



**Fourth Opinion on Malta - adopted on 14 October 2016  
Published on 4 May 2017**

**Summary**

The authorities of Malta continued to pay attention to the integration of society as a whole. Maltese society displays, in large measure, an embracing and tolerant approach towards migrants. However, isolated cases of hostility and discrimination towards them are reported. To counteract these negative phenomena, the authorities have undertaken awareness-raising campaigns and reinforced provisions of the Criminal Code to make racial motive an aggravating circumstance for all crimes. No data is collected systematically either on the prevalence of racially motivated crimes or on the number of cases relating to incitement to racial hatred. In addition, the National Migrant Integration Strategy 2015-2020 has yet to be adopted.

The institutional position of the main human rights protection and promotion bodies, namely the National Commission for the Promotion of Equality (NCPE) and the Parliamentary Ombudsman Institution, remains weak. Proposals to strengthen their independence and mandates, with a view to making them compatible with the Paris Principles and Parliamentary Assembly Resolution 1959 (2013), have not been pursued.

**Recommendations:**

- **Strengthen independence and capacity of human rights institutions in line with the Paris Principles and Parliamentary Assembly Resolution 1959 (2013) in order to allow them to carry out their respective roles effectively;**
- **Establish a data collection system which would record the number of racist or ethnically motivated crimes and incidences of hate speech; set up specific monitoring and reporting mechanisms with regard to online hate speech;**
- **Continue combating all forms of racism, intolerance and discrimination and respecting human rights of all those within the jurisdiction of Malta; reinforce efforts to guarantee full respect of human rights of all persons living in Malta, by adopting, *inter alia*, the National Migrant Integration Strategy 2015-2020 without further delay.**

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## I. Key findings

### Monitoring process

1. This fourth cycle Opinion on the implementation of the Framework Convention by Malta was adopted in accordance with Article 26(1) of the Framework Convention and Rule 23 of Resolution (97)10 of the Committee of Ministers. The fourth [State Report](#), submitted by the Maltese authorities on 29 May 2014, reiterates the position held by the authorities that “Malta has no national minorities in its territory and that any substantive obligations previously mentioned in the Conclusions of the Advisory Committee are not within the remit of the Framework Convention on National Minorities”.<sup>1</sup> The report does not provide information requested under the “Outline for State reports to be submitted under the Fourth Monitoring Cycle” adopted by the Committee of Ministers of the Council of Europe.<sup>2</sup> In addition, Malta did not provide any comment on the Advisory Committee’s 3rd Opinion adopted on 11 October 2012 and published on 20 January 2014. The Advisory Committee has no information about what steps, if any, were taken by the authorities to disseminate the Opinion, as well as the corresponding Committee of Ministers’ Resolution.

2. The Advisory Committee recalls that in the first two cycles of monitoring, the authorities submitted substantial state reports, which contained information, in particular, on the measures taken to support asylum seekers and refugees.<sup>3</sup> The Advisory Committee notes with regret that under the current monitoring cycle, no information has been transmitted to the Secretary General or the monitoring bodies established under the Framework Convention. It is clear that the absence of any information by the State Party on the measures taken to implement the Committee of Ministers’ recommendations<sup>4</sup> hampers significantly the Advisory Committee’s ability to make a comprehensive assessment of the situation in Malta.

3. Furthermore, the Advisory Committee deeply regrets that it was not possible to make a visit to Malta. It recalls that country visits are an essential element of the monitoring process. In the absence of a full state report, a visit to Malta would have allowed the Advisory Committee to establish a direct dialogue with the representatives of the Maltese authorities and to discuss matters relating to the Framework Convention with other parties.

4. The Advisory Committee notes that in the Declaration contained in the instrument of ratification, deposited on 10 February 1998, the Government of Malta stated that it “considers its ratification of the Framework Convention as an act of solidarity in the view of the objectives

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<sup>1</sup> See

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800902e7>.

