

COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

DUNJA MIJATOVIĆ

REPORT FOLLOWING HER VISIT TO MALTA
FROM 11 TO 16 OCTOBER 2021

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SUMMARY

Commissioner Dunja Mijatović and her team visited Malta from 11 to 16 October 2021. During the visit, the Commissioner held discussions with the Maltese authorities, the Parliamentary Ombudsman, the Chairpersons of the National Commission for the Promotion of Equality and the Commission on Gender-Based Violence and Domestic Violence, journalists, human rights defenders and other representatives of civil society, and international counterparts. The present report focuses on the following issues raised during the visit: media freedom, certain aspects concerning asylum and migration, and women's rights and gender equality.

Media freedom

The assassination of the investigative journalist Daphne Caruana Galizia more than four years ago shone a spotlight on the urgent need for measures to protect journalists in Malta and fight impunity, along with broader reforms to tackle the systemic weaknesses that created the conditions for such tragedy to happen. While steps have been taken to shed light on the circumstances of the murder, justice has yet to be served for Daphne Caruana Galizia, her family and fellow journalists. The Commissioner calls on the Maltese authorities to continue their investigations to identify everyone involved in the murder and to ensure that those responsible are held accountable.

The public inquiry report which found the state responsible for the assassination of Daphne Caruana Galizia provides a solid foundation for effecting vital changes that would benefit Maltese society as a whole. Fully implementing the recommendations of the report should therefore be a top priority for the government. The Commissioner urges the authorities to ensure that legislative and other reforms, which should be set in motion without delay, follow the recommendations of the inquiry report and comply with international standards. Effectively engaging civil society in this process and ensuring accountability and transparency at all stages is essential.

The authorities should act swiftly to put in place the reforms needed to strengthen the protection of journalists. They should start with a co-ordinated response to threats and harassment against journalists, including online, coupled with enhanced awareness-raising among the police and dialogue between law enforcement and media professionals. The Commissioner calls on the authorities, including at the highest political level, to take a robust public stance against attacks on journalists and refrain from any conduct that encourages hate speech against them.

The planned adoption of a new media law, to provide greater protection for journalists, should not result in state interference in the regulation of their profession. Instead, an effective system of self-regulation should be adopted by the media community, based on an agreed code of ethics and a mechanism for receiving and responding to complaints.

Although Malta decriminalised defamation in 2018, the Commissioner remains concerned about the excessive use of vexatious lawsuits against Maltese journalists and newspapers. She urges the Maltese authorities to ensure that relevant legislation is adopted without delay and that, in matters of public interest, the burden of proof in libel cases filed against journalists is reversed. The new legislation could, among others, include provisions to allow the early dismissal of patently spurious lawsuits or measures to punish abuse, for example by reversing the costs of proceedings.

The Commissioner calls on the Maltese authorities to ratify the Council of Europe Tromsø Convention on Access to Official Documents and to ensure that journalists have access to accurate and timely information. The implementation of the Freedom of Information Act of 2008 should be subject to an independent and thorough analysis and additional measures should be taken so that exceptions to the rule of public disclosure are interpreted and applied more specifically and narrowly.

Asylum and migration

The decrease in Malta's search and rescue efforts over the past few years, together with its reported failure to assist migrants rescued by NGO ships and its restrictive disembarkation policies continue to pose significant risks to the human rights – including the right to life – of refugees, asylum seekers and migrants in the Central Mediterranean. The Commissioner recalls that effective search and rescue and timely and safe disembarkation are of the essence to safeguard the lives and dignity of those rescued at sea. She calls on the Maltese authorities to ensure adequate rescue capacities in Malta's search and rescue region, enhance the effective co-ordination of rescue operations, and effectively investigate any allegations of omissions to provide immediate assistance to persons in distress at sea. Under no circumstance should disagreements between Malta and other member states about disembarkation responsibilities be allowed to put human rights at risk. When such disagreements arise, humanitarian considerations should take precedence. The authorities should also seek constructive co-operation with NGOs conducting search and rescue operations and facilitate their work, including by allowing them access to ports.

Any repetition of the human rights and humanitarian crisis created as a result of the temporary closure of Malta's ports in 2020 should be avoided. To comply with Malta's non-*refoulement* obligations, the Maltese authorities should moreover ensure that persons rescued at sea have a genuine and effective possibility of applying for asylum or otherwise submitting arguments against their return.

Malta's continued co-operation with the Libyan authorities to curb irregular migration is a matter of grave concern, in so far as it leads to refugees and migrants being returned to face extreme suffering in Libya and contributes to other human rights violations. The Commissioner recalls that Libya is not a safe place for disembarkation and urges the Maltese authorities to suspend such co-operation activities with the Libyan Coast Guard and other Libyan authorities until clear guarantees of their human rights compliance are in place. Moreover, she strongly urges Malta's government to refrain from any action, including instructions to private vessels, that would result in returns to, and disembarkations in, Libya and to ensure accountability for any such incidents occurring as a result of action by the Maltese authorities.

The authorities should take immediate measures to avoid arbitrary detention of asylum seekers and migrants, invest in alternatives to immigration detention, improve safeguards against the detention of vulnerable persons, and ensure that any detention of children is immediately ended. Any detained migrants must be treated with dignity. The authorities should strengthen the independent monitoring of places of detention and guarantee human rights defenders, including NGOs, wide access to such places to provide support and assistance with respect to the asylum procedure or other matters. Furthermore, adequate safeguards should be put in place to protect detained asylum seekers and migrants from any ill-treatment or abuse.

The authorities should continue efforts to improve reception conditions and ensure that asylum seekers who are no longer accommodated in reception centres are not exposed to homelessness and destitution. The Commissioner strongly urges the authorities to ensure that unaccompanied minors effectively benefit from the protection granted by law to all children.

Women's rights and gender equality

Despite the substantial steps taken in recent years, Malta has failed to implement important reforms which could significantly advance its legal and institutional framework for the promotion of gender equality and women's rights. In particular, the Commissioner encourages the authorities to adopt, at the earliest opportunity, the Equality Act and the Human Rights and Equality Commission Act, in line, *inter alia*, with the guidance provided by the European Commission for Democracy through Law (Venice Commission).

Furthermore, while Malta's overall gender equality outcomes have improved, patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in the family and society continue to place women in a disadvantaged position in a number of areas, including the labour market and participation in political and public decision-making. The authorities should put in place a comprehensive policy to overcome these attitudes and stereotypes and support with adequate resources the awareness-raising activities carried out by independent human rights structures to promote gender equality and women's rights so as to ensure that such activities can be systematically implemented.

The Commissioner also calls on the authorities to step up measures to enable employees in the private sector to benefit from flexible working arrangements similar to those offered to employees in the public sector, further improve the availability of childcare support to facilitate women's re-entry into the labour market and act to reverse the growing gender pay gap in Malta. They should also take measures to enhance women's access to political and public leadership and decision-making positions, including by promoting gender mainstreaming within political parties, ensuring that women are represented in all areas of political activity, that selection, recruitment, and appointment processes for leading positions in public decision-making are gender sensitive and transparent, and that women candidates and elected representatives enjoy adequate visibility in the media.

Unimpeded access to sexual and reproductive health care is crucial to preserve women's right to health, as well as other rights including the right to life, the rights to be free from torture and ill-treatment and from discrimination and the right to privacy. Malta's blanket ban on abortions puts these rights at significant risk. The Commissioner urges the authorities to repeal provisions criminalising abortion, to develop comprehensive regulation of women's access to legal and safe abortion and to improve the availability of sexual and reproductive health services.

The Commissioner further calls on the authorities to guarantee equality for all women in the enjoyment of sexual and reproductive health and rights, including by ensuring the provision of evidence-based information and mandatory comprehensive sexuality education, securing the availability and affordability of modern contraceptive services and safeguarding access to health care in the light of refusals to provide care on grounds of conscience.

INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), carried out a visit to Malta from 11 to 16 October 2021. The visit focused on media freedom (section 1 of the present report), certain issues concerning asylum and migration (section 2), and gender equality and women's rights (section 3).
2. During the visit the Commissioner met with the Prime Minister of Malta, Robert Abela; the Deputy Prime Minister and Minister for Health, Christopher Fearne; the Minister for Home Affairs, National Security and Law Enforcement, Byron Camilleri; the Minister for Equality, Research and Innovation, Owen Bonnici; the Minister for Justice and Governance, Edward Zammit Lewis; the Attorney General, Victoria Buttigieg; and the Police Commissioner, Angelo Gafà. In addition, the Commissioner met with the Parliamentary Ombudsman, Anthony C. Mifsud, the Chairperson of the National Commission for the Promotion of Equality, Renee Laiviera, and the Chairperson of the Commission on Gender-Based Violence and Domestic Violence, Audrey Friggieri. She also had exchanges with journalists, human rights defenders and other representatives of civil society, and international counterparts.
3. The Commissioner visited the Safi Detention Centre, as well as two open accommodation centres located in Hal Far ("Hal Far Tent Village" and "Hangar Open Centre"), where she talked to asylum

seekers and migrants and the authorities in charge. At the end of her stay in Malta, she travelled to Bidnija to pay tribute to the journalist Daphne Caruana Galizia, at the site where she was killed.

