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ECRI REPORT ON MALTA

(fifth monitoring cycle)

Adopted on 21 March 2018

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TABLE OF CONTENTS

FOREWORD	7
SUMMARY	9
FINDINGS AND RECOMMENDATIONS	11
I. COMMON TOPICS	11
1. LEGISLATION AGAINST RACISM AND RACIAL DISCRIMINATION	11
- PROTOCOL NO. 12 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS.....	11
- EXISTENCE OF CRIMINAL, CIVIL AND ADMINISTRATIVE LAW PROVISIONS AS PER GENERAL POLICY RECOMMENDATION (GPR) No. 7	11
- <i>CRIMINAL LAW</i>	11
- <i>CIVIL AND ADMINISTRATIVE LAW</i>	12
- <i>NATIONAL SPECIALISED BODIES</i>	14
2. HATE SPEECH	14
- DATA	14
- HATE SPEECH IN PUBLIC DISCOURSE	15
- HATE SPEECH IN TRADITIONAL MEDIA AND ON THE INTERNET	16
- RESPONSE OF THE AUTHORITIES	16
3. RACIST AND HOMO/TRANSPHOBIC VIOLENCE	18
- DATA	18
- RESPONSE OF THE AUTHORITIES	19
4. INTEGRATION POLICIES	20
- IMMIGRANTS	20
- REFUGEES.....	23
II. TOPICS SPECIFIC TO MALTA	25
1. INTERIM FOLLOW-UP RECOMMENDATIONS OF THE FOURTH CYCLE	25
2. EFFECTIVENESS OF THE NATIONAL COMMISSION FOR THE PROMOTION OF EQUALITY (NCPE).....	26
3. WITHDRAWAL OF TEMPORARY HUMANITARIAN PROTECTION - NEW (THPN) .	26
4. POLICIES TO COMBAT DISCRIMINATION AND INTOLERANCE VIS-A-VIS LGBT ...	27
- LEGISLATIVE ISSUES	27
- PROMOTING TOLERANCE AND COMBATING DISCRIMINATION.....	28
INTERIM FOLLOW-UP RECOMMENDATIONS	31
LIST OF RECOMMENDATIONS	33
BIBLIOGRAPHY	35

FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States of the Council of Europe regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 6 December 2017; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since the adoption of ECRI's fourth report on Malta on 20 June 2013, progress has been made in a number of fields.

Malta ratified Protocol No. 12 to the European Convention on Human Rights in December 2015. The National Commission for the Promotion of Equality is almost fully in line with ECRI's General Policy Recommendations No. 2 and No. 7.

The authorities signed an agreement with the OSCE-ODIHR to implement the Training against Hate Crimes for Law Enforcement (TAHCLE) programme, designed to improve police skills in recognising, understanding and investigating hate crimes.

Courses have been developed to teach Maltese and English to the increasing numbers of immigrant pupils in schools. The Ministry for Education offers language support in the form of a one-year intervention programme.

Efforts have been made over several years to develop a National Migrant Integration Strategy. The strategy has been approved by the Cabinet of Ministers for the years 2017-2020 and an accompanying Action Plan is being finalised.

There have been impressive advances in equality for LGBT persons in Malta. Same sex marriage was legalised in July 2017. The Gender Identity, Gender Expression and Sex Characteristics Act of April 2015 provides a simple and accessible process for legal gender recognition, based on the principles of self-determination and bodily integrity. The Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act of December 2016 criminalised deceptive and harmful conversion practices.

An LGBTIQ Consultative Council was set up in 2013 to advise the Government on issues impacting on this community and to advance their rights. The LGBTIQ Action Plan 2015-2017 was a commitment to further action in a wide range of fields, including education and combating hate crime.

In December 2014, the policy Addressing Bullying Behaviour in Schools was launched, covering also homophobic and transphobic bullying.

ECRI welcomes these positive developments in Malta. However, despite the progress achieved, some issues give rise to concern.

The Criminal Code punishes incitement to hatred or violence but only against a person or persons in Malta. There is still no systematic data collection on the number of reported incidents of racist hate crime, including hate speech, investigations carried out or prosecutions and sentencing.

The Internet and in particular social media in Malta are rife with offensive content.

There is an overall negative climate of public opinion on immigration and towards migrants. Malta's Family Reunification Regulations strictly limit the definition of family members to spouses and unmarried minor children. Malta has some of the most unfavourable conditions for naturalisation in the European Union. There is little systematic state provision of language or cultural support for adult migrants.

Malta has no long-term integration strategy targeting refugees and beneficiaries of "local" forms of protection. Refugees remain the most vulnerable and marginalised group in Malta, experiencing isolation and a relatively low level of interaction with Maltese people. Many complain of extremely low wages and exploitation in unregistered employment. Beneficiaries of subsidiary protection are excluded from the right to family reunification, which causes suffering and seriously undermines their integration prospects.

In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.

A mechanism for collecting disaggregated data on hate crime incidents, including hate speech, on grounds of race, colour, language, religion, ethnic origin, citizenship, sexual orientation and gender identity, should be put in place, recording the specific bias motivation as well as the criminal justice response, and this data should be made available to the public.*

The authorities should press ahead with and intensify training for police, prosecutors and judges in order to ensure a more effective fight against racist and homo/transphobic hate crime, including violence.

ECRI recommends that the unnecessarily harsh conditions for long-term residence status are removed, in particular evidence of accommodation that is not shared with non-family members. It also recommends that the authorities broaden the list of persons eligible for family reunification in order to facilitate successful integration of third country nationals in Malta.

A strategy for the integration of all migrants should be adopted as soon as possible, along with a clear message to the public that integration is a two-way process for both migrants and the majority population. To encourage full integration, the strategy should address language acquisition in English and Maltese, and cover reasonable and achievable ways to obtain long-term residence status, as well as electoral rights and eventually Maltese citizenship.

Efforts to prevent labour exploitation should be intensified by systematically providing refugees with information on their rights in employment and on how to report abuses.

The authorities should consider providing for the possibility of family reunification for those granted subsidiary protection status, in order to enhance their integration. They should also organise a campaign to raise awareness among the public about the need for international protection and promoting a positive image of refugees.

The authorities should continue to allow persons who cannot be returned to their country of origin to stay legally in Malta. For those who have resided in Malta for more than ten years, the authorities should consider a more permanent form of regularisation.*

* This recommendation will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Common topics

1. Legislation against racism¹ and racial discrimination²

- Protocol No. 12 to the European Convention on Human Rights

1. ECRI welcomes Malta's ratification of Protocol No. 12 on 8 December 2015; the Protocol came into force in the country on 1 April 2016.

- Existence of criminal, civil and administrative law provisions as per General Policy Recommendation (GPR) No. 7

- Criminal law

2. ECRI is pleased to note that the Maltese Criminal Code, which has been amended several times since its fourth report, largely reflects GPR No. 7. The following analysis focuses mainly on the lacunae.
3. Article 82A(1) of the Criminal Code punishes anyone who "uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, ... with intent thereby to stir up violence or racial or religious hatred against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion, or whereby such violence or racial or religious hatred is likely, having regard to all the circumstances, to be stirred up". Article 82A(2) defines "violence or racial or religious hatred" as against a person or a group of persons in Malta on account of their gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion. Compared to GPR No. 7 §18a, the offence of incitement to discrimination is missing. Moreover, ECRI is concerned that the offence can only be committed against persons *in Malta* and considers this geographical restriction unreasonable (see § 33 of this report). As for the grounds, ECRI notes that citizenship appears in Article 82A(2), which is fully in line with GPR No. 7, but not in Article 82A(1). This discrepancy could give rise to difficulties in application.
4. There is no reference to the offence of defamation, as called for in GPR No. 7 §18b, nor to the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a group of persons on grounds of their race, colour, language, religion, nationality or national or ethnic origin, contrary to GPR No. 7 §18d.
5. Article 82B covers publicly condoning, denying or grossly trivialising genocide, crimes against humanity and war crimes, but only where the conduct is "likely to incite to violence or hatred or likely to disturb public order or which is threatening, abusive or insulting". This limitation does not correspond with GPR No. 7 §18e, which only calls for the conduct to have "a racist aim".
6. Article 82A punishes the "display of written or printed material which is threatening, abusive or insulting", but there is no mention of public dissemination, distribution, production or storage, with a racist aim, of written, pictorial or other material, contrary to what is set out in GPR No. 7 §18f.

