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ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Third Opinion on Malta adopted on 11 October 2012

EXECUTIVE SUMMARY

In recent years Malta has adopted important legal measures to reinforce protection against discrimination and racism, and initiatives have been taken to improve the integration of asylum-seekers and refugees.

Nevertheless, there are reports of cases of discrimination and manifestation of xenophobia against persons of different ethnic backgrounds who are encountering difficulties in a number of sectors, such as employment, housing, and healthcare. In addition, reports indicate an increase in discriminatory attitudes, sometimes fuelled by media and political debates.

The Advisory Committee recommends to continue to assign high priority to combating intolerance and discrimination in all their forms and ensuring the respect of human rights of all those under the jurisdiction of Malta; to pursue efforts to guarantee the full respect of human rights of third country nationals and to facilitate their integration; to adopt resolute measures to improve society's attitudes towards such persons through a commitment to a robust and long term information strategy.

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**ADVISORY COMMITTEE OF THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES**

THIRD OPINION ON MALTA

1. The Advisory Committee adopted the present Opinion on 11 October 2012 in accordance with Article 26 (1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on information contained in the statement made by the Maltese Ambassador on 19 January 2012 to the Rapporteur Group on Human Rights (GR-H) and other written sources consulted by the Advisory Committee. On the basis of the available information, the Advisory Committee concluded that the preparation of this Opinion did not necessitate a visit to Malta.
2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Malta. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.
3. Both sections make reference to the follow-up given to the findings of the monitoring of the Framework Convention, contained in the Advisory Committee's first and second Opinions on Malta, adopted on 30 November 2000 and 22 November 2005 respectively, and in the Committee of Ministers' corresponding Resolutions, adopted on 27 November 2001 and 31 January 2007.
4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Malta.
5. In order to promote an inclusive and transparent process involving all the relevant actors, the Advisory Committee strongly urges the authorities to make the present Opinion public upon its receipt. It would also like to bring to the attention of States Parties that on 16 April 2009, the Committee of Ministers adopted new rules for the publication of the Advisory Committee's opinion and other monitoring documents, aiming at increasing transparency and at sharing the information on the monitoring findings and conclusions with all the parties involved at an early stage (see Resolution CM/Res (2009) 3 amending Resolution (97) 10 on the monitoring arrangements under Articles 24-26 of the Framework Convention for the protection of National Minorities).

I. MAIN FINDINGS

Monitoring procedure

6. On 19 January 2012, the Ambassador of Malta to the Council of Europe informed the Rapporteur Group on Human Rights (GR-H) that “no changes have occurred since 1998 when Malta ratified the Convention” and stated, “no national minorities in the sense of the Framework Convention exist in the territory of the Government of Malta”. The Advisory Committee notes that the Rapporteur Group on Human Rights (GR-H) decided to recognise this statement as constituting a state report and that the third monitoring cycle could proceed accordingly.¹

7. The Advisory Committee takes note of and regrets that it has not been provided by the State Party with updated information on the measures taken to implement the recommendations set out in its previous opinion, thus preventing the Committee to make a comprehensive assessment of the situation in Malta. In the absence of a full state report, the Advisory Committee has consulted a number of other sources.

8. The Advisory Committee recalls that Malta endorsed the aims of the Framework Convention by ratifying it in 1998, while refraining from considering foreigners living in Malta as persons belonging to national minorities. The Advisory Committee regrets that the authorities have abandoned the constructive approach which they had adopted during the two previous cycles of monitoring. The Advisory Committee recalls that the authorities have earlier provided information, particularly in a detailed second State Report, on the measures taken to improve the integration of asylum-seekers and refugees.² The Advisory Committee therefore hopes to be able to resume soon its dialogue with the Maltese authorities.

9. The Advisory Committee stresses the relevance of Article 6 on account of the growing cultural diversity in Maltese society as a result of immigration. It recalls that this article, which applies to all persons living in Malta irrespective of their ethnic, cultural, linguistic or religious identity, invites Contracting Parties to encourage the spirit of tolerance and non-discrimination and to take effective measures to promote mutual respect for all persons living on its territory.

Tolerance and antidiscrimination

10. The Advisory Committee notes that the authorities are paying particular attention to preventing discrimination and combating prejudice and racism, and have introduced antidiscrimination legislation. The Advisory Committee is aware of the rapid changes that have taken place in the composition of the population of Malta due to immigration³ and requests for asylum as well as the challenges that these changes have meant for the enjoyment of human rights.⁴ The Advisory Committee takes note of recent initiatives such as the new project “I’m Not Racist, But...” and the National Report on Strategies for Social Protection and Inclusion,

¹ Statement made by the Ambassador of Malta to the Council of Europe at the Rapporteur Group on Human Rights (GR-H) during its meeting on 19 January 2012.