4. The Commissioner would like to thank the Maltese authorities in Strasbourg and Valletta for their assistance in organising her visit and for providing her with additional information following the visit. She expresses her gratitude to all her interlocutors in Malta for sharing with her their knowledge, experiences and insights.¹

1. MEDIA FREEDOM

5. Malta's press freedom ranking registered a severe drop following the assassination of the investigative journalist Daphne Caruana Galizia on 16 October 2017 and has continued to decline ever since as a result of delays in the investigations into her killing, the government's initial reluctance, despite repeated calls by her family and the international community, to set up a public inquiry into state responsibility for her assassination,² and allegations of political interference in the work of the Board of Inquiry.³ For the second year in a row, it stands at its lowest level ever (81st).⁴
6. At the same time, Malta's media climate remains deeply divided along political lines. The two main political parties own and operate outlets incorporating multimedia platforms, leaving little space for diversity and the representation of minority voices.⁵ Journalists seen as being affiliated with a different party are frequently denied access to events or information on this basis and the political attitude towards them is often openly hostile and derogatory. Meanwhile, the public service media reportedly function as a conduit for government opinion and have been widely criticised for failing to fulfil their duty of impartial reporting.
7. Of further concern is the lack of a transparent system for providing public aid to media outlets. Subsidies provided since the onset of the COVID-19 pandemic have been a source of controversy, with politically-owned media houses reportedly favoured over independent outlets, thus further polarising the media environment.⁶
8. The Commissioner shares the concerns raised by many of those she spoke to who believe that this environment contributes to public distrust in the media and helps perpetuate impunity and corruption. This remains the case despite an emerging shift in public opinion following the release, on 29 July 2021, of the public inquiry report which found the state responsible for Daphne Caruana Galizia's death.⁷ Rather than being recognised as a pillar of democracy, journalism is still discredited, and journalists continue to face harassment and obstacles in their work. Investigative journalists, in particular, are dismissed as "hate figures" and are regularly targeted by retaliatory hate speech, threats and lawsuits. Moreover, their allegations are not taken seriously and often go uninvestigated by the authorities.

¹ This report was finalised on 21 January 2022. All online documents quoted in the report were last accessed on that date.

² See Parliamentary Assembly of the Council of Europe (PACE), [Resolution 2293 \(2019\)](#) "Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges", adopted on 26 June 2019 and the relevant [report](#) of the PACE Committee on Legal Affairs and Human Rights (rapporteur: Pieter Omtzigt).

³ See the Commissioner's [letter](#) to the Prime Minister of Malta, Joseph Muscat, published on 29 November 2019. See also www.article19.org/resources/malta-ecpmf-public-inquiry/.

⁴ Reporters Without Borders (RSF), [2021 World Press Freedom Index](#).

⁵ See Media Pluralism Monitor 2021, Country report Malta, available at: <https://cmpf.eui.eu/mpm2021-results/>, p. 8.

⁶ *Idem*, p. 15.

⁷ Available in Maltese at: www.gov.mt/en/Pages/quicklinks.aspx. For an English version, see the courtesy translation of the report published by the Daphne Caruana Galizia Foundation: www.daphne.foundation/en/2021/11/20/public-inquiry-translation. See also the [courtesy translation](#) of conclusions and recommendations, provided by the Daphne Caruana Galizia Foundation, and RSF: <https://rsf.org/en/news/daphne-caruana-galizia-landmark-public-inquiry-recommendations-must-be-implemented>.

9. It is beyond the scope of this report to address in detail the broader reforms needed to overcome these challenges. However, the Commissioner believes that for these reforms to succeed, it is essential to fully implement the recommendations of the public inquiry report, together with those issued by the European Commission for Democracy through Law (Venice Commission) and the Group of States against Corruption (GRECO),⁸ with respect to strengthening the rule of law in Malta. The Commissioner's observations in the following subsections will focus on some critical points pertaining to the safety of journalists, the use of abusive lawsuits against journalists and access to public information.

1.1. SAFETY OF JOURNALISTS

1.1.1. THE CASE OF DAPHNE CARUANA GALIZIA AND THE ONGOING HARASSMENT AND INTIMIDATION OF JOURNALISTS

10. The Commissioner's visit coincided with the fourth anniversary of the murder of Daphne Caruana Galizia. Investigations into her killing are ongoing and despite some progress, including the arraignment of several suspects and the conviction of a perpetrator, full accountability has yet to be established. The Commissioner regrets that several years after this tragic event and despite numerous calls, including by her,⁹ to ensure that those responsible for carrying out the murder and any masterminds behind it are promptly brought to trial, justice has yet to be served for Daphne Caruana Galizia, her family and fellow journalists.
11. With regard to this situation, the Parliamentary Assembly of the Council of Europe (PACE) in Resolution 2293 (2019) on the assassination of Daphne Caruana Galizia and the rule of law¹⁰ stressed that the murder and the authorities' failure to bring the suspected killers to trial or to identify those who ordered her assassination were symptomatic of a dysfunctional system in which some persons seemed to enjoy impunity.
12. The Board of Inquiry also concluded that a culture of impunity had been created from the highest echelons of power in Malta. The killing of Daphne Caruana Galizia had been preceded by years of attacks on her home, vexatious lawsuits¹¹ and other harassment, all of which went unpunished. The authorities' inaction at the time when threats against the journalist were escalating and the involvement of some public officials in smear campaigns launched against her had created a favourable climate for those who wanted to harm and ultimately eliminate her to do so with the least consequences possible. Furthermore, the Board of Inquiry found that the murder of Daphne Caruana Galizia had been intrinsically linked to her critical reporting.
13. Protests calling for justice in Daphne Caruana Galizia's case were systematically countered by the authorities. The Civil Court in its Constitutional Jurisdiction found in January 2020 that the authorities' repeated orders to remove her memorial in Valletta were arbitrary and violated the protesters' right to freedom of expression.¹²
14. The Commissioner regrets the numerous reports of ongoing threats and harassment, in particular online, against editors and journalists, many of whom continue to actively advocate for justice for Daphne Caruana Galizia and an official investigation into the corruption cases exposed through her reporting. Hate speech towards journalists is also very common, especially in the online comments

⁸ Venice Commission, [Opinions](#) (Malta); GRECO, [Evaluations](#) (Malta).

⁹ [Justice should be ensured to honour the memory of Daphne Caruana Galizia](#), 16 October 2021; [Malta must establish accountability for the murder of Daphne Caruana Galizia](#), statement, 16 October 2019.

¹⁰ See fn. 2 above.

¹¹ See [OSCE Representative urges authorities in Malta to protect independent journalists and free expression](#), 15 February 2017, and European Federation of Journalists (EFJ), [Malta: Libel suits and warrants against Daphne Caruana Galizia](#), 9 February 2017.

¹² *Delia v. Minister for Justice of Malta Owen Bonnici et al.*, 30 January 2020.

sections of the media. Some journalists expressed concerns that online threats act as a catalyst for actual violence. The Commissioner observes that public officials' negative rhetoric about the media has certainly led to a surge in insults, threats and harassment of journalists by the public. Such an environment may deter young people from becoming journalists, while journalists themselves are more likely to resort to self-censorship.

15. Women journalists are particularly exposed, both online and offline, to harassment and sexist hate speech which builds on gender stereotypes to question their professionalism. The virulent cyberbullying campaign launched against a woman cartoonist in November 2021 is a worrying example of the continuing, deeply gendered attacks against women in the media.¹³
16. The Commissioner's attention was drawn in particular to a series of spoofing attacks against several journalists and newsrooms, as well as the NGO Repubblika, in which fake e-mails and web items have been created since the summer of 2021 with the aim of casting doubt on the prosecution's cases in the ongoing investigations into the murder of Daphne Caruana Galizia and the motives of those fighting for justice in these cases.¹⁴ These attacks continued during the Commissioner's visit to Malta, in some instances escalating into threats. The spoof calls and e-mails were co-ordinated in such a way as to intimidate those concerned.

1.1.2. THE PUBLIC INQUIRY REPORT ON STATE OF RESPONSIBILITY FOR THE ASSASSINATION OF DAPHNE CARUANA GALIZIA

17. The inquiry report contains a series of recommendations for legislative and procedural reforms to strengthen the protection of journalists, guarantee journalistic freedom, and enhance the authorities' capacity to intervene promptly and effectively to investigate allegations made by journalists. The Commissioner learned that a committee of experts has been recently appointed by the government to provide recommendations regarding changes in the media sector in Malta. These include upcoming observations that the committee has been requested to make on a number of legislative proposals announced by the government.¹⁵ The Commissioner would like to receive further details about these proposals and the committee's work.
18. Regarding journalists' safety, a key recommendation of the inquiry report concerns the establishment of a specialised unit within the police force which should include officers trained to identify and assess risks affecting journalists, as well as their causes and possible connections with the journalists' work. A specialised operational unit of this type should serve as an immediate contact between the police and journalists in need of protection and be tasked with responding to allegations made by journalists. The inquiry report highlights that for this to happen, it is essential that police officers have a thorough understanding of the role of journalists as guardians of democracy and be adequately trained to respond to their allegations while respecting their professional secrecy and the inviolability of their sources of information.
19. With regard to the current situation, media representatives shared with the Commissioner their concerns that the police force lacks a mechanism that would allow it to mount a co-ordinated response to journalists' allegations and to identify, and deal with, patterns of incidents and concerted, systematic threats or attacks against journalists. As a result, the police often fail to adequately respond to such threats or attacks and to properly investigate possible connections with the journalists' work.