¹ According to ECRI's General Policy Recommendation (GPR) No.7, "racism" shall mean the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

² According to GPR No. 7 "racial discrimination" shall mean any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

7. The Criminal Code has no provisions which fully reflect GPR No. 7 §18g, which calls for punishment for the creation or leadership of a group which promotes racism, support for such a group and participation in its activities.³ There are likewise no provisions criminalising racial discrimination in the exercise of one's public office or (private) occupation, contrary to GPR No. 7 §18h.
8. ECRI is pleased to note that Article 83B provides for the punishment for any offence to be increased when aggravated or motivated wholly or in part by hatred against a person or a group on grounds of their gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief, or political or other opinion. This is fully in line with GPR No. 7 §21.
9. ECRI recommends amending the Criminal Code to remove the reference in Article 82A(2) to "in Malta" and to include the ground of citizenship in Article 82A(1). The following offences should also be added: incitement to discrimination; defamation; the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a group of persons; public dissemination, public distribution, production or storage, with a racist aim, of written, pictorial or other material containing manifestations covered by paragraphs 18 a, b, c, d and e; the creation or leadership of a group which promotes racism, support for such a group and participation in its activities; and racial discrimination in the exercise of one's public office or (private) occupation.

- ***Civil and administrative law***

10. In its fourth report, ECRI recommended the inclusion of citizenship, language and religion as prohibited grounds of discrimination under the anti-discrimination legal framework in place. It also urged the authorities to introduce legal provisions allowing for the suppression of public financing for those political parties whose members are responsible for racist acts.
11. ECRI notes that the following legislation continues to govern the prohibition of racial discrimination: the Employment and Industrial Relations Act 2002,⁴ the Equality for Men and Women Act 2003,⁵ and the Equal Treatment of Persons Order 2007.⁶ These acts are based on EU Council Directives, particularly 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and 2000/78/EC establishing a general framework for equal treatment in employment and occupation. Consequently, the list of prohibited grounds does not fully correspond with ECRI's as defined in its GPR No. 7. While religion has been included, as recommended by ECRI, citizenship and language have not. ECRI regularly points out that basing legislation on the EU Council Directives results in significant lacunae, since one

³ Article 83A punishes promoting or organising an organisation of two or more persons with a view to commit criminal offences, and participation in its activities. Article 135A punishes any public officer or servant who, under colour of his office, creates or assumes leadership of a group which promotes violence or racial hatred. The former is too general and makes no mention of promoting racism or committing racially-motivated offences, and the latter only applies to a public official acting in his/her official capacity.

⁴ This prohibits discrimination on the grounds of religion or religious belief, disability, age, sexual orientation, racial or ethnic origin, pregnancy or maternity leave, and gender reassignment in the field of employment.

⁵ Its definition of discrimination has been extended to include not only discrimination based on sex or family responsibility but also sexual orientation, age, religion or belief, racial or ethnic origin, gender identity, gender expression or sex characteristics in the fields of employment, education, vocational training, financial services and advertising.

⁶ This further implemented the provisions of Directive 2000/43/EC, prohibiting discrimination on grounds of racial or ethnic origin in the areas of social protection, including social security and health care, social advantages, education, access to and supply of public goods and services which are available to the public, including housing, and services provided by banks, financial institutions and insurance companies.

of the directives calls for equal treatment in all main areas of everyday life (employment, training, social security, health care, education, access to goods and services) but only in respect of racial or ethnic origin, while the other requires equal treatment on wider grounds (religion or belief, disability, age, sexual orientation) but only in the field of employment.⁷ ECRI considers that the prohibition of racial discrimination (on grounds of “race”, colour, language, religion, nationality or national or ethnic origin) should apply in all areas of life as set out in GPR No. 7 §4.

12. As regards forms of discrimination, contrary to GPR No. 7 §6, there is no specific reference to the prohibition of segregation, discrimination by association, or instructing, inciting or aiding another to discriminate. Similarly, ECRI has found no general duty for public authorities to promote equality and prevent discrimination, as called for in GPR No. 7 §8.⁸ There are also no provisions placing public authorities under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination, contrary to GPR No. 7 §9.
13. There is no legislation providing for the suppression of public financing of organisations which promote racism or the possibility of dissolution of such organisations, as called for in GPR No. 7 §§16 and 17.
14. ECRI notes with interest that an Equality Bill is under preparation in Parliament. The aim is to present the equality legal framework in one comprehensive legislative act.⁹ ECRI supports this step, which would facilitate its application. It encourages the authorities to take into consideration the points raised above in order for the new law to reflect the key elements of national legislation against racism and racial discrimination, as set out in its GPR No. 2.
15. ECRI strongly recommends the enactment of a single Equality Act including the following essential elements: the grounds of citizenship and language; as forms of discrimination, segregation, discrimination by association, and instructing, inciting or aiding another to discriminate; a duty for public authorities to promote equality and prevent discrimination; a duty of public authorities to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination; the necessary legal tools to review, on an on-going basis, the conformity with the prohibition of discrimination of all laws, regulations and administrative provisions, and to amend or abrogate those found not to be in conformity; and the suppression of public financing of organisations which promote racism and the possibility of dissolution of such organisations.

⁷ See also European Commission, Justice, Petra Schott, EU Equal Treatment Legislation.

⁸ The Public Administration Act 2009 provides, in Article 4, that public employees shall contribute through their own conduct to making their workplace one which avoids discrimination. Article 5 states that all public employees are under a duty to comply with the Code of Ethics; this sets out that “public employees shall not harass or discriminate in work practices on the ground of sex, marital status, pregnancy, age, race, colour, nationality, physical or intellectual impairment, sexual preference, or religious, political or other convictions/allegiances when dealing with their colleagues and members of the public”. These do not fully correspond to ECRI’s recommendation.

⁹ Based on Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to goods and services and their supply, and Directive 2006/54/EC implementing the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

- **National specialised bodies¹⁰**

16. The National Commission for the Promotion of Equality (NCPE) is the body responsible for ensuring that Maltese society is free from any form of discrimination based on: (i) sex/gender and family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, and gender identity, gender expression or sex characteristics in employment, banks and financial institutions, and education; and (ii) racial/ethnic origin and gender in the provision of goods and services and their supply. In 2016, the remit of the NCPE was widened to include the Exercise of Rights Conferred on Workers (Freedom of Movement) Regulations.
17. The NCPE has powers, among others, to carry out general investigations with a view to determining whether the Equal Treatment of Persons Order and the Equality for Men and Women Act are complied with; to investigate individual complaints and mediate with regard to such complaints; to provide assistance to persons suffering from discrimination in enforcing their rights; to keep under review the working of the Order and the Act and, where necessary, to submit proposals for the amendment or substitution of their provisions; and to refer matters to the competent civil court or the Industrial Tribunal for redress. These competences are almost fully in line with ECRI's GPR No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and GPR No. 7 §24; the only missing elements are the right to initiate, and participate in, court proceedings and monitoring legislation.
18. ECRI notes that a Human Rights and Equality Commission Bill is under preparation in Parliament. It aims to establish a new Human Rights and Equality Commission as legal successor to the current NCPE. ECRI encourages the authorities to include in its mandate the additional competences highlighted above, in line with its GPR Nos. 2 and 7. They should also ensure that the wider human rights remit of the future body does not dilute in any way the fight against racism and racial discrimination.
19. ECRI recommends granting the National Commission for the Promotion of Equality (or its successor institution) the competence to initiate, and participate in, court proceedings as well as to monitor legislation for compliance with the prohibition of discrimination and make proposals for modification where necessary.

