

# ECRI REPORT ON MALTA

(sixth monitoring cycle)



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**ECRI**  
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## FOREWORD

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The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to the fight against racism, discrimination (on grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

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

ECRI’s country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, those of the fourth round in the beginning of 2014, and those of the fifth round at the end of 2019. Work on the sixth round reports started at the end of 2018.

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

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

The sixth round country reports focus on three topics common to all member States: (1) Effective equality and access to rights, (2) Hate speech and hate-motivated violence, and (3) Integration and inclusion, as well as a number of topics specific to each one of them.

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

**The following report was drawn up by ECRI under its own responsibility. Unless otherwise indicated, it covers the situation up to 6 December 2023; as a rule, developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**

## SUMMARY

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**Since the adoption of ECRI's fifth report on Malta on 21 March 2018, progress has been made and good practices have been developed in a number of fields.**

The governmental funding provided to the National Commission for Promotion of Equality (NCPE) has been gradually increased and allows the Commission to conduct more capacity-building and research activities.

The policy regarding LGBTI equality has been set in regularly renewed strategies and action plans. Significant efforts have been made to provide quality health care for transgender persons. They include the opening of the Gender Wellbeing Clinic, a specialised facility offering multi-disciplinary care, and a programme of raising awareness addressed to general practitioners and other healthcare professionals.

Following the adoption of an Anti-Racism Strategy 2021-2023 aimed at preventing and counteracting hate speech, the Anti-Racism Platform has been established. This consultative body, including representation of civil society, is part of the process of implementation of the strategy. Moreover, some systems of gathering data regarding hate speech and hate-motivated violence have been developed and a Victim Support Agency, which offers assistance to victims of crime, including hate speech of a criminal nature and hate-motivated violence, has been established.

The authorities have made efforts to improve the integration and inclusion of migrants, including asylum seekers and refugees, by developing an integration programme for adults, entitled "I belong". Furthermore, they have continued to operate a one-year preparatory programme for migrant children, who are to be integrated into mainstream schools. They have also developed other educational initiatives, such as a programme for welcoming Ukrainian families who have arrived in Malta since 2022.

Events aimed at promoting migrant culture and nurturing joint initiatives by migrants and Maltese citizens have been organised at local level, for instance in the municipality of Msida.

Significant effort has been made to strengthen the links between the police and LGBTI community, including by regular trainings, recruitment of LGBTI police officers and increasing their visibility within the police.

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

The legal status of the NCPE is not compatible with the requirements of independence of equality bodies, which negatively impacts public trust in the Commission and leads to underreporting.

The process of the review of the medical protocols applicable to the treatment of intersex persons has not yet been concluded and there is no appropriate counselling available for parents of intersex babies and children.

The system of data collection on the number of reported incidents of racist or LGBTI-phobic hate crime, including criminal hate speech, is still not comprehensive, and does not include data on prosecutions and convictions.

The press and electronic media on occasion portray migrants in a stereotypical way and their programming lacks representation of people with a migration background. There are occurrences of hate speech against asylum seekers and migrants, particularly on the Internet and social media. There are also cases of hate-motivated violence mainly against migrants.

The most recent Migrant Integration Strategy and Action Plan was to be implemented by 2020 but its implementation process reportedly lacked meaningful dialogue or cooperation with civil society organisations and the target groups. Since 2020, no new strategy or action plan on integration of migrants has been adopted.

Moreover, in 2020, the authorities discontinued all policies aimed at the regularisation of stay of unsuccessful asylum seekers, who could not be returned to their countries of origin and remained in Malta for many years.

Trust in the police by people with a migration background has been significantly undermined by allegations of serious abuses committed by police officers. The effectiveness of the measures taken by the police in the field of community outreach was limited due to insufficient number of officers with linguistic skills and cultural background facilitating contacts with migrants.

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

The authorities should bring forward legislation establishing a fully independent and effective equality body in line with ECRI's General Policy Recommendation No. 2 on equality bodies to combat racism and intolerance at national level. Development of such legislation should build upon the work done so far and include consultations with civil society.\*

As regards LGBTI equality, the authorities should: i) develop and codify protocols of care for intersex persons based on their right to bodily integrity and diversity; ii) provide appropriate training to all healthcare professionals; iii) develop counselling services and self-help groups for intersex persons and the parents of intersex children as well as other measures to provide them with sound information about options available and dangers of surgical and hormonal treatment at a very young age.

When it comes to combating hate speech in the media and on the Internet, the authorities should take measures aimed at promoting equality and diversity, raising awareness of the adverse effects of hate speech, and preventing and combating misinformation and negative stereotyping, including by: i) increasing digital and media literacy, especially on social media, in particular for children and young people; ii) encouraging, with due regard for the independence of the media, diversity in mainstream media programming; iii) encouraging

trainings on inclusive reporting and on preventing and combating hate speech for journalists, editors and online content moderators.

The authorities should also ensure that all Internet service providers and social network operators swiftly and systematically remove hate speech from their systems and promptly forward evidence to the relevant law enforcement authorities.

The authorities should develop and adopt a comprehensive strategy for integration and inclusion of migrants. The strategy should in particular: i) contain clear and measurable indicators by which the impact of the strategy may be assessed; ii) require regular evaluation of its implementation; iii) provide for the allocation of sufficient resources for its implementation; iv) provide for the inclusion of civil society organisations working with migrants in the implementation and evaluation of the strategy.\*

The authorities should also develop a new policy with a view to enabling persons who cannot be returned to their country of origin to stay legally in Malta, with priority treatment for those who have resided in Malta for lengthy periods of time.

The authorities should i) further develop and intensify trainings for all law enforcement officials regarding the need to prevent and combat racism and intolerance in policing; ii) establish a framework for dialogue and co-operation between law enforcement officials and people with a migration background; iii) seek to recruit law enforcement officials with a migration background.

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\* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

## FINDINGS AND RECOMMENDATIONS

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### I. EFFECTIVE EQUALITY AND ACCESS TO RIGHTS

#### A. Equality bodies<sup>1</sup>

1. The National Commission for Promotion of Equality (NCPE) was established as an equality body by the Equality of Men and Women Act.<sup>2</sup> It is tasked with safeguarding equality based on sex, family responsibilities, religion/belief, age, sexual orientation, race/ethnic origin and gender identity, gender expression and sex characteristics in employment as well as access to vocational/professional training or banks and financial institutions. The NCPE's mandate is also established in the field of gender as well as "race"/ethnic origin in access to and provision of goods and services via two legal notices, namely Legal Notice 181 of 2008, Access to Goods and Services and their Supply Regulations<sup>3</sup> and Legal Notice 85 of 2007, Equal Treatment of Persons Order<sup>4</sup> and in the field of freedom of movement for workers in the European Union by the Legal Notice 173 of 2016, Exercise of Rights Conferred on Workers (Freedom of Movement) Regulations.<sup>5</sup>
2. In its fifth report on Malta (§§ 17-19), ECRI indicated that the powers of the NCPE were mostly in line with its General Policy Recommendation (GPR) No. 2 on equality bodies to combat racism and intolerance at national level and GPR No. 7 on national legislation to combat racism and racial discrimination. It recommended granting the NCPE the powers that were still missing, namely the competence to initiate, and participate in, court proceedings as well as to monitor legislation for compliance with the prohibition of discrimination and make proposals for modifications where necessary. Regrettably, the powers of the NCPE have not been amended as recommended. That said, the ECRI delegation has been informed during the 2023 contact visit that in practice the NCPE gives its opinion on legislation by participating in public consultations.
3. ECRI positively notes that the NCPE's governmental funding has been gradually increased in recent years (from 350,000 euros in 2018 and 453,431 euros in 2019 to 550,000 euros in 2022),<sup>6</sup> which allows the Commission to conduct more capacity-building and research activities.
4. While the scope of activities of the NCPE encompasses multiple awareness-raising campaigns and research projects, the number of complaints lodged to the Commission remains relatively low. In 2019 the Commission conducted 16 investigations into alleged cases of discrimination, of which 4 were related to discrimination on the basis of "race"/ethnic origin;<sup>7</sup> in 2020 there were 15 investigations conducted, but none of them concerned grounds falling within ECRI's mandate;<sup>8</sup> in 2021 out of 24 investigations, five cases concerned alleged discrimination on the basis of "race"/ethnic origin (including one investigation initiated *ex officio*) and one concerned discrimination on the grounds of gender identity/gender expression/sex characteristics;<sup>9</sup> and in 2022 out of 12 investigations, three concerned alleged discrimination on the basis of

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<sup>1</sup> The term "national specialised bodies" was updated to "equality bodies" in the revised version of GPR No. 2, which was published on 27 February 2018.

<sup>2</sup> Chapter 456 of the Laws of Malta, [the Equality of Men and Women Act](#).

<sup>3</sup> Legal Notice 181 of 2008, [Access to Goods and Services and their Supply Regulations](#).

<sup>4</sup> Legal Notice 85 of 2007, [Equal Treatment of Persons Order](#).

<sup>5</sup> Legal Notice 173 of 2016, [Exercise of Rights Conferred on Workers \(Freedom of Movement\) Regulations](#)

<sup>6</sup> See respectively, NCPE (2019): 77; NCPE (2020): 75; and NCPE (2023): 73.

<sup>7</sup> NCPE (2020): 42.

<sup>8</sup> All cases referred to discrimination based on sex, sexual harassment and age discrimination as well as cases not withing grounds covered by NCPE's remit. See NCPE (2021): 46.

<sup>9</sup> NCPE (2022b): 34.



“race”/ethnic origin and one concerned discrimination on the basis of sexual orientation.<sup>10</sup> According to civil society and other independent interlocutors met during the visit, the small number of complaints lodged with the NCPE does not correspond with the scale of discrimination faced by various groups of concern to ECRI in Malta but instead reflects a lack of knowledge about the mandate of the equality body among groups exposed to discrimination, most notably migrants, as well as a lack of confidence in NCPE’s independence.<sup>11</sup> ECRI encourages the authorities to assist in raising awareness about the mandate and competences of the NCPE among groups of population that are most vulnerable to discrimination, including migrants.

5. According to the Equality for Men and Women Act the NCPE is composed of members appointed by the Prime Minister for the term of two years with the possibility of reappointment.<sup>12</sup> It is funded from funds allocated to it by the Minister responsible for equality issues and its financial plan is subject to approval by the Minister in question and the Minister responsible for financial matters.<sup>13</sup> Similarly, its hiring capacity is subject to governmental approval and its annual report is submitted first to the relevant Minister, who then submits it to the House of Parliament.<sup>14</sup> ECRI notes that this is not compatible with the requirements of independence of equality bodies as expressed in its GPR No. 2 and in the Paris Principles,<sup>15</sup> and also influences public trust in the NCPE, which is perceived by members of groups exposed to racism and intolerance and civil society generally as structurally placed within the Ministry responsible for equality issues (Ministry for Home Affairs, Security, Reforms and Equality).
6. In this context, ECRI notes that, since 2014, the Maltese authorities have been working on legislation that would establish a fully independent body combining the role of a national human rights institution and an equality body. Those efforts resulted in the drawing-up of the Human Rights and Equality Commission Bill, which was subject to public consultations<sup>16</sup> and presented to the Parliament in 2019.<sup>17</sup> It is also positive to note that the opinions of the Council of Europe and other bodies were sought in its preparation.<sup>18</sup> However, the parliamentary elections in March 2022 halted the discussion of the Bill and it has not yet been re-introduced in Parliament.
7. ECRI recommends, as a matter of priority, that the authorities bring forward legislation establishing a fully independent and effective equality body in line with ECRI’s General Policy Recommendation No. 2 on equality bodies to combat racism and intolerance at national level. Development of such legislation should build upon the work done so far and include consultations with civil society.

## **B. Inclusive education**

8. This section deals with education policies<sup>19</sup> that aims to combat exclusion and marginalisation through an inclusive education devised for all, and to create an inclusive society respectful of diversity in accordance with sections II and III of

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<sup>10</sup> NCPE (2023): 44.