¹³ Coalition for Women in Journalism, [press statement](#), 18 November 2021.

¹⁴ [Alert](#) submitted to the Council of Europe Platform to promote the protection of journalism and safety of journalists, 30 August 2021.

¹⁵ www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2022/01/11/pr220024.aspx.

20. In this respect, the authorities specified that hate speech incidents are already treated in a centralised, co-ordinated way and that procedures are being developed to extend this procedure to other types of incidents. While in view of the low number of violent incidents, the authorities are not currently planning to set up a specialised unit as recommended by the Board of Inquiry, a contact point already exists within the Police Force to whom incidents can be reported. Furthermore, in accordance with the recommendations of the inquiry report, reforms are ongoing to ensure that decisions on complaints are no longer the preserve of the Commissioner of Police, but are taken collectively, by a commission.
21. The authorities also informed the Commissioner of their plans to introduce, as of November 2021, systematic and continuous training for police officers on media issues and journalists' safety. For this purpose, an agreement has been concluded with the Institute of Maltese Journalists (IGM) and further contacts established with international bodies and police forces in other Council of Europe member states. As mentioned in her exchanges with the Maltese authorities, however, the Commissioner considers that broader engagement with media professionals is needed in order to take into account the views of those media professionals who are not members of the IGM.
22. Last but not least, the Board of Inquiry recommended the introduction of a law to regulate the journalism profession. Most importantly, the recommendations mention that the new law should ensure that journalism is self-regulated, in a similar way to other independent professions. The Commissioner wishes to stress that media self-regulation is an important tool to safeguard editorial freedom, to promote media quality and accountability, and to help ensure credibility for media outlets. It is also a vital mechanism for reducing the state's influence on the media to a minimum.

1.2. THE USE OF ABUSIVE LAWSUITS AGAINST JOURNALISTS

23. The Commissioner notes that journalists in Malta have been the target of abusive legal proceedings aimed at inhibiting critical reporting. She was informed of several instances of Strategic Lawsuits against Public Participation (SLAPPs) directed at journalists. At the time of her death, Daphne Caruana Galizia was facing over 40 civil and criminal defamation suits in various jurisdictions, including Malta and the United States. These included 43 civil and 5 criminal suits, brought by political representatives from across the political spectrum in Malta. She also had her bank accounts frozen by a court order in relation to a libel case brought by a government minister. Some of these lawsuits have continued posthumously against her family and a few of them are still pending.
24. In a letter dated 12 September 2019,¹⁶ the Commissioner called on the former Prime Minister of Malta and members of his government to withdraw the lawsuits that were still pending against Daphne Caruana Galizia's family. In addition to the pressure and intimidation this meant for the family, the Commissioner mentioned the concern that under Maltese law, which places the burden of proof on the respondents, the family could be obliged to reveal information about her journalistic work and sources. She added that in cases involving matters of public interest such as those concerning corruption, Maltese legislation should allow courts to take a more balanced approach and consider reversing the burden of proof. She also recommended that the authorities repeal the rules which allow the passing of civil defamation cases to heirs, which put journalists and their families at risk and have a chilling effect on investigative journalism.
25. As the Commissioner has stressed in a human rights comment,¹⁷ SLAPPs divert journalists' time, energy and resources and have a profoundly intimidating effect. In some cases, the threat of bringing such a suit, including through letters sent by powerful law firms, was enough to bring about the desired effect of halting journalistic investigation and reporting. For example, in May and June 2020, the Times of Malta, Malta Today, Malta Independent, Lovin Malta and The Shift News

¹⁶ [Letter](#) to the Prime Minister of Malta, Joseph Muscat, published on 19 September 2019.

¹⁷ [Time to take action against SLAPPs](#), 27 October 2020.

received letters in relation to their reporting from a UK-based law firm and a US-based law firm on behalf of an entrepreneur, demanding the removal of articles and threatening legal action.¹⁸ In another case highlighting the issue of forum shopping, Maltese blogger Manuel Delia and the newspaper Times of Malta were sued in Bulgaria by the Bulgarian co-owner of a Maltese bank after the publication of articles alleging that he was being investigated.¹⁹

26. The Commissioner received information concerning further government plans to adopt anti-SLAPPs legislation that would also reflect developments at EU level. This would in particular amend provisions concerning the enforcement of judgments obtained abroad and the current requirements for the defendant to pay a fee to respond, and limit heirs' liability in libel lawsuits continuing after the defendant's death. She would like to receive more information on this topic and invites the Maltese authorities to consult civil society and relevant international actors and organisations on any new legislative proposals.

1.3. ACCESS TO PUBLIC INFORMATION

27. Public access to information that is in the public interest is an integral aspect of, and essential prerequisite for, freedom of expression.
28. In Malta, the Freedom of Information Act of 2008 entered fully into force in 2012. It gives the general public the right of access to documents held by public authorities. However, only those who are EU citizens and have been resident in Malta for at least five years can submit requests. The public authority concerned is required to process freedom of information requests within 20 working days, a timeframe which may be extended by up to 40 working days. Any refusal must be explained, and a decision can be appealed with the Information and Data Protection Commissioner.²⁰ His/her decision can then be appealed through the Information and Data Protection Appeals Tribunal and the Courts of Appeal.
29. Access to public information has reportedly become increasingly difficult in Malta in recent years. The latest report by the Council of Europe Group of States Against Corruption (GRECO) underlined that the Freedom of Information Act provides for ample exceptions to the communication of information which could prevent the disclosure of important information of public interest.²¹ During the visit, the Commissioner was informed that journalists consistently encounter difficulties when requesting information from the authorities : their requests for information are often ignored or turned down, there have been unnecessary delays and, in some instances, diversionary tactics. The situation was exacerbated by the pandemic.²² In addition, NGOs have expressed concerns regarding the use of "commercial sensitivity" as a ground to refuse freedom of information requests.²³
30. The Commissioner notes that this restrictive attitude towards access to information in general means that, often, those seeking information have to challenge negative decisions before courts or administrative authorities. As a result, most information requests become irrelevant by the time the response reaches the applicant, thus undermining the freedom of information enshrined in Article 10 of the European Convention on Human Rights (ECHR).

¹⁸ [Annual report](#) by the partner organisations to the Council of Europe Platform to promote the protection of journalism and safety of journalists, "Wanted! Real action for media freedom in Europe", 28 April 2021, p. 31 and [alert](#) "British-Azerbaijani businessman threatens defamation actions against five media outlets", posted on the Platform on 15 July 2020.

¹⁹ [Alert](#) "Satabank co-owner files SLAPPs against Maltese blogger Manuel Delia and Times of Malta in Bulgaria", posted on the Council of Europe Platform on 9 March 2020.

²⁰ See the [report on Malta](#) by the Council of Europe Group of States Against Corruption (GRECO), Fifth evaluation round, adopted on 22 March 2019, p.17.

²¹ *Ibidem*.

²² See, for example, <https://lovinmalta.com/news/authorities-refuse-to-explain-criteria-behind-safe-travel-list-as-malta-starts-welcoming-tourists/>, 13 June 2021.

²³ International Freedom of Expression Mission to Malta, [Statement of Findings](#), 19 October 2018.

31. The conclusions of the public inquiry into the assassination of Daphne Caruana Galizia stressed that there is a need to revise the Freedom of Information Act “to limit the cases in which the public administration may arbitrarily refuse to provide information that is in the public interest and that the public is entitled to”²⁴ and hence limit the culture of confidentiality and secrecy under the pretext of privacy and commercial sensitivity.

1.4. CONCLUSIONS AND RECOMMENDATIONS

32. Despite herself, Daphne Caruana Galizia became a symbol of all the threats to journalists when she was assassinated more than four years ago. The Commissioner calls on the Maltese authorities to continue their investigations to identify all individuals who were in any way involved in the assassination and ensure that full accountability, including of the mastermind or masterminds behind the murder, is established. Carrying out an effective investigation into the assassination of Daphne Caruana Galizia is not only an obligation that the Maltese authorities must comply with under international law but will also help to demonstrate Malta’s commitment to protecting freedom of expression and upholding the rule of law.
33. The public inquiry report which found the state responsible for the assassination of Daphne Caruana Galizia provides a solid foundation for effecting vital changes that will benefit Maltese society as a whole. Fully implementing the recommendations of the report should therefore be a top priority for the government. The Commissioner urges the authorities to ensure that legislative and other reforms, which should be set in motion without delay, follow the recommendations of the inquiry report and comply with international standards. Effectively engaging civil society in this process, *inter alia*, through timely and genuine consultations, and ensuring accountability and transparency at all stages is essential.
34. The Commissioner calls on the authorities to act swiftly to put in place the far-reaching reforms needed to strengthen the protection of journalists in accordance with the Council of Europe’s Committee of Ministers Recommendation (2016)4 on the protection of journalism and safety of journalists and other media actors²⁵ and to address the lack of trust in the media in Malta. They should start with a co-ordinated response to threats and harassment against journalists, including online, in order to provide adequate protection measures. Enhanced awareness-raising among the police and dialogue between law enforcement and media professionals are key in this respect. It is important, moreover, to ensure that allegations of abuse and crime emerging from journalists’ investigations are followed up and investigated by the relevant authorities.
35. The Commissioner urges the authorities, including at the highest political level, to take a robust public stance against attacks on journalists and to refrain from any conduct that encourages hate speech against them. There is also a need to tackle the scourge of sexist harassment against female journalists. The Council of Europe’s Committee of Ministers Recommendation (2019)1 on preventing and combating sexism²⁶ and the General Recommendation No. 1 on the digital dimension of violence against women adopted by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO),²⁷ along with the Safety of Female Journalists

²⁴ [Courtesy translation](#) of the conclusions and recommendations of the public inquiry report, provided by the Daphne Caruana Galizia Foundation.