2. Hate speech¹¹

- **Data**

20. In its fourth report, ECRI recommended the authorities to collect data on the application of criminal law provisions against racism in a systematic way so that their effectiveness can be assessed. Regrettably, there is still no systematic data collection on the number of reported incidents of racist hate crime, including hate speech, investigations carried out or prosecutions and sentencing. Malta has never reported hate crime statistics to the OSCE-ODIHR. According to the authorities, hate crime and hate speech do not occur frequently in Malta. However, this view is not in conformity with NGO reports (see below). ECRI considers that the lack of data collection undermines any

¹⁰ Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

¹¹ According to ECRI's GPR No. 15 on combating Hate Speech, "hate speech" shall mean the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.

evaluation of the effectiveness of the relevant provisions as well as the possibility of obtaining a clear picture of the extent of hate crime and hate speech in Malta. It also gives the impression that this type of crime is not taken seriously.¹²

21. ECRI strongly reiterates its recommendation to ensure that a mechanism for collecting disaggregated data on hate crime incidents, including hate speech, on grounds of race, colour, language, religion, ethnic origin, citizenship, sexual orientation and gender identity, is put in place, recording the specific bias motivation as well as the criminal justice response, and that this data is made available to the public.

22. NGOs have stated that the absence of official data stems also from under-reporting by victims, who are mainly migrants, particularly asylum seekers and refugees.¹³ According to a 2016 survey, 87% of respondents who had experienced hate speech did not report the incident to the police.¹⁴ The perceived lack of action taken on the few instances that do get reported has increased the distrust of the migrant community in the police.¹⁵ A 2014 survey of third country nationals found that those who were victims of racist crimes were often unaware of their rights and had difficulties with the complexity of reporting procedures.¹⁶

23. To resolve this situation, the authorities should set up other forms of reporting, such as third-party reporting systems or dedicated telephone hotlines, in cooperation with relevant NGOs. In this context, ECRI applauds an initiative of an NGO, The People for Change Foundation. Its project Report Racism Malta was launched in 2014 creating an easy-to-use on-line platform for victims to report racist incidents in several languages.¹⁷ It also offers guidance in cases where complaints may be taken forward and remedies accessed. Incidents of a criminal nature can be transmitted to the police. Since its creation several hundred reports have been recorded.

24. ECRI recommends setting up alternative mechanisms to encourage victims to report hate crime and hate speech incidents, such as third party reporting systems or dedicated telephone lines.

- **Hate speech in public discourse**

25. According to a survey carried out over four months in 2016,¹⁸ around 34% of respondents had been victims of hate speech; they specified that 80.9% of the hate speech episodes happened in the form of public verbal abuse. The victims believed that the main motivations behind the hate speech were nationality (21.6%), political opinion (17.6%) and religion (14.7%).

26. Hate speech involving verbal abuse in public places frequently targets people who are visibly different, in particular regarding skin colour, from the majority population.¹⁹ For example, in July 2015 a black Hungarian student was verbally assaulted at a bus station in Valletta and told to “go back to your country” (see also § 45 of this report).

¹² SOS Malta 2016.

¹³ SOS Malta 2016.

¹⁴ SOS Malta 2016.

¹⁵ The People for Change Foundation. See: www.pfcmalta.org/report-racism-malta.html.

¹⁶ Foundation for Shelter and Support to Migrants 2015.

¹⁷ See: www.pfcmalta.org/report-racism-malta.html.

¹⁸ SOS Malta 2016.

¹⁹ Malta Today 2015.

27. Certain organisations also engage in the systematic use of hate speech, notably the Maltese Patriots, a nationalist, anti-immigration and anti-Islam party with a small following (it obtained only 0.4% of the votes in the 2017 elections and has no seats in Parliament). Its activities include calling protest events and inciting racial hatred, often by stoking the still-present “fear of Muslim invasion”, which is deeply related to Malta’s historical context and its Roman Catholic identity.²⁰ For example, in September 2014, during an anti-immigration march, the leader of the Maltese Patriots stated that immigrants carry infectious diseases and are members of terrorist groups.²¹ Its spokesperson has also warned that the Muslim population in Malta would explode as Muslim women, like rabbits, “breed at a fast rate” with the sole intention of taking over the island, and that the “Maltese race” would be destroyed.²² Members of the organisation demonstrated against an application to open a Muslim prayer room in Bugibba,²³ and on the occasion of a protest against Muslims praying in the street due to lack of space in the single Mosque in Malta, they caused offence by distributing pork sandwiches.²⁴

28. In this context, ECRI observes that Islamophobia is prevalent in Maltese society in general. It is experienced not only by migrants of North African or Middle Eastern descent and Sub-Saharan Africans, but also by Maltese Muslims,²⁵ who note that the terms “Arab”, “Muslim”, “North African” and “immigrant” are often used synonymously and are generally framed in a negative light.

- **Hate speech in traditional media and on the Internet**

29. The run-up to the elections of May 2017 saw a prominent rise in hate speech of a political nature, with hostile commentary originating from party members and the public using both traditional and on-line media.²⁶

30. According to NGOs, the Internet and in particular social media in Malta are rife with offensive content. Racist comments, especially on Facebook, are the most prevalent form of incident reported via the Report Racism Malta service run by The People for Change Foundation.²⁷ For example, in August 2013, the Facebook page of EU Commissioner for Home Affairs Cecilia Malmström was inundated with racist and abusive comments after she urged the Maltese government to allow 102 migrants to disembark in Malta.²⁸

31. On the other hand, ECRI is pleased to note that lesbian and bisexual people have been more positively represented in the media since the introduction of civil unions for same sex couples in 2014. The first child adopted by gay parents was also favourably publicised in the local press.²⁹

- **Response of the authorities**

32. ECRI considers hate speech particularly worrying not only because it is often a first step in the process towards violence but also because of the pernicious effects it has psychologically on those who are targeted and on social cohesion in general. Appropriate responses include law enforcement channels (criminal,

²⁰ ENAR Shadow Report 2011-2012.

²¹ The People for Change Foundation 2015.

²² Times of Malta 2016a; The Malta Independent 2016.

²³ Malta Today 2014.

²⁴ Times of Malta 2016b.

²⁵ There are an estimated 6 000 to 10 000 Muslims in Malta, most of whom are foreign nationals.

²⁶ The Malta Independent 2017.

²⁷ Malta Today 2015.

²⁸ The People for Change Foundation 2013.

²⁹ SOS Malta 2016.

civil and administrative law sanctions) but also other mechanisms to counter its harmful effects, such as prevention, self-regulation and counter speech.