<sup>2</sup> See Outline for State reports to be submitted under the Fourth Monitoring Cycle, in conformity with Article 25 of the Framework Convention for the Protection of National Minorities, adopted by the Committee of Ministers at the 1169th meeting of the Ministers’ Deputies on 30 April 2013, doc. ref.: ACFC/III(2013)001, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680095c78>.

<sup>3</sup> See in particular 2nd State Report submitted by Malta on 1 December 2004, doc. ref.: ACFC/SR/II(2004)011, available at

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008b53a>.

<sup>4</sup> See Resolution CM/ResCMN(2014)8 on the implementation of the Framework Convention for the Protection of National Minorities by Malta, available at

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805c57f3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c57f3).

of the Convention”. In this context, the Advisory Committee draws the attention of the authorities to its Fourth Thematic Commentary on The Scope of Application of the Framework Convention for the Protection of National Minorities, adopted on 27 May 2016, in which it sets out its position concerning declarations made at the time of ratification:

“States parties to the Framework Convention have developed various approaches to establish the beneficiaries of the rights contained in the Framework Convention. In 18 cases, declarations and reservations were deposited at the time of ratification or signature, clarifying to whom the rights contained in the Framework Convention shall be applied or how certain provisions shall be interpreted. [...] The Advisory Committee has systematically reviewed the effects of these declarations and reservations on persons belonging to national minorities and on their access to rights. Given that, in many cases, the declarations date back to the late 1990s, and taking into account the substantially changed conditions in states parties since then, their pertinence should be reviewed at regular intervals by the states parties concerned to ensure that the approach to the scope of application accurately reflects the present-day societal context.”<sup>5</sup>

5. In view of the Government of Malta’s assessment that there are no national minorities in Malta, and with no information as to whether or not any group of persons has expressed an interest or harbours an intention to be recognised as such, this Opinion – such as the previous ones – contains an assessment of measures undertaken by the authorities with regard to Article 3 (on the scope of application) and Article 6 of the Framework Convention, which applies to all persons living in Malta, irrespective of their ethnic, cultural, linguistic or religious identity. Article 6 expressly invites contracting parties to take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory and to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity. In this context, the Advisory Committee draws the attention of the authorities to the position expressed in its Fourth Thematic Commentary on the scope of application of the Framework Convention, that

“the lack of respect for or ill-treatment of migrants, asylum seekers, refugees and/or other individuals who are, for whatever reason, considered to be different from the majority population, may prompt a general environment of fear. This may entice persons belonging to minorities to strive for conformity rather than for the active enjoyment of their rights. Based on Article 6, the Advisory Committee has also evaluated the implementation of the Framework Convention in states parties where, according to the authorities, no persons belonging to national minorities reside.”<sup>6</sup>

6. In the absence of both an informative state report and a visit, the findings of the Opinion are based on information contained in a wide range of written sources and on information obtained by the Advisory Committee, including from non-governmental sources.

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<sup>5</sup> See Fourth Thematic Commentary on The Scope of Application of the Framework Convention for the Protection of National Minorities, paragraph 23 and 24, doc. ref. ACFC/56DOC(2016)001, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a4811>.

<sup>6</sup> *ibid.*, paragraph 52.

## General overview of the present situation

7. The Advisory Committee notes that, in recent years, Maltese society has undergone, as a result of migration (both regular and irregular), a rapid process of transformation in the composition of its population. Whereas in 2005, the number of third-country nationals amounted to 12 000 (3% of the population),<sup>7</sup> in 2015, the number of third-country nationals residing in Malta had risen to 42 400 people, constituting 9.9% of the population.<sup>8</sup> This led to a rise in the feeling of insecurity and apprehension on the part of some segments within society.<sup>9</sup>

8. The authorities responded to these challenges by adopting anti-discrimination legislation, by setting up a National Commission for the Promotion of Equality, by reinforcing the provisions of the Criminal Code and by signing and ratifying Protocol 12 of the European Convention on Human Rights.<sup>10</sup> These measures have been accompanied by a new Strategy for the Reception of Asylum Seekers and Irregular Migrants, adopted in 2015.