<sup>11</sup> See for instance, PRESERVERE (2022): 18.

<sup>12</sup> Article 11 of [the Equality of Men and Women Act](#).

<sup>13</sup> Article 14 of [the Equality of Men and Women Act](#).

<sup>14</sup> Articles 13 and 15 of [the Equality of Men and Women Act](#).

<sup>15</sup> United Nations, General Assembly (1993). See also ACFC (2021): § 40.

<sup>16</sup> See website of public consultations [Towards A Robust Human Rights And Equality Framework](#).

<sup>17</sup> UN HRC (2022): §§ 85 and 111.

<sup>18</sup> See Venice Commission (2018).

<sup>19</sup> This section relates to education for all children and young people. Specific measures for the education of migrants and children belonging to minority groups are dealt with under the heading of integration and inclusion.



ECRI's GPR No. 10 on combating racism and racial discrimination in and through school education.

9. In its GPR No. 10, ECRI recommends that human rights education is an integral part of the school curriculum at all levels and across all disciplines. According to the National Curriculum Framework 2012 students in Malta are introduced to democratic values that are related to respect of fundamental freedoms, human rights and responsibilities as well as diversity and the value of a democratic and inclusive society.<sup>20</sup> Human rights education is mostly realised as a part of Personal, Social and Career Development (PSCD), which contains elements of education on diversity and tolerance, as well as on human sexuality; in Social Studies, which includes basic information on human rights as well as racial discrimination issues; and in Ethics, which contains more elaborate<sup>21</sup> modules related to justice, tolerance and diversity as well as to human rights and freedoms.<sup>22</sup> ECRI notes, however, that Ethics is not compulsory for all students, as it constitutes an alternative to religious education. ECRI considers that comprehensive human rights education should not be treated as an alternative to religious education and invites the authorities to consider including more elements of teaching on human rights, especially those included in the seventh year of Ethics course, in the curricula of subjects that are followed by all students.
10. In addition to the implementation of the school curriculum, the authorities support *ad hoc* initiatives such as providing classroom libraries with books that promote diversity and LGBTI inclusion<sup>23</sup> and organising human rights and diversity days, such as Human Rights Day, LGBTIQ+ Rights Day and Racial and Ethnic Diversity Day. ECRI considers both those initiatives as **promising practices** and encourages the authorities to continue them.
11. The authorities informed ECRI that the Institute for Education offers initial teacher training courses for human rights education and that human rights are addressed in several training courses offered to teachers as a part of their continuous training, although ECRI understands that none of those modules is obligatory for all teachers. Trainings for teachers were also organised as a part of the implementation of the LGBTIQ Equality Strategy and Action Plan 2018-2022 and included, for instance, online trainings for over 200 secondary school teachers on providing LGBTI students with inclusive and safe environments.<sup>24</sup> ECRI commends the organisation of such trainings. Considering the sporadic nature of these initiatives, it nevertheless invites the authorities to ensure that human rights constitute an integral part of teachers' initial and ongoing training and that teachers are provided with such training in a systematic manner.
12. It appeared from the information gathered during the contact visit that bullying is a major problem in Maltese schools. According to research conducted in 2018, 32% of students indicated that they were being bullied at least a few times a month, compared to the EU average of 22.1%.<sup>25</sup> Different forms of harassment are also experienced by children belonging to vulnerable groups. According to a survey conducted in 2017, 59.4% of children identifying as LGBTI said that they experienced verbal harassment at school and 45% were allegedly victims of cyberbullying, 22.6% claimed that they were physically harassed and 13% were allegedly assaulted on grounds of their sexual orientation, gender identity or

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<sup>20</sup> The Government of Malta, Ministry of Education and Employment (2012): 54 and 66.

<sup>21</sup> See especially Ethics syllabus for [year 5](#) and [year 7](#) of education.

<sup>22</sup> Curricula of all those subjects are available at the website of the [Department of Learning and Assessment Programmes](#).

<sup>23</sup> The Government of Malta, Ministry for Equality, Research and Innovation (2021b): 13. The authorities estimate that as a result of this action, the books in question reached 1,600 kindergarten and primary school children.

<sup>24</sup> The Government of Malta, Ministry for Equality, Research and Innovation (2021b): 12.

<sup>25</sup> OECD (2019): 48; EU European Commission (2021): 4.

gender expression.<sup>26</sup> Against this background, ECRI welcomes that the curricula of PSCD contain teaching about recognising, coping with and reacting to bullying and cyberbullying<sup>27</sup> as well as that the authorities have developed a policy on addressing bullying behaviour in schools<sup>28</sup> and a multi-level system of responses to bullying incidents in schools. Depending on the seriousness of the situation, the bullying in public schools may be addressed by an anti-bullying team at school level or support may be sought from the higher structures of the school administration (colleges) or a National Anti-Bullying Service.

13. According to the data provided by the authorities, in 2022 alone, 501 cases<sup>29</sup> were referred to the National Anti-Bullying Service, which intervened by providing individual and class sessions, meetings with parents and school staff members, as well as conducting 171 awareness and prevention sessions in schools. It also organised a promotional campaign through short videos shared on social media. ECRI welcomes the authorities' ongoing efforts to prevent bullying at schools. It nevertheless observes that there is no national system in place to monitor bullying incidents at school nor a compilation of data on such incidents that would include specific reasons for bullying behaviour. Lack of such data may significantly impede the authorities' capacity to address the root causes of bullying and to develop effective measures aimed at preventing and countering racist and intolerant incidents at schools.
14. ECRI recommends that the authorities put in place a national system of monitoring racist and anti-LGBTI incidents in schools and that they gather gender-disaggregated data on such incidents, including on specific reasons for bullying behaviour. Such data should serve as a basis for development of more targeted responses to bullying in schools, including further preventive campaigns and trainings for teachers and other professionals working with children in schools.

### **C. Irregularly present migrants**

15. In its GPR No. 16 on safeguarding irregularly present migrants from discrimination, ECRI calls for the creation of effective measures (“firewalls”) to ensure the fundamental human rights of irregularly present migrants in fields such as education, health care, housing, social security and assistance, labour protection and justice.<sup>30</sup> Such firewalls should separate the activities of immigration control and enforcement from the provision of services, so that migrants who are irregularly present in Malta do not refrain from accessing their rights due to fear of deportation.
16. According to Eurostat, in 2018, 515 persons (non-EU citizens) were found to be “illegally” present in Malta, while in 2019, 620 cases were recorded; in 2020, 590; in 2021, 695 and in 2022, 780.<sup>31</sup>
17. On a positive note, ECRI notes that the police authorities issue documents to migrants irregularly present in Malta, which allow them to stay in the country until they can be returned to their countries of origin. These documents do not prevent the police from returning the holders of such a document as soon as it is possible. However, they provide them with access to basic health care and enable them to apply for a work permit. According to the data provided by the authorities, as of

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<sup>26</sup> MGRM (2019): 24-28. The data reflect results of the survey conducted online among 139 students aged between 13 and 22.

<sup>27</sup> See for instance PSCD curriculum for [year 3](#), [years 7](#) and [year 8](#) of education.

<sup>28</sup> The Government of Malta, Ministry for Education and Employment (2014).

<sup>29</sup> This number encompasses all bullying incidents referred to the National Anti-Bullying Service, at all education levels (primary, middle and secondary) without specification of the grounds for bullying behaviour. Due to the lack of disaggregated data on grounds for bullying, it is not possible to determine how many of those were on grounds relevant to ECRI. Moreover, those data do not cover cases of bullying that have been addressed at the school-level without resorting to the support of the National Anti-Bullying Service.

<sup>30</sup> See §§ 3, 4, 11 and 12 of the GPR No. 16 and §§ 3, 4, 11 and 12 of its Explanatory Memorandum.

<sup>31</sup> Eurostat (2023): Malta.

April 2023, 720 third-country nationals present in Malta were holders of these documents.

18. The Maltese legislation does not establish “firewalls” preventing service providers from reporting irregularly present migrants. It emerged from the information collected during the contact visit that in practice immigration control and police forces do not intervene in places such as hospital or schools,<sup>32</sup> and health care providers and school administration do not report migrants who are irregularly present in the country. The situation is, however, different with regard to labour protection, as labour inspection officials are obliged to report irregularly present migrants to the police, and, when illegal employment is suspected, they carry out joint inspections of places of employment with police officers. ECRI is concerned that this practice impedes the ability of irregularly present migrants to seek protection against labour exploitation, to which they are particularly vulnerable.<sup>33</sup> Consequently, ECRI invites the authorities to decouple immigration control from labour inspection and ensure that all migrants, notwithstanding their legal status, have unobstructed access to administrative and judicial remedies against labour exploitation, without fear of negative consequences.
19. In its GPR No. 16 ECRI also underlines the need to guarantee access to education to all children, including those who are irregularly present, without requiring documentation relating to immigration or migratory status.<sup>34</sup> It was brought to ECRI’s attention that enrolment in schools can be delayed in case of children whose parents are present in Malta on the basis of work visas which do not provide for the immediate regularisation of the presence of their families. In such cases these – irregularly present children – cannot obtain documentation allowing them to enrol into schools for a period of a few months. ECRI strongly encourages the authorities to revise their administrative procedures and ensure prompt access to education for all children irrespective of their immigration status.

#### **D. LGBTI equality<sup>35</sup>**

20. On the Rainbow Europe Map and Index reflecting the European countries’ legislation and policies guaranteeing LGBTI rights, Malta ranks first of 49 countries scored, with an overall score of 89.29%.<sup>36</sup> With one of the most advanced legal provisions in this regard in Europe, Malta guarantees a high level of protection of the human rights of LGBTI persons, including marriage equality, legal gender recognition based on the principles of self-determination and bodily integrity as well as a ban on so-called conversion practices.<sup>37</sup> The relevant legislation was amended in 2023 in order to clarify that the prohibition of advertising conversion practices encompassed any favourable description, endorsement or promotion of such practices.<sup>38</sup>
21. As to civil and administrative law, ECRI notes that despite the general prohibition of discrimination on grounds of sexual orientation and gender identity in the Constitution, anti-discrimination laws do not contain the prohibition of

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<sup>32</sup> See, however, Legal Notice No. 112 of 2019, [Procedure for the Inspection of Illegally Staying and Illegally Employed Third-country Nationals and the Monitoring of Third Country Nationals enrolled in Educational Establishments Regulations](#), which explicitly grants the power to enter schools in search of irregularly present migrants to a special unit within the Identity Malta Agency.

<sup>33</sup> See also, in the context of human trafficking, GRETA (2021): § 12.

<sup>34</sup> GPR No. 16, § 19.

<sup>35</sup> For terminology, see ECRI’s [glossary](#).

<sup>36</sup> ILGA-Europe (2022): see Malta.

<sup>37</sup> See also ECRI (2018a): §§ 99-104.

<sup>38</sup> [Act No. XIII of 2023](#). The amendment was passed amidst discussions related to the first criminal case pending before Maltese courts, in which the defendant faces charges of advertising conversion practices. See Malta Today (2023, 9 June), Times of Malta (2023, 17 January).

discrimination based on those grounds in access to goods and services. Reference is made in this respect to the section IV.A of the present report.