33. As concerns the criminal law response, ECRI recalls that incitement to hatred or violence is punished under Article 82A of the Criminal Code (see § 3 above). However, as already observed, the offence must target a person or persons *in Malta*. A recent case demonstrates the urgency of amending this wording. In October 2015, a Maltese prison warden posted a comment on Facebook under an article on arson attacks against facilities for asylum seekers in Sweden, stating that he hoped the shelter was “burning with them inside”. He could not be convicted of incitement to hatred since the statement was aimed at people *outside* Malta. The Magistrate stated that the comment went beyond the limits of what was enshrined in the right to free expression and called upon legislators to expand the law’s definition to encapsulate inciting racial hatred against people overseas.³⁰ ECRI has been informed that the Minister for Justice is considering proposing changes to Article 82A to remedy the legal lacuna (see ECRI’s recommendation in § 9 of this report).
34. ECRI further notes that Article 6 of the Press Act makes it a criminal offence for any person to threaten, insult or expose to hatred, persecution or contempt a person or group of persons on the basis of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief, political or other opinion, or disability. The punishment is imprisonment for a term not exceeding three months and a fine.
35. Malta signed the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, on 28 January 2003, but has not yet ratified it. In view of the large amounts of racist and intolerant content on the Internet, ECRI strongly encourages ratification of this instrument. In this context, it is pleased to note, however, that there is a cybercrime unit in the police.
36. ECRI also notes that The People for Change Foundation and the University of Malta are the Maltese project partners for the European Commission-funded CONTACT programme, whose objectives include training in combating hate speech and hate crime for law enforcement professionals.³¹
37. As concerns civil and administrative law, ECRI notes that the Broadcasting Act 1991, in its Article 16K, sets out that media service providers shall not prejudice respect for human dignity or include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation. Article 16J states that audiovisual media services shall not contain any incitement to hatred based on race, sex, religion or nationality. ECRI considers that both these provisions should be updated with the inclusion of gender identity.
38. ECRI recommends that the ground of gender identity is added to Articles 16 J and K of the Broadcasting Act.
39. As for self-regulation, the Broadcasting Authority is the independent regulator set up under the Constitution to monitor and regulate all radio and television broadcasts originating from the Maltese Islands. It is an independent statutory body consisting of a Chair and four other members appointed by the President

³⁰ The prison warden was, however, convicted of the offence of misuse of electronic equipment and fined 5 000 euros which was upheld on appeal. The appeal court judge stated that owing to modern-day technology, “a comment directed against an individual living miles away is as relevant as that directed against one’s neighbour”. See Times of Malta, 13 May 2016, Outdated law leads to acquittal for racist comment by prison warden and Times of Malta, 10 July 2017, Prison guard who posted offensive Facebook comment must pay €5,000 fine.

³¹ See: www.pfcmalta.org/contact.html.

of Malta, on the advice of the Prime Minister in consultation with the Leader of the Opposition. As part of its daily activities, the Authority monitors radio and television stations. It has the power to warn or fine stations or programmes that transgress legal and licence obligations.³² Its website provides full information on submitting a complaint and a list of decisions taken per year (regrettably, in Maltese³³ only).³⁴

40. In this context, ECRI recalls its fourth-report recommendation that an independent body should be mandated to receive complaints (or to raise cases *ex officio*) for breach of the Press Act and to impose sanctions. ECRI was informed that the Government is considering establishing a press complaints council or ombudsman to deal with complaints regarding unfair reporting. In addition, ECRI notes that the Press Club of Malta and the Institute of Broadcasters issued a Code of Ethics in 1991 which is administered by a Press Ethics Commission, set up in 1999. The Code (Article 7) states that journalists “should not help to introduce in society discrimination based on sex, race, religion or differences of political opinion”.³⁵
41. As for self-regulation in politics, in its fourth report, ECRI urged the authorities to propose provisions within the Parliament’s Code of Ethics which sanction racist speech or conduct. ECRI regrets that the 1995 Code has not been amended and it is not aware of any attempts to do so.
42. Finally, ECRI places great importance on tackling hate speech through confronting and condemning it directly by counter speech that clearly shows its destructive and unacceptable character. ECRI therefore welcomes the key role played at the highest level by the President and Prime Minister on numerous occasions. For instance, the President invited people to be more conscious about the language they use on Facebook and has repeatedly been a voice for vulnerable people in society, particularly migrants and refugees who are the targets of intolerant comments.³⁶ Further, in December 2016, she used the Republic Day investiture ceremony to speak out against racism, xenophobia and hate speech.³⁷
43. Lastly, ECRI notes that Malta hosted a conference in April 2017 during its Presidency of the Council of the EU on how to support civil society in delivering effective positive narratives against hate speech online, gathering together Member States’ authorities, civil society organisations and digital actors (including IT companies, such as Google and Facebook, and social media strategists).³⁸

3. Racist and homo/transphobic violence

- Data

44. As noted above, there is no official hate crime data available in Malta (see ECRI’s recommendation in § 21). By all accounts, there is very little racist violence in the country. When isolated incidents occur, they usually target the migrant community. ECRI has been informed, for example, that migrants at the reception centre in Marsa frequently have bottles thrown at them in drive-by attacks at night.

³² European Journalism Centre.

³³ Malta has two official languages, Maltese and English.

³⁴ See: www.ba-malta.org/broadcasting-decisions.

³⁵ MediaWise 2011.

³⁶ The European Law Students’ Association Malta 2016.

³⁷ Times of Malta 2016c.

³⁸ See: www.eu2017.mt/en/Events/Pages/Online-Hate-Speech.aspx.

45. In July 2015, a black Hungarian student was spat at, told to “go back to your country” and slapped by a Maltese woman in Valetta after he suggested that a crowd waiting at a bus station should queue in single file.³⁹ When the police arrived they erroneously pinned down and handcuffed the victim. An investigation was launched and charges brought against the woman, which were later dropped.
46. ECRI notes that the Malta Union of Professional Psychologists and the Maltese Psychological Association published an article in July 2015 expressing serious concern over the prevalence of racist and xenophobic behaviour in the Maltese Islands.⁴⁰ It stated that the emergence of small-membership anti-immigration and extreme right-wing clubs having racist and/or xenophobic agendas has the potential to cause tension and harm in the community, especially when directed openly towards ethnic minorities, immigrants and others whose status, culture and identity differs from that of the mainstream group. ECRI encourages the authorities to remain vigilant to this threat.
47. As for violence against LGBT persons, ECRI notes that 20% of Maltese respondents to the 2012 FRA LGBT survey stated that they had been physically attacked or threatened with violence at least once in the preceding five years.⁴¹ In January 2012, two teenage lesbian girls were brutally assaulted by two young men in a public park in Hamrun.⁴² The men were found guilty of assault (at the time, sexual orientation did not figure among the hate-motivated grounds in the Criminal Code) and fined 500 euros.⁴³ More recently, in July 2017 a transgender woman was beaten up on a date by a man who reacted violently to the revelation of her transgender identity. He pleaded guilty and was fined 800 euros and sentenced to 18 months’ imprisonment suspended for two years.⁴⁴ ECRI was not able to ascertain whether Article 83B of the Criminal Code on aggravating circumstances was applied. ECRI also wishes to highlight the fact that between 2012 and 2017 there were no reports of homo- or transphobic violence, which attests to the progress made in Malta in respect for the rights of LGBT persons.

- **Response of the authorities**

48. There are no specific provisions in the Criminal Code punishing racist and homo/transphobic violence. However, under Article 83B, any ordinary offence motivated by hatred on a wide range of specified grounds, including those recommended by ECRI in its GPR No. 7, as well as sexual orientation and gender identity, can be punished more severely (see § 8 above).
49. In its fourth report, ECRI reiterated its recommendation to provide regular training to all those involved in the criminal justice system on the relevant criminal law provisions and to sensitise them on the importance of countering racially motivated conduct, as well of acknowledging racist bias. ECRI notes that the National Action Plan against Racism and Xenophobia of 2010 also included an objective related to increasing awareness of the relevant legal framework by all concerned.⁴⁵
50. Indeed several of ECRI’s interlocutors stated that training police to identify racial hatred and to treat hate crimes as such would also go a long way to ensuring a

³⁹ Times of Malta 2015.

⁴⁰ The Malta Independent 2015.

⁴¹ European Union Fundamental Rights Agency 2012.

⁴² Times of Malta 2012a.