9. Maltese society displays, in large measure, an embracing and tolerant approach towards third-country nationals. Isolated cases of hostility and discrimination towards migrants have been reported,<sup>11</sup> prompting the authorities to take legal measures and undertake awareness-raising campaigns, such as activities to address racism and to increase the level of tolerance and understanding among the population.

## Assessment of measures taken to implement the recommendations made by the Committee of Ministers under the third monitoring cycle

10. The Conclusions forming part of the third Opinion of the Advisory Committee on Malta contained two indents which made specific recommendations to the authorities. These recommendations were repeated almost *expressis verbis* in the Committee of Ministers' Resolution.<sup>12</sup> The Advisory Committee regrets that even in respect of the specific

<sup>7</sup> See Michel Poulain: European migration statistics: Definitions, data and challenges; M. Barni and G. Extra, eds., Mapping Linguistic Diversity in Multicultural Contexts (2008), 43-66. Berlin/New York: Mouton de Gruyter, available at [www.poliglotti4.eu/docs/publications/Poulain%202008%20European%20migration%20statiststics%20definitions,%20data%20and%20challenges.pdf](http://www.poliglotti4.eu/docs/publications/Poulain%202008%20European%20migration%20statiststics%20definitions,%20data%20and%20challenges.pdf).

<sup>8</sup> See Eurostat table Foreign-born population by country of birth, 1 January 2015, available at [www.ec.europa.eu/eurostat/statistics-explained/index.php/File:Foreign-born\\_population\\_by\\_country\\_of\\_birth,\\_1\\_January\\_2015\\_\(%C2%B9\)\\_YB16.png](http://www.ec.europa.eu/eurostat/statistics-explained/index.php/File:Foreign-born_population_by_country_of_birth,_1_January_2015_(%C2%B9)_YB16.png).

<sup>9</sup> See for example Mind D Gap: Together we can make a difference, available at [https://socialdialogue.gov.mt/en/Public\\_Consultations/MSDC/Documents/2015%20-%20Integration/MSD\\_Report%20booklet\\_JF\\_rev4.pdf](https://socialdialogue.gov.mt/en/Public_Consultations/MSDC/Documents/2015%20-%20Integration/MSD_Report%20booklet_JF_rev4.pdf), page 12.

<sup>10</sup> Malta signed and ratified Protocol 12 on 8 December 2015. It entered into force in respect of Malta on 1 April 2016.

<sup>11</sup> See, for example, Equality Matters NCPE Newsletter, NCPE's Investigations: Alleged discrimination in the rental of a property on the basis of race and ethnic origin, available at [https://ncpe.gov.mt/en/Documents/News\\_and\\_Events/Newsletter/NCPE%20Newsletter%20No.6.pdf](https://ncpe.gov.mt/en/Documents/News_and_Events/Newsletter/NCPE%20Newsletter%20No.6.pdf); Caritas Cares: Malta Report, November 2015, available at [http://www.caritas.eu/sites/default/files/2015\\_caritas\\_cares\\_country\\_report\\_mt.pdf](http://www.caritas.eu/sites/default/files/2015_caritas_cares_country_report_mt.pdf).

<sup>12</sup> Resolution CM/ResCMN(2014)8 on the implementation of the Framework Convention for the Protection of National Minorities by Malta, adopted by the Committee of Ministers on 2 July 2014 at the 1204th meeting of the Ministers' Deputies: "Recommendations: - continue to take all necessary measures to combat intolerance and discrimination in all their forms and to ensure respect of the human rights of all those under the jurisdiction of Malta; pursue efforts to guarantee the full respect of the human rights of third country nationals with a view to

recommendations of the Committee of Ministers, the authorities of Malta did not provide any information in the State Report on steps taken to implement them.