22. The governmental policy regarding LGBTI equality is set in regularly renewed LGBTIQ Equality Strategies and Actions Plans and coordinated by the Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics Unit (SOGIGESC Unit) in the Human Rights Directorate of the Ministry of Home Affairs, Security, Reforms and Equality. The first strategy and action plan in this field covered the period of 2015-2017,<sup>39</sup> with the following document covering the years 2018-2022.<sup>40</sup> The current LGBTIQ Equality Strategy and Actions Plan 2023-2027<sup>41</sup> was launched on 17 May 2023. It contains various policy measures grouped in 10 thematic areas, including improvement in data gathering and research, addressing increasing visibility and inclusive services for the most vulnerable groups of the LGBTI population (such as elderly, persons with disability, migrants and children and youth), fight against discrimination, hate speech and hate crime, as well as the promotion of LGBTI equality at international level. ECRI takes positive note of the fact that the document has been developed in consultation with various stakeholders, including civil society organisations, and endorsed by the LGBTIQ+ Consultative Council – an advisory body representing civil society organisations active in the field of LGBTI equality.
23. While the level of social acceptance of LGBTI persons in Malta is above the EU average,<sup>42</sup> many interlocutors with whom the ECRI delegation spoke during the visit considered that the situation varies geographically, with more awareness-raising needed, particularly in the island of Gozo.<sup>43</sup> In this context ECRI notes with satisfaction that the LGBTIQ Equality Strategy and Action Plan 2018-2022 contained particular measure aimed at addressing the needs of LGBTI persons living in Gozo,<sup>44</sup> which resulted in support for the opening of Qawsalla Hub, a new point of contact of the LGBTI community in this region.<sup>45</sup> Moreover, on 4 September 2022, the first Pride March was held in Gozo.<sup>46</sup> The 2023-2027 Strategy and Action Plan continues to recognise the “double insularity” experienced by the LGBTI community in Gozo but considers it to be a cross-cutting issue and pledges to ensure implementation and mainstreaming of its measures on the Gozo island.<sup>47</sup> ECRI welcomes these developments and encourages the authorities to continue their efforts to address the challenges faced by the LGBTI community in Gozo.
24. ECRI is pleased to note a number of developments that contributed to better access to quality health care for transgender persons in Malta. These efforts include the opening of the Gender Wellbeing Clinic in 2018. The clinic offers complex care provided to transgender persons by a multi-disciplinary team<sup>48</sup> and offers services ranging from prescriptions for free hormone treatment, assessments for those seeking surgical interventions, psychosocial support services, family therapy and voice therapy. It does not however conduct gender-

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<sup>39</sup> The Government of Malta, Ministry for Social Dialogue, Consumer Affairs and Civil Liberties (2015).

<sup>40</sup> The Government of Malta, Ministry for European Affairs and Equality (2018).

<sup>41</sup> The Government of Malta, Parliamentary Secretariat for Reforms and Equality Human Rights Directorate (2023).

<sup>42</sup> EU, FRA (2020): Malta country data.

<sup>43</sup> LGBTI+ Gozo (2022) and NCPE (2022a): 19.

<sup>44</sup> The Government of Malta, Ministry for European Affairs and Equality (2018): 9.

<sup>45</sup> The Government of Malta, Ministry for Equality, Research and Innovation (2021b): 9.

<sup>46</sup> NCPE (2023): 73. The second Pride in Gozo, held on 9 September 2023, was a part of EuroPride events held in Malta. Unfortunately, it registered some cases of violence against the participants (Times of Malta (2023, 14 September)). The attacks met with condemnation and are under police investigation (Times of Malta (2023, 15 September)).

<sup>47</sup> The Government of Malta, Parliamentary Secretariat for Reforms and Equality, Human Rights Directorate (2023): 16.

<sup>48</sup> This consists of persons from each of the following medical specialties: endocrinology, urology, gynaecology, plastic surgery and psychiatry, together with a designated social worker, psychologist(s), counsellor, family therapist, speech language pathologist and a nurse coordinator, as well as paediatric experts.

affirming surgeries, which currently are not available in Malta,<sup>49</sup> nor does the Maltese health insurance cover the cost of such surgeries conducted abroad.<sup>50</sup>

25. ECRI visited the Gender Wellbeing Clinic. The delegation gained a positive impression of the commitment and professionalism of the staff, as well as the scope of multidisciplinary services provided by the clinic. It considers the establishment and functioning of the clinic as a **good practice**. It noted, nonetheless, that the protocols of care developed by the staff of the Gender Wellbeing Clinic are not codified in any documents, which may create obstacles in preservation and transmission of knowledge of those protocols, especially in case of staff rotation. Hence, ECRI strongly encourages the authorities to take all necessary steps to assemble and codify the protocols of care developed by the Gender Wellbeing Clinic in order to make them accessible to new staff as well as to other healthcare professionals. It also encourages the authorities to make provision for transgender persons wishing to undergo gender affirming surgeries in Malta and/or to consider offering the possibility of covering the costs for gender affirming procedures carried out abroad until such time as surgeries of this kind are available in Malta.
26. The authorities have also implemented a project aimed at raising awareness and knowledge about the health care provision for LGBTI persons and addressed to all medical practitioners in Malta. The Transform project included training of management staff, nurses, general practitioners, emergency healthcare personnel, reception staff and other healthcare professionals, as well as the development of a website aimed at providing health care practitioners with information on specific health needs of transgender persons.<sup>51</sup> The authorities also informed ECRI that despite the formal conclusion of the project, the trainings for health practitioners continue to be organised. ECRI considers that such trainings significantly contribute to quality health care provided to LGBTI persons by general practitioners<sup>52</sup> and considers them a **promising practice**.
27. In relation to the situation of intersex persons, ECRI notes that since 2015 there has been a legal prohibition of any sex assignment treatment and/or surgical intervention on the sex characteristics of minors for whom treatment and/or intervention can be deferred until the person to be treated can give informed consent, hence outlawing non-medically necessary interventions on intersex babies and children.<sup>53</sup> The legislation also provided for the establishment of a working group to review the medical treatment protocols in line with current medical best practices and human rights standards and to issue a report with a set of recommendations for the revision of the medical treatment protocols.<sup>54</sup> According to the information obtained during the ECRI contact visit, a working group has been established, but has still to conclude its work on the recommendations to be made regarding intersex persons. In the meantime, civil society interlocutors indicated that there was no appropriate counselling for parents of intersex babies and children.
28. ECRI was also made aware of long-standing claims that the lack of awareness about intersex condition leads to cases of families taking their children abroad in order to conduct so-called “sex-normalising” surgeries.<sup>55</sup> ECRI was not able to confirm the occurrence of such cases. However, it notes that more should be done

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<sup>49</sup> With the exception of orchiectomy, breast surgeries and hysterectomy.

<sup>50</sup> See also ECRI (2018a): § 108.

<sup>51</sup> The Government of Malta. Ministry for Equality, Research and Innovation (2022).

<sup>52</sup> See also, NCPE (2022c): 67.

<sup>53</sup> Article 14 of [the Gender Identity, Gender Expression and Sex Characteristics Act](#).

<sup>54</sup> Article 16 of [the Gender Identity, Gender Expression and Sex Characteristics Act](#).

<sup>55</sup> StopIGM.org / Zwischengeschlecht.org (2020). See also UN CRC (2019): §§ 29 (d) and (e).



in awareness raising about the medical needs of intersex persons among healthcare professionals and families of intersex children.

29. ECRI recommends that the authorities: i) develop and codify protocols of care for intersex persons based on their right to bodily integrity and diversity; ii) provide appropriate training to all healthcare professionals, placing a particular emphasis on the right of intersex persons to bodily integrity and diversity; iii) develop counselling services and self-help groups for intersex persons and the parents of intersex children as well as other measures to provide them with sound information about options available and dangers of surgical and hormonal treatment at a very young age.

30. As regards challenges faced by LGBTI asylum seekers, reference is made to the section III.A. of the present report.

## II. HATE SPEECH AND HATE-MOTIVATED VIOLENCE

### A. Hate speech<sup>56</sup>

#### *Legislation and policies*

31. In its fifth report on Malta (§§ 2-9), ECRI noted that the Criminal Code was largely in line with ECRI's recommendations. It noted, however, a few lacunae such as the geographical restriction in the criminal provisions on incitement to violence or hatred that limits its scope to "violence or hatred" directed against a person or a group of persons in Malta and the lack of provisions criminalising in particular incitement to discrimination or the public expression of racist ideologies, as well as the creation or leadership or support of a group which promotes racism or participation in its activities. ECRI regrets to note that no change has since been made in this respect.

32. ECRI recommends that the authorities to review the Criminal Code and proceed with the necessary amendments in the light of paragraph 11 of Recommendation Rec(2022)16 of the Committee of Ministers of the Council of Europe on combating hate speech. If necessary, Council of Europe support should be sought.

33. On 28 July 2021, the authorities adopted the Anti-Racism Strategy 2021-2023,<sup>57</sup> which contains a vast catalogue of measures aimed at preventing and counteracting hate speech, promoting inclusive public discourse and addressing racial discrimination. It places particular emphasis on the need to raise standards of reporting in media and to eradicate racist language in political discourse. It also aims at tackling underreporting of hate speech and discrimination and at countering online hate speech in particular. The Strategy was developed following consultations with civil society representatives. It provided for the setting-up of the Anti-Racism Platform – a consultative body representing *inter alia* civil society organisations, including migrant-led organisations, academia and persons affected by racial discrimination, which started its work in July 2021. The Platform is involved in the implementation of the Strategy, including through regular consultations on the development of ministerial anti-racism plans, of training curricula and of the programme of events organised within the framework of the Strategy.<sup>58</sup>

34. ECRI considers that the adoption of the Anti-Racism Strategy 2021-2023 and the establishment of and cooperation with the Anti-Racism Platform constitute positive developments in addressing the problem of hate speech in Malta. It notes, however, that the Strategy does not include indicators by which the impact of the various measures to be taken and the extent to which goals have been achieved

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<sup>56</sup> See definitions of hate speech and hate crime in ECRI [glossary](#).

<sup>57</sup> The Government of Malta. Ministry for Equality, Research and Innovation (2021a).

<sup>58</sup> See Kopin (2023): 2-3.

may be measured. It also noted that its implementation faces delays.<sup>59</sup> ECRI therefore encourages the authorities to conduct, in cooperation with the Anti-Racism platform, a thorough assessment of the implementation of the Anti-Racism Strategy, which could gather information on lessons learned and (potential) good practices. This assessment should serve as a basis for the development and reinforcement of a future anti-racism strategy, which would ensure continuity and improvement of the measures being taken under the current document.

#### *Data collection*

35. In its previous reports, ECRI recommended to ensure that a comprehensive mechanism for collecting disaggregated data on hate incidents/hate crime, including hate speech of a criminal nature,<sup>60</sup> is put in place and that the data collected is made available to the public. In its last conclusions, ECRI noted that in 2019 the authorities had set up the Hate Crime and Hate Speech Unit, which had among its tasks compiling statistics on hate crime, including criminal hate speech. Consequently, ECRI considered that its recommendation had been fully implemented.<sup>61</sup>
36. In 2020 the authorities established a new body – the Victim Support Agency – which resulted in the dissolution of the Hate Crime and Hate Speech Unit. The Unit staff was transferred to the new agency.<sup>62</sup> However, they were no longer expressly tasked with gathering data on hate speech and hate crime.<sup>63</sup> The data about number of reported hate crimes, including cases of hate speech of criminal character, are still gathered by the police, through the National Police System, and can be provided to the public, upon request. However, they do not contain information about prosecutions and convictions based on hate crime provisions.<sup>64</sup> ECRI invites the authorities to re-establish a data collection mechanism on hate speech and hate crime and to publish the available data at regular intervals.
37. In addition, it emerged from the information gathered during the 2023 contact visit that many hate incidents, especially targeting migrants, remain unreported. There is also no comprehensive data about cases of hate speech that do not meet the threshold of being considered a criminal offence. In this context, ECRI welcomes that the Anti-Racism Strategy 2021-2023 provides for a quantitative and qualitative research on hate speech targeting migrants in Malta and encourages the authorities to build on this research to gain more in-depth understanding of the phenomenon of hate speech in Malta and develop specific responses to it.<sup>65</sup>

#### *Hate speech in public discourse, in media and online*

38. It emerged from discussions with official and civil society interlocutors during the contact visit that the press and electronic media in Malta on occasion portrayed migrants in a stereotypical way and that their programming lacked representation of people with a migration background. However, as a rule, the press and electronic media do not disseminate statements that could be considered as hate speech.

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<sup>59</sup> For instance, the Strategy called on all Ministries to develop, by the end of 2021, inter-ministerial action plans against racism. According to the information received from the authorities, as of June 2023, most of the Ministries were in the final phase of the drafting of the plans and their implementation was expected to commence by the end of 2023.

