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SECOND REPORT ON MALTA

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Foreword

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on Malta is dated 4 October 1996 (published in September 1997). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.

An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.

The contact visit to Malta took place on 22-24 October 2001. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the Maltese national authorities for their wholehearted co-operation in the organisation of the contact visit, and in particular would like to thank all the persons who met its delegation each of whom provided much valuable information on their own field of competence. ECRI would also like to thank the Maltese national liaison officer whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.

Furthermore, ECRI would like to thank all the representatives of non-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.

The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 14 December 2001 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

Executive summary

Malta has recently started to take measures to address the issue of racism and discrimination through the introduction of new criminal law provisions to combat incitement to racial hatred, the ratification of further relevant international instruments and the putting in place of legislation and structures to deal with asylum seekers and refugees.

Despite a widely-held perception in Malta that problems of racism and discrimination are not a major issue, incidents of discrimination, inter alia in access to public places, as well as prejudices and stereotypes within society, suggest that further steps still need to be taken, both to combat concrete manifestations of discrimination and to raise awareness and combat prejudices among the general public. It is particularly important to combat stereotypes and prejudices since such latent phenomena may rapidly lead to more overt forms of racism and discrimination.

In the following report, ECRI recommends that further action be taken in a number of areas to combat racism, xenophobia and discrimination. These recommendations cover, inter alia, the need to introduce civil and administrative law provisions to combat discrimination in fields such as housing, employment and access to public places, the need to complement the legislation and structures put in place to process asylum requests with a organisational framework of practical assistance for refugees and asylum seekers residing in Malta, and the need to raise awareness in society of the existence of discrimination and prejudice and to provide special training for key sectors dealing with minority groups.

SECTION I: OVERVIEW OF THE SITUATION

A. International Legal Instruments

1. Malta has signed and ratified the majority of international legal instruments relevant in the fight against racism and intolerance. Since the publication of ECRI's first report, Malta has ratified the Framework Convention for the Protection of National Minorities and has deposited a declaration, as provided for in Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, which allows for individual complaints to be examined by the CERD Committee.
2. ECRI encourages the Maltese authorities to ratify the European Charter for Regional or Minority Languages and to sign and ratify: Protocol N° 12 to the European Convention on Human Rights, the European Convention on the Participation of Foreigners in Public Life at Local Level, the European Convention on the Legal Status of Migrant Workers, the European Convention on Nationality and the Revised European Social Charter. ECRI also urges Malta to accept Article 19 of the Social Charter concerning the right of migrant workers and their families to protection and assistance. ECRI notes that recent changes in Maltese citizenship legislation have removed most of the barriers to ratification of the European Convention on Nationality and that ratification of this instrument is therefore foreseen in the near future.
3. ECRI also notes that as concerns the UN Convention relating to the Status of Refugees, it is intended to lift the geographical restriction and most of Malta's current reservations in the near future and that it is subsequently foreseen to lift the remaining reservations upon accession to the European Union. ECRI strongly encourages this process.
4. ECRI notes that the European Convention on Human Rights became part of Maltese domestic legislation in 1987.

B. Constitutional provisions and other basic provisions

5. Article 32 of the Constitution states that every person is entitled to the fundamental rights of the individual, and this "whatever his race, place of origin, political opinions, colour or creed". Article 45 prohibits discriminatory treatment by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. Apparently, no case has been brought before the Constitutional Court challenging an administrative act on the grounds of racial discrimination.

C. Criminal Law Provisions

6. In its first report, ECRI noted that no provisions existed in Maltese criminal law to combat racism and racial discrimination. ECRI is pleased to note that an amendment to the Criminal Code will soon come into force, which will prohibit incitement to racial hatred and which carries a prison term of between 6 and 18 months for "whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up racial hatred or whereby racial hatred is likely, having regard to all the circumstances, to be stirred up". "Racial hatred" is defined as meaning

“hatred against a group of persons in Malta defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins”.

7. ECRI further encourages the Maltese authorities to introduce criminal law provisions defining ordinary crimes but with a racist motive as racist crimes and allowing for the racist motives of offenders to be taken into consideration as an aggravating circumstance when sentencing, as recommended by ECRI in its general policy recommendation N° 1. ECRI is pleased to learn that the Office of the Attorney General is currently examining the possibility of penalising discrimination on racial grounds and of introducing the concept of racism as an aggravating circumstance.

D. Civil and administrative law provisions

8. As ECRI noted in its first report, no specific provisions exist in civil and administrative law to combat discrimination in fields such as education, employment, housing and access to public places. ECRI urges the Maltese authorities to introduce such legislation covering all fields of life, particularly in the context of the various legislative changes underway to prepare Malta's possible future accession to the European Union, and with reference to the European Union Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and the Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. ECRI notes in this respect that a new draft Employment Relations Act covers in its Part V discrimination related to employment.