11. Moreover, the authorities of Malta asserted that “any substantive obligations previously mentioned in the Conclusions of the Advisory Committee are not within the remit of the Framework Convention on National Minorities”.<sup>13</sup> The Advisory Committee considers this assertion incorrect, given the scope of application of Article 6 of the Framework Convention to all persons living in Malta, regardless of their status, and taking into account the recommendations contained in the Committee of Ministers’ Resolution.

12. The Advisory Committee notes also that, in 2013, the authorities embarked on a four-year project entitled Mind D Gap: Together we can make a difference which supports civil society’s efforts to facilitate integration of migrants (referred to as “third-country nationals”) within Maltese society. The project is intended to serve as a pilot phase for the National Migrant Integration Strategy 2015-2020, which is yet to be adopted.

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fostering better social cohesion; and adopt resolute measures to improve society’s attitudes towards such persons through a commitment to a robust and long-term information strategy.”

<sup>13</sup> See fourth State Report submitted by Malta pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities, received on 29 May 2014, doc. ref. ACFC/SR/IV(2014)009, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800902e7>.

## II. Article-by-article findings

### Article 3 of the Framework Convention

#### Application of the Framework Convention

13. The authorities' position on the scope of application of the Framework Convention has remained constant since the first monitoring cycle. According to the declaration submitted by Malta when ratifying the Framework Convention, "no national minorities in the sense of the Framework Convention exist in the territory of the Government of Malta".

14. In the absence of a full state report and a visit to Malta, and based on limited information obtained from other sources, the Advisory Committee is not in a position to assess the accuracy of this statement.

15. The Advisory Committee recalls that the Preamble of the Convention calls for the creation of a climate of tolerance and dialogue, and that it has consistently asked Malta to adopt a dialogue-based approach in their relations with persons and groups interested in access to rights contained in the Framework Convention. It reiterates the position voiced already in its first Opinion that "concerning persons belonging to an ethnic, linguistic or religious group other than the dominant one, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It is of the opinion that the Maltese authorities should consider this issue in consultation with the persons concerned".<sup>14</sup>

#### *Recommendation*

16. The Advisory Committee renews its call on the authorities to adopt a dialogue-based approach in their relations with persons and groups who may be interested in access to rights contained in the Framework Convention.

### Article 6 of the Framework Convention

#### Tolerance and protection against discrimination

17. The National Commission for the Promotion of Equality (NCPE), which was set up in 2004 and whose mandate extends to awareness raising on discrimination based on 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, provision of goods and services and education, continues to ensure the necessary co-ordination among government departments and other agencies in the implementation of equality and non-discrimination policy measures, services or initiatives. It has to be noted, however, that the Commissioner for the Promotion of Equality and six members of the Commission are appointed by the government and that the Commission reports to the government. Furthermore, the Advisory Committee notes that, although the NCPE may receive and investigate complaints

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<sup>14</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities Opinion on Malta, adopted on 30 November 2000, paragraph 14, doc. ref. ACFC/INF/OP/I(2001)6, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008be67>.

from individuals and mediate between the parties, its proposals are not binding or enforceable.

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18. The authorities have undertaken a reflection on the broadening of the mandate of the NCPE by transforming it into a Human Rights and Equality Commission (HREC) that would meet the Paris Principles and Parliamentary Assembly Resolution 1959 (2013) establishing standards of a fully independent human rights institution. With this aim in mind, the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties presented drafts of two legislative initiatives at a public seminar on 10 December 2015: a Bill towards an Equality Act and a Bill towards a Human Rights and Equality Commission Act. The Advisory Committee notes that these legislative initiatives are currently undergoing further consultations and have not been presented to the parliament.

19. Similarly, proposals aiming to strengthen the Parliamentary Ombudsman Institution, tabled by the ombudsperson in March 2014, have not been pursued. These proposals would have resulted in merging a number of autonomous or semi-autonomous institutions that had been set up by law to oversee specific areas of social, economic or other activities with the office of the Parliamentary Ombudsman. Furthermore, they would have allowed the office holder to enquire into alleged violations by a private stakeholder delivering a service previously administered by the government, and would have reinforced mechanisms for implementation of the ombudsperson's recommendations.