<sup>60</sup> See ECRI (2013):§ 21; ECRI (2018a); § 21.

<sup>61</sup> ECRI (2021a).

<sup>62</sup> See Article 3(6) of the [Legal Notice No 418 of 2020](#) and Victim Support Agency (2022): 9.

<sup>63</sup> According to the Legal Notice establishing the Victim Support Agency, the Agency has only the task of compiling reports and record statistics of the number of victims accessing and benefiting from victim support services (see Article 4 (i) of the [Legal Notice No 418 of 2020](#)). The data published at the time of reporting did not make it possible to determine how many of the victims supported by the Agency were victims of hate speech of a criminal nature or other hate crime.

<sup>64</sup> Despite being a participating state of the Organisation for Security and Cooperation in Europe (OSCE), Malta does not report any hate crime data to the Office for Democratic Institutions and Human Rights of this organisation (OSCE/ODIHR (2023)).

<sup>65</sup> Government of Malta. Ministry for Equality, Research and Innovation (2021a): measure 4.



Such statements are nonetheless widely present in social media and on the Internet,<sup>66</sup> in particular in comments sections of newspaper websites and other news portals. According to the survey conducted by the Eurobarometer in 2018, 55% of Maltese Internet users encountered hate speech online, which then constituted the highest number within the EU.<sup>67</sup> ECRI was informed that the number of hateful comments posted under newspaper articles concerning in particular subjects related to migration was such that some publications had decided to close comment sections under the relevant articles as they considered they were no longer in a position to moderate online discussions and remove hateful comments.<sup>68</sup>

### *Responses to hate speech*

39. As pointed out in its GPR No. 15 on combating hate speech, ECRI considers that, to effectively prevent and combat hate speech, action is required in a number of areas, including awareness-raising, prevention and counter-speech, victim support, self-regulation, the use of regulatory powers and, as a last resort, criminal investigations and sanctions.
40. There are some good examples of awareness-raising campaigns targeting hate speech, organised by civil society actors with the support of the authorities. They include a Stop Hate initiative led by SOS Malta, which entailed the training of volunteers assigned to review and moderate comments posted on online newspaper forums.<sup>69</sup> Further, the “Patriotism=Anti-Racism” project involved series of meetings at local level aimed at reframing patriotism as a mindset that celebrates both Malta’s history and intercultural values.
41. When it comes to diversity in media, it appeared during the contact visit that significant progress has been made in the representation of LGBTI persons in all media, which contributed to their visibility and broader acceptance. Similar diversity is not, however, seen in mainstream media when it comes to, for instance, persons with a migration background.
42. ECRI recommends that the authorities take measures aimed at promoting equality and diversity, raising awareness of the adverse effects of hate speech, and preventing and combating misinformation and negative stereotyping, including by: i) increasing digital and media literacy, especially on social media, for different segments of society, in particular children and young people; ii) encouraging, with due regard for the independence of the media, diversity in mainstream media programming; iii) encouraging trainings on inclusive reporting and on preventing and combating hate speech for journalists, editors and online content moderators.
43. As for counter speech, there are some good examples. In 2019, the then President reacted to the wave of online anti-migrants comments sparked by a riot in one of the reception centres by stating that fomenting hatred was an abuse of the right to freedom of expression and a transgression of human rights.<sup>70</sup> In March 2023, the President, in a public speech, urged politicians, journalists, social influencers, employers and people of prominence to always consider their words both offline and online and to avoid hateful language, in particular in politics.<sup>71</sup> Counter speech has also been present in some statements made by representatives of the Catholic Church. In January 2022, in response to anti-LGBTI remarks made in social media by a Catholic priest, the Archbishop of Malta issued a warning to the priest and an

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<sup>66</sup> Times of Malta (2021, 6 September).

<sup>67</sup> Eurobarometer (2018): 24.

<sup>68</sup> This practice is applied, for instance, by the Times of Malta.

<sup>69</sup> See <https://www.sosmalta.org/stophate>.

<sup>70</sup> The Malta Independent (2019, 22 October).

<sup>71</sup> Times of Malta (2023, 17 March).

official statement condemning his remarks.<sup>72</sup> However, according to many civil society interlocutors met by ECRI during the visit, there is a general perception that politicians and public officials are not held sufficiently accountable for racist, including xenophobic, statements.<sup>73</sup>

44. In terms of victim support, ECRI takes positive note of the establishment of the Victim Support Agency (VSA), which offers information, emotional, social and psychological support and legal advice to victims of crime, including hate speech of a criminal nature and hate-motivated violence. The VSA encourages reporting to the police and supports crime victims.<sup>74</sup> ECRI considers that to be a **good practice**. However, ECRI notes that, according to its civil society partners, the Agency did not fully fill the vacuum created after the dissolution of the Hate Speech and Hate Crime Unit, partly due to the lack of awareness of its activities among potential victims. ECRI therefore invites the authorities to take action to make the Agency more visible and accessible to potential victims and witnesses of hate speech and hate crime.
45. As concerns self-regulation, ECRI welcomes the fact that the Code of Ethics established for the public administration contains a provision related to the obligation to act in accordance with the principle of non-discrimination and to treat everyone with dignity and respect.<sup>75</sup> It regrets that a similar provision has not been incorporated in the Code of Ethics for the Members of Parliament.<sup>76</sup>
46. ECRI also notes that there is no functioning self-regulatory mechanism for the press. However, the Anti-Racism Strategy 2021-2023 provides for drawing up “an anti-racist and intercultural code of practice” applicable to all media. In this context, ECRI takes note of an initiative taken by some Maltese journalists, currently associated with the Institute of Maltese Journalism (IGM), to establish a media council, which would constitute a self-regulatory body for the press and other media (including online media) with one of its main goals being the enforcement of the new code of ethics.<sup>77</sup>
47. Radio and TV are regulated by the Broadcasting Authority – an independent regulator set up under the Constitution. It has the power to issue warnings or impose fines on radio and TV stations or programmes that are in breach of legal and licence obligations. That said, the Broadcast Authority has no power related to online media.<sup>78</sup>
48. ECRI recommends that the authorities support the development of stronger self-regulatory and other regulatory mechanisms against hate speech, and, in particular, that they: i) encourage the Parliament and political parties to adopt codes of conduct that prohibit the use of hate speech, in particular on the Internet, call on their members and followers to abstain from engaging in, endorsing or

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<sup>72</sup> The Malta Independent (2022, 6 January). In this case, the priest in question, who stated that being gay was “worse than being possessed” and compared it to a number of diseases, was also charged with online hate speech. However, in September 2022, he was acquitted of criminal charges. See Malta Today (2022, 7 January); The Malta Independent (2022, 29 September).

<sup>73</sup> See also Aditus (2020b): 7.

<sup>74</sup> Victim Support Agency (2023): 14-15.

<sup>75</sup> Chapter 595 of the Laws on Malta, [Public Administration Act](#), Schedule One, Code of Ethics for Public Employees and Board Members. The document also specifies that it is applicable to “actions and behaviour within and outside the public administration, online and offline”.

<sup>76</sup> Parliament of Malta (1995) and Chapter 570 of the Laws on Malta, [Standards in Public Life Act](#), Article 3 (3)(a) and Schedule One.

<sup>77</sup> In the past, the role of policing ethical rules for the journalists was played by Press Ethics Commission established within the Institute of Maltese Journalists (IGM) – earlier Press Club of Malta, see ECRI (2018a): § 40. However, ECRI was informed that the Press Ethics Commission had not been functional for many years and, in any case, its scope of reach had extended only to the members of the IGM and it had operated on the basis of code of ethics that needed updating in light of developments related in particular to the proliferation of online hate speech.

<sup>78</sup> Except those covered by the audio-visual media services (AVMS).

disseminating hate speech, and provide for sanctions; ii) encourage and support the establishment of a media council or other self-regulatory body fostering principles of ethical journalism, iii) extend the powers of the Broadcasting Authority to enable it to deal with online hate speech. Reference is made in this regard to ECRI's General Policy Recommendation No. 15 on combating hate speech, Recommendation CM/Rec (2022)16 of the Committee of Ministers to member States on combating hate speech and the Charter of European political parties for a non-racist and inclusive society as endorsed by the Parliamentary Assembly of the Council of Europe in its Resolution 2443 (2022).

49. As to criminal law responses, ECRI regrets that, despite having signed it on 28 January 2003, Malta has not yet ratified the First Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. ECRI strongly encourages the authorities to ratify this Protocol.<sup>79</sup>
50. ECRI was informed that several instances of hate speech, especially online, were the subject of criminal investigations and sanctions. For instance, in 2021, 20 defendants received suspended sentences ranging from 18 months to two years of imprisonment and fines that ranged from 150 to 500 Euros for posting hateful comments against migrants under the Facebook post containing a video depicting a man who had been assaulted by foreign nationals and further indictments were issued in relation to similar comments.<sup>80</sup> Yet, police representatives met by the ECRI delegation indicated that the carrying out of investigations into online hate speech meets with obstacles related to obtaining information on perpetrators. There are also no legal provisions obliging Internet service providers and social network operators to remove hate speech content from their platforms.
51. ECRI recommends that the authorities ensure that all Internet service providers and social network operators swiftly and systematically remove hate speech from their systems and promptly forward evidence to the relevant law enforcement authorities.
52. The authorities informed ECRI that due to the specific character of criminal hate speech, all cases regarding such charges are currently assigned to a specialised magistrate. ECRI recognises that such a solution may contribute to the development of valuable expertise and case-law consistency. However, authorities should seek to build capacity to recognise and adjudicate criminal hate speech and other hate crime cases among all magistrates and judges. ECRI encourages the authorities to offer appropriate training to magistrates and judges.

## **B. Hate-motivated violence**

53. The data from the National Police System show that the police recorded 63 hate incidents on grounds falling within ECRI's mandate<sup>81</sup> in 2020; 42 in 2021; 43 in 2022; and 14 in the first four months of 2023 (until 30 April 2023). While there is no breakdown per criminal law provisions available, the majority of them were classified as insults and threats (80), threats and private violence (23) and crimes against public peace (22); 17 reports were characterised as bodily harm and seven as damage. Most cases concerned offences targeting victims on the basis of their "race" (50), language (33), colour (23), sexual orientation (18) and ethnic origin (15). Fourteen cases concerned grounds of religion, and nine gender identity. There is no data as to how many of those reports resulted in prosecutions and/or convictions of alleged perpetrators.

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<sup>79</sup> See also ECRI (2018a): § 35.

<sup>80</sup> Times of Malta (2021, 3 September); Times of Malta (2021, 6 September).

<sup>81</sup> These numbers do not include cases of hate crime based on political affiliation and gender. They do, however, include cases of criminal hate speech.

54. Some well-publicised cases of hate-motivated violence include an alleged murder of an Ivorian citizen, who was killed in a drive-by shooting near Ħal Far open reception centre on 6 April 2019. Another two men, of Ghanaian and Guinean origin, were injured in the same shooting.<sup>82</sup> The incident took place only a few months after another hit-and-run attack left a 17 years-old migrant from Chad injured.<sup>83</sup> The police traced both incidents to two off-duty members of the Maltese Armed Forces, who have been charged with murder and attempted murder. The men were released on bail and the criminal proceedings against them were still pending at the time of the ECRI contact visit.<sup>84</sup> Following the arrest of these suspects, the Armed Forces of Malta conducted an internal inquiry and said they found no signs of structural racial hatred or intolerance within their ranks. They nevertheless recommended specialised training for leaders at different tiers of the command structure.<sup>85</sup> ECRI invites the authorities to seriously consider providing such training to other members of the Maltese armed forces.
55. Since ECRI's previous report, several measures have been taken to increase the capacity of law enforcement officials to tackle hate crimes. Following the delivery of the OSCE/ODIHR's Training Against Hate Crimes for Law Enforcement (TAHCLE), training on hate crime is regularly provided by the Academy for Disciplined Forces both as a part of initial and of continuous training. Periodic trainings regarding crime against LGBTI persons are also delivered by the SOGIGESC Unit. However, the capacity of the police to address hate-motivated violence seem to be significantly diminished by underreporting of such incidents and lack of trust in law enforcement agencies on the part of people with a migration background. ECRI considers that that problem cannot be tackled without addressing systemic problems related to racism and intolerance within law enforcement agencies. Reference is made to section IV.B.