²⁵ [Recommendation CM/Rec \(2016\)4](#) of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, adopted on 13 April 2016.

²⁶ [Recommendation CM/Rec \(2019\)1](#) of the Committee of Ministers to member States on preventing and combating sexism, adopted on 27 March 2019.

²⁷ [General Recommendation No. 1](#) on the digital dimension of violence against women, adopted by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) on 20 October 2021.

Online guidebook²⁸ of the OSCE Representative on Freedom of the Media offer important guidance on addressing this multifaceted problem.

36. In addition, the Commissioner calls on the authorities to ensure that the adoption of a new media law, pursuant to the recommendations of the public inquiry report, aimed at providing greater protection for journalists, does not result in state interference in the regulation of their profession. An effective system of self-regulation should be adopted by the media community, based on an agreed code of ethics and a mechanism for receiving and responding to complaints. Any self-regulatory mechanisms developed in this respect should operate independently and transparently, be open to meaningful participation from all relevant stakeholders, be accountable to the public and work in accordance with ethical standards that take full account of the multimedia ecosystem.²⁹ Further general measures are also necessary for journalism to thrive, including greater protection of journalistic sources.
37. While the Commissioner welcomes the adoption of the Media and Defamation Act which decriminalised defamation in Malta in 2018, she remains concerned about the excessive use of vexatious lawsuits introduced against Maltese journalists and newspapers. The Commissioner reiterates her previous recommendation to the Maltese authorities to ensure that relevant legislation is adopted without delay and that, in matters of public interest, the burden of proof in libel cases filed against journalists is shifted onto the claimant. As the Commissioner has previously explained, such legislation could, among others, include provisions to allow the early dismissal of patently spurious lawsuits or measures to punish abuse, for example by reversing the costs of proceedings.
38. As the Commissioner pointed out in a recent human rights comment on this topic,³⁰ effective access to public information bears great relevance for investigative journalism and for democratic accountability. In this respect, the Commissioner notes that Malta has not signed or ratified the Council of Europe Tromsø Convention on Access to Official Documents. She calls on the Maltese authorities to do so as soon as possible and ensure that journalists have access to accurate and timely information. The Commissioner draws the authorities' attention to GRECO's recommendations that the implementation of the Freedom of Information Act of 2008 be subject to an independent and thorough analysis and that additional measures be taken so that exceptions to the rule of public disclosure are interpreted and applied more specifically and narrowly. She welcomes the fact that an independent study to examine this matter was launched in January 2021 and encourages the authorities to consult a vast array of stakeholders in this context.

2. ASYLUM AND MIGRATION

39. Following an increase in sea arrivals in 2018 and a peak in 2019, totalling 3 406 persons, Malta saw a decrease in arrivals in 2020 (2 281 persons) and a further substantial reduction in 2021 (607 persons in the year to 31 October).³¹ However, as a country of first arrival in the Central Mediterranean, with a large search and rescue region (SRR), Malta continues to bear a major responsibility for rescue and disembarkation and is among the European states that receive the highest number of asylum applications relative to their size, GDP and population.³² As with many

²⁸ Available at: www.osce.org/representative-on-freedom-of-media/370331.

²⁹ Guidelines on media pluralism and transparency of media ownership, Appendix to [Recommendation CM/Rec\(2018\)1](#) of the Committee of Ministers to member States on media pluralism and transparency of media ownership, adopted on 7 March 2018.

³⁰ [Access to official documents is crucial – let's make it a reality](#), 1 December 2020.

³¹ Office of the United Nations High Commissioner for Refugees (UNHCR) Malta, [Figures at a glance](#) (Mediterranean arrivals).

³² European Asylum Support Office (EASO) Asylum Report 2021, pp. 77-78, available at: <https://www.easo.europa.eu/asylum-report-2021>.

other countries, the onset of the COVID-19 pandemic brought additional challenges for Malta in the areas of asylum and migration.

40. The Commissioner has called on all Council of Europe member states to deploy adequate rescue capacity in the Mediterranean, especially on those routes where it is most needed, and to show solidarity with Malta by providing support for expanding and improving reception capacities and relocating persons from Malta as necessary.³³ Closing the protection gap in the Mediterranean requires increased co-ordination and responsibility-sharing by member states and the adjustment of their practices to ensure that humanitarian needs are met and that human rights – including the right to life and protection from *refoulement* – are upheld at sea and on land.³⁴
41. Nevertheless, the Commissioner wishes to underline that the above-mentioned challenges do not exempt Malta from complying with its human rights obligations and other core duties under international law. In particular, saving lives, providing humanitarian assistance and ensuring that the rights of those involved are upheld, including as regards access to international protection, cannot be compromised, even in difficult contexts such as increased arrivals and the COVID-19 pandemic. In many respects, however, Malta's restrictive asylum and immigration policies and practices continue to jeopardise the rights of refugees, asylum seekers and migrants. The Commissioner will address below some concerns pertaining to maritime search and rescue, as well as immigration detention and reception conditions.

2.1. SEARCH AND RESCUE

42. The Commissioner is concerned about the reported deterioration in Malta's approach to search and rescue in recent years. Although Malta has continued to carry out search and rescue operations, there have been numerous reports of delays and non-response by its Rescue Coordination Centre to distress calls (contested by the authorities),³⁵ restricted disembarkation of people rescued within the Maltese search and rescue region (SRR),³⁶ instructions given to commercial ships to return migrants to Libya³⁷ and refusals by the authorities to provide life-saving assistance to, and allow the safe disembarkation of, migrants rescued by NGO ships.³⁸ The Commissioner was informed that the number of rescues had decreased following the closure of Malta's ports on 9 April 2020, in response to the COVID-19 situation.³⁹
43. The Commissioner has already addressed these concerns in her dialogue with the Maltese authorities, in 2020.⁴⁰ She regretted in particular the humanitarian and human rights crisis created in May-June, when Malta refused to disembark over 400 rescued migrants whom it kept for several weeks on chartered private vessels outside its territorial waters while trying to secure relocation commitments from other member states. She called on Malta to ensure that monitoring bodies and agencies providing assistance and protection were granted urgent access to those rescued and that migrants were not unlawfully detained at sea and warned against making safe disembarkation on land dependent on other states' commitments.⁴¹

³³ See, for example, [States should ensure rescue at sea and allow safe disembarkation during the COVID-19 crisis](#), 16 April 2020.

³⁴ [Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean](#), Recommendation, June 2019; [A distress call for human rights. The widening gap in migrant protection in the Mediterranean](#), Follow-up report, March 2021.

³⁵ www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2021/April/06/pr210652.aspx.

³⁶ [UNHCR and IOM call for urgent disembarkation of rescued migrants and refugees in Central Mediterranean Sea](#), 29 August 2020; [ICS, UNHCR and IOM call on States to end humanitarian crisis onboard ship in the Mediterranean](#), 7 September 2020.

³⁷ www.infomigrants.net/en/post/25040/98-migrants-returned-to-libya-after-being-rescued-by-commercial-ship.

³⁸ <https://timesofmalta.com/articles/view/malta-turns-down-request-for-stranded-migrants-to-disembark.731254>.

³⁹ www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2020/April/09/pr200648.aspx.

⁴⁰ [Letter](#) to the Prime Minister of Malta, Robert Abela, published on 11 May 2020.

⁴¹ [Immediate action needed to disembark migrants held on ships off Malta's coast](#), 4 June 2020.

