centre or to some other residential facility that caters for adults.

Acknowledging that the shift from a minors' residential home or from foster care to an adult residential setting along with the new rights and obligations associated with adulthood are all changes that may prove to be traumatic for the young irregular immigrant, the transition from a minors' residence to an adult setting shall be planned and supported by trained workers.

In order to promote a smooth transition to adulthood:

- residential homes for unaccompanied minor irregular immigrants in liaison with competent authorities, shall organise care and training programmes that prepare minors for independent living and/or repatriation. In the case of unaccompanied minor irregular immigrants in foster care, Aġenzija Appoġġ shall be responsible for such a preparation programme;
- six weeks prior to unaccompanied minor irregular immigrant's 18th birthday, the management of the Home where immigrant is residing shall draw up a report about such immigrant for the attention of the entity responsible for the running of the residence to where such an irregular immigrant is to be transferred upon reaching adulthood. In the case of unaccompanied minor irregular immigrants who are in foster care but will not be staying with foster carers after the age of 18 years, such a report will be drawn up by Aġenzija Appoġġ.

In order to minimise disruption in the lifestyle of the young irregular immigrant, this report shall include

- (a) a brief history of the immigrant's behaviour, activities, interests and achievements throughout the duration of his/her stay in residential care; and

(b) make recommendations that safeguard and promote the social welfare of the irregular immigrant as he/she assumes the rights and obligations of an adult; and

- the Secretary to the Children's and Young Persons' Advisory Board shall notify the Commissioner for Refugees and all other competent authorities once an unaccompanied minor irregular immigrant reaches age 18 years.

❖ **Conclusion**

The aim of this policy is to protect unaccompanied minor irregular immigrants and to promote their social welfare with a view to enhance their future prospects for a better life as adults. This policy therefore complements the Maltese Government's main policy on Irregular immigrants, Refugees and Integration. In providing fair, equitable and comprehensive social welfare coverage to all deserving irregular immigrants irrespective of age, gender, race, religion and culture, these policies reflect a commitment of respect for human values.

The Ministry for the Family and Social Solidarity acknowledges the possibility that changing circumstances may necessitate amendments to this policy. In this regard any recommendations are to be forwarded to the said Ministry for consideration. Any necessary amendments to this policy require the approval of the Ministry for the Family and Social Solidarity.

ANNEX 2

COMMENTS OF THE OMBUDSMAN

I have been requested to comment on the follow-up report of the Council of Europe regarding the implementation of the recommendations of the Commissioner for Human Rights (2003-2005). My Office has in the past been instrumented in focusing attention on the plight of illegal immigrants in Malta. My predecessor conducted an own motion investigation to ensure that these persons were treated compassionately and their dignity was respected. In 2002, the number of detained immigrants was a few hundreds; today they exceed 1,200. In 2004, my predecessor also reported on the condition of irregular immigrants held in detention in Mount Carmel Hospital. The findings and recommendations of my predecessor are still substantially valid today. Progress has been made also through the implementation of most of his recommendations to which reference is made.

The follow-up report which makes an assessment of progress registered is divided into chapters dealing with specific aspects of the problem. Each chapter is divided into two separate sections; a factual part relating the facts as they resulted to the investigating team followed by their conclusions.

1. I shall first make some comments of a general nature. Coming from the Office of the Commissioner for Human Rights of the Council of Europe, the report's main trust is clearly on the Commissioner's concern for the observance of human rights of irregular migrants and asylum seekers in Malta. It provides extensive coverage of the rights of irregular migrants and asylum seekers and of the obligations and responsibilities of the Maltese government towards them together with observations on the areas where slippage has been noted. The report makes little or no reference to the particular circumstances of the Maltese situation such as the paucity of the human, financial and physical resources that the government can allocate to ease this problem; the country's small size and its inability to withstand a large influx of migrants and asylum seekers; the social tensions that complete freedom of these people in a small country may be expected to give rise to and the extent of response by foreign governments to Malta's request for assistance.