E. Administration of Justice

- *Judiciary*

9. In the light of the proportions of non-citizens in among the prison population (currently almost one quarter of all prisoners), it would appear that judges may rather frequently have to deal with non-citizens in the cases brought before them. No specific training exists for judges to assist them in dealing with persons from different cultural backgrounds and to provide them with an opportunity to recognise and examine any possible prejudices and stereotypes they might hold. ECRI considers that such training would be most beneficial in order to ensure that no discrimination exists in the court system.
10. ECRI notes that it is the practice that non-citizens brought before the courts should have full access to free legal aid and to interpretation services where necessary, and encourages the authorities to ensure that non-citizens are made fully aware of their rights in this respect.

- **Prisons**

11. A significant proportion of the prison population in Malta is made up of non-citizens. Such persons are apparently often in custody for drug-related offences. There have been some complaints and demonstrations from the part of the non-citizen prison population, who have requested, inter alia, the appointment of an Arab person to the Prison Visitors Board and who have claimed that they do not enjoy the same access as Maltese prisoners to certain services, such as the drug rehabilitation programme. ECRI recommends that the authorities take additional measures to ensure that the staff working in prisons receive special training to help them deal with persons from different cultures and backgrounds, and that possible issues of discrimination, and the need to cater for the particular requirements of the non-citizens held in prison, are considered and addressed. ECRI notes that a Maltese citizen of Muslim religion and culture has now been nominated to the Prison Visitors Board.

F. Specialised bodies and other institutions

12. The Office of the Ombudsman was set up in July 1995 to investigate allegations of maladministration on the part of the authorities. The Ombudsman, who is elected by a two-thirds majority of Parliament, investigates individual cases but can also carry out wider investigations on his own initiative and make recommendations to Parliament concerning legislation etc. Although the Ombudsman does not have the power to enforce recommendations, the moral and political authority of the body generally ensures that recommendations are carried out. ECRI notes that the Ombudsman, which is a well-known and respected institution in Malta, has initiated investigations into certain areas of concern to ECRI, such as the conditions of detention of illegal immigrants, and has also investigated some complaints of discrimination. However, the Ombudsman can only investigate complaints relating to the actions of the authorities, whereas most of the reported cases of discrimination in Malta concern discrimination in the private sector, such as refusal of entry to public places of entertainment. ECRI therefore recommends that consideration should be given to the establishment of a mechanism to deal with instances of discrimination between individuals. In this respect, ECRI draws attention to its general policy recommendation N° 2 on specialised bodies in which it sets out a number of principles to be borne in mind when creating a body of this type.

G. Reception and status of non-citizens

- **Refugees and asylum seekers**

13. Until recently, applications for refugee status have been decided upon by the UNHCR, in partnership with a Maltese NGO, the Emigrants Commission. In June 2000 the Refugees Act was passed by Parliament to set up a framework for dealing with asylum applications. The Act provides for the office of the Refugee Commissioner, which will receive applications, assess cases and make decisions on the granting of refugee status. It also establishes an Appeals Board to review the Commissioner's decisions in case of appeal. The Act came into force on 1 October 2001. Initially, due to the geographical limitation declared by Malta in respect of the UN Convention on the Status of Refugees, the Refugee Commissioner continued to forward cases of non-European asylum seekers on to the UNHCR; however, the geographical limitation was lifted at the end of 2001 and the Commissioner is now in a position to take decisions on all cases.