44. At the same time, Malta’s failure to take measures to ensure that persons are not returned to face human rights violations is of grave concern to the Commissioner. Despite ample evidence that Libya is not a safe place for disembarkation,⁴² incidents continue to be reported in which Maltese authorities’ actions resulted in people rescued or intercepted at sea being returned to Libya. The “Easter weekend incident” of 14 April 2020, for example, resulted in 12 people being reported dead or missing, while survivors were detained and subjected to inhuman treatment and other serious violations of their human rights in Libya.⁴³ The Commissioner notes that Malta continues to co-operate with the Libyan Coast Guard in intercepting and returning migrant boats to Libya. Numerous such interceptions in the Maltese SRR were reported in 2021, with at least one incident involving the Libyan Coast Guard carrying out dangerous manoeuvres and opening fire on a boat.⁴⁴
45. The Commissioner deeply regrets the Maltese authorities’ view, shared with her during her visit, that co-operation with Libya, leading to refugees, asylum seekers and migrants being returned there, is indispensable for the effective management of sea arrivals in Malta. In her opinion, this position is irreconcilable with the findings of international bodies which show that refugees and migrants, including children, intercepted by the Libyan Coast Guard are routinely detained in special detention centres where they face intolerable conditions and are exposed to systematic violations of their human rights, including unlawful killings, slavery, torture, trafficking, sexual and gender-based violence, starvation and extortion.⁴⁵ The Commissioner would like to reiterate that in these circumstances, forcible returns to Libya violate the cornerstone principle of non-*refoulement*, which prohibits returns to places where persons would be at risk of serious human rights violations or other irreparable harm.⁴⁶
46. Lastly, the Commissioner is worried about the authorities’ heavy-handed action with respect to migrants who have survived attempted returns to Libya. The situation of the three young asylum seekers (the “El Hiblu 3”) who now face criminal charges in Malta, after being rescued by a merchant ship in March 2019 together with some 100 other people, is an example of this.⁴⁷ While the circumstances which led to the ship changing course and eventually docking in Malta have still to be established, the Commissioner is concerned about the severity of the charges brought against these young men, which include offences under counter-terrorism legislation, some punishable with life imprisonment. As mentioned during her visit, the Commissioner believes that no one should be criminalised for opposing their return to Libya.

2.2. DETENTION OF MIGRANTS AND ASYLUM SEEKERS AND RECEPTION CONDITIONS

47. In recent years, Malta has made positive changes to its immigration and asylum legislation and policy, notably by eliminating mandatory detention provisions and introducing vulnerability screenings, although mostly upon referrals, and not on a systematic basis.⁴⁸ The Commissioner was informed, however, that in practice, since the increase in boat arrivals in 2018, most of the newly arrived refugees and migrants have been placed in detention centres on public health grounds, often for prolonged periods of time and in poor conditions which deteriorated further following the outbreak of the COVID-19 pandemic. In a report published in November 2020, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) also found that

⁴² UNHCR, [Position](#) on the designations of Libya as a safe third country and as a place of safety for the purpose of disembarkation following rescue at sea, September 2020; UN Human Rights Council, [Report](#) of the Independent Fact-Finding Mission on Libya, 1 October 2021.

⁴³ <https://timesofmalta.com/articles/view/migrants-demand-payment-of-damages-after-pushback-to-libya.829552>.

⁴⁴ https://sea-watch.org/en/libyan_coast_guard_shots_fired/.

⁴⁵ Human Rights Council, Report of the Independent Fact-Finding Mission on Libya, 1 October 2021 (fn. 42 above), pp. 15-17.

⁴⁶ See the Commissioner’s letter to the Prime Minister of Malta, published on 11 May 2020 (fn. 40 above).

⁴⁷ See Amnesty International, “Malta: The El Hiblu 3 case – Update. The Long Wait for Justice”, 26 March 2021, available at: <https://www.amnesty.org/en/documents/eur33/3884/2021/en/>.

⁴⁸ Aditus/ECRE, Malta Country Report, available at: <https://asylumineurope.org/reports/country/malta/>.

contrary to Maltese legislation, vulnerable individuals have been kept in detention centres, owing to lack of space in open centres or other alternatives to detention.⁴⁹

48. Information received by the Commissioner during her visit indicates that the majority of those arriving by sea are still automatically placed in closed facilities managed by the Detention Services for COVID-19 quarantine and medical clearance purposes. Families, women, children, and vulnerable individuals are usually transferred to the Initial Reception Centre at Marsa managed by the Agency for the Welfare of Asylum Seekers (AWAS), where they are accommodated under an open regime. However, NGOs shared with the Commissioner their concerns that some children continue to be detained pending age assessment, although the authorities have started releasing them during the relevant appeal proceedings.
49. The Commissioner understands that following medical clearance, asylum seekers from countries not listed as safe countries of origin are accommodated in open centres. In respect of asylum seekers from countries deemed safe, the authorities rely on national legislation regulating reception conditions to continue to detain them. While the applications lodged by asylum seekers from the latter category are processed under a fast-track procedure – which, according to information provided to the Commissioner, does not offer an effective remedy against rejection decisions – obstacles to the return of those rejected often lead to prolonged detention pending removal. The Commissioner’s understanding is that in practice, these asylum seekers have no possibility of effectively challenging their detention.
50. During its visit to Malta in September 2020 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found that over 90% of the persons held in detention were detained on public health grounds.⁵⁰ This was the case despite the fact that the Maltese courts had declared this form of detention unlawful, on account of, *inter alia*, the vagueness of the legislation relied on by the authorities,⁵¹ the lack of assessment of the concerned persons’ specific situations and of individualised detention orders issued to them, and the lack of clear remedies.⁵² The Commissioner was pleased to learn that from September 2020 to the time of her visit, the number of detained asylum seekers had decreased from 1 400 to around 460. She understood, however, that some asylum seekers were still being detained on public health grounds, without a detention order.
51. The CPT also found that the overall detention conditions and regimes for asylum seekers and migrants were verging on institutional mass neglect. In certain cases, the living conditions, regimes, lack of due process safeguards, treatment of vulnerable persons and some specific COVID-19-related measures could be considered to constitute inhuman and degrading treatment under Article 3 ECHR (prohibition of torture and of inhuman and degrading treatment or punishment). Several riots and escape attempts took place, two of which resulted in the wounding of a migrant and the death of another one in September 2020.⁵³
52. Since September 2020, some positive changes have been reported in the management of detention centres, as well as improvements in detention conditions, including refurbishing, a medical clinic, increased human resources including welfare officers, better oversight of detained persons and a complaints mechanism. The Commissioner witnessed some of these improvements during her visit to the Safi Detention Centre. However, she noted that several problems persisted with respect to the prevailing material conditions and detention regimes.

⁴⁹ Council of Europe, Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), [Baseline Evaluation Report – Malta](#), adopted on 15 October 2020 and published on 23 November 2020, pp. 68-70.

⁵⁰ See CPT, [Report](#) on its visit to Malta from 17 to 22 September 2020, published on 10 March 2021, p. 8.

⁵¹ Prevention of Disease Ordinance, Cap. 36 of the Laws of Malta, 1982, art. 13 (1), <https://legislation.mt/eli/cap/36/eng>.

⁵² CPT Report on Malta, p. 9, and Aditus/ECRE, Malta Country Report, p. 90 (incl. fn. 284).

⁵³ CPT Report on Malta, pp. 11 and 15-18, and [press release](#) issued on 10 March 2021.

53. The Commissioner was struck by the deplorable conditions at Block A in the Safi Detention Centre, including the carceral design and the blatantly poor sanitary and hygiene conditions and overcrowding. Her dismay was shared by the staff of the Ombudsman's Office, who had made similar observations in the past. The Commissioner received assurances from the authorities that Block A would be modernised very soon. She invites the authorities to provide her with updates about the improvements made to living conditions there.
54. Several migrants with whom the Commissioner talked at the Safi Detention Centre complained about poor health care, in particular as regards the availability of adequate medication. The majority had been vaccinated against COVID-19 but were not wearing masks. They also reported being handcuffed while taking walks (a migrant woman) or while being escorted to medical checks. Many voiced their anguish at not knowing the reasons for their detention and their despair in the face of an uncertain future. They deplored their lengthy detention and expressed their wish to live as free people, in dignity and to have jobs that would allow them to support themselves and their families. They also complained about not being able to obtain information about their situation and to access legal assistance and other support. The authorities confirmed that at the time of the Commissioner's visit detained migrants could only use a landline to make external calls. The mobile telephone service previously available to them had been discontinued.
55. The Commissioner understood that access by organisations providing assistance and independent monitoring had been restricted in the context of the COVID-19 pandemic. NGO access was restored in September 2020, but authorisation had to be sought prior to each visit. The Commissioner was informed that NGOs only had access to reception rooms and were required to nominate in advance those with whom they wished to talk. This made it difficult to identify any new persons in vulnerable situations or otherwise in need of assistance as regards access to protection or legal assistance. Moreover, the mandate of the Monitoring Board for Detained Persons, designated as Malta's National Preventive Mechanism (NPM) under the Optional Protocol to the United Nations Convention against Torture (OPCAT), appeared not to cover the case of detainees who had not been issued with a detention order. In addition, the NPM's reports are not intended to be made public but are instead to be submitted only to the relevant ministry. The Commissioner welcomes in this respect the authorities' willingness to review the mandate of the NPM, as indicated during her visit. She would like to receive further information about any steps taken to strengthen the NPM's powers and independence and to ensure the transparency of its work.
56. Malta's reception capacities are limited. The Commissioner was informed that in 2020, newly arrived asylum seekers could not access reception centres and were systematically held in detention. Since mid-2020, the duration of stay in reception centres has been reduced from twelve to six months for adult male asylum seekers to accommodate quicker releases from detention. As a result, they are often forced to leave reception centres before the asylum procedure has been completed, with no concrete measures taken to avoid homelessness and destitution. Asylum seekers are particularly vulnerable to the latter because their access to the labour market continues to be limited. NGOs expressed concern that this policy has worsened the situation of many asylum seekers, including as regards their mental health. The Commissioner was also informed that asylum seekers are not usually assessed for vulnerability before leaving the reception centres.
57. The Commissioner visited two reception centres in Hal Far, the "Hal Far Tent Village" for adult men and unaccompanied minors and the "Hangar Open Centre" for single men, single women and families. In both centres, accommodation was provided in containers which appeared overcrowded and lacked air conditioning and heating. While the premises were clean, there was a lack of adequate hygiene conditions for residents, including as regards access to water and sanitation. Work was under way in the "Hangar", however, to install additional showers and toilets. While playrooms had been set up for young children in the "Hangar" centre, the outside environment was stark, with no vegetation or furnishings in place for children's open-air activities.