² Malta presented a first State Report on 27 July 1999 and a second one on 3 November 2006.

³ For example, according to the report of the Commissioner for Human Rights of the Council of Europe following his visit to Malta in June 2011, from 1998 until the end of March 2011, approximately 13 500 people arrived in Malta from Northern Africa.

⁴ ECHR, *Louled Massoud v. Malta*, judgement of 27/07/2010 concerning the unlawful detention of an immigrant for more than 18 months.

which involves a major effort to improve living conditions and integration prospects for third country nationals.

11. Despite these developments and a general climate of tolerance in the Maltese society, prejudices and racist attitudes to migrants have been reported. The Advisory Committee understands from various sources that persons from different ethnic, linguistic and religious backgrounds still encounter difficulties in a number of sectors, such as employment, housing, healthcare. Moreover, there are continued reports of hostile attitudes to such persons.

II. ARTICLE-BY-ARTICLE FINDINGS

Article 3 of the Framework Convention

Application of the Framework Convention

Recommendations from the two previous cycles of monitoring

12. During the previous cycles of monitoring, the Advisory Committee invited the authorities to consider the possibility of applying the Framework Convention, in the light of its objectives, on an article-by-article basis and in consultation with those concerned, to individuals who do not share the language, religion or culture of the general population.

Present situation

13. The Advisory Committee takes note of the fact that the authorities' position on the scope of the Framework Convention has not changed since the first monitoring cycle. According to the declaration submitted by Malta when ratifying the Framework Convention, there are no national minorities within the meaning of the Framework Convention in the territory of Malta.⁵

14. Given that no full state report has been received and that there was no visit to Malta, the Advisory Committee has no knowledge of any groups of persons having expressed the wish to be recognised as national minorities in the sense of the Framework Convention. Nonetheless, it encourages the authorities to adopt a dialogue-based approach in their relations with persons and groups who might in the future be interested in the protection provided by the Framework Convention.

Recommendation

15. The Advisory Committee encourages the authorities to adopt a dialogue-based approach in their relations with persons and groups who might in the future be interested in the protection provided by the Framework Convention.

Article 6 of the Framework Convention

Tolerance and protection against discrimination

Recommendations from the two previous cycles of monitoring

16. During the previous cycles of monitoring, the Advisory Committee invited the authorities to extend the legal and institutional framework to combat racial discrimination in order to provide both citizens and non-citizens with protection against any discriminatory treatment by the public authorities or private bodies, covering all fields.

⁵ Declaration recorded in the instrument of ratification submitted on 10 February 1998: "The Government of Malta declares that Articles 24 and 25, in particular, of the Framework Convention for the Protection of National Minorities of 1 February 1995 are to be understood having regard to the fact that no national minorities in the sense of the Framework Convention exist in the territory of the Government of Malta. The Government of Malta considers its ratification of the Framework Convention as an act of solidarity in the view of the objectives of the Convention".

17. The authorities were also invited to continue their efforts to alert the public to the importance of tolerance and dialogue, and also to improve the integration of refugees and asylum-seekers, inter alia by providing the Agency for the Organisation for the Integration and Welfare of Asylum Seekers (OIWAS) and other relevant entities with adequate resources to ensure they are able to meet the welfare needs of asylum-seekers and refugees.

Present situation

18. The Advisory Committee welcomes the fact that the Equal Treatment of Persons Order of 2007 covers the fields of employment, social welfare, health, education, housing, access to property and services and applies to the public and private sectors.⁶ It also notes that the National Commission for the Promotion of Equality (NCPE), set up in 2004, plays an important role in this field by investigating the cases of discrimination submitted to it and by raising public awareness about relevant legislation by means of brochures, surveys, information campaigns etc.⁷ In this context, the Advisory Committee notes that different initiatives have been taken, such as the new project “*I’m Not Racist, but...*” launched in May 2012 by NCPE. This project aims at combating and raising awareness on racial discrimination and involves training for African migrants in reporting discrimination. An anti-racism theme day is planned, in order to promote a multicultural atmosphere in favour of diversity.⁸

19. The Office of the Ombudsman continued to investigate the cases of all persons who felt that they had been treated in a discriminatory manner by a public authority.⁹ Furthermore, the Advisory Committee welcomes that, following the 2009 amendments to the Penal Code, the racist nature of an offence is now an aggravating circumstance and a harsher penalty shall be imposed where a public official has perpetrated the offence.