14. As regards the initial arrival of asylum seekers at points of entry into Malta, it has been commented that there is a lack of information on how to claim asylum and on the rights of asylum seekers, and that border officials may lack training in how to deal with persons who may be claiming asylum in Malta. Concerns have been expressed that non-governmental organisations have not been given an opportunity to gain access to asylum seekers at border control points, and some fears have been raised that the principle of non-refoulement may not in all cases be respected. ECRI stresses the need to ensure that officials at border control points receive thorough and on-going training to equip them to receive and deal with asylum requests correctly, and notes that further training sessions in this area are foreseen for 2002. Information should be provided in a range of languages at border points to inform asylum seekers of their rights, and interpretation services and legal assistance should also be made easily accessible.
15. Once asylum seekers receive refugee status, attempts are generally made to resettle them in other countries such as the USA, Canada and Australia. Malta has thus considered itself as a transit country for refugees rather than as a country of resettlement, mainly due to its small size. For this reason, integration measures have not been developed in an organised fashion, although refugees receive free education and health care and recently have been granted permission to seek employment. The task of finding accommodation and other basic facilities for asylum seekers and refugees has been undertaken to date by the non-governmental sector, notably Church organisations. UNHCR has in the past provided financial assistance for accepted refugees but such assistance will now gradually be phased out over a period of four years.
16. Nevertheless, it has been commented that it may prove in the future more difficult to resettle refugees in other countries and that more refugees may in fact remain in Malta on a permanent basis. Even today, the notion of Malta as a purely transit country may not reflect the reality of the situation, as it seems that a number of asylum seekers who do not receive refugee status do in fact stay on in Malta, while some recognised refugees spend long periods in Malta before being resettled, and therefore may find it more difficult to eventually leave again to start a new life in a different country. Concerns have been expressed that it is not yet clear how the authorities plan to ensure that refugees and asylum seekers are adequately provided for once UNHCR financial assistance is withdrawn. ECRI stresses that alongside the new legislative and administrative structure which has been set up to deal with asylum seekers, more attention needs to be paid to putting in place structures and systems, funded by the authorities rather than on a voluntary basis, to assist asylum seekers and refugees in finding accommodation and in providing financial assistance to those in a vulnerable situation. In this respect, ECRI notes that a legal notice has been published in November 2001 which places recognised refugees on the same footing as Maltese citizens as regards the provisions of the Social Security Act. ECRI notes with satisfaction the decision that refugees should be permitted to work, however regrets that this decision has not been formalised in a legislative change guaranteeing this right. Noting that in any case, many asylum seekers are obliged to work on the black market in order to support themselves and their families, ECRI also considers that the right to work might be extended to asylum seekers pending a decision on their applications, in order to allow them to provide for themselves and their families where possible.
17. ECRI also feels that more specialised services should be set up to help assist asylum seekers and refugees arriving and living in Malta and who may have particular difficulties and needs connected to their previous experiences. For

example, mental health services such as post-traumatic stress counselling for adults and children, may be required.

- ***Detention of persons for breaches of the Immigration Act***

18. Non-citizens trying to enter Malta without the requisite visas and financial resources, those found sojourning in Malta illegally (including persons who have filed an asylum application after being found in breach of the Immigration Act) and those waiting to be deported pending investigations concerning their country of origin or the granting of identity documents have to date been held in detention in a police complex - Ta'Kandja – and, as a short-term measure, pending repatriation, in a detention facility at the airport. Persons have also been held in police cells for extended periods of time. The conditions of the Ta'Kandja complex have been criticised on a number of occasions on the grounds that they are inadequate in terms of cleanliness and facilities offered, particularly in a situation where persons have been held in detention for long periods of time. The lack of specialised staff with appropriate training to deal with the particular needs of non-citizens held in detention has also been noted. It has also been reported that in some cases whole families have been held in detention. Non-governmental organisations working with non-citizens have also commented that they have faced difficulties in gaining access to the persons held in detention in order to provide support and advice. ECRI deplores that some individuals have spent months or even years in detention pending decisions on their asylum applications or the obtaining of the necessary papers to be removed from Malta. ECRI urges the authorities to take steps to address such problems, and hopes that the introduction of the office of the Refugee Commissioner will help to alleviate waiting periods and delays as outlined above.
19. ECRI notes that a new closed reception facility is shortly to be opened and hopes that the recommendations made by various parties as regards the conditions of detention of non-citizens will be implemented in the context of the new facility. In particular, ECRI stresses the need for staff working in the facility to be fully-trained in dealing with persons of different backgrounds and cultures and for systems to be put in place to ensure that persons held in detention have full and easy access to legal and other advice from the part of non-governmental organisations working in the field and specialised lawyers. Steps should also be taken to ensure that persons held in the facility have access to recreational facilities and a range of activities. Noting that it will apparently be the practice to hold in the closed centre all asylum seekers who enter or are found in Malta illegally before claiming asylum, ECRI emphasises its opinion that the holding of asylum seekers in detention should be avoided to the greatest extent possible, particularly in the case of persons arriving with families, and that efforts should be made to guarantee freedom of movement to asylum seekers wherever possible. ECRI stresses in this respect its opinion that asylum seekers, even if their claims are not considered to be valid by the authorities, should not be treated as criminals, and that any measures taken with regard to such persons should reflect this approach.

H. Education and training/awareness-raising

20. The school curriculum covers human rights education in the subject “Personal and Social Development”. However, some sources have indicated that there is a lack of teaching about other cultures and about the wider context of historical events of importance to Malta in a manner which might help avoid stereotypes and prejudices. Some individual incidents of harassment by schoolchildren of

non-Maltese children have also been reported. ECRI feels that further efforts to ensure that children are taught more about different cultures, religions and histories would be beneficial in ensuring that such incidents do not become more frequent and that children gain a respect and understanding for those who are different from themselves.