58. In the Hal Far Tent Village, the Commissioner talked to a number of unaccompanied minors aged 16 and above. Most of them stated that they were not attending school and were not involved in other meaningful activities. While the minors confirmed that they were being assisted by the social services, they had difficulties in understanding their situation at the time and their future prospects. Furthermore, contrary to the authorities' obligations under Maltese legislation regarding protection of the human rights of the child,⁵⁴ no guardians had yet been appointed for these minors.

2.3. CONCLUSIONS AND RECOMMENDATIONS

59. Effective search and rescue is crucial for the protection of the rights of refugees, asylum seekers and migrants in the Mediterranean. The Commissioner calls on the Maltese authorities to ensure adequate rescue capacities in Malta's search and rescue region and to enhance the effective co-ordination of rescue operations, including by ensuring that its Rescue Coordination Centre responds immediately to distress calls, by making full use of all vessels able to assist in search and rescue operations, including NGO ships, and effectively investigating any alleged omission to provide immediate assistance to persons in distress at sea.
60. The authorities should ensure the timely and safe disembarkation of rescued persons. The Commissioner urges the authorities to strengthen the co-ordination of disembarkations to avoid delays, refrain from issuing instructions to shipmasters that may lead to disembarkation in unsafe places and respect shipmasters' discretion not to disembark those rescued in such places. Under no circumstance should disagreements between Malta and other member states about disembarkation responsibilities be allowed to put the human rights of rescued persons at risk. When such disagreements arise, humanitarian considerations should take precedence.
61. The authorities should seek constructive co-operation with NGOs conducting search and rescue operations to safeguard the right to life and other rights of migrants and refugees rescued at sea. They should facilitate the work of NGOs, including by allowing them access to ports and providing support for any other needs related to their work or technical necessities.
62. The Commissioner calls on the authorities to avoid any repetition of the crisis situation created as a result of the temporary closure of Malta's ports in 2020. To comply with Malta's non-*refoulement* obligations, the authorities should moreover ensure that persons rescued at sea have a genuine and effective possibility of applying for asylum or otherwise submitting arguments against their return.
63. The Commissioner urges Malta's government to review its co-operation activities with the Libyan Coast Guard and other relevant entities in Libya and identify those that impact, directly or indirectly, on the return of persons intercepted at sea to Libya, or otherwise contribute to human rights violations. Such activities and any additional planned support to the Libyan Coast Guard and other Libyan authorities concerned should be suspended until clear guarantees of their human rights compliance are in place. Once again, the Commissioner strongly urges Malta's government to refrain from any action that would result in returns to, and disembarkations in, Libya and to ensure full accountability for situations in which action by the Maltese authorities has directly or indirectly led to such returns.
64. The authorities should urgently invest in alternatives to detention, in line with, *inter alia*, Council of Europe guidance,⁵⁵ and immediately end all detention of children. As asserted notably by the United Nations Committee on the Rights of Child, the detention of any child because of their or their parents' migration status constitutes a child right violation and contravenes the principle of the best

⁵⁴ Minor Protection (Alternative Care) Act, Cap. 602 of the Laws of Malta, 2020, <https://legislation.mt/eli/cap/602/eng>.

⁵⁵ [Legal and practical aspects of effective alternatives to detention in the context of migration](#), Analysis by the Steering Committee for Human Rights (CDDH), December 2017; [Alternatives to Immigration Detention: Fostering Effective Results](#), Practical guide adopted at the 91st CDDH meeting, 18–21 June 2019.

interests of the child.⁵⁶ Moreover, stronger safeguards should be put in place to avoid the detention of vulnerable persons, prevent arbitrary detention and ensure that detention is only used as a measure of last resort and for the shortest possible time.

65. Any detained migrants must be treated with dignity. The authorities should guarantee human rights defenders, including NGOs, wide access to places of detention to provide support and assistance with respect to the asylum procedure or other matters. In addition, adequate safeguards should be established to protect detained persons from any ill-treatment or abuse. The Commissioner invites the Maltese authorities to provide further information about the complaints system put in place in this respect. She further calls on the authorities to strengthen the independence and powers of the National Preventive Mechanism and ensure that its mandate covers all detained migrants and that it can publish its findings.
66. The authorities should continue efforts to improve reception conditions and ensure that asylum seekers who are no longer accommodated in reception centres are not exposed to homelessness and destitution. The Commissioner strongly urges the authorities to ensure that unaccompanied minors effectively benefit from the protection granted by law to all children.

3. WOMEN'S RIGHTS AND GENDER EQUALITY

67. Women's rights are an inalienable, integral and indivisible part of universal human rights. According to the Council of Europe Gender Equality Strategy 2018-2023, gender equality "entails equal rights for women and men, girls and boys, as well as the same visibility, empowerment, responsibility and participation, in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men."⁵⁷
68. Malta has ratified the major international instruments establishing obligations with respect to women's rights, including the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) and its Optional Protocol setting up an inquiry procedure and a procedure for individual communications, Protocol No. 12 to the European Convention on Human Rights, which institutes a general prohibition of discrimination, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, 2011). In the past few years, it has also taken steps to strengthen its national legislation and policy for the promotion and protection of women's rights and has set up institutions to co-ordinate and monitor their implementation.
69. Malta's progress as well as its outstanding shortcomings with respect to combating violence against women and gender-based violence were extensively addressed in the above-mentioned evaluation report published by the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) in November 2020.⁵⁸ Below the Commissioner sets out her observations and recommendations on some specific issues concerning gender equality and women's sexual and reproductive health and rights.
70. The Commissioner wishes to stress from the outset, however, the need to step up efforts to eradicate prejudice based on the idea of women's inferiority and gender stereotypes, which in addition to contributing to perpetuating gender-based violence against women, continue to

⁵⁶ See, *inter alia*, United Nations, [Joint general comment](#) No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017. For additional resources see International Detention Coalition, Global Campaign to end immigration detention of children: <https://endchilddetention.org/>.

⁵⁷ Council of Europe, Gender Equality Strategy 2018-2023, 2018, available at: <https://edoc.coe.int/en/190-gender-equality>.

⁵⁸ GREVIO, Baseline Evaluation Report – Malta, 2020 (fn. 49 above).

undermine the effective realisation of women’s rights and gender equality in Malta. During her visit, the authorities repeatedly mentioned that the new generations’ attitudes are changing and that this will eventually lead Malta to reduce gender inequalities. The Commissioner is mindful that effecting societal and cultural changes is often a long-term process. In her opinion, however, it is crucial that the authorities accelerate efforts to close gender equality gaps and enhance the general protection of women’s rights now.

3.1. GENDER EQUALITY

71. Malta’s Constitution contains specific provisions setting out the state’s obligation to promote the equal right of men and women to enjoy all economic, social, cultural, civil and political rights, as well as the possibility of adopting temporary special measures aimed at accelerating *de facto* equality between women and men.⁵⁹ Further relevant legislation includes the Equality for Men and Women Act (2003)⁶⁰ and acts regulating employment and industrial relations. In 2014 Malta became the first European country to prohibit discrimination on grounds of sexual orientation and gender identity in its Constitution.⁶¹ It subsequently adopted other relevant laws and policy documents, including an act for the introduction of same-sex marriage in 2017 and the LGBTIQ (lesbian, gay, bisexual, trans, intersex and genderqueer) equality strategy and action plan 2018-2022.⁶² In 2021, Malta launched its second national strategy on gender-based violence and domestic violence. The Commissioner was also informed that preparations for the adoption of Malta’s first gender equality and gender mainstreaming strategy are ongoing.
72. Malta has a diverse institutional architecture dedicated to promoting equality between women and men and women’s rights. The mandates of the National Commission for the Promotion of Equality (NCPE, Malta’s equality body) and of the Commission on Gender-Based Violence and Violence against Women (formerly the Commission on Domestic Violence) have been progressively broadened. Further structures include the Consultative Council for Women’s Rights, established in 2017 to assist the government in developing relevant policy and legislative proposals, and the Gender Mainstreaming Unit set up in 2019 within the Human Rights Directorate under the Ministry of Equality.
73. Despite this progress, the Commissioner’s interlocutors across the board agreed that further action is necessary to strengthen Malta’s equality legislation and address long-standing deficiencies regarding the independence and resources allocated to the NCPE. For this purpose, a legislative package including a draft equality act and a draft act on a new Human Rights and Equality Commission (HREC) has been in preparation for several years. In an Opinion issued in 2018, the Venice Commission noted, *inter alia*, that further revisions to the proposed acts were necessary to sufficiently guarantee the independence of the HREC and to ensure that the specific equality duties of private and public sector actors were more precisely set out.⁶³
74. The Commissioner regrets that this legislative package has not yet been adopted. In particular, she is concerned that this delay is also due to the ongoing consideration by the authorities of proposals made notably by religious organisations, including religious schools, and organisations of health care professionals with a view to introducing into the draft equality act provisions that would allow services to be refused on grounds of conscience. The Commissioner will address this issue in greater detail in the following subsection concerning women’s sexual and reproductive health and rights.