⁴³ Times of Malta 2012b.

⁴⁴ Lovin Malta 2017.

⁴⁵ The National Commission for the Promotion of Equality 2010.

more effective justice system. Therefore, ECRI welcomes the authorities' signing of an agreement with the OSCE-ODIHR in February 2017 to implement the Training against Hate Crimes for Law Enforcement (TAHCLE) programme in Malta.⁴⁶ This is designed to improve police skills in recognising, understanding and investigating hate crimes.

51. ECRI also notes that the Government's LGBTIQ Action Plan 2015-2017 addresses violence, discrimination, bullying and ill-treatment, with a commitment to guarantee equality and quality of life for all LGBTIQ persons. It includes undertakings to review the existing protocols dealing with hate crime, ensure police are adequately trained, and set up appropriate referral services for victims.⁴⁷

52. ECRI strongly recommends the authorities to press ahead with and intensify training for police, prosecutors and judges in order to ensure a more effective fight against racist and homo/transphobic hate crime, including violence.

4. Integration policies

53. According to the results of the last census of 2011, Malta's population numbered 417 430 people, 5% of whom were non-Maltese nationals. By 2015, the number of immigrants residing in Malta had risen to almost 10% of the total population.⁴⁸ The majority of non-Maltese nationals are other EU citizens, particularly from the United Kingdom, while the majority of third country nationals are Libyans. ECRI notes that Malta considers it has no national minorities in its territory and no Roma population.⁴⁹ Therefore, the analysis below focuses on integration of immigrants and refugees.

- Immigrants

54. According to figures available in February 2017, around 19 300 persons coming from countries outside the EU have a residence permit to live in Malta (of whom around 4 350 benefit from international protection). In total, around 3 500 Libyans account for 18% of all non-EU residents in Malta. These are followed by around 1 800 Serbs (9.4%), 1 600 Filipinos (8.4%) and 1 600 Russians (8.4%).⁵⁰ The authorities informed ECRI that in 2016, 1 700 applications for residents permits were received.

55. ECRI notes that according to a 2015 Eurobarometer report, 76% of respondents in Malta stated that immigration was their most important national concern.⁵¹ The Migrant Integration Policy Index (MIPEX) reports that the public in Malta has less positive attitudes towards immigrants than on average in European countries.⁵² According to a public opinion survey conducted in Malta in 2015, only 48.6% of participants stated that they were in favour of integration of immigrants.⁵³

56. In addition to an overall negative climate of public opinion on immigration and towards migrants (see also the sections on hate speech and violence), this group also experiences other disadvantages. In 2015, MIPEX ranked Malta's approach to integration 33rd out of 38 countries surveyed. It reported that non-

⁴⁶ See : www.osce.org/odihr/297026.

⁴⁷ ILGA-Europe 2016.

⁴⁸ Eurostat 2015.

⁴⁹ Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities 2014; European Commission 2014.

⁵⁰ Malta Today 2017a.

⁵¹ European Commission 2015.

⁵² Migrant Integration Policy Index (MIPEX) 2015.

⁵³ Ministry for Social Dialogue, Consumer Affairs and Civil Liberties 2015a.

EU nationals are less likely to become long-term residents with equal rights, less likely to become Maltese citizens and also less likely to reunite with their family than in almost any other EU country.⁵⁴ These findings are of concern to ECRI since they negatively impact successful integration.

57. Under the Status of Long-Term Residents (Third Country Nationals) Regulations, non-EU nationals can, after five years of residence in Malta, apply for long-term residence status, which grants equal access to education and training, employment and self-employment, social security, assistance and protection, and tax benefits, among others. Eligibility requires evidence of stable and regular resources equivalent to the average wage in Malta, with an additional 20% for each family member. Applicants must pass an integration test as well as an English or Maltese language test, with pass marks of at least 65% in each. Evidence of accommodation that is not shared with non-family members is also required, although this is not a condition set out in the EU Long-term Residence Directive 2003/109/EC (as amended by Directive 2011/51/EU). ECRI considers this aspect particularly harsh, especially on a small island where accommodation is scarce and sharing is often the only option for many migrants. African migrants reported to ECRI their frustration at never obtaining permanent residence status.
58. ECRI recommends that the unnecessarily harsh conditions for long-term residence status are removed, in particular evidence of accommodation that is not shared with non-family members.
59. Further, Malta's Family Reunification Regulations also present a more restrictive approach than necessary under the EU Council Directive 2003/86/EC on the right to family reunification.⁵⁵ The regulations strictly limit the definition of family members to spouses and unmarried minor children, whereas the EU Directive permits states to extend it to parents, unmarried adult children and unmarried partners. ECRI considers that restricting family reunion not only causes hardship by dividing family members, but also ultimately hinders integration.
60. ECRI recommends that the authorities broaden the list of persons eligible for family reunification in order to facilitate successful integration of third country nationals in Malta.
61. ECRI notes also that Malta does not grant electoral rights to third country nationals. It encourages the authorities to consider granting the right to vote and stand for local elections, as it considers political participation and active involvement in community decision-making an important means of promoting inclusion.
62. As the final step in successful integration, ECRI considers that naturalisation should be possible within a reasonable timeframe. Regrettably, Malta has some of the most unfavourable conditions for naturalisation in the EU. ECRI refers to §§5-9 of its fourth report for a description of the conditions required and their arbitrary application, since the situation has not changed since then. The result is that in practice it may take up to 15 to 20 years - if ever - to become naturalised (see also the section below on Topics specific to Malta, Interim follow-up recommendations of the fourth cycle). Indeed, Malta has seen a steady decline in the numbers of persons granted citizenship through naturalisation.⁵⁶

⁵⁴ MIPEX 2015.

⁵⁵ Aditus Foundation 2014.

⁵⁶ Aditus Foundation 2014.

63. As concerns acquisition of the local language, ECRI is pleased to note that courses have been developed to teach Maltese and English as a foreign language to the increasing numbers of immigrant pupils in schools. The Ministry for Education offers language support for these children in the form of a one-year intervention programme offered in schools or in specially designated “hubs”. In all other aspects of school life, immigrant children are integrated with other pupils. In addition, in most state primary schools teachers are asked to support the language acquisition of such pupils to facilitate their social, cultural and educational integration. ECRI notes that in the secondary sector, pupils may study Maltese as a second or additional language.
64. In this context, ECRI applauds the exceptional dedication of staff at the St Paul’s Bay Primary School, where 75% of the 1 134 pupils are non-Maltese and originate from around 45 different countries. ECRI’s delegation bore witness to the significant efforts made to create an atmosphere of inclusion and equal opportunities for all children. In 2016, the Education Minister described the school as a “shining example of the diverse cultural, religious and ethnic backgrounds of its pupils and how an inclusive community can be built around that”.⁵⁷
65. Beyond school, however, it seems that there is little systematic state provision of language or cultural support. Limited courses for adult migrants, in English mainly but also Maltese, are facilitated through the provision of premises, but the teaching is ensured by NGOs and churches.⁵⁸ African migrants informed ECRI that the language barrier is a very significant problem for them. This is of particular concern to ECRI, since language skills are an important requirement for acquiring long-term residence status in the country (see § 57 above).
66. ECRI recalls that it has repeatedly recommended that the authorities devise a long-term integration strategy targeting the various categories of migrants in Malta. While no such strategy has been published yet, ECRI welcomes the work that has been undertaken over several years to develop a National Migrant Integration Strategy up to the year 2020.
67. These efforts started in 2013 with the launching of a four-year pilot project entitled “Mind D Gap: Together we can make a difference”, which supported civil society’s efforts to facilitate the integration of immigrants. In this context, ECRI particularly commends the important work undertaken in this domain by numerous NGOs. An Inter-Ministerial Committee on Integration was set up, composed of senior officials from five ministries: Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, Ministry for Family and Social Solidarity, Ministry for Education and Employment, Ministry for Energy and Health and Ministry for Home Affairs and National Security. It co-ordinated input towards a Framework Document for the strategy, setting out a number of priorities, including anti-discrimination and equality, resolving social barriers, and providing opportunities in education, family issues, labour market and health care.⁵⁹
68. In May 2015, an on-line general public consultation was launched on the Framework Document. Research was also commissioned to assess perceptions in the general population in relation to third country nationals, migration and integration, using telephone questionnaires. The conclusions were published in June 2015; these indicated primarily lack of knowledge and public awareness about the meaning of integration. In February 2017, the

⁵⁷ Times of Malta 2016b.