### III. INTEGRATION AND INCLUSION

#### Migrants

##### Data

56. According to the results of the census of 2021, Malta's population numbered 519,562 people, 115,449 (22.2%) of whom were non-Maltese nationals (in comparison to 4.9% recorded in 2011). Among this group 34.7% were EU citizens and 9.2% were British. The other main groups included Indian, Filipino, and Serbian nationals.<sup>86</sup>
57. When it comes to asylum seekers and beneficiaries of international protection, according to the data provided by the authorities, in 2022, 918 first time asylum applications were lodged in Malta. Fifteen persons were granted refugee status, 172 subsidiary protection and nine persons obtained other forms of protection (temporary humanitarian protection). In 2021, the number of first-time applications was 1,213, 18 persons were granted refugee status, 156 subsidiary protection and six temporary humanitarian protection. In 2020, 2,419 applications were lodged, 76 persons were granted refugee status, 192 subsidiary protection and six humanitarian temporary protection. The most numerous groups among asylum-seekers were Sudanese, Bangladeshi, Eritrean and then Syrian nationals. The largest number of beneficiaries of international protection were Syrian, Libyan, Sudanese and Eritrean citizens.<sup>87</sup> Moreover, in the period from 24 February 2022

<sup>82</sup> Times of Malta (2019, 9 April b); Times of Malta (2021, 5 November).

<sup>83</sup> Times of Malta (2019, 8 April); Times of Malta (2019, 9 April a).

<sup>84</sup> See also The Malta Independent (2023, 6 April 2023).

<sup>85</sup> Times of Malta (2020, 24 May 2020).

<sup>86</sup> National Statistics Office Malta (2023): 7, 115 and 154.

<sup>87</sup> See e.g., UNHCR (2021a); UNHCR (2021b); UNHCR (2022).

to 13 August 2023, the Maltese authorities issued temporary protection certificates to 2,055 persons fleeing Russia's war of aggression against Ukraine.<sup>88</sup>

#### *Policy framework and measures taken by the authorities*

58. In December 2017, the authorities adopted their first Migrant Integration Strategy and Action Plan (Vision 2020),<sup>89</sup> which was to be implemented by 2020. It contained a number of measures related to the institutional framework for implementation of the integration policies, the provision of information to migrants, and the funding of initiatives aimed at integration of migrants as well as to data-gathering. It also provided for the development of a comprehensive integration programme "I belong", which had a lot of success among migrants.
59. ECRI welcomes the development of the above strategy and action plan. It notes however that some of the measures referred to in this document were of a general nature, providing little possibility to measure their impact and that – according to civil society interlocutors met by the ECRI delegation during the visit – implementation of the strategy and action plan lacked meaningful dialogue or cooperation with civil society organisations and of the target groups. ECRI was also informed that no final evaluation of the implementation of the strategy and the action plan has been conducted, although – according to the authorities – some lessons have been drawn and were to be used in the development of a new integration strategy. In this context, ECRI notes with interest that some measures introduced in the Migrant Integration Strategy and Action Plan have been continued after the formal expiry of the strategy. However, it underlines that effective integration and inclusion requires sustainability and continuation of policies. In this context, ECRI regrets that no new strategy or action plan on integration of migrants has been adopted.
60. ECRI recommends, as a matter of priority, that the authorities develop and adopt a comprehensive strategy for integration and inclusion of migrants. The strategy should in particular: i) contain clear and measurable indicators by which the impact of the strategy may be assessed; ii) require regular evaluation of its implementation; iii) provide for the allocation of sufficient resources for its implementation; iv) provide for the inclusion of civil society organisations working with migrants in the implementation and evaluation of the strategy.
61. One of the biggest successes of the Migrant Integration Strategy and Action Plan (Vision 2020) was the development of the integration programme for adult migrants, "I belong". The programme is open to all migrants, including asylum seekers and refugees, at their request, and is organised in two stages. The first stage consists of 60 hours of classes in English, Maltese and cultural orientation, whereas the second one contains 170 hours of Maltese and cultural orientation. The enrolment in the programme is followed by an individual meeting aimed at the development of a Personal Integration Plan, which may include participation in one or two stages of the programme, as well as additional courses and special assistance. The completion of the programme is a prerequisite for third country nationals to be eligible for a long-term residence status.
62. The "I belong" programme was initially envisaged for approximately 700 participants per year. The interest in participation exceeded this number with approximately 6,602 persons applying from the inauguration of the programme (in November 2018) to the end of 2022. According to the data collected by the authorities, this number included 543 asylum seekers, 491 beneficiaries of subsidiary protection, 178 refugees and 148 beneficiaries of temporary humanitarian protection. In the years 2019-2022, 5,270 persons took part in the

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<sup>88</sup> UNHCR (2023). According to the statistics covering 2022 alone, 99% of the beneficiaries of temporary humanitarian protection were Ukrainian citizens, UNHCR (2022).

<sup>89</sup> The Government of Malta, Ministry for European Affairs and Equality (2017).

Stage 1 of the programme and 937 persons participated in its Stage 2. The ECRI delegation met with some graduates of the programme, who regarded it as a useful tool of integration into the Maltese society. In ECRI's opinion, the programme should be regarded as a **very promising practice**.

63. However, ECRI was also made aware of struggles related to lack of sufficient number of places for all interested migrants as well as difficulties related to the fact that the on-site classes take place only in two locations. Some potential beneficiaries struggle to find time and financial resources necessary to commute for classes. Hence, ECRI invites the authorities to further expand the capacities of the "I belong" programme as well as to explore the possibility of multiplying locations in which on-site classes are delivered and expanding existing capacities for online participation.
64. As concerns the education of children with a migration background, the authorities developed a one-year preparatory programme in induction "hubs", where children, who do not have sufficient command of English and Maltese languages, attend school and prepare to be integrated into mainstream schools as of the following school year. ECRI visited the biggest induction hub in Malta, situated in Naxxar, where over 300 children originating from more than 35 countries followed education at primary and secondary level. The delegation observed that there was a strong commitment on the part of teaching staff and cultural mediators supporting children and their families in settling into the Maltese system. It noticed, nonetheless, that the staff involved appeared to be over-stretched. It also noted that while the children and their families receive significant support and guidance during the year when the children attend the induction programme, the subsequent transition to mainstream schools was challenging due to a lack of sufficient contact and follow-up between the induction programme and the new school as well as a lack of resources in the mainstream schools to sufficiently address the specific needs of migrant children. ECRI regards the induction programme for migrant children as a **good practice**. At the same time, it encourages the authorities to commit more resources to that programme as well as to the development of further support for the transition of children from this programme to the mainstream schools and to the support of children with a migrant background in those schools.
65. In addition, ECRI positively notes that the authorities launched some *ad hoc* initiatives supporting migrant children in acquiring sufficient linguistic skills to pursue their education in Malta. They include a summer programme Language2Go, during which children both transitioning to mainstream schools and already attending them can improve their knowledge of both official languages used in Malta.<sup>90</sup> Moreover, in response to the influx of persons fleeing Russia's war of aggression in Ukraine, in 2022, the authorities launched a special "Welcome Course for Families" addressed to Ukrainian families enrolling children in Maltese schools. The programme was implemented under a new formula, which included joined sessions for children and their parents. ECRI encourages the authorities to extend its scope also to families of other nationalities.
66. Suitable housing remains one of the main issues for migrants, including asylum seekers and beneficiaries of international protection. Asylum seekers are entitled to be accommodated in reception centres for a period up to six months or up to a year (in case of families and vulnerable persons).<sup>91</sup> Beneficiaries of international protection, as a rule, are not entitled to accommodation in reception centres, except for vulnerable persons and families on a case-by-case basis.<sup>92</sup> Refugees can apply

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<sup>90</sup> According to the data submitted by the authorities, in 2019, 150 children aged 5 to 16 took part in this programme, in 2020, it was 510 children, in 2021, 788 and in 2022, 423 children.

<sup>91</sup> The authorities informed ECRI that this period could be further extended for the most vulnerable asylum-seekers based on individual assessment conducted by the Agency for the Welfare of Asylum Seekers (AWAS).

<sup>92</sup> See AIDA (2023): 144.



for alternative public accommodation, and all beneficiaries of international protection are entitled to housing benefit if they are renting from private owners.<sup>93</sup> Nonetheless, due to scarce resources, high rental prices, and cases of discrimination by private property owners, migrants, including asylum seekers and beneficiaries of international protection, often live in substandard conditions.<sup>94</sup> ECRI underlines that lack of adequate housing is a major hindrance to successful integration and strongly encourages authorities to address the issue of exploitation of migrant tenants and to make necessary efforts to improve the living conditions of migrants, including asylum seekers and beneficiaries of international protection.

67. Certain progress has been made in support of employment of migrants, especially asylum seekers and beneficiaries of international protection. The Maltese Public Employment Service (Jobplus) provides job seeking support and career guidance.<sup>95</sup> Those efforts are supported by activities of a number of civil society organisations, such as Integra Foundation, KOPIN and Hal Far Outreach of JRS which organise employment-related workshops and support for asylum seekers and beneficiaries of international protection.<sup>96</sup> Nevertheless, according to ECRI's official interlocutors and civil society representatives met during the visit, those actions depend on temporary financing. In the view of ECRI, in order to bring sustainable change in the situation of migrant workers, these actions should become part of a well-coordinated integration policy. In this respect, reference is made to the recommendation made in paragraph 60.
68. Migrants, who struggle with securing regular and stable employment, are also at high risk of labour exploitation<sup>97</sup>, which in most cases remains unreported due to lack of awareness of procedures and access to legal aid, lack of trust in the institutions or fear of repercussions.<sup>98</sup> In this context, ECRI welcomes that the authorities initiated a public campaign against trafficking in human beings and labour exploitation<sup>99</sup> and that Jobplus prepares and distributes materials on labour rights and manners in which to report abuses. ECRI considers it a **good practice** that should be extended by actively reaching out to migrant communities.
69. ECRI notes that vulnerability to exploitation is linked to the procedures for obtaining employment licences and the type of licence. While refugees and beneficiaries of subsidiary protection may apply for a personal working licence, allowing them to change employment during the validity of the licence, asylum seekers may obtain only a work permit, which is tied to a particular employer.<sup>100</sup> Moreover, their working permits have to be renewed every three or six months, which in practice dissuades employers from applying for those permits and forces asylum-seekers to seek unregistered employment.<sup>101</sup> ECRI invites the authorities to revise their policies regarding work permits for asylum seekers with the aim to limit their dependence on employers and effectively combat labour exploitation.
70. ECRI further recognises that effective integration and inclusion is a two-way process that cannot be completed without efforts being made both by migrants and the majority population. The crucial role in this process is played by municipalities,

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<sup>93</sup> AIDA (2023): 88 and 144.

<sup>94</sup> JRS and Aditus (2021): 25. According to the results of survey published by the EU Fundamental Rights Agency in 2018, among persons of African descent residing in 12 EU countries, Malta had the highest percentage of respondents of African descent who lived in severely deprived (29%) or overcrowded housing (84%) among all surveyed countries, see EU FRA (2018): 61-62.

<sup>95</sup> According to the information gathered by the authorities, in 2022, 165 migrants benefited from temporary employment through the Job Brokerage programme and 22 migrants participated in cooperation, training or counselling as a part of VASTE programme.

<sup>96</sup> AIDA (2023): 95.

<sup>97</sup> See also GRETA (2021): §§ 12 and 153.

<sup>98</sup> Grech, S. (2021): 21.

<sup>99</sup> GRETA (2021): § 166.