21. Around one third of schools in Malta are Catholic schools. Religion is taught in schools but children can opt out of religious classes, even in Catholic schools. ECRI feels that religious education classes should include more information about different religions with a view to increasing understanding and knowledge between faiths.

I. Access to public services

- Access to public places

22. The most visible manifestation of discrimination in Malta seems to be the refusal of access to public places such as discos and bars to persons of Arabic origin or of black African origin. Such refusals have been well-documented and reported in the printed media and on television, and seem to occur on a quite regular basis. The pretext for refusal of entry is often that persons of Arabic origin and black Africans have “caused trouble” in the past. Doormen often refuse entry by claiming that membership cards are required; however, Maltese persons and “white” tourists are not required to show membership cards. Although the police are aware of such incidents, and are sometimes appealed to at the moment of refusal of entry, to ECRI’s knowledge, no action has been taken against the proprietors of public places where discrimination is practised. In principle, the 1972 regulations on the sale of commodities do not allow unjustified discrimination in publicly-offered services, including entry to places of entertainment. The authorities consider moreover that the new criminal law provision against incitement to racial hatred may be used to punish such types of discrimination; however, ECRI is concerned that the wording of this provision, which is focused around the concept of speaking or acting with an intent to incite to racial hatred, does not cover the type of discrimination practised in refusal of access to public places. ECRI thus reiterates its recommendation that civil and administrative law provisions be put in place which would provide an effective remedy for the victims of such discriminatory practices. ECRI also feels that a public stance by the authorities condemning such forms of discrimination, along with awareness-raising measures taken among the proprietors of bars and clubs, would also be most opportune.

- **Access to housing**

23. Some incidents of discrimination, notably against persons of Arabic origin, have been reported in the renting of accommodation. Such instances of discrimination do not currently find any remedy in the courts. ECRI again stresses the need to put in place a legislative framework within which discrimination in the renting of accommodation could be redressed.

J. Employment

24. Although the extent is unknown, it appears that a sizeable number of non-citizens are employed on the black market in Malta, particularly in certain sectors such as the construction industry and low-grade “invisible” work such as kitchen jobs. This group of workers includes asylum-seekers, who are not permitted to work¹, and also immigrants who are staying in Malta without the necessary residence and work permits. Such persons are particularly vulnerable to abuses on the part of employers, including lower wages, unsafe conditions of work, illegal working hours and no insurance or accident cover. The authorities are taking steps to tackle the problem of illegal employment, including stepping-up inspections at workplaces. ECRI stresses the need to ensure that such measures target the employers who are exploiting foreign workers rather than punishing the workers themselves, and that measures should be taken to alleviate the possibly very difficult situation that such persons and their families may face once their source of income is removed.

K. Vulnerable groups

25. Persons of Arabic origin and black persons from Africa are particularly vulnerable to manifestations of discrimination and to the effects of widely-held prejudices and stereotypes concerning “criminality” or the purposes for which such persons have come to Malta. ECRI feels that such problems of discrimination and stereotyping should be addressed, as detailed in more depth below (see Issues of particular concern).

L. Conduct of law enforcement officials

26. Allegations of police misconduct are investigated by the police authorities and, if necessary, by the courts. There have been a few reports of allegations of ill-treatment of non-citizens by police officers, although official investigations have not found such cases to be substantiated. ECRI draws attention to its general policy recommendation N° 1 in which it recommends that allegations of police misconduct should be investigated by an independent body external to the police force structures. ECRI also considers that the police should receive special training in dealing with persons from different backgrounds and cultures and in the principle of non-discrimination, and notes that it is intended to include this subject in the curriculum of the Police Academy in 2002.
27. The issue of the need for special training for prison staff and staff dealing with asylum seekers and illegal immigrants held in detention, and for immigration officers is dealt with in other sections of this report (see paragraphs 11 and 14).

¹ *Recognised refugees however can now work –see paragraph 15*

M. Media

28. Although some newspapers and television programmes address issues of racism and discrimination in Malta in a responsible and informative fashion, it is also reported that other media tend to report on incidents involving non-citizens in a fashion which may increase prejudices and stereotypes, for example by mentioning the ethnic origin of alleged perpetrators of crimes when these are not Maltese. It also appears that individuals have on occasion used the media to express racist views, for example in letters to the editor. ECRI hopes that where necessary, the forthcoming criminal law provision concerning incitement to racial hatred may be used to combat racist material printed or broadcast in the media. ECRI also encourages the media professions to apply codes of self-conduct in order to curb types of reporting which may spread or exacerbate prejudice in society, and emphasises the positive role the media may play in raising awareness of problems of racism, intolerance and discrimination and in promoting positive images of minority groups such as asylum seekers and immigrants.