⁵⁸ Council of Europe Language Policy Unit 2015.

⁵⁹ Ministry for Social Dialogue, Consumer Affairs and Civil Liberties 2015b.

Government announced that it was conducting fieldwork on problematic areas and that it would launch an integration policy later in the year.⁶⁰

69. ECRI was subsequently informed by the authorities in May 2017 that the National Migrant Integration Strategy had been approved by the Cabinet of Ministers for the years 2017 to 2020 and that an accompanying Action Plan was being finalised before publication of both documents. The strategy would cover all categories of migrants, i.e. legally residing third country nationals, asylum seekers and beneficiaries of international protection. The focus would be on an “integration itinerary” for migrants to follow, and would include performance indicators, as well as monitoring and evaluation.
70. The principal idea of the integration itinerary is that integration should commence with an integration request, followed by an individual integration programme overseen by a case worker, involving mandatory Maltese language, optional English, legal, social and cultural orientation in practical sessions, and a record of work and skills. When all requirements are met, a pre-integration certificate should be awarded which leads to a number of benefits still to be defined. The ultimate goal is long-term residence but, regrettably, not citizenship. After many years of lack of political will on these issues, ECRI is pleased that the authorities are now making advances on integration, despite some reservations they expressed over capacity and resources.
71. ECRI encourages the authorities to complete this process as soon as possible, taking into account its comments above. The strategy should also convey the message that smooth integration is one of the keys to social cohesion and involves a two-way process with efforts made both by migrants and by the majority population.
72. ECRI strongly recommends the adoption of a strategy for the integration of all migrants as soon as possible, along with a clear message to the public that integration is a two-way process for both migrants and the majority population. To encourage full integration, the strategy should address language acquisition in English and Maltese, and cover reasonable and achievable ways to obtain long-term residence status, as well as electoral rights and eventually Maltese citizenship.

- **Refugees**

73. According to figures available in February 2017, some 4 350 persons living in Malta benefit from international protection. The largest group are from Somalia (around 1 170 people), followed by Eritrea (630 people).⁶¹
74. In its fourth report, ECRI reiterated its recommendation to devise a long-term integration strategy targeting refugees and beneficiaries of “local” forms of protection⁶² so as to ensure their integration into Maltese society in all areas of life. ECRI regrets that no such strategy currently exists. However, as observed in the previous section of this report, a National Migrant Integration Strategy and Action Plan, which will include refugees and other beneficiaries of international protection, is in the process of adoption (see ECRI’s recommendation in § 72). In the absence of a national policy, ECRI takes note that the UNHCR has launched a tailored integration project together with Jesuit Refugee Service Malta to increase the level of integration of beneficiaries of international protection.

⁶⁰ Malta Today 2017b.

⁶¹ Malta Today 2017a.

⁶² This term, used in ECRI’s fourth report (§ 112), refers to temporary forms of humanitarian protection (THP).

75. ECRI notes that refugees remain the most vulnerable and marginalised group in Malta. According to research published in 2014⁶³ and in 2016,⁶⁴ refugees experience isolation and a relatively low level of interaction with Maltese people, rarely engaging in social contacts with neighbours or the local community.
76. Although most refugees are in work due to the current favourable labour situation in Malta, many complain of extremely low wages and exploitation in unregistered employment. Despite ECRI's recommendation made in its fourth report to take steps to counter the labour exploitation of refugees, according to a survey on severe forms of labour exploitation in Malta,⁶⁵ employers (typically, relatively small contractors in the private sector) consider refugees as suitable for menial jobs which are refused by Maltese nationals and involve harsher conditions, longer hours and more labour intensive work. The research attributed the low levels of reporting of labour abuses to the lack of proper information about rights and employment conditions and fear of employers. ECRI has also been informed that weak enforcement of labour laws is a factor contributing to the problem.
77. ECRI recommends that the authorities intensify their efforts to prevent labour exploitation by systematically providing refugees with information on their rights in employment and on how to report abuses.
78. ECRI draws attention to the fact that Malta now predominantly grants subsidiary protection rather than refugee status, which has an impact on integration. Beneficiaries of subsidiary protection are excluded from the right to family reunification. Although this is in line with the EU Council Directive 2003/86/EC on the right to family reunification, ECRI recalls that this instrument sets out the possibility of Member States adopting or maintaining more favourable provisions. The inability to be joined by family members not only causes suffering but also seriously undermines the integration prospects of those affected.
79. ECRI recommends that the authorities consider providing for the possibility of family reunification for those granted subsidiary protection status, in order to enhance their integration.
80. In its fourth report, ECRI also made a number of recommendations on providing accommodation in open reception centres which meet adequate standards of living, and ensuring that persons with subsidiary protection and with other forms of "local" protection are granted social assistance to provide them with an incentive to find alternative accommodation suitable for long-term stay.
81. ECRI notes that persons granted refugee status, subsidiary protection or other forms of "local" protection are offered accommodation at one of eight open centres where they may remain for up to one year. All the centres are now run by the Government Agency for the Welfare of Asylum Seekers (AWAS). ECRI notes that, although the authorities stated that renovations had taken place as well as consistent efforts to improve the conditions in the centres, according to NGOs accommodation in most of the open centres still present shortcomings, inadequate material conditions and very poor infrastructure, such as insalubrious and poorly maintained toilet and shower facilities. There are also differences in services from one centre to another, with some providing language courses and employment assistance while others do not. Moreover, people residing in open centres are generally not well integrated in local

⁶³ Aditus Foundation and UNHCR 2013.

⁶⁴ JRS Malta et al. 2016.

⁶⁵ McKay 2014.

communities, an aspect which negatively affects their access to regular employment opportunities and mainstream services.⁶⁶

82. ECRI takes note, however, that beneficiaries of international protection may also live, at their own cost, in any other place of residence. They receive personal identity documents, residence and work permits, access to social welfare benefits and emergency medical care, and may move freely around the country.
83. Finally, ECRI recalls that several of its interlocutors pointed out that positive public messaging about refugees – and migrants in general - was urgently needed in Malta. As concerns refugees, a clear explanation to the public of their need for international protection would go a long way to changing negative opinion towards them.
84. ECRI strongly recommends that the authorities organise a campaign to raise awareness among the public about the need for international protection and promoting a positive image of refugees.