20. The authorities have continued their efforts to promote tolerance and facilitate integration of Maltese society as a whole. There appears to be a willingness on the part of the authorities to promote the welfare of third-country nationals and their integration. The Advisory Committee welcomes in particular the setting up of a Directorate for Human Rights and Integration within the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties and a similar one within the Ministry for Education and Employment. A project entitled Mind D Gap: Together we can make a difference, implemented by the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties supports civil society's efforts "to fulfil the conditions of residence and to facilitate their integration within Maltese society".<sup>16</sup> The project is intended to serve as a pilot phase for the National Migrant Integration Strategy 2015-2020. The Framework Document for the project states that "The aim of the Strategy is to bring about real changes for third country nationals and other migrants within our society, and to build a strong community where everyone, regardless of race, colour, religious or political opinion, age, sex, gender, disability, sexual orientation, gender identity or any other status, can live, work and prosper in a context of fairness, equality, rights, responsibilities and respect".<sup>17</sup> The Advisory Committee welcomes in particular the public consultations conducted by the authorities prior to the publication in June 2015 of the Framework Document: Towards a National Migrant Integration Strategy 2015-2020. It regrets, however, that in the year that followed, no further progress towards the adoption of the Strategy was achieved.

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<sup>15</sup> See similar comment in the ECRI Report on Malta (fourth monitoring cycle), paragraphs 34-39, adopted on 20 June 2013, CRI(2013)37, available at <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Malta/MLT-CbC-IV-2013-037-ENG.pdf>.

<sup>16</sup> See Mind D Gap: Together we can make a difference, available at [https://socialdialogue.gov.mt/en/Public\\_Consultations/MSDC/Documents/2015%20-%20Integration/MSD\\_Report%20booklet\\_JF\\_rev4.pdf](https://socialdialogue.gov.mt/en/Public_Consultations/MSDC/Documents/2015%20-%20Integration/MSD_Report%20booklet_JF_rev4.pdf).

<sup>17</sup> *ibid.*, page 7.



### *Recommendations*

21. The Advisory Committee invites the authorities to continue their efforts to strengthen the independence and capacity of human rights institutions in line with the Paris Principles and Parliamentary Assembly Resolution 1959 (2013), in order to allow them to carry out their respective tasks effectively.

22. The Advisory Committee calls on the authorities to adopt the National Migrant Integration Strategy 2015-2020 without further delay.

### **Intercommunity relations**

23. The authorities undertook efforts to address identified shortcomings<sup>18</sup> relating to the reception of asylum seekers arriving in the country. The Agency for the Welfare of Asylum Seekers (AWAS)<sup>19</sup> which, in 2009, replaced the Organisation for the Integration and Welfare of Asylum Seekers (OIWAS) was given the task of implementing national legislation and policy concerning the welfare of refugees, persons enjoying international protection and asylum seekers. In practice, the AWAS manages reception facilities, provides information programmes in the area of employment, housing, health, welfare and education, and promotes governmental schemes related to resettlement and voluntary returns.

24. According to the Migrant Integration Policy Index (MIPEX),<sup>20</sup> Malta's integration policies are still underdeveloped and migrants in Malta do not yet benefit from a comprehensive policy for their integration into Maltese society. On the other hand, with a view to improving the services offered to migrants living in Malta, the authorities have undertaken commendable efforts to train public service providers on intercultural competence, organised orientation sessions for migrants on different areas of work, education and practical aspects of living in Malta.<sup>21</sup> The Department of Quality and Standards in Education (DQSE) offers language support for migrant children in acquiring knowledge of English or Maltese and a number of schools have made efforts to support migrant children.<sup>22</sup> The Advisory Committee welcomes, in particular, information provided by the Ministry for Education and Employment in the Country Report Language in Education Policy Profile<sup>23</sup> according to which some schools organise activities aimed to promote multiculturalism through presentations on different cultures and inclusive projects relating to migrant children's backgrounds.