20. The Advisory Committee acknowledges that the authorities have faced a particularly high level of migration flows. According to several sources, the authorities have taken various initiatives to promote tolerance and facilitate integration of third country nationals.¹⁰ For instance, specific measures for the integration of third country nationals were adopted under the 2008-2010 National Report on Strategies for Social Protection and Inclusion, such as language courses and vocational training programmes. The authorities have undertaken to set up a consultative body for refugees, responsible for helping them with access to the labour market. Measures have also been taken to step up the resources of the Organisation for the Integration and Welfare of Asylum Seekers (OIWAS), now known as the Agency for the Welfare of Asylum Seekers (AWAS).¹¹

⁶ www.gov.mt; Rap/Rcha/Ma/II/2009, add Gvt of Malta, reply re. Rev.Eur.Soc.Charter, 29 June 2009

⁷ www.equality.gov.mt.

⁸ Press Release of NCPE, A new project “*I’m Not Racist, but...*” 4 May 2012,

⁹ www.ombudsman.org, Annual report 2010

¹⁰ UN Human Rights Council, National report submitted by Malta and Report of the Working Group on the Universal Periodical Examination, Malta, 2009.

¹¹ Malta, National Report on Strategies for Social Protection and Social Inclusion, 2008-2010, see in particular the Chapter on “promoting the integration of third country nationals”.

21. Despite these developments, the Advisory Committee refers to a number of concurring sources¹² indicating that asylum-seekers and refugees are discriminated against and treated unfairly in terms of access to employment, housing and healthcare.¹³ The Advisory Committee has also been informed of attitudes of intolerance against persons of different ethnic backgrounds and religions. In addition, reports indicate an increase in discriminatory attitudes, sometimes fuelled by media and by political debates. In this context, the Advisory Committee considers of particular importance that the authorities contribute to the public debate on immigration in a manner that fully reflects the importance of human rights and human dignity.¹⁴ However, according to a recent survey by the United Nations High Commissioner for Refugees (UNHCR) on public perception about refugees and migrants, a 54% majority of interviewees said that they did not consider migration to be a threat, and 78% considered that Malta should provide refugees and migrants with support programmes.¹⁵

Recommendations

22. The Advisory Committee calls on the authorities to continue to assign high priority to combating intolerance and discrimination in all their forms and ensuring the respect of human rights of all those under the jurisdiction of Malta.

23. The Advisory Committee encourages the authorities to continue all their efforts to guarantee the full respect of human rights of third country nationals and to facilitate their integration; to adopt resolute measures to improve society's attitudes towards such persons through a commitment to a robust and long term information strategy.

¹² CERD : Final Observations of the Committee on the Elimination of Racial Discrimination, Malta, September 2011; ENAR: Racism and related discriminatory practices in Malta, 2011.

¹³ EU-MIDIS, EU inquiry into minorities and discrimination: in 2009, 66% of persons from sub-Saharan Africa stated that they had suffered discrimination in the 12 months preceding the survey. This trend is confirmed by the 2010 inquiry.

¹⁴ Commissioner for Human Rights of the Council of Europe: Report following his visit to Malta in June 2011; Council of Europe Parliamentary Assembly, Press release PACE 129 (2012); UN Human Rights Council, Report of the Working Group on the Universal Periodical Examination, Malta, June 2009; ENAR: Racism and related discriminatory practices in Malta, 2011.

¹⁵ UNHCR: A Report on public perception about refugees and migrants in Malta, 2012.

III. CONCLUSIONS

24. The Advisory Committee considers that the present concluding remarks could serve as the basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to Malta.

Positive developments following two cycles of monitoring

25. The authorities have continued their activities to promote awareness of the need for a tolerant society and have also taken measures to facilitate integration of refugees and asylum-seekers. Regarding protection against discrimination, commendable measures have been adopted to improve the legislative framework for combating discrimination.

Issues of concern following two cycles of monitoring

26. Asylum-seekers and refugees are discriminated against and unfairly treated in terms of access to social rights.

27. There are continuing reports of racist attitudes and acts of intolerance against persons from different ethnic backgrounds.

Recommendations

28. In addition to the measures to be taken to implement the detailed recommendations as set out in Sections I and II of the Advisory Committee's Opinion, the authorities are invited to take the following measures to improve further the application of the Framework Convention:

- **Continue to assign high priority to combating intolerance and discrimination in all their forms and ensuring the respect of human rights of all those under the jurisdiction of Malta.**
- **Pursue efforts to guarantee the full respect of human rights of third country nationals and to facilitate their integration; adopt resolute measures to improve society's attitudes towards such persons through a commitment to a robust and long term information strategy.**