⁵⁹ <https://legislation.mt/eli/const/eng>, in particular Articles 14 and 45(11).

⁶⁰ Cap. 456 of the Laws of Malta, <https://legislation.mt/eli/cap/456/eng>.

⁶¹ GREVIO, Baseline Evaluation Report – Malta, 2020, p. 14.

⁶² Detailed information is available on the webpage of the Human Rights Directorate of the Ministry for Equality, Research and Innovation, <https://humanrights.gov.mt/en/Pages/default.aspx> (see “LGBTIQ equality”).

⁶³ [Opinion](#) on the Draft Act amending the Constitution, on the Draft Act on the Human Rights and Equality Commission, and on the Draft Act on Equality adopted by the Venice Commission at its 115th Plenary Session (Venice, 22-23 June 2018).

75. As regards gender equality in practice, numerous reports and statistics show that gender inequality is deeply rooted in Maltese society.⁶⁴ Despite important improvements in Malta's overall gender equality outcomes, patriarchal attitudes and stereotypes regarding the roles of women and men in the family and society continue to place women in a disadvantaged position in several areas, including the labour market and participation in political and public decision-making.
76. Malta ranks 13th in the European Union (EU) Gender Equality Index 2021, with a score of 65.0 out of 100 points (3.0 points below the EU score).⁶⁵ Malta's best scores are in the domains of health (92.3 points, ranking second) and money (84.2 points). Malta achieved substantial progress in the domains of work (from 65.1 points in 2010 to 76.8 points in 2019) and power (from 20.9 points to 37.5 points). However, gender inequalities remain the most pronounced in the latter domain, in which Malta ranks 19th.
77. The gender employment gap in Malta remains the largest in the EU, at 22%,⁶⁶ with the female work force being impacted by a series of factors, including the fact that flexible arrangements to ensure work-life balance are for the most part only available in the public sector.⁶⁷ Despite women's high levels of education and the measures taken by the authorities in recent years to empower more women to enter or remain in employment, such as the introduction of a free childcare scheme,⁶⁸ their situation in the labour market is characterised by high unemployment rates, concentration in low-paid sectors and a widening gender pay gap (from 7.8% in 2007 to 11.6% in 2019, although this is still lower than the EU average of 14.1%). While Maltese legislation incorporates the principle of equal wages for the same work or work of equal value,⁶⁹ the European Committee on Social Rights has found that this principle is not effectively guaranteed in practice and that no measurable progress has been made in Malta in reducing the gender pay gap.⁷⁰
78. Furthermore, while progress has been achieved as regards women's access to political and decision-making positions at local level, Malta has a low share of women among government ministers and members of Parliament. The situation is expected to change in Parliament, following the unanimous adoption of an Act to ensure *de facto* equality between men and women in politics.⁷¹ The Commissioner welcomes the fact that the corrective mechanism introduced by the new act aims to achieve a 40% participation rate of the under-represented sex (including persons identified as gender neutral), in line with the recommendations made by the Council of Europe's Committee of Ministers in respect of balanced participation of women and men in political and public decision-making.⁷² She also notes with interest the NCPE's efforts to raise awareness, during the debates preceding the adoption of the act, of the need to address the root causes of women's low participation in political life and to take concerted measures to remove the social barriers which keep them out of politics, emphasising that a gender-corrective mechanism is only one element of the reforms necessary to achieve gender balance in Parliament.⁷³

⁶⁴ See, for example, NCPE, *The Covid-19 pandemic: research on the distribution of work in households*, 2020, available at: https://ncpe.gov.mt/en/Pages/Our_Publications_and_Resources/Research_published_by_NCPE.aspx; Naudi, M., Clark, M., Saliba, H., *Barriers to help-seeking in gender-based violence against women: a research study*, 2018, pp. 26-27, available at: <https://stopviolencecms.gov.mt/en/Pages/Projects/Research.aspx>.

⁶⁵ <https://eige.europa.eu/gender-equality-index/2021/country/MT>. A score of 100 points means full equality.

⁶⁶ <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20200306-1>.

⁶⁷ https://publicservice.gov.mt/en/Pages/News/2020/20200122_Work-Life-Balance.aspx.

⁶⁸ <https://education.gov.mt/en/pages/free-childcare.aspx>.

⁶⁹ Constitution of Malta, Article 14, Employment and Industrial Relations Act, Article 26, Equal Treatment in Employment Regulations, Article 3A, and Equality for Men and Women Act, in particular Article 4.

⁷⁰ Country factsheet – Malta (March 2021), pp. 3-4, available at: <https://www.coe.int/en/web/european-social-charter/malta>.

⁷¹ Act to amend the Constitution of Malta and the General Elections Act to ensure *de facto* equality between men and women in politics, No. XX of 2021, <https://legislation.mt/eli/act/2021/20/eng>.

⁷² [Recommendation Rec\(2003\)3](https://www.coe.int/t/e/com/min/Recommendation_Rec(2003)3) of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making, adopted on 12 March 2003.

⁷³ NCPE, [Broader reform than a gender-corrective mechanism required for Gender Balanced Parliament](#), 19 January 2021.

79. In connection with the above, the Commissioner was informed that although the allocated resources have increased in the past years, more funds are needed to enable the NCPE and the Commission on Gender-Based Violence and Domestic Violence to carry out awareness-raising and other activities to promote gender equality and women's rights in a systematic way.

3.2. WOMEN'S SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

80. Access to abortion has long been a taboo topic in Malta. In recent years, women's rights NGOs and groups of medical professionals have made efforts to break the silence and bring the issue into the mainstream of public and political debate. Malta's first rally for women's sexual and reproductive rights took place on 28 September 2019.⁷⁴

81. Malta is one of the last two countries in the Council of Europe to have a total ban on abortion, with no exceptions, including when the woman's life is in danger. Abortion is prohibited in the Criminal Code, which provides for up to three years of imprisonment for those procuring an abortion, as well as for any pregnant woman who knowingly consents to an abortion. Medical doctors or pharmacists who knowingly prescribe or administer the means necessary to perform an abortion are liable to up to four years' imprisonment and may be banned from practising.⁷⁵

82. Information received by the Commissioner indicates that in practice the authorities have ceased, for a very long time now, to sentence women who seek abortions, although some women have faced criminal charges for this reason. Moreover, some medical professionals make exceptions in situations where the pregnant woman's life is endangered. Nevertheless, the law continues to have a significant deterrent effect and poses major risks for women's health and other rights, including the right to free movement. For example, in September 2020, a pregnant victim of domestic abuse was temporarily prevented from travelling through a court injunction issued after her partner claimed that she planned to seek an abortion abroad.⁷⁶ Regarding women victims of rape, GREVIO expressed concern that fear of stigma and prosecution may discourage them from seeking the necessary support services, and that heavy financial, administrative, and psychological burdens weigh on those victims who wish to end their pregnancy.⁷⁷

83. The Commissioner was disappointed to learn, during her visit, that the authorities did not envisage a timeline for decriminalising abortion, although a bill on decriminalisation had been introduced in Parliament in May 2021. The authorities did not consider it likely that such a bill could be adopted in the near future, although they admitted that the prohibition of abortion did not stop women, including girls, from seeking abortions. The Commissioner was disturbed, furthermore, by the authorities' apparent lack of concern about the serious risks incurred by women who seek or undergo abortions in unauthorised circumstances, which are aggravated by the lack of access to post-abortion care in Malta, both in the public and private health sectors.⁷⁸ These concerns were largely dismissed by the authorities on account of the possibility for women to have abortions abroad.

84. The Commissioner was informed that Maltese women who travel abroad to seek abortions are not prosecuted. However, travel is not routinely available to all women and girls living in Malta and it has been severely restricted for some time in the context of the Covid-19 pandemic. During this period, requests for abortions and reproductive health advice have increased dramatically, with Malta's first Family Planning Advisory Service – a volunteer service which includes in particular

⁷⁴ <https://lovinmalta.com/news/the-world-is-not-black-or-white-pro-choice-campaigner-urges-empathy-ahead-of-maltas-first-ever-rally/>.

⁷⁵ Cap. 9 of the Laws of Malta, <https://legislation.mt/eli/cap/9/eng>, Articles 241 and 243.