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<sup>18</sup> See UN High Commissioner for Refugees (UNHCR), UNHCR's Position on the Detention of Asylum-Seekers in Malta, 18 September 2013, available at <http://www.refworld.org/docid/52498c424.html>.

<sup>19</sup> Subsidiary Legislation 217.11, Agency for the Welfare of Asylum Seekers regulations, 17 July 2009, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9566&l=1>.

<sup>20</sup> See Migrant Integration Policy Index (MIPEX), 2015, available at <http://www.mipex.eu/malta>.

<sup>21</sup> See Newsletter of the International Organization for Migration (IOM), Malta, May 2015, available at <https://eufunds.gov.mt/en/EU%20Funds%20Programmes/Migration%20Funds/Documents/publicity/Newsletter%20-%20May%202015.pdf>.

<sup>22</sup> See <http://www.timesofmalta.com/articles/view/20151013/local/language-curriculum-plans-for-migrants.588018>.

<sup>23</sup> See Country Report: Malta, Language in Education Policy Profile 2014), pages 44-45, available at [https://www.coe.int/t/dg4/linguistic/Source/Country\\_Report\\_Malta\\_EN.pdf](https://www.coe.int/t/dg4/linguistic/Source/Country_Report_Malta_EN.pdf).

### *Recommendation*

25. The Advisory Committee calls on the authorities to continue their efforts to promote integration of Maltese society as a whole.

#### **Combating racism and intolerance**

26. Racial, religious and xenophobic motivation for any offence constitutes an aggravating circumstance entailing the increase in the prescribed punishment for all crimes, by virtue of amendments already introduced to the Criminal Code of Malta in 2009.<sup>24</sup> The definition of race in this context is broad and covers race, descent, colour and nationality (including citizenship) or ethnic or national origins.<sup>25</sup> Furthermore, the Criminal Code criminalises intentional incitement to racial hatred and “in situations where the circumstances have the likely effect of stirring up hatred”.<sup>26</sup> The Advisory Committee welcomes these provisions, but regrets to note that no data is systematically collected on the prevalence of racially motivated crimes and on the number of cases relating to incitement to racial hatred. It notes in this context that regrettably Malta has never submitted any information on hate crimes to the Office for Democratic Institutions and Human Rights (ODIHR).<sup>27</sup>

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<sup>24</sup> See ACT No. XI (17 July 2009) to amend the Criminal Code, Cap. 9, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=20900&l=1>.

<sup>25</sup> Article 222A reads : “(1) The punishments established in the foregoing provisions of this sub-title shall be increased by one or two degrees when the harm is committed on a person who has attained the age of sixty years or on a person suffering from a degree of physical or mental infirmity in consequence of which he is unable to defend himself adequately.

(2) The punishments established in the foregoing provisions of this sub-title shall also be increased by one to two degrees when the offence is racially or religiously aggravated or motivated, wholly or partly, by xenophobia within the meaning of the following subarticles.

(3) An offence is racially or religiously aggravated or motivated by xenophobia if:

(a) at the time of committing the offence, or immediately before or after the commission of the offence, the offender demonstrates towards the victim of the offence hostility, aversion or contempt based on the victim’s membership (or presumed membership) of a racial or religious group; or

(b) the offence is motivated, wholly or partly, by hostility, aversion or contempt towards members of a racial group based on their membership of that group.

(4) In subarticle (3)(a):

"membership", in relation to a racial or religious group, includes association with members of that group; "presumed" means presumed by the offender.

(5) It is immaterial for the purposes of subarticle (3)(a) or (b) whether or not the offender’s hostility is also based, to any extent, on any other factor not mentioned in that those paragraphs.

(6) In this article:

"racial group" means a group of persons defined by reference to race, descent, colour, nationality (including citizenship) or ethnic or national origins;

"religious group" means a group of persons defined by reference to religious belief or lack of religious belief.

<sup>26</sup> Article 82A, “(1) Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or racial hatred or whereby violence or racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months.