II. Topics specific to Malta

1. Interim follow-up recommendations of the fourth cycle

85. In its first interim recommendation, ECRI recommended that the Maltese authorities amend the Citizenship Act so as to: introduce clear, objective and measurable requirements in connection with the acquisition of citizenship through naturalisation; ensure that decisions relating to the acquisition, retention, loss, recovery or certification of nationality are open to review; and, as far as cases of loss of citizenship are concerned, remove any less favourable treatment afforded to persons who have acquired their citizenship through naturalisation or registration. In its conclusions adopted on 30 June 2016, ECRI noted that the Citizenship Act was amended in 2013, but only to introduce acquisition of citizenship through investment, and there appeared to be no changes regarding ECRI's recommendation. It therefore concluded that its recommendation had not been implemented. ECRI regrets that the situation has remained the same since then.
86. In its second interim recommendation, ECRI strongly recommended that the Maltese authorities provide non-custodial alternatives to detention and refrain from resorting to the detention of migrants and asylum seekers unless it is strictly necessary in the particular circumstances of an individual case. In its conclusions adopted on 30 June 2016, ECRI welcomed the good progress made in respect of asylum seekers and was pleased that its recommendation had been implemented concerning this group. However, the situation did not appear to have changed significantly as concerns other migrants. ECRI therefore concluded that its recommendation had been partially implemented. It is not aware of significant developments since then.
87. In its third interim recommendation ECRI strongly recommended that the Maltese authorities amend the asylum procedure so as to ensure: free legal aid as from the outset of the asylum procedure, in particular at the time when the preliminary questionnaire is filled in; the asylum seeker's access to his/her case file; and a right in all cases to appear before the Refugee Appeals Board at the appeals stage. In its conclusions of 30 June 2016, ECRI noted that free legal aid was only provided at the appeal stage of the asylum procedure. It also noted that while asylum seekers do have access to their case files in theory, this does not always happen in practice. As for the right to appear before the Refugee Appeals Board, amendments were made to the Refugee Appeals Board (Procedures) Regulations in 2012 granting this right. Overall, ECRI concluded

⁶⁶ Asylum Information Database 2017.

that its recommendation had been partially implemented. It is not aware of any further changes on these issues since then.

2. Effectiveness of the National Commission for the Promotion of Equality (NCPE)

88. In its fourth report, ECRI recommended the authorities to ensure that the national specialised body for combating racism and racial discrimination is entirely independent. It notes that the Commissioner and all seven⁶⁷ other members of the NCPE continue to be appointed by the Prime Minister and funding is allocated by the Minister responsible for equality out of funds voted by Parliament. Some reports indicate, nevertheless, that the NCPE is independent and autonomous.⁶⁸ Certain interlocutors considered that appointments to the NCPE should be subject to Parliamentary oversight.
89. In this context, ECRI takes note that the draft National Human Rights and Equality Commission Act (see § 18 above) provides for the appointment of the Commissioner by a two-thirds majority of Parliament, while the other members will continue to be appointed by the Prime Minister. ECRI supports this proposed amendment.

3. Withdrawal of Temporary Humanitarian Protection - New (THPN)

90. In 2010 the status of Temporary Humanitarian Protection – New (THPN) was introduced for “non-returnable” migrants. These were rejected asylum seekers who had entered the country prior to 2007 and had been subject to return procedures. However, on account of legal or logistical reasons (primarily lack of diplomatic relations or cooperation with their countries of origin), but due to no fault of their own, they could not physically be returned and remained in Malta.⁶⁹ ECRI was informed by the authorities that 1 326 people have THPN status; they mostly originate from West African countries. These people were granted a one-year renewable residence permit subject to documented evidence of their integration efforts and employment history in Malta.
91. While the system was far from perfect, THPN brought a significant improvement in the lives of beneficiaries, giving them a measure of security and access to a number of basic rights and services, and protecting them from exploitation.⁷⁰
92. However, towards the end of 2016, the Ministry for Home Affairs announced its suspension of THPN status and withdrawal of the possibility to renew residence and work permits beyond October 2017. The people affected were expected to procure the required documentation from their countries of origin that would allow them to apply for a residence permit, failing which their continued stay in Malta would become irregular.
93. The people directly impacted had all lived and worked in Malta for more than a decade (since they arrived before 2007), but some for as long as 18 years. Many of them had children who were born in Malta and an established working and family life.⁷¹ The withdrawal of THPN plunged them into uncertainty and entailed numerous difficulties. Concern was notably expressed by Maltese employers as to how this decision would impact their ability to retain migrant workers.⁷²

⁶⁷ Article 11 of the Equality for Men and Women Act was amended in 2015 to increase the number of Commission members from six to seven. In addition, at least three of the Commission members must be women and one must be a person with disability.

⁶⁸ For example, US Department of State 2016.

⁶⁹ See also § 112 of ECRI’s Fourth Report on Malta.

⁷⁰ Malta Today 2017c.

⁷¹ Malta Today 2017c.

⁷² Times of Malta 2016d.

94. ECRI notes with interest that the Government's announcement generated an outpouring of sympathy for the migrants affected. Numerous institutions also voiced their opposition. The Children's Commissioner spoke out against the Government's decision, saying that such a measure should not be retroactive. She even went as far as stating: "Migrants who have integrated in society should be given a more permanent and defined status, and in the case of families with children this should include citizenship".⁷³
95. In addition, 23 human rights NGOs drew up a position paper on THPN. A petition was launched by the Department for Inclusion and Access to Learning within the Faculty of Education at the University of Malta, insisting that the potential deportation would have a negative social and economic effect on Maltese society.⁷⁴ The Faculty for Social Wellbeing has also spoken out against the new measures.⁷⁵ On 1 February, the newspapers Malta Today, Times of Malta and The Malta Independent joined forces in a joint editorial to call on the Maltese government to review Malta's arbitrary system of THPN and to demand the regularisation of non-returnable migrants, stating that "a glance at the lives of THPN beneficiaries reveals an impressive level of social integration".⁷⁶
96. ECRI notes with satisfaction that the authorities have taken account of the views expressed above. The Ministry for Home Affairs, following a re-assessment, recently reversed its decision and announced that it would retain THPN status until a new system granting the same level of rights is put in place. All those concerned, as well as NGOs, have been informed. ECRI welcomes this positive development.
97. ECRI strongly recommends that the authorities continue to allow persons who cannot be returned to their country of origin to stay legally in Malta. For those who have resided in Malta for more than ten years, the authorities should consider a more permanent form of regularisation.

4. Policies to combat discrimination and intolerance vis-à-vis LGBT⁷⁷

98. ECRI takes positive note of the impressive advances in equality for LGBT persons in Malta. These have resulted in Malta retaining first place for two years on ILGA Europe's Rainbow Europe Map, reflecting 49 European countries' legislation and policies guaranteeing LGBT human rights.⁷⁸ Many reports and interlocutors also indicated significant changes in Maltese society in a very short time and an overall favourable and accepting attitude towards LGBT persons.

- Legislative issues

99. A series of highly important legislative developments have occurred. In 2014 Malta became the first country in Europe, and only the second in the world, to prohibit discrimination on grounds of sexual orientation and gender identity in its Constitution.⁷⁹
100. The Civil Unions Act 2014 introduced registered partnerships for couples of the same and of opposite sex, and grants them the same rights as in marriage. The act also recognises marriages and unions celebrated abroad.
101. The Maltese Parliament then took a further step on 12 July 2017 and legalised same sex marriage. It also made changes to a number existing laws, including

⁷³ Times of Malta 2016e.

⁷⁴ Times of Malta 2016d.

⁷⁵ Times of Malta 2016f.

⁷⁶ Malta Today 2017c.

⁷⁷ For terminology, see the definitions set out in Council of Europe Commissioner for Human Rights 2011.

⁷⁸ ILGA Europe, Rainbow Europe Country Ranking.