<sup>100</sup> UNHCR (2019): 21.

<sup>101</sup> AIDA (2023): 95-96.



which are the key actors in bringing local communities together. In this context ECRI takes positive note of events organised at local level in order to promote migrant culture and nurture joint initiatives by migrants and Maltese citizens. The ECRI delegation had an opportunity to hear first-hand accounts about such initiatives organised in Msida, including volunteering opportunities, meetings of the local community over a meal, sport activities, and after-school programmes for children. Many of those events are organised in cooperation with civil society organisations. ECRI considers that those initiatives are **good examples** of how local authorities can contribute to building mutual understanding between migrants and other segments of the population.

#### *Situation of LGBTI asylum-seekers*

71. According to Procedural Standards for Granting and Withdrawing International Protection Regulations sexual orientation, as well as gender identity, gender expression and sex characteristics are considered as among the grounds that can lead to granting refugee status in Malta.<sup>102</sup> The authorities, together with the UNHCR, developed a targeted information campaign “From Pink Triangles to Rainbows” which included preparation of leaflets informing LGBTI migrants about the possibility to seek asylum on those grounds as well as explaining basic legal provisions regarding the human rights of LGBTI people in the country and providing contact to institutions and civil society organisations active in this field.<sup>103</sup> Legal support to LGBTI asylum-seekers is also provided by specialised civil society organisations.<sup>104</sup> In this context, ECRI recalls that LGBTI asylum seekers constitute a particularly vulnerable group among migrants, regularly facing intersectional discrimination and marginalisation, and considers this targeted information campaign and support to constitute **promising practices**.
72. It was nonetheless brought to ECRI’s attention that the possibility of claiming asylum on grounds of sexual orientation, gender identity, gender expression and sex characteristics is hindered in the case of asylum seekers from countries that are considered by the authorities as “safe”. The list of supposedly safe countries contains eight countries, in which LGBTI persons may face persecution.<sup>105</sup> Asylum applications lodged by persons originating from those countries are subject to the accelerated procedure during which they are more likely to be placed in detention facilities, where they do not receive adequate legal information and assistance.<sup>106</sup> Hence, according to many civil society interlocutors met during the ECRI’s visit to Malta, they are frequently not aware of the possibility to claim asylum on the ground of their sexual orientation or gender identity, and they also do not have the possibility to raise those grounds in the appeal procedure.<sup>107</sup>
73. ECRI strongly recommends that the authorities ensure that all asylum-seekers, including those originating from supposedly safe countries, promptly receive comprehensive legal information, including on the possibility of seeking asylum on the grounds of sexual orientation, gender identity and sex characteristics, and that asylum seekers have access to free legal aid and to an effective remedy against decisions taken on their application for international protection.

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<sup>102</sup> Article 19 of the Legal Notice No. 416 of 2015, as amended by Act XL of 2020 and Legal Notices No. 488 of 2021 and No. 273 of 2022, [Procedural Standards for Granting and Withdrawing International Protection Regulations](#).

<sup>103</sup> See information on this campaign on [the website of the Human Rights Directorate](#).

<sup>104</sup> Such as Aditus and Malta Gay Rights Movement, see MGRM (2023): 7.

<sup>105</sup> Aditus (2022): 7 and ILGA (2020).

<sup>106</sup> In this respect, ECRI refers to the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, see CPT (2021): §§ 54-56.

<sup>107</sup> In this respect, reference is made to the judgment of the European Court of Human Rights in the case of [S.H. v. Malta](#), no. 37241/21, 20 December 2022.

### *Regularisation of stay*

74. In its fifth report on Malta ECRI addressed the situation of so-called “non-returnable” migrants, namely rejected asylum seekers, who on account of legal or logistical reasons, could not be returned to their countries of origin and remained in Malta for many years. At the time, such persons could benefit from the “Temporary Humanitarian Protection – New” (THPN) status but that status was due to be discontinued. In the light of those plans, ECRI recommended (§ 97) that the authorities continue to allow persons who cannot be returned to their country of origin to stay legally in Malta.
75. The THPN scheme was discontinued in 2018. Subsequently, migrant persons who had entered Malta irregularly by the end of 2015 and who had resided in the country for at least 5 years and proved their active participation in the integration process could apply for Specific Resident Authorisation (SRA). This possibility was discontinued at the end of 2020.<sup>108</sup> Hence, in its subsequent conclusions on Malta, ECRI considered that its recommendation had not been implemented.<sup>109</sup>
76. The authorities have informed ECRI that no action has yet been envisaged to allow for the regularisation of stay of unsuccessful asylum seekers, notwithstanding the length of their residence in Malta. Status granted before the expiry of the SRA policy can be renewed. That said, according to the civil society organisations, the criteria for renewing it have been tightened and in many cases, it has resulted in the loss of earlier obtained SRAs.<sup>110</sup>
77. ECRI recommends that the authorities develop a new policy with a view to enabling persons who cannot be returned to their country of origin to stay legally in Malta, with priority treatment for those who have resided in Malta for lengthy periods of time.

### *Family reunification*

78. In its last report on Malta, ECRI recommended that the authorities broaden the list of persons eligible for family reunification in order to facilitate successful integration of third country nationals in Malta and that they consider providing for the possibility of family reunification for those granted subsidiary protection status, in order to enhance their integration.<sup>111</sup>
79. The conditions for family reunification have not been altered so far. Family reunification may be applied for by recognised refugees, but it is still unavailable to the beneficiaries of subsidiary protection<sup>112</sup>. ECRI shares the opinion of the Council of Europe Commissioner for Human Rights, who stated that depriving persons granted subsidiary protection of the right to family reunification often impeded significantly chances for full integration and might be considered ill-founded and discriminatory.<sup>113</sup>
80. ECRI recommends that the authorities ensure that persons who are granted subsidiary protection status are provided with the possibility of family reunification in order to facilitate their successful integration in the country.

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<sup>108</sup> The Government of Malta, Ministry for Home Affairs, Law Enforcement and National Security (2020).

<sup>109</sup> ECRI (2021a).

<sup>110</sup> PICUM (2021, 6 December).

<sup>111</sup> ECRI (2018), §§ 56 and 79.

<sup>112</sup> See also Camilleri, C. (2022a): 17-22.

<sup>113</sup> Council of Europe, Commissioner for Human Rights (2017, 14 December).

## Naturalisation

81. The Maltese Citizenship Act<sup>114</sup> provides for the possibility of naturalisation after five years of residence in Malta. That said, according to the established practice, applications for citizenship lodged by persons granted refugee status are examined only after a minimum 10-year residence period, and those of beneficiaries of subsidiary protection only after a minimum 20-year period.<sup>115</sup> Moreover, decisions concerning refusal of naturalisation are discretionary, do not require reasoning and are not subject to administrative or judicial control.<sup>116</sup> There are also no specific legal provisions aimed at facilitating naturalisation of children born or educated in Malta.<sup>117</sup>
82. ECRI recognises that member states enjoy a wide margin of appreciation in matters concerning citizenship. That said, it notes that, in cases of beneficiaries of international protection, who are long-term residents of the country in which they found refuge, naturalisation is an ultimate form of integration and should be possible under reasonable conditions. In this context, ECRI notes that Malta has signed the European Convention on Nationality on 29 October 2003 but has still not ratified it.<sup>118</sup> ECRI encourages the authorities to initiate a new ratification process.
83. ECRI recommends that the authorities review, in law, policy and practice, the conditions for naturalisation of persons benefiting from international protection and ensure that these conditions are based on objective, measurable and foreseeable criteria and are subject to administrative or judicial control. These conditions should not provide for a period of residence exceeding ten years before the lodging of an application.

## IV. TOPICS SPECIFIC TO MALTA

### A. Adoption of a comprehensive equality legislation

84. In its last report on Malta (§§ 11-14), ECRI noted that the Maltese anti-discrimination legal framework consisted of multiple legal acts, which were not fully aligned with ECRI's recommendations.
85. ECRI notes that the prohibition of racial discrimination and of discrimination based on sexual orientation, gender identity and sex characteristics continues to be governed by multiple legal acts (including the Employment and Industrial Relations Act,<sup>119</sup> the Equality of Men and Women Act,<sup>120</sup> Access to Goods and Services and their Supply Regulations,<sup>121</sup> and Equal Treatment of Persons Order<sup>122</sup>). The list of prohibited grounds varies between those acts, which results in a situation in which the scope of protection against discrimination differs depending on the ground on which the discrimination is based.<sup>123</sup> None of the legislative acts cover discrimination based on the ground of citizenship or language. Moreover, the scope of some pieces of legislation overlaps, thereby providing for competing remedies against the same or similar acts of discrimination. This results in significant gaps in the protection against racial and other forms of discrimination

<sup>114</sup> Chapter 188 of the Laws of Malta, [Maltese Citizenship Act](#).

<sup>115</sup> AIDA (2023): 137; Camilleri, C. (2022b): 16-17.

<sup>116</sup> It was also brought to ECRI's attention that the access to the naturalisation procedure was made more difficult in 2021 when the fee for application for naturalisation was raised from 34.94 to 450 euros. (See also Carla Camilleri (2022b): 18).

<sup>117</sup> With the exception of persons who are born in Malta and who are stateless.

<sup>118</sup> Council of Europe Treaty Office, [Chart of signatures and ratifications, ETS No. 166](#).

<sup>119</sup> Chapter 452 of the Laws of Malta, [Employment and Industrial Relations Act](#).

<sup>120</sup> Chapter 456 of the Laws of Malta, [Equality of Men and Women Act](#).

<sup>121</sup> Legal Notice 181 of 2008, [Access to Goods and Services and their Supply \(Equal Treatment\) Regulations](#).

<sup>122</sup> Legal Notice 85 of 2007, [Equal Treatment of Persons Order](#).

<sup>123</sup> On the basis of the Equality of Men and Women Act.

and makes it more difficult for victims of discrimination to make effective use of the legal remedies provided to them.<sup>124</sup>

86. Furthermore, it was brought to ECRI's attention that although Malta ratified Protocol No. 12 to the European Convention on Human Rights on 8 December 2015 and the Protocol came into force with respect to Malta on 1 April 2016,<sup>125</sup> it has not been incorporated into the domestic law, namely the European Convention Act.<sup>126</sup> Consequently, unlike other provisions of the European Convention on Human Rights, Protocol No. 12 still cannot be relied upon by the victims of discrimination in domestic proceedings, in particular before Maltese courts.<sup>127</sup>
87. Against this background, ECRI notes with satisfaction that the authorities have been working on a new Equality Bill, aimed at providing for a comprehensive legal framework against discrimination in one legislative act. Public consultations on the proposed legislation have been conducted<sup>128</sup> and the Equality Bill was presented to the Parliament.<sup>129</sup> However, the end of term of the parliament in 2022 halted the legislative procedure and in order for the works to continue the bill has to be re-introduced. The authorities informed ECRI that they intended to do so in the near future.
88. ECRI recommends that the authorities re-introduce in parliament an equality legislation that includes all the key elements of national legislation against racism and intolerance, as reflected in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and General Policy Recommendation No. 17 on preventing and combating intolerance and discrimination against LGBTI persons. In doing so, the authorities should ensure that the Protocol No. 12 to the European Convention on Human Rights is incorporated into national law and can be relied upon by victims of discrimination in domestic proceedings.

## **B. Addressing racism and intolerance within law enforcement agencies**

89. During the visit, the ECRI delegation heard accounts of manifestations of racial discrimination and intolerance by members of police and other law enforcement agencies in Malta, as well as of good practices aimed at bridging the gap between the police and groups at risk of being targeted by hate speech and hate-motivated violence.
90. On a positive note, since the last report on Malta, significant efforts have been made to strengthen the links between the police and the LGBTI community. Regular trainings conducted by the SOGIGESC Unit, the recruitment of LGBTI police officers and action to improve their visibility within the police contributed to increasing trust in the police within this community. Unfortunately, the same cannot be said for people with a migration background. Their trust in the police was significantly undermined by serious abuses allegedly committed by law enforcement officials.
91. In 2022, alleged abuse by law enforcement officials included a case where three police officers were charged with abducting and assaulting foreign nationals.<sup>130</sup> ECRI also received reports of use of excessive force in raids on migrants' places

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<sup>124</sup> PRESERVERE (2022): 7-8.