(2) For the purposes of the foregoing subarticle "violence or racial hatred" means violence or hatred against a group of persons in Malta defined by reference to colour, race, religion, descent, nationality (including citizenship) or ethnic or national origins or against a member of such a group.”

<sup>27</sup> OSCE Participating States have committed themselves to: "nominate, if they have not yet done so, a national point of contact on hate crimes to periodically report to the ODIHR reliable information and statistics on hate crimes", to "collect, maintain and make public, reliable data and statistics in sufficient detail on hate crimes and

27. In the absence of official data, the Advisory Committee notes that circumstantial evidence<sup>28</sup> indicates cases of racially motivated crimes, bullying in schools, treating persons with a different skin colour as perpetrators of a crime, rather than victims or innocent bystanders.<sup>29</sup> According to NGOs, the internet and, in particular, social media in Malta are rife with offensive content and continue to produce racist messages. The authorities appear to have taken no steps to facilitate reporting on hate speech online.

28. Investigations carried out by the National Commission for the Promotion of Equality and other sources indicate cases of discrimination on the basis of race or ethnic origin in access to housing,<sup>30</sup> employment<sup>31</sup> and access to health care, which in many cases depends on the discretion of health service providers.<sup>32</sup> Women migrants from sub-Saharan African countries, who were previously denied access to education in their countries of origin, are the most disadvantaged.<sup>33</sup>

### *Recommendations*

29. The Advisory Committee calls on the authorities to establish a data collection system which would record the number of racist or ethnically motivated crimes and incidences of hate speech. The authorities should consider setting up specific monitoring and reporting mechanisms on hate speech online.

30. The Advisory Committee reiterates its call on the authorities to continue to assign high priority to combating all forms of racism, intolerance and discrimination and ensuring the respect of human rights of all those within the jurisdiction of Malta.

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violent manifestations of intolerance, including the numbers of cases reported to law enforcement, the numbers prosecuted and the sentences imposed." (MC Decision No. 9/09), available at <http://hatecrime.osce.org/what-do-we-know/our-mandate>, OSCE ODIHR Hate Crime Reporting, available at <http://hatecrime.osce.org/malta>.

<sup>28</sup> See, for example, Afrophobia in Europe, ENAR Shadow Report 2014-2015, available at [http://www.enar-eu.org/IMG/pdf/shadowreport\\_afrophobia\\_final\\_with\\_corrections.pdf](http://www.enar-eu.org/IMG/pdf/shadowreport_afrophobia_final_with_corrections.pdf).

<sup>29</sup> *ibid.*, pages 27 and 39.

<sup>30</sup> *ibid.*, note 11.

<sup>31</sup> *ibid.*

<sup>32</sup> *ibid.*, note 20.

<sup>33</sup> *ibid.*, note 27.

### III. Conclusions

31. The Advisory Committee considers that the present concluding remarks and recommendations could serve as the basis for the resolution to be adopted by the Committee of Ministers with respect to the implementation of the Framework Convention by Malta.

32. The authorities are invited to take account of the detailed observations and recommendations contained in Sections I and II of the Advisory Committee's Fourth Opinion.<sup>34</sup> In particular, they should take the following measures to improve further the implementation of the Framework Convention:

#### **Recommendations:**<sup>35</sup>

- Strengthen independence and capacity of human rights institutions in line with the Paris Principles and Parliamentary Assembly Resolution 1959 (2013) in order to allow them to carry out their respective roles effectively;
- Establish a data collection system which would record the number of racist or ethnically motivated crimes and incidences of hate speech; set up specific monitoring and reporting mechanisms with regard to online hate speech;
- Continue combating racism, intolerance and discrimination in all their forms and respect human rights of all those within the jurisdiction of Malta; reinforce efforts to guarantee full respect of human rights of all persons living in Malta, by adopting, *inter alia*, the National Migrant Integration Strategy 2015-2020 without further delay.

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<sup>34</sup> A link to the Opinion is to be inserted in the draft resolution before submission to the GR-H.

<sup>35</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.