⁷⁹ The Constitution was amended in 2014.

the Marriage Act and the Criminal and Civil Codes, to ensure that references to husband, wife, mother and father become gender neutral.⁸⁰

102. The Gender Identity, Gender Expression and Sex Characteristics Act of April 2015 provides for the recognition and registration of the gender of a person. The Act, which is considered to be one of the most advanced in the world, provides a simple, accessible process for legal gender recognition, based on the principles of self-determination and bodily integrity. For officially registering the change of gender and first name, a transgender person is not required to provide any proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment. In addition, the age at which a person can independently request their gender to be changed in official documents was lowered from 18 to 16. The Act also forbids medical professionals from carrying out unnecessary surgical intervention on intersex infants.⁸¹
103. Through the Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act of December 2016, Malta became the first European country to criminalise “deceptive and harmful” conversion practices, defined as any treatment which aims to change, repress or eliminate a person’s sexual orientation or gender identity. The law also stipulates that sexual orientation, gender identity and gender expression cannot constitute a disease, disorder, illness, deficiency, disability or shortcoming of any sort.
104. As concerns asylum, ECRI takes note that subsidiary legislation explicitly provides for granting international protection to persons fleeing persecution on account of belonging to a particular social group, including on the basis of sexual orientation or gender identity. In 2013 a Nigerian man who was persecuted in his country of origin on account of his homosexuality was granted asylum.⁸²

- **Promoting tolerance and combating discrimination**

105. Malta has taken important steps to combat discrimination against LGBT persons and promote tolerance. An LGBTIQ Consultative Council was set up by the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties in 2013. Its members are appointed by the Minister and include representatives of organisations working in the field of LGBTIQ rights or experts. The role of the council is to advise the Government on issues which impact on LGBTIQ persons and to advance their rights through legislation, policies and other measures. Members of the council gave a positive assessment of the initiative and felt that their proposals had been taken on board and good results achieved. The LGBTIQ Action Plan 2015-2017 is a commitment to further action for this community in a wide range of fields, including education and combating hate crime. Discussions are on-going as to whether to renew the action plan beyond 2017.
106. As concerns education, according to the 2013 LGBT survey of the EU Fundamental Rights Agency, 41% of the participants in Malta always or often experienced negative comments or conduct at school because of their LGBT identity, while 70% were never open about their LGBT identity at school. In 2013, the Ministry for Education and Employment set up a working group, which included a representative from the NGO Malta Gay Rights Movement, to review anti-bullying policy. In December 2014, a new policy entitled Addressing Bullying Behaviour in Schools was launched, which for the first time made reference to homophobic and transphobic bullying. At the beginning of 2015, a

⁸⁰ Times of Malta 2017.

⁸¹ Transgender Europe 2015.

⁸² The Malta Independent 2013.

dedicated anti-bullying unit within the Ministry met with schools to inform them about the policy and its implications. ECRI is pleased to note that this generated a generally positive reaction from teachers and schools.

107. Furthermore, in June 2015, the Trans, Gender Variant and Intersex Students in Schools Policy was launched. This provides guidelines on how to implement the provisions of the Gender Identity, Gender Expression and Sex Characteristics Act in schools. From July 2015, educational materials including a collection of books on diversity and audio-visual resources for teachers were made available to schools.
108. As regards health care, ECRI notes that there is no state funding for any gender reassignment treatment. Since only limited sex-change surgery is available in the country, those requiring it have to travel abroad and finance it at their own cost. In 2014, a government committee was tasked with assessing whether hormone treatment and surgery should be offered as part of state health care, but no decision was reached.⁸³ ECRI encourages the authorities to consider providing financial assistance to those in need of such treatment.
109. ECRI notes that Malta has installed two permanent “rainbow crossings”, in Valletta and in Gozo, dedicated to the UN Free & Equal Campaign.⁸⁴ Pride events have been held every year since 2004 with no problems reported; in June 2016 the Prime Minister, Opposition leader and several ambassadors took part.⁸⁵

⁸³ FRANET 2014; Times of Malta 2014.

⁸⁴ See Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, LGBTIQ Action Plan 2015-2017, <https://socialdialogue.gov.mt/en/Documents/LGBTIQ%20Action%20Plan/LGBTI%20Action%20Plan%20lo%20res.pdf>.

⁸⁵ Gay Malta 2016.

INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of Malta are the following:

- ECRI strongly reiterates its recommendation to ensure that a mechanism for collecting disaggregated data on hate crime incidents, including hate speech, on grounds of race, colour, language, religion, ethnic origin, citizenship, sexual orientation and gender identity, is put in place, recording the specific bias motivation as well as the criminal justice response, and that this data is made available to the public.
- ECRI strongly recommends that the authorities continue to allow persons who cannot be returned to their country of origin to stay legally in Malta. For those who have resided in Malta for more than ten years, the authorities should consider a more permanent form of regularisation.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report

LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 9) ECRI recommends amending the Criminal Code to remove the reference in Article 82A(2) to “in Malta” and to include the ground of citizenship in Article 82A(1). The following offences should also be added: incitement to discrimination; defamation; the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a group of persons; public dissemination, public distribution, production or storage, with a racist aim, of written, pictorial or other material containing manifestations covered by paragraphs 18 a, b, c, d and e; the creation or leadership of a group which promotes racism, support for such a group and participation in its activities; and racial discrimination in the exercise of one’s public office or (private) occupation.
2. (§ 15) ECRI strongly recommends the enactment of a single Equality Act including the following essential elements: the grounds of citizenship and language; as forms of discrimination, segregation, discrimination by association, and instructing, inciting or aiding another to discriminate; a duty for public authorities to promote equality and prevent discrimination; a duty of public authorities to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination; the necessary legal tools to review, on an on-going basis, the conformity with the prohibition of discrimination of all laws, regulations and administrative provisions, and to amend or abrogate those found not to be in conformity; and the suppression of public financing of organisations which promote racism and the possibility of dissolution of such organisations.
3. (§ 19) ECRI recommends granting the National Commission for the Promotion of Equality (or its successor institution) the competence to initiate, and participate in, court proceedings as well as to monitor legislation for compliance with the prohibition of discrimination and make proposals for modification where necessary.
4. (§ 21) ECRI strongly reiterates its recommendation to ensure that a mechanism for collecting disaggregated data on hate crime incidents, including hate speech, on grounds of race, colour, language, religion, ethnic origin, citizenship, sexual orientation and gender identity, is put in place, recording the specific bias motivation as well as the criminal justice response, and that this data is made available to the public.
5. (§ 24) ECRI recommends setting up alternative mechanisms to encourage victims to report hate crime and hate speech incidents, such as third party reporting systems or dedicated telephone lines.
6. (§ 38) ECRI recommends that the ground of gender identity is added to Articles 16 J and K of the Broadcasting Act.
7. (§ 52) ECRI strongly recommends the authorities to press ahead with and intensify training for police, prosecutors and judges in order to ensure a more effective fight against racist and homo/transphobic hate crime, including violence.
8. (§ 58) ECRI recommends that the unnecessarily harsh conditions for long-term residence status are removed, in particular evidence of accommodation that is not shared with non-family members.
9. (§ 60) ECRI recommends that the authorities broaden the list of persons eligible for family reunification in order to facilitate successful integration of third country nationals in Malta.
10. (§ 72) ECRI strongly recommends the adoption of a strategy for the integration of all migrants as soon as possible, along with a clear message to the public that integration is a two-way process for both migrants and the majority population. To

encourage full integration, the strategy should address language acquisition in English and Maltese, and cover reasonable and achievable ways to obtain long-term residence status, as well as electoral rights and eventually Maltese citizenship.

11. (§ 77) ECRI recommends that the authorities intensify their efforts to prevent labour exploitation by systematically providing refugees with information on their rights in employment and on how to report abuses.
12. (§ 79) ECRI recommends that the authorities consider providing for the possibility of family reunification for those granted subsidiary protection status, in order to enhance their integration.
13. (§ 84) ECRI strongly recommends that the authorities organise a campaign to raise awareness among the public about the need for international protection and promoting a positive image of refugees.
14. (§ 97) ECRI strongly recommends that the authorities continue to allow persons who cannot be returned to their country of origin to stay legally in Malta. For those who have resided in Malta for more than ten years, the authorities should consider a more permanent form of regularisation.

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