<sup>125</sup> ECRI (2018a): § 1. See also Council of Europe, Treaty Office, [Chart of signatures and ratifications of Treaty 177](#).

<sup>126</sup> Chapter 319 of the Laws of Malta, [European Convention Act](#).

<sup>127</sup> Malta Today (2016, 12 August).

<sup>128</sup> See website of those public consultations [Towards A Robust Human Rights And Equality Framework](#).

<sup>129</sup> UN HRC (2022): §§ 85-90 and 110-112.

<sup>130</sup> Times of Malta (2022, 13 October).

of residence, leaving serious damage to the accommodation and property of the potential victims.<sup>131</sup>

92. On a positive note, in some cases police officers reported their colleagues' alleged abuses and criminal behaviours<sup>132</sup> and the authorities have encouraged such reporting by taking protection measures for whistle-blowers. ECRI also welcomes that an Independent Police Complaints Board was established with the task of investigating cases of police misconduct.<sup>133</sup> ECRI also recognises that, in reaction to cases of police abuse uncovered in 2022, the police intensified trainings, including a module on "zero tolerance to racism and xenophobia", which is now obligatory in the context of initial and ongoing training.
93. Progress has also been achieved in the field of community outreach. It includes the establishment of community policing teams, which are supposed to proactively reach out to groups of concern to ECRI in a given area, the recruitment of an officer who speaks Arabic and can be approached directly by representatives of the communities concerned, and by issuing a call for police officers who wish to undergo an advanced training to obtain a profile of cultural mediator.<sup>134</sup> However, according to both official and civil society interlocutors met by the ECRI delegation during the visit, the current number of officers with linguistic skills and cultural background facilitating contacts with migrants is insufficient. Employment of officers with such a background is also rendered difficult by the requirements that all police officers should hold Maltese citizenship. ECRI learned that the authorities are exploring the possibility of lifting such requirement.
94. ECRI strongly recommends that the authorities: i) further develop and intensify trainings for all law enforcement officials regarding the need to prevent and combat racism and intolerance in policing; ii) establish a framework for dialogue and co-operation between law enforcement officials and people with a migration background, including by organising consultation meetings between police officers, representatives of migrant groups and civil society organisations working with migrants in order to establish regular dialogue, mutual trust and co-operation, and by developing a network of police officers responsible for outreach to groups of concern to ECRI; iii) seek to recruit law enforcement officials with a migration background and to provide them with equal opportunities for career development and promotion, so that diversity within law enforcement agencies better reflects the diversity of the general population. In this context, the authorities should consider lifting the requirement of holding Maltese citizenship for persons able and willing to serve in law enforcement agencies.

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<sup>131</sup> Times of Malta (2019, 29 July); Times of Malta (2022, 24 September).

<sup>132</sup> Times of Malta (2022, 29 November).

<sup>133</sup> Articles 35 and 36 of the [Police Act](#).

<sup>134</sup> According to the information received from the authorities, seven police officers volunteered to complete this course, out of which one has already graduated from the course.

## INTERIM FOLLOW-UP RECOMMENDATIONS

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

- (§7) ECRI recommends that the Maltese authorities bring forward legislation establishing a fully independent and effective equality body in line with ECRI's General Policy Recommendation No. 2 on equality bodies to combat racism and intolerance at national level. Development of such legislation should build upon work done so far and include consultations with civil society.
- (§60) ECRI recommends that the authorities develop and adopt a comprehensive strategy for integration and inclusion of migrants. The strategy should in particular: i) contain clear and measurable indicators by which the impact of the strategy may be assessed; ii) require regular evaluation of its implementation; iii) provide for the allocation of sufficient resources for its implementation; iv) provide for the inclusion of civil society organisations working with migrants in the implementation and evaluation of the strategy.

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



## LIST OF RECOMMENDATIONS

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

1. (§7) ECRI recommends, as a matter of priority, that the authorities bring forward legislation establishing a fully independent and effective equality body in line with ECRI's General Policy Recommendation No. 2 on equality bodies to combat racism and intolerance at national level. Development of such legislation should build upon the work done so far and include consultations with civil society.
2. (§14) ECRI recommends that the authorities put in place a national system of monitoring racist and anti-LGBTI incidents in schools and that they gather gender disaggregated data on such incidents, including on specific reasons for bullying behaviour. Such data should serve as a basis for development of more targeted responses to bullying in schools, including further preventive campaigns and trainings for teachers and other professionals working with children in schools.
3. (§29) ECRI recommends that the authorities: i) develop and codify protocols of care for intersex persons based on their right to bodily integrity and diversity; ii) provide appropriate training to all healthcare professionals, placing a particular emphasis on the right of intersex persons to bodily integrity and diversity; iii) develop counselling services and self-help groups for intersex persons and the parents of intersex children as well as other measures to provide them with sound information about options available and dangers of surgical and hormonal treatment at a very young age.
4. (§32) ECRI recommends that the authorities to review the Criminal Code and proceed with the necessary amendments in the light of paragraph 11 of Recommendation Rec(2022)16 of the Committee of Ministers of the Council of Europe on combating hate speech. If necessary, Council of Europe support should be sought.
5. (§42) ECRI recommends that the authorities take measures aimed at promoting equality and diversity, raising awareness of the adverse effects of hate speech, and preventing and combating misinformation and negative stereotyping, including by: i) increasing digital and media literacy, especially on social media, for different segments of society, in particular children and young people; ii) encouraging, with due regard for the independence of the media, diversity in mainstream media programming; iii) encouraging trainings on inclusive reporting and on preventing and combating hate speech for journalists, editors and online content moderators.
6. (§48) ECRI recommends that the authorities support the development of stronger self regulatory and other regulatory mechanisms against hate speech, and, in particular, that they: i) encourage the Parliament and political parties to adopt codes of conduct that prohibit the use of hate speech, in particular on the Internet, call on their members and followers to abstain from engaging in, endorsing or disseminating hate speech, and provide for sanctions; ii) encourage and support the establishment of a media council or other self-regulatory body fostering principles of ethical journalism, iii) extend the powers of the Broadcasting Authority to enable it to deal with online hate speech. Reference is made in this regard to ECRI's General Policy Recommendation No. 15 on combating hate speech, Recommendation CM/Rec (2022)16 of the Committee of Ministers to member States on combating hate speech and the Charter of European political parties for a non-racist and inclusive society as endorsed by the Parliamentary Assembly of the Council of Europe in its Resolution 2443 (2022).
7. (§51) ECRI recommends that the authorities ensure that all Internet service providers and social network operators swiftly and systematically remove hate speech from their systems and promptly forward evidence to the relevant law enforcement authorities.



8. (§60) ECRI recommends, as a matter of priority, that the authorities develop and adopt a comprehensive strategy for integration and inclusion of migrants. The strategy should in particular: i) contain clear and measurable indicators by which the impact of the strategy may be assessed; ii) require regular evaluation of its implementation; iii) provide for the allocation of sufficient resources for its implementation; iv) provide for the inclusion of civil society organisations working with migrants in the implementation and evaluation of the strategy.
9. (§73) ECRI strongly recommends that the authorities ensure that all asylum-seekers, including those originating from supposedly safe countries, promptly receive comprehensive legal information, including on the possibility of seeking asylum on the grounds of sexual orientation, gender identity and sex characteristics, and that asylum seekers have access to free legal aid and to an effective remedy against decisions taken on their application for international protection.
10. (§77) ECRI recommends that the authorities develop a new policy with a view to enabling persons who cannot be returned to their country of origin to stay legally in Malta, with priority treatment for those who have resided in Malta for lengthy periods of time.
11. (§80) ECRI recommends that the authorities ensure that persons who are granted subsidiary protection status are provided with the possibility of family reunification in order to facilitate their successful integration in the country.
12. (§83) ECRI recommends that the authorities review, in law, policy and practice, the conditions for naturalisation of persons benefiting from international protection and ensure that these conditions are based on objective, measurable and foreseeable criteria and are subject to administrative or judicial control. These conditions should not provide for a period of residence exceeding ten years before the lodging of an application.
13. (§88) ECRI recommends that the authorities re-introduce in parliament an equality legislation that includes all the key elements of national legislation against racism and intolerance, as reflected in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and General Policy Recommendation No. 17 on preventing and combating intolerance and discrimination against LGBTI persons. In doing so, the authorities should ensure that the Protocol No. 12 to the European Convention on Human Rights is incorporated into national law and can be relied upon by victims of discrimination in domestic proceedings.
14. (§94) ECRI strongly recommends that the authorities: i) further develop and intensify trainings for all law enforcement officials regarding the need to prevent and combat racism and intolerance in policing; ii) establish a framework for dialogue and co-operation between law enforcement officials and people with a migration background, including by organising consultation meetings between police officers, representatives of migrant groups and civil society organisations working with migrants in order to establish regular dialogue, mutual trust and co-operation, and by developing a network of police officers responsible for outreach to groups of concern to ECRI; iii) seek to recruit law enforcement officials with a migration background and to provide them with equal opportunities for career development and promotion, so that diversity within law enforcement agencies better reflects the diversity of the general population. In this context, the authorities should consider lifting the requirement of holding Maltese citizenship for persons able and willing to serve in law enforcement agencies.

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## APPENDIX: GOVERNMENT'S VIEWPOINT

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**The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Malta.**

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of Malta on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice and unless otherwise indicated, could only take into account developments up until 6 December 2023, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

## Response of the Maltese authorities to ECRI's Draft Report on Malta (sixth monitoring cycle)

Noting the various instances highlighted by ECRI as good practices, the following pages contain a number of pertinent points which the Maltese authorities wish to emphasise in light of ECRI's comments and recommendations in its sixth report on Malta.

### Immigration control and labour inspections – paragraph 18

Joint inspections performed by Jobsplus with Immigration Police and Identità are in line with the Sanctions Directive 2009/52/EC transposed in domestic legislation through the Minimum Standards on Sanctions And Measures Against Employers Of Illegally Staying Third-Country Nationals Regulations (SL217.14).

It is to be noted that Immigration Police only accompany labour inspectors when illegal employment is suspected.

### LGBTI community and public order at Pride March – paragraph 23

With reference to footnote 46 stating “The second Pride in Gozo, held on 9 September 2023, was a part of EuroPride events held in Malta. Unfortunately, it registered some cases of violence against the participants (Times of Malta (2023, 14 September)). The attacks met with condemnation and are under police investigation (Times of Malta (2023, 15 September)).”, it is to be noted that police investigations have concluded that the events were not connected to the Pride March and that there was no hate-violence.

### Data collection mechanism on hate speech and hate crime – paragraph 36

It is to be noted that the Victim Support Agency carries out data collection as per routine with each and every case referred to the Agency. Data is also published by the Victim Support Agency in its annual report.