N. Monitoring the situation

29. In its first report, ECRI drew attention to the need to monitor the situation in order to uncover any possible problems of racism and discrimination which may exist. ECRI reiterates this recommendation, noting that while it is a widely-held belief that Malta is a tolerant society in which there are no problems of racism and intolerance, there are in fact signs that stereotypes and prejudices do exist within society and are a matter for concern, particularly as they might easily lead to more concrete manifestations of racism and discrimination.

SECTION II: ISSUES OF PARTICULAR CONCERN

In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of Malta, ECRI would like to draw attention to the need for awareness-raising concerning issues of racism, discrimination and intolerance, both among the general public and among key groups.

O. Need for awareness-raising

30. The widely-accepted view within Malta is that problems of racism and discrimination are not really prevalent in the country, and that Maltese society is particularly tolerant. This tolerance is attributed to the mixed cultural heritage and historical position of Malta at the crossroads of European and Arabic societies and to its modern situation as a tourist destination. However, some sources have commented that although racism in Malta is not generally of the ideological or violent sort, there does exist in the popular feeling quite significant levels of prejudice and, in some cases, hostility, towards certain groups of foreigners, including immigrants and especially persons of Arabic origin and black persons of African origin. These stereotypes and prejudices appear to be based on the belief that such persons have come to Malta for illegal purposes such as drug trafficking or to transit to other European countries, or as illegal immigrants who will take employment away from Maltese workers. Such prejudices find their expression in discrimination in certain areas of life (see paragraphs 22 and 23 above) and also in attitudes among the general public, where negative assumptions and perceptions concerning certain minority

groups appear to be rather commonplace. Such attitudes are in some cases reflected in the media, while it has also been reported that political debate around issues such as asylum has at times been conducted in somewhat negative tones.

31. As regards relations between the different religious groups - in a context where almost all of the population is Catholic, of which around two-thirds regularly practice their religion – ECRI feels that although no serious problems of religious intolerance have been reported, there may also exist some prejudices and mistrust concerning other religions and particularly as regards Muslims, as well as some practical issues which may arise in connection with religion. For example, it has been reported that Muslims wishing to marry Maltese persons may face difficulties in marrying in the Catholic Church, and that in general, the issue of “mixed marriages” between Muslims and Catholic Maltese is an issue to which public reactions are somewhat ambivalent. ECRI stresses that particularly in the current context, measures to combat misconceptions and prejudices towards Muslims are especially valuable. Such measures should include more teaching in schools about different religions and also awareness-raising among the general public. In this respect, ECRI draws attention to its general policy recommendation N° 5 on combating discrimination and intolerance against Muslims, and encourages the active participation of the Muslim community in any initiatives undertaken in this respect.
32. ECRI is aware that at the present time, the concrete manifestations of racism and discrimination which occur in Malta have not been considered to be of major concern by the authorities. Nonetheless, ECRI reiterates its opinion that every instance of discrimination should be addressed and combated through legislative and other means, both as a matter of principle and also in order to send a message to the public that discrimination is not acceptable and will be punished. Moreover, ECRI feels that there is a need to acknowledge that such incidents may point to underlying problems of prejudice and intolerance within society and that steps should be taken to combat such tendencies.
33. In this respect, ECRI stresses the importance of educative and awareness-raising initiatives, both at the level of school education but also among the general public and among key groups. In the school context, ECRI feels, as outlined above (paragraph 20), that further efforts should be made to increase teaching concerning other cultures, religions and societies. Among the general public, ECRI feels that the forthcoming introduction of new criminal provisions to combat incitement to racial hatred and the recent introduction of structures and legislation in the field of asylum and refugees would provide a good opportunity to initiate public debate about issues of racism, discrimination and intolerance and their manifestations within Maltese society.

34. Furthermore, ECRI emphasises in particular the need for training in issues of racism and discrimination for persons in a number of key sectors who may have to deal with non-citizens or with problems of discrimination in their work. Such sectors include the police, who should be trained to recognise instances of discrimination and to take appropriate action. Immigration officers should receive thorough and on-going training in the correct procedures and attitudes to adopt when receiving asylum seekers and also in addressing problems such as the control of illegal immigration in an appropriate fashion. Prison staff and staff responsible for dealing with asylum seekers held in detention should also receive specialised training, again on an on-going basis.

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