⁷⁶ <https://timesofmalta.com/articles/view/abuse-victim-issued-travel-ban-as-partner-claims-she-wants-abortion.819991>.

⁷⁷ GREVIO, Baseline Evaluation Report – Malta, 2020, p. 42.

⁷⁸ See World Health Organisation (WHO), Global Abortion Policies Database, Country profile Malta, available at: <https://abortion-policies.srhr.org/country/malta/>.

medical doctors and social workers – reporting 200 requests in the first six months since its launch online in August 2020.⁷⁹ The Commissioner understood, however, that the government tried to mitigate the negative consequences of travel restrictions by increasing access to emergency contraception as a way to prevent unintended pregnancies.

85. Legal access to over-the-counter emergency contraception pills from pharmacies became available in Malta in 2016. However, reports show that numerous pharmacies refuse to dispense such contraceptives, on grounds of conscience. Although the relevant regulations require pharmacists or pharmacies in such cases to refer patients to other professionals, the Commissioner understands that no measures are in place to enforce this obligation. Although the website pharmacy.com.mt provides a list of pharmacies which stock emergency contraception, in practice women are often left without access to the necessary medication. The Commissioner was informed that in general, women’s access to other sexual and reproductive health services also remains severely limited, with services being frequently denied on a variety of grounds. Migrant women are often unaware of the availability of these services and unable to access them.
86. As mentioned in the previous section, several proposals have been submitted to the Maltese authorities to introduce provisions into the draft equality act which would allow services to be refused on grounds of conscience. According to information provided to the Commissioner, such requests have been submitted, *inter alia*, by the Malta Medical Council and other groups of medical professionals and pharmacists. These groups expressed concern that in the absence of a “conscience clause”, the act will nullify the effects of professional codes which allow health care professionals to refuse services on such grounds and will therefore create discrimination against them, contrary to their right to freedom of belief.
87. The Commissioner would like to underline that unimpeded access to sexual and reproductive health care is crucial to preserve women’s right to health, as well as other rights including the right to life, the right to be free from torture and ill-treatment, the right to privacy, gender equality and freedom from discrimination. The preamble to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states in this respect that “the role of women in procreation should not be a basis for discrimination”.
88. Furthermore, international human rights standards oblige states to take effective measures to ensure that medical professionals’ refusals of care on grounds of conscience or religion do not jeopardise women’s access to sexual and reproductive health care. Also, neither the European Court of Human Rights (hereinafter “the Court”), nor other international bodies have recognised any entitlement for medical professionals to refuse sexual and reproductive health care on the grounds of their beliefs.⁸⁰ Regarding the right to manifest one’s religion or belief, the Court has stressed that Article 9 ECHR “does not always guarantee the right to behave in public in a manner governed by that belief”.⁸¹ As stated in Article 9(2) ECHR, manifestations of religion or belief can be lawfully restricted in situations where it is necessary to protect the rights and freedoms of others. Regarding the refusal by pharmacists to sell contraceptives, the Court has held that “the applicants cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products.”⁸² The European Committee of Social Rights also found that Article 11 of the

⁷⁹ <https://timesofmalta.com/articles/view/abortion-support-service-gets-over-200-requests-in-six-months.851348>.

⁸⁰ See “[Women’s sexual and reproductive health and rights in Europe](#)”, Issue Paper published by the Commissioner for Human Rights, 2017, pp. 59-61.

⁸¹ See, *inter alia*, *Pichon and Sajous v. France*, Application No. 49853/99, decision of 2 October 2001, *R. R. v. Poland*, Application No. 27617/04, judgment of 26 May 2011, §206, and *P. and S. v. Poland*, Application No. 57375/08, judgment of 30 October 2012, §106.

⁸² *Pichon and Sajous v. France*, Application No. 49853/99, decision of 2 October 2001.

European Social Charter (right to protection of health) does not impose on states a positive obligation to provide a right to conscientious objection for health care workers.⁸³

89. Human rights mechanisms have also underlined that where national laws or practices allow medical professionals to refuse to provide certain forms of health care, states must ensure that access to the relevant service is not undermined as a result. They must, in particular, effectively implement a range of measures, including establishing a timely and effective system of referral to alternative providers; guaranteeing the availability of an adequate number of health care providers willing and able to provide services at all times, in both public and private facilities and within reasonable geographical reach; prohibiting institutional refusals; ensuring that emergency or urgent procedures are not refused; and establishing adequate oversight and monitoring systems.⁸⁴
90. The Commissioner was informed that the Maltese authorities have also started work on the revision of the national sexual health policy and the national sexual health strategy, which were adopted in 2010 and 2011, respectively, and that a public consultation is to be launched for this purpose. In this respect, she would like to draw the authorities' attention to the Issue Paper "Women's sexual and reproductive health and rights in Europe" published by her office in 2017, which contains relevant recommendations regarding the measures that states should take, *inter alia*, to secure the availability and affordability of modern contraceptive services, ensure women's access to safe and legal abortion services, safeguard access to health care in light of refusals to care, and guarantee quality maternal health care.⁸⁵
91. Lastly, the Commissioner's interlocutors indicated that teaching material on equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, sexuality education and, to a certain extent, domestic violence are included in the mandatory national curriculum. However, no specific monitoring of the implementation of this part of the curriculum exists. Civil society representatives raised concerns with regard in particular to the provision of sexuality education in church schools, which represent around 30% of schools in Malta.⁸⁶

3.3. CONCLUSIONS AND RECOMMENDATIONS

92. The Commissioner encourages the authorities to take the necessary steps to strengthen Malta's equality legislation and institutional architecture by adopting, at the earliest opportunity, the Equality Act and the Human Rights and Equality Commission Act, in line, *inter alia*, with the guidance provided by the Venice Commission. The authorities should, in addition, adopt the gender equality and gender mainstreaming strategy and ensure that a comprehensive set of measures is put in place to overcome harmful stereotypes regarding the roles of women and men in society and in the family. Such measures should be addressed to authorities, public bodies and civil society alike.
93. The Commissioner points out that the international human rights standards to which Malta has signed up require that states take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudice and any customary or other practices which are based on the idea of the inferiority of women or on stereotyped roles for men and women and to carry out systematic awareness raising in this

⁸³ European Committee of Social Rights (ECSR), *Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden*, Complaint no. 99/2013, decision on the merits, 17 March 2015, paragraph 70.

⁸⁴ United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), [General Recommendation No. 24](#): Article 12 of the Convention (Women and Health), 1999, paragraph 11; Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 22](#) on the right to sexual and reproductive health, 2016, paragraph 14.

⁸⁵ See fn. 80 above. See also the Commissioner's webpage dedicated to the topic of women's sexual and reproductive health and rights: <https://www.coe.int/en/web/commissioner/women-s-sexual-and-reproductive-rights-in-europe>.

⁸⁶ National Statistics Office Malta, [Statistics](#) on pre-primary, primary and secondary formal education, 2012/2013 – 2016/2017.

respect.⁸⁷ She therefore urges the authorities, in particular, to allocate sufficient and sustainable resources to independent human rights structures so as to ensure that their awareness-raising activities promoting gender equality and women's rights can be systematically implemented.

94. The authorities should enhance their efforts to advance equality for women and men in employment. They should, notably, step up measures to enable employees in the private sector to benefit from flexible working arrangements similar to those offered to employees in the public sector, further improve the availability of childcare support to facilitate women's re-entry into the labour market and take measures to reverse the growing gender pay gap in Malta.
95. Balanced participation of women and men in political and public decision-making is a necessary condition for the full enjoyment of human rights by all and for the better functioning of a democratic society. The Commissioner urges the authorities to take measures to enhance women's access to political and public leadership and decision-making positions, including by promoting gender mainstreaming in the structures and operation of political parties; ensuring that women are represented in all areas of political activity; ensuring that there is gender-balanced representation in posts or functions whose holders are nominated by government and other public authorities and that the selection, recruitment and appointment processes for leading positions in public decision-making are gender sensitive and transparent, and encouraging media professionals to ensure that women and men candidates and elected representatives receive equal visibility in the media, especially during election periods.⁸⁸
96. Protecting women's sexual and reproductive health and rights is an essential component of member states' obligations to respect and guarantee women's human rights and advance gender equality. The Commissioner strongly urges the authorities to repeal provisions criminalising abortion, to develop comprehensive regulation of women's access to legal and safe abortion and to improve the availability of sexual and reproductive health services.
97. The Commissioner further calls on the authorities to take steps to guarantee equality for all women in the enjoyment of sexual and reproductive health and rights, including through providing evidence-based information and mandatory comprehensive sexuality education and securing the availability and affordability of modern contraceptive services. In addition, they are urged to ensure that women's access to sexual and reproductive health care is not undermined as a result of laws, policies or practices that allow medical and other professionals to refuse to provide certain forms of health care on grounds of conscience. Institutional refusals to provide sexual and reproductive health care should be clearly prohibited in law. With regard to these obligations, the authorities should take into consideration the relevant international standards, case-law and guidance mentioned in this report.

⁸⁷ CEDAW, Article 5, and Istanbul Convention, Article 13.

⁸⁸ Further measures are indicated in Recommendation Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making (see fn. 72 above).