



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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Mr Michael FARRUGIA
Minister for Home Affairs and National Security of Malta

Strasbourg, 14 December 2017

Dear Minister,

Further to our meeting and constructive exchange during my visit to Malta from 7 to 10 November, I would like to follow up on certain issues concerning the human rights of migrants, including asylum seekers.

I welcome the positive changes which have occurred in the last two years, especially the end of the automatic migrant detention policy, as well as the participation of Malta in the EU refugee relocation programme. My visit to the Hal Far migrant reception centre also gave me the opportunity to observe that the living conditions in this centre have improved since my predecessor's 2011 visit. However, further ameliorations are needed, in particular in the single men's unit which consists of containers with poor sanitation facilities.

Reception centres should be transitional accommodation solutions, since migrants and beneficiaries of international protection should have access to adequate housing. However, many of them continue to remain in reception centres because of a lack of affordable housing, which also affects nationals with low incomes. This situation constitutes an obstacle to migrant integration and may generate tensions with the local population, as occurred recently in Marsa. Therefore, I urge Malta to give full effect to Article 31 of the European Social Charter (ESC), which guarantees the right to housing, and Article 16 ESC concerning the right of the family to social, legal and economic protection, by taking appropriate measures to improve public housing schemes and to eradicate discrimination that migrants may face in their access to housing. To this end, I call on Malta to accept Article 19 ESC concerning specifically the right of migrant workers and their families to protection and assistance. I also strongly encourage the Maltese authorities to support and promote human rights awareness campaigns in order to tackle negative perceptions and stereotypes that affect migrants.

In addition, distinctions concerning entitlement to social security benefits between refugees and beneficiaries of other forms of international protection should be removed. I invite Malta to give effect to Article 13§4 ESC so that all foreign nationals, be they legally present or in an irregular situation, are entitled to emergency medical and social assistance. I also encourage Malta to accept the collective complaint system under the ESC.

During my visit, I noted that many migrants work, a number of them reportedly undeclared. Facilitating migrants' access to the legal employment market is both a condition for their integration and an opportunity for the national economy which is currently booming and needs the additional workforce. In this context, the bureaucratic obstacles to migrants' access to the labour market should be removed and steps should be taken to counter the reported labour exploitation of migrants.

I noted that the recently adopted first migrant integration strategy addresses some of these concerns, as well as other issues such as access to language courses and training programmes tailored to the needs of migrants. I welcome this development and invite Malta to systematise the implementation of this strategy. I should also like to stress that one of the elements of getting integration right is to ensure

quick and effective access to family reunification. It is clear that separation from family members is a cause of great stress, especially for persons who have received international protection. The constant worry about the fate of loved ones left behind can lead to depression and eating and sleeping disorders. These factors make focusing on integration, such as participating fully in language learning or labour market orientation, extremely difficult. Real integration can often only begin when the family is together again.

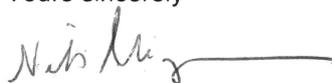
However beneficiaries of subsidiary protection are not entitled to family reunification under Maltese law. Laws and policies that clearly disadvantage persons with subsidiary protection may be ill-founded and discriminatory. Often, the assumption that persons with subsidiary protection only remain in Europe for a short while does not reflect reality. Rather, with conflicts across the world being protracted, their temporary situation often turns into a permanent one. Therefore, I urge Malta to put an end to this form of unfair distinction and establish family reunification procedures able to guarantee flexibility, promptness and effectiveness in order to secure all international protection holders' right to respect for family life under Article 8 of the European Convention on Human Rights.

Access of long-term residents to citizenship is another major factor of migrant integration. As I noted in the 2016 Issue Paper concerning migrant integration in Europe, naturalisation improves migrants' well-being in a variety of ways, such as increasing their protection from discrimination and relevant reporting rates, as well as their opportunities for free movement in the EU. However, I note with concern that naturalisation applications are considered only if the applicants have resided in Malta for more than 18 years which is clearly excessive. In addition, the naturalisation process is reportedly lengthy and non-transparent, while decisions are not subject to judicial review. I call on Malta to take all necessary measures to facilitate migrants' access to citizenship, and to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, as well as to ratify the 1997 European Convention on Nationality.

Lastly, I would like to note that during my visit I was informed by legal practitioners that the decisions of the Refugee Appeals Board's three chambers, the merits of which cannot be challenged before courts, suffer from serious shortcomings. Reportedly while some decisions include a comprehensive examination of the elements of fact and law of the case, others do not include any reasoning at all, rejecting the case on the basis of one sentence. Concerns have also been expressed about the lack of asylum-related training and capacity of the Board Members. I invite Malta to redress this situation and provide for a full judicial review of the Refugee Appeals Board's decisions.

I look forward to receiving your reply and continuing a constructive dialogue with you and your government.

Yours sincerely



Nils Muižnieks