2. The factual observations in the report are substantially correct. It should however be stressed that, in the years under review, the problem of the influx of asylum seekers and foreigners in an irregular situation reaching Malta's shores has escalated and has reached proportions that could not have been foreseen five years ago. Indications are that the situation which has already reached crisis point will continue to worsen. There is little hope that the problem will be solved or indeed cushioned by initiatives at the points of departure of these irregular immigrants. Solutions have therefore mostly to be found at the receiving end through initiatives taken by Malta in collaboration with the international community particularly the European Union. Hopefully there is a growing awareness that Malta and other receiving countries should not alone bear the brunt of this humanitarian problem. That burden should be shouldered also by other EU countries in proportion to their larger territorial size and greater economic prosperity.

3. The follow-up report makes an objective assessment of progress made in Malta. It also highlights deficiencies in the implementation of the recommendations of the Commissioner for Human Rights. On the other hand, considering the strong diplomatic initiative taken by Malta and other receiving countries to convince the EU to participate in a solution of the crisis, one would have expected the follow-up report to underline the imperative need for a new strategic plan that puts into practice the solidarity principle. This should be translated into concrete and effective measures not only to ensure the full observance of fundamental human rights within EU boundaries but also to contribute to a permanent solution by providing resettlement opportunities for those irregular immigrants who are so entitled.

4. One understands that the follow-up report had to be limited to an assessment of the progress made by Malta in the implementation of the recommendations of the Commissioner for Human Rights. It is clear that the investigating team stuck strictly to those terms of remit. In doing so however, it would have been, in my opinion, opportune for the *rapporteurs* to stress the limitations Malta had to handle alone a humanitarian crisis of such mammoth proportions. The European Union should finally recognise that frontier member States, especially if small and indefensible should not be left to face this problem alone. In such exceptional circumstances, it was the duty of the Union to positively contribute towards the observance of fundamental human rights for which it should also shoulder its share of responsibility.

5. These comments are in a no way meant to exonerate the Maltese government from its grave responsibility to ensure the full observance of fundamental human rights in the treatment of the asylum seekers and irregular immigrants. The follow-up report rightly notes that substantial progress was made in the implementation of the recommendations of the Commissioner for Human Rights but that much still has to be done to achieve acceptable standards. The follow-up report however seems to ignore the fact that with the removal of most of the reservations to the 1951 Convention and with the enactment of the Refugee Act of the year 2000, Malta has progressed from a policy solely based on compassion towards irregular immigrants to one based on the rule of law. A policy that rightly clearly distinguishes between an irregular immigrant who has no right to seek asylum in the country and another who has the right to ask and obtain refugee status.

6. The rule of law not only gives rights but also imposes duties both on the irregular immigrants and also on the State. The rule of law means that the State is bound to respect, in fact and in practice, the fundamental human rights of each individual within the territory. First and foremost the right to freedom from degrading and inhuman treatment. This means that the State, whatever the reason that made it accept these irregular immigrants, has to treat them first and foremost as human beings. Fundamental rights are neither approximate nor relative. Their violation can neither be excused nor justified.

7. This is the Government's declared policy and the follow-up report seeks to ensure that this policy is put in practice in the context of the implementation of rights and not out of compassion. This means that an irregular immigrant who feels that his fundamental rights are being violated has every right to protest against such violation with all legal means at his disposal. On the other hand, an irregular immigrant must realise that while in Malta he has to

observe the laws of Malta. Until he is given, from the competent authorities, the status of a person seeking asylum, he has no right except that of being treated as a human being and in conditions that respect his fundamental rights. Who abuses from the hospitality accorded to him and violates the laws of the country has to answer for his actions.

8. These basic distinctions are not very evident in the follow-up report and might constitute a point of divergence on substance. It should be accepted that no person has the right to enter another country of which he is not a citizen by irregular means and without proper identification. As a rule this is considered to be a criminal offence, punishable at law and sanctioned by forced repatriation to the country of origin.

9. Irregular migrants, irrespective of the way in which they travel to Malta, can only expect preferential treatment if it can be proved that they qualify for protection as *buona fide* asylum seekers. The problem has been magnified beyond proportions by the sheer numbers of migrants attempting to reach European shores, their desperate condition and rudimentary means of transport that often leads to tragedy. This crisis situation necessitated the contested detention policy on which the major political parties concur.

