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Advisory Committee on the Framework Convention for the Protection of National Minorities

Opinion on Malta,
adopted on 30 November 2000

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EXECUTIVE SUMMARY

Following the receipt of the initial Report of Malta on 27 July 1999 (due 1 June 1999), the Advisory Committee commenced the examination of the Report at its 6th meeting on 22 - 24 November 1999. The Advisory Committee subsequently adopted its opinion on Malta at its 9th meeting on 30 November 2000.

Given the limited information provided by the Government and obtained from other sources, the Advisory Committee is not in a position to assess the statement of the Maltese authorities, according to which there are no national minorities in the sense of the Framework Convention for the Protection of National Minorities (hereinafter: the Framework Convention) in the territory of Malta. The Advisory Committee is aware that the potential for application of a number of provisions of the Framework Convention is rather limited.

The Advisory Committee is of the opinion that specific conclusions and recommendations by the Committee of Ministers could help to improve further the implementation of the Framework Convention in Malta, and the Advisory Committee, therefore, submits draft conclusions and recommendations for consideration by the Committee of Ministers. The Advisory Committee stands ready to be involved in the monitoring of the follow-up to the conclusions and recommendations adopted by the Committee of Ministers in accordance with Rule 36 of the Committee of Ministers' Resolution (97) 10.

I. PREPARATION OF THE PRESENT OPINION

1. The initial Report of Malta, due 1 June 1999 (hereinafter: the Report) was received on 27 July 1999. The Advisory Committee commenced the examination of the Report at its 6th meeting on 22-24 November 1999.

2. In the course of its examination of the Report, the Advisory Committee identified a number of points on which it required further information. A questionnaire was therefore sent to the Maltese authorities on 10 December 1999. The Government's response to this questionnaire was received on 23 May 2000. When preparing the present opinion, the Advisory Committee also consulted a range of written materials from various Council of Europe bodies, other international organisations as well as from NGOs and other independent sources.

3. The Advisory Committee subsequently adopted the present opinion at its 9th meeting on 30 November 2000 and decided to transmit this opinion to the Committee of Ministers.

4. The present opinion is submitted pursuant to Article 26(1) of the Framework Convention, according to which, in evaluating the adequacy of the measures taken by the Parties to give effect to the principles of the Framework Convention, “the Committee shall be assisted by an advisory committee”, as well as pursuant to Rule 23 of Resolution (97)10 of the Committee of Ministers, according to which the “Advisory Committee shall consider the state reports and shall transmit its opinion to the Committee of Ministers”.

II. GENERAL REMARKS ON THE REPORT

5. The Advisory Committee welcomes the effort made by the Maltese authorities to present the information on an article-by-article basis. The Advisory Committee takes note of both the reservation and the declaration contained in the instrument of ratification deposited by the Maltese authorities. According to the declaration, Malta considers that no national minorities in the sense of the Framework Convention exist in its territory. The Advisory Committee returns to the matter of the personal scope of application of the Framework Convention under Article 3 below.

6. The Advisory Committee welcomes the fact that Malta, as is expressed both in the declaration and in the Report, has joined the Framework Convention in an act of solidarity in view of the objectives of this legal instrument.

7. The Advisory Committee notes that in its above-mentioned questionnaire, it requested additional information on the existence of any linguistic or ethnic groups which the Government does not consider at this stage to be a national minority and that the Maltese authorities provided no information on this issue in their written reply. The Advisory Committee also requested further information on the religious composition of the population, including the legal and factual position of religious groups other than the dominant one. The reply only deals with the legal position of those groups, but not with the factual one.

8. In the following part of the opinion it is stated in respect of a number of articles that, on the basis of the information currently at its disposal, the Advisory Committee considers that implementation of the article at issue does not give rise to any specific observations. The Advisory Committee wishes to make clear that this statement should not be understood as signalling that adequate measures have now been taken and that efforts in this respect may be diminished or even halted. Indeed, the Advisory Committee considers that the nature of the obligations of the Framework Convention requires a sustained and continued effort by the authorities to respect the principles and achieve the goals of the Framework Convention. Furthermore, a certain state of affairs may, in the light of the recent entry into force of the Framework Convention, be considered acceptable at this stage but that need not necessarily be so in further cycles of monitoring. Finally, it may be the case that issues that appear at this stage to be of relatively minor concern, prove over time to have been underestimated.

III. SPECIFIC COMMENTS IN RESPECT OF ARTICLES 1 - 19

Articles 1 - 2

9. Based on the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

Article 3

10. The Advisory Committee stresses that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Maltese Government is therefore deemed to be the outcome of this examination.

11. Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this margin of appreciation must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

12. For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made.

13. As mentioned above, neither the Report nor the written reply provided by the Maltese authorities were comprehensive. Therefore the Advisory Committee expresses the hope that the Maltese authorities will provide specific figures on the composition of the population, including non-citizens, as is foreseen in the outline for state reports adopted by the Committee of Ministers on 30 September 1998. It is also hoped that information will be provided on the factual situation of religious groups and on the legal as well as factual position of such groups as foreigners residing in Malta.

14. In the absence of such information and given the limited information obtained from other sources, the Advisory Committee is not in a position to assess the statement of the Maltese authorities, according to which there are no national minorities in the sense of the Framework Convention in the territory of Malta. The Advisory Committee is of the opinion that, concerning persons belonging to an ethnic, linguistic or religious group other than the dominant one, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It is of the opinion that the Maltese authorities should consider this issue in consultation with the persons concerned.

Articles 4 - 5

15. Based on the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

Article 6

16. Notwithstanding the fact that the population of Malta presents a relatively homogeneous nature, the Advisory Committee notes that this country has experienced the phenomenon of immigration in recent years, notably through the arrival of migrant workers and refugees. The Advisory Committee thus attaches importance for the authorities to promote a spirit of tolerance and mutual respect between all persons living on the territory of Malta.

17. While acknowledging the fact that discrimination does not seem to be a widespread phenomenon in Malta, the Advisory Committee is nevertheless concerned about the fact that some cases of discrimination have been recently reported, *inter alia*, in the renting of accommodation and in the access to certain places of entertainment. Attention to these cases has already been drawn at the international level, notably by the European Commission against Racism and Intolerance (ECRI)¹ and the European Union (EU)². Similar cases have also been mentioned in the 14th periodic report of Malta submitted under the International Convention on the Elimination of all Forms of Racial Discrimination³. The Advisory Committee welcomes the effort recently made by the Government to address the issue of discrimination. In the opinion of the Advisory Committee, the Maltese authorities should carefully investigate those alleged cases of discrimination and continue its efforts to prevent them from happening in the future.

Articles 7 - 19

18. Based on the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

IV. CONCLUDING REMARKS

19. Given the limited information provided by the Maltese authorities and obtained from other sources, the Advisory Committee is not in a position to assess the statement of the Maltese authorities, according to which there are no national minorities in the sense of the Framework Convention in the territory of Malta. The Advisory Committee is aware that the potential for application of a number of provisions of the Framework Convention is rather limited.

20. The Advisory Committee is of the opinion that specific conclusions and recommendations by the Committee of Ministers could help to improve further the implementation of the Framework Convention in Malta and the Advisory Committee therefore submits draft conclusions and recommendations for consideration by the Committee of Ministers. The Advisory Committee stands ready to be involved in the monitoring of the follow-up to the conclusions and recommendations adopted by the Committee of Ministers in accordance with Rule 36 of the Committee of Ministers' Resolution (97) 10.

¹ ECRI's country-by-country approach: Report on Malta (First Round)

² Regular Report from the Commission on Progress towards Accession, October 1999

³ United Nations Committee on the Elimination of Racial Discrimination (CERD), 14th periodic Report, 11 February 1999 (CERD/C/337/Add.3.), ad § 74

V. PROPOSAL FOR CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE OF MINISTERS

With a view to the foregoing, the Advisory Committee is of the opinion that the Committee of Ministers should consider the adoption of the following draft conclusions and recommendations with respect to Malta:

The Committee of Ministers,

Having regard to the Framework Convention for the Protection of National Minorities and the first report submitted by Malta, on 27 July 1999, on the implementation of the Framework Convention;

On the basis of the opinion adopted by the Advisory Committee on 30 November 2000;

Welcomes the support given by Malta to the Framework Convention for the Protection of National Minorities;

Invites Malta to inform the Advisory Committee, within one year from the adoption of the present decision, how it has followed up the conclusions and recommendations as follows:

In respect of Article 3

The Committee of Ministers *concludes* that, concerning persons belonging to an ethnic, linguistic or religious group other than the dominant one, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It *recommends* that the Maltese authorities consider this issue in consultation with the persons concerned and provide specific figures on the composition of the population, including non-citizens. It *recommends* that the Maltese authorities provide information on the factual situation of religious groups and on the legal as well as factual position of such groups as foreigners residing in Malta.

In respect of Article 6

The Committee of Ministers *concludes* that there is reason for concern about discrimination, *inter alia*, in the renting of accommodation and in the access to certain places of entertainment. It therefore *recommends* that the Maltese authorities carefully investigate those alleged cases of discrimination and continue its efforts to prevent them from happening in the future.