Statistical data by the Malta Police Force on the subject for the past years is as follows:

#### Hate Reports for years 2021, 2022 and 2023

Category	2021	2022	2023	Total
<b>COLOUR</b>	<b>15</b>	<b>2</b>	<b>4</b>	<b>21</b>
BODILY HARM	0	1	0	1
CRIMES AGAINST PUBLIC PEACE	1	0	1	2
DAMAGE	2	0	0	2
INSULTS AND THREATS	8	1	3	12
THREATS AND PRIVATE VIOLENCE	4	0	0	4
<b>ETHNIC ORIGIN</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>10</b>
BODILY HARM	1	2	0	3
DAMAGE	0	1	0	1
DIST PUBLIC PEACE AND ORDER	0	0	1	1
INSULTS AND THREATS	2	1	1	4
THREATS AND PRIVATE VIOLENCE	1	0	0	1
<b>GENDER</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>5</b>
CRIMES AGAINST PUBLIC PEACE	0	1	0	1
DAMAGE	0	0	1	1
INSULTS AND THREATS	0	1	2	3
<b>GENDER IDENTITY</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>6</b>
BODILY HARM	0	0	1	1



CASES OF CIVIL NATURE	0	1	0	1
CRIMES AGAINST PUBLIC PEACE	0	1	0	1
INSULTS AND THREATS	1	2	0	3
<b>LANGUAGE</b>	<b>5</b>	<b>3</b>	<b>5</b>	<b>13</b>
BODILY HARM	0	1	0	1
DAMAGE	1	0	2	3
INSULTS AND THREATS	3	2	3	8
THREATS AND PRIVATE VIOLENCE	1	0	0	1
<b>POLITICAL</b>	<b>12</b>	<b>11</b>	<b>11</b>	<b>34</b>
CASES OF CIVIL NATURE	0	0	1	1
CRIMES AGAINST PUBLIC PEACE	0	3	2	5
CRIMES AGAINST PUBLIC PEACE	0	0	1	1
DAMAGE	0	1	0	1
INSTRUCTIONS	0	0	1	1
INSULTS AND THREATS	7	5	3	15
THREATS AND PRIVATE VIOLENCE	5	1	3	9
VIOLENCE AGAINST PUB OFFICER	0	1	0	1
<b>RACE</b>	<b>9</b>	<b>15</b>	<b>14</b>	<b>38</b>
ABUSE OF PUBLIC AUTHORITY	0	1	0	1
BODILY HARM	1	2	2	5
CASES OF CIVIL NATURE	1	1	0	2
CRIMES AGAINST PUBLIC PEACE	3	7	2	12
DAMAGE	1	0	0	1
INSULTS AND THREATS	2	2	7	11
SEXUAL OFFENCE	1	0	0	1
THREATS AND PRIVATE VIOLENCE	0	2	3	5
<b>RELIGION/BELIEF</b>	<b>4</b>	<b>6</b>	<b>3</b>	<b>13</b>
BODILY HARM	1	2	0	3
CRIMES AGAINST PUBLIC PEACE	0	2	0	2
INSULTS AND THREATS	2	2	3	7
THREATS AND PRIVATE VIOLENCE	1	0	0	1
<b>SEXUAL ORIENTATION</b>	<b>4</b>	<b>9</b>	<b>6</b>	<b>19</b>
BODILY HARM	1	0	0	1
CASES OF CIVIL NATURE	0	0	1	1
CRIMES AGAINST PUBLIC PEACE	0	1	1	2
GENDER BASED VIOLENCE	0	2	1	3
INSULTS AND THREATS	3	4	1	8
THREATS AND PRIVATE VIOLENCE	0	2	2	4
<b>Grand Total</b>	<b>54</b>	<b>56</b>	<b>49</b>	<b>159</b>

**Making the Victim Support Agency more visible and accessible to potential victims and witnesses of hate speech and hate crime – paragraph 44**

The Victim Support Agency is engaged in promotional activities.

The Victim Support Agency is also engaged with the preparation of a victim's guidebook also in collaboration with the Commission for the Rights of Persons with Disability (CRPD) to make the publication more user friendly.

#### **Policy on anti-racism for members of the Maltese armed forces – paragraph 54**

A policy issued by the Headquarters of the Armed Forces of Malta (AFM) entitled 'A Policy to address Discrimination and promote Equality and Inclusion in the Armed Forces of Malta' was distributed amongst all ranks within the AFM in November 2023. One of its actions entails the provision of awareness training on discrimination based on gender identity, race, religion and sexual orientation across all AFM personnel. This policy also provides for a redress mechanism whereby any incidents are reported, investigated and which may result in offenders being subject to disciplinary measures.

#### **Provision of anti-racism training to members of the Malta Police Force – paragraph 55**

Training on hate crime investigation, fundamental rights, ethics, diversity and professional standards, is provided at all levels of the Malta Police Force starting from the basic training courses and the courses leading to promotion to the rank of police sergeant up to the officer cadets training courses and the diploma in policing.

Moreover, in-service training tackle the following topics:

- Supporting Individuals with Mental Health Issues
- Fundamental Human Rights
- Zero Tolerance to Racism & Xenophobia
- Hate Crime
- Customer Care

Training for new members of the Community Policing Teams cover:

- Awareness on Mental Health Conditions
- Customer Care
- Policing in Intercultural Contexts: Challenges & Opportunities

Other forms of special training delivered to police officers include:

- Awareness Session on How to Support Persons with Autism
- Mental Health First Aid (Richmond)
- Seminar on Illegal Substances & their Effects
- Seminar on Stress Management & Bullying
- Dementia Awareness Talks
- Session on Work Related Trauma and Well-Being
- Seminar on Stress Management
- Hygeia: A Conference on Mental Wellness
- Hate Crime Course (CEPOL)
- Fundamental Rights for Multipliers (Frontex)
- Fundamental Rights (CEPOL)
- Victim Protection (CEPOL)
- Training in Preparation for Euro Pride (HRD)
- Workshop; Preventing Racism & Discrimination - Enabling the Effective Implementation of the EU Anti-Racist Legal Framework in Malta
- HRD Training on Anti-Racism

#### **Adequate housing for asylum seekers – paragraph 66**

Beyond the entitled period of accommodation in reception centres, asylum seekers from the community who find themselves in difficult situations due to homelessness, mental health issues or any other medical issues are assessed accordingly by professionals of the Agency for the Welfare of Asylum Seekers (AWAS) and are re-accommodated accordingly in the reception centres to be supported so that they can be able to become once again independent. Vulnerable beneficiaries are allowed to continue residing at reception centres beyond the normal length of accommodation contracts.

### **Job seeking service assisting migrants in transitioning from unemployment to employment – paragraph 67**

It needs to be clarified that although the Job Brokerage service offered by Jobsplus, the Maltese Public Employment Service, was initially funded under the EU Asylum, Migration and Integration Fund (AMIF), now that the project has been completed, a number of the services were retained by Jobsplus and are being provided through national funds.

### **Provision of information on employment to migrants – paragraph 68**

As part of various efforts in this regard, Jobsplus has provided information on an International Mobile App and informs its clients about this App. Additionally, through another AMIF project administered by the Foundation for Social Welfare Services (FSWS), material has been developed by FSWS in different languages to support victims of human trafficking. These leaflets are also being distributed by Jobsplus to its clients.

### **Asylum seekers on grounds of sexual orientation, gender identity and sex characteristics; free legal aid provision; provision of information, and; effective remedy for asylum seekers originating from safe countries – paragraphs 72 and 73**

On the recommendation “that the authorities ensure that all asylum-seekers, including those originating from supposedly safe countries, promptly receive comprehensive legal information, including on the possibility of seeking asylum on the grounds of sexual orientation, gender identity and sex characteristics, and that asylum seekers have access to free legal aid and to an effective remedy against decisions taken on their application for international protection.”

It should be noted that all asylum seekers, irrespective of their country of origin, are asked multiple questions and given ample opportunities to indicate all the reasons why they are in need of international protection (the procedure involves filling of an application form during the lodging of the application and the personal interview), and that it is ultimately the individual’s sole responsibility to come forth with this information.

In addition to the above, it should be noted that the allegation that asylum seekers who are in detention are not aware of the possibility to claim asylum on the ground of their sexual orientation or gender identity is factually incorrect since there have been cases of asylum seekers who were in detention and who claimed international protection because of their alleged gender identity or sexual orientation.

Furthermore, all asylum seekers are provided comprehensive information on the asylum procedure and their rights and obligations by the International Protection Agency (IPA), Malta’s asylum determination authority. This information has now been further beefed up through the creation of detailed booklets and videos.

It is also important to highlight the fact that asylum seekers are not entitled to free legal assistance/representation during the administrative phase of the asylum procedure. Free legal assistance is provided at appeals stage, and which is therefore fully in line with EU legislation.

With regard to asylum seekers originating from safe countries of origin, the Maltese authorities are of the opinion that the automatic review by the International Protection Appeals Tribunal (IPAT) in case the application has been rejected as manifestly unfounded provides for an effective remedy. Moreover since when reviewing the IPA’s decision, the Tribunal takes into account all the information submitted by the applicant, including the application form filled-in during the lodging of the application, the interview transcript and any documentation that has been submitted to the IPA.

It should also be noted that whereas the fact that a third country has been designated as a safe country of origin implies that in general there is no well-founded fear of persecution or a real risk of suffering serious harm for its nationals or stateless persons who were formerly habitual residents there, this does not mean that there cannot be individual cases or profiles that even though coming from a safe country of origin there might still be a need of international protection. Indeed, over the years there have been cases where nationals of safe countries of origin were granted international protection after it was established that they had a well-founded fear of persecution or a real risk of suffering serious harm upon return to their country of origin (e.g. in

recent years the International Protection Agency granted refugee status to LGBTIQ+ persons from two North African countries).

Applications lodged by persons coming from a safe country of origin are processed under an accelerated procedure, meaning that a decision on the application is taken within a shorter timeframe. However, all procedural guarantees still apply, including full access to the asylum procedure for any individual who wishes to apply for international protection, the right to remain in Malta pending the examination of the application, provision of information relating to the asylum procedure and on the rights that asylum seekers are entitled to, the provision of interpretation throughout the whole procedure (if necessary), a personal interview and a full and thorough assessment of the protection needs claimed by the applicant.

The International Protection Agency has developed specific internal guidelines to provide guidance on the modality of procedures and the assessment of claims related to sexual orientation or gender identity. These apply regardless of the applicant's country of origin.

Furthermore, all applications involving an LGBTIQ+ claim pass through multiple quality checks before being finalized in order to ensure that the argumentation is clear and correct, and that the decision is legally sound.

#### **Asylum seekers whose application was unsuccessful - paragraph 77**

It is to be noted that the Maltese authorities have no legal obligation to regularise the stay of failed asylum seekers. Indeed, failed asylum seekers are not entitled to any automatic rights or benefits in Malta, except access to emergency healthcare. Any further concessions, like access to the labour market, are granted at the sole discretion of the government authorities.

Furthermore, it should also be noted that failed asylum seekers always have the possibility to apply for voluntary return to their country of origin. Lack of cooperation by the individual in this regard should in no way be rewarded with regularisation of stay as this would undermine both the asylum and return systems and would run counter to having an effective and just migration policy.

For the sake of clarity, the recommendation that “authorities should also develop a new policy with a view to enabling persons who cannot be returned to their country of origin to stay legally in Malta, with priority treatment for those who have resided in Malta for lengthy periods of time” cannot be accepted.

#### **Naturalisation of persons benefiting from international protection – paragraphs 81 and 83**

The Maltese Citizenship Act does not statutorily provide for any specific provisions regarding the immigration position insofar as naturalization processes are concerned. It only refers to aliens or stateless persons. As has been remarked, the state enjoys full competency in the grant of citizenship and this is in line with principles of public international law in this field.

The grant of citizenship by naturalization as provided by Maltese legislation is discretionary and in this regard it is to be remarked that any criteria for the exercise of such discretion, in the context of Malta's special demographic and economic considerations, whether applicants are in the field of asylum or not, is not public. The reference in the report to specific periods of time for such grant is, therefore, not appropriate in such a scenario.

Malta, as in the case of other European States, had removed the jus solis principle from its citizenship legislation in 1989. Facilitation for the granting of Maltese citizenship is, however, provided for in the case of those persons born in Malta and who are stateless.

#### **Alleged abuse by law enforcement officials – paragraph 91**

It needs to be clarified that the abuse indicated in 2022 was one of those cases where police officers reported their colleagues of criminal conduct (as is mentioned in paragraph 92).

## **Law enforcement and persons with a migratory background – paragraphs 93 and 94**

The Malta Police Force is doing its utmost to promote policing careers amongst Maltese citizens with a migrant family background. It is the Police Force's mission to provide a professional and trusted policing service to ensure safety and security for everyone in partnership with the community (Malta Police Transformation Strategy 2020-2025).

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