10. The report reiterates the principle that “*detention of asylum seekers should be warranted only in special circumstances and last as short as possible*”. In the Maltese scenario it is inconceivable to abandon the policy of detention completely. The state has the duty to determine not only the identity of the refugee but also whether he could usefully be integrated in Maltese society even if temporarily. It is well known that migrants often destroy their identity documents making it very difficult for the authorities to determine their identity and their country of origin. It is true that the state has the duty to limit as much as possible the time of detention. It has also to explore alternative means of control of movements of irregular immigrants whose status has not as yet been determined by the Commissioner.

11. Detention for reasonable time, if under acceptable conditions, is also in the interest of the irregular immigrant. He will clearly find himself in a very difficult situation that could lead to further tragedy if he was given freedom of movement on his arrival in Malta, without means of subsistence or a roof above his head, in a country which was totally alien, if not hostile, to him. One important point needs to be stressed. This is that practically the totality of all irregular migrants arriving to Malta never intended to come here. They do not wish to remain in Malta and their only ambition is to reach the European mainland. They in fact feel thwarted by destiny because they were rescued by Maltese servicemen rather than by Italian ones.

12. This clearly means that as soon as they are freed from detention most of them will be doing their utmost to find ways and means of reaching Italian shores. They were more likely to turn for help to unscrupulous criminal organisations that it is now proved operate in this field. Rather than insisting on the discontinuance of the detention policy, emphasis should be made on the need to ensure and guarantee adequate conditions of detention in all centres.

13. The conclusion of the follow-up report that there are instances where detainees are being kept in conditions that could be qualified as inhuman and degrading is very disturbing. Those conditions do not refer to the time of detention but rather to the facilities and material comfort available. Remedial action is called for. It is clear from the report that much has been done by the Government to improve the situation but what has been done is not enough.

One has to realise that Malta has been overcome by the magnitude of the problem. It cannot cope alone since it lacks the economic and human resources necessary for effective solutions. She needs help from the international community especially her European partners. There is need for greater investment in specialised personnel able to communicate easily with irregular immigrants and to evaluate their needs and solve immediate problems. This investment would eventually lead to a reduction in security costs.

14. The real problem remains that of identifying who were those irregular immigrants who were entitled to the status of asylum seekers. I cannot but be in agreement with the emphasis made in the follow up report on the need to speed up the process of defining status, to ensure a fair hearing, and on the need of a proper appreciation of appeal tribunals that they are determining the rights of irregular migrants to seek asylum and that, therefore, the administrative decisions should be fairly and justly scrutinised.

15. The conclusions in the various sections of the follow up report are generally appreciative of the efforts made by the Maltese authorities to improve the situation, both in the treatment of irregular immigrants within the detention centre and on their release. The report remains critical of serious shortcomings even though it accepts that the Government was doing its best in the circumstances. Undoubtedly much has to be done to reach acceptable standards. Undoubtedly too Malta cannot do it alone. Fortunately there seems to be a growing awareness that this is a European problem and that the burden should be shared equally by all member states in the union and not only by those who are exposed to the immigration phenomenon. Hopefully, too, this awareness will be translated into practical solutions backed by economic and other aid.

16. I shall make one last point on the section in the report dealing with the functioning of the justice system. I am in full agreement with the conclusion that any action undertaken to improve the effectiveness and speed of Maltese justice should not be at the expense of the protection of the individual's rights, in particular basic rights. There is some cause for concern that the attempts to simplify civil procedure could be done at the expense of undermining the basic Constitutional principle that the determination of civil rights and obligations should be done by an impartial and independent tribunal. Referring civil disputes to compulsory arbitration - a misnomer in itself - might not exactly fit in with this constitutional right. Similarly Small Claims and other tribunals, over by practicing lawyers, might be considered not too completely satisfy the requisites of independence unless it was possible to appeal from their decisions, also on the merits, before a higher tribunal.

17. I am personally of the opinion that a solution is not to be found in the recruiting of more Judges and Magistrates. I believe greater care should be taken in their selection. Practical training preparing them for their role should also be considered. The point made in the report on the pensions of Judges and Magistrates as a possible way to jeopardise their independence merits attention. Judicial pensions are today at a completely unacceptable level. They barely amount to one fourth of salaries and allowances. I have no proof that this situation, clearly in violation of the European Judges Charter has actually jeopardised the independence of the Judiciary. Clearly however the potential threat exists. This situation should be remedied, if anything, because it is a serious deterrent to attract the right, competent persons to fill vacant posts of Judges and Magistrates.