European Commission against Racism and Intolerance
Commission européenne contre le racisme et l'intolérance

CRI(2016)39

ECRI CONCLUSIONS ON THE IMPLEMENTATION OF THE RECOMMENDATIONS IN RESPECT OF MALTA SUBJECT TO INTERIM FOLLOW-UP

Adopted on 30 June 2016[1]

Published on 4 October 2016

[1] Any developments which occurred after 22 April 2016, date on which the latest information on measures taken to implement the recommendations chosen for interim follow-up was received, are not taken into account in this analysis.

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FOREWORD

As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007[1], not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

[1] CM/Del/Dec(2007)986/4.1.

1. In its report on Malta (fourth monitoring cycle) published on 15 October 2013, ECRI recommended that the authorities amend the Citizenship Act so as to: introduce clear, objective and measurable requirements in connection with the acquisition of citizenship through naturalisation; ensure that decisions relating to the acquisition, retention, loss, recovery or certification of nationality are open to review ; and, as far as cases of loss of citizenship are concerned, remove any less favourable treatment afforded to persons who have acquired their citizenship through naturalisation or registration – particularly where fundamental rights are concerned.

ECRI notes that the Citizenship Act was amended in 2013, but only to introduce acquisition of citizenship through investment. There appear to be no changes regarding ECRI's recommendation.

ECRI concludes, therefore, that its recommendation has not been implemented.

2. In its report on Malta (fourth monitoring cycle), ECRI strongly recommended that the authorities provide non-custodial alternatives to detention and refrain from resorting to the detention of migrants and asylum seekers unless it is strictly necessary in the particular circumstances of an individual case.

ECRI notes that amendments to the Immigration Act were enacted on 4 December 2015 and amendments to the Reception of Asylum Seekers Regulations on 11 December 2015. These amendments transpose the EU's recast Reception Conditions Directive and aim to execute a number of judgments of the European Court of Human Rights against Malta relating to the detention of asylum seekers.[1]

As concerns asylum seekers, the Reception of Asylum Seekers Regulations now provide that they can only be detained after a detention order is issued by the Principal Immigration Officer following an assessment of the case. Detention can be ordered for one or more reasons which are set out in an exhaustive list. The detention order must be in writing, in a language which the applicant is reasonably supposed to understand, and sets out the reasons for detention as well as information on procedures to challenge it. Free legal assistance and representation are granted to asylum seekers challenging the lawfulness of their detention.

The Regulations now also set out specific alternatives to detention for asylum seekers: the applicant who is not detained may be required to report at a police station within specified timeframes; to reside at an assigned place; to deposit or surrender documents; or to place a guarantee or surety with the Principal Immigration Officer.

Finally, asylum applicants cannot be kept in detention for more than nine months.

As concerns other migrants ("prohibited immigrants") against whom a return decision has been taken and a removal order issued, Article 14 (2) of the Immigration Act sets out that they may be detained in custody until removed from Malta. ECRI has found no provisions providing for alternatives to detention and no wording indicating that resorting to detention unless it is strictly necessary in the particular circumstances of an individual case has been included in the relevant legislation.

However, as concerns both asylum seekers and other migrants, under the new provisions of Article 25A (10) of the Immigration Act, the Immigration Appeals Board shall grant release from custody where continued detention of a person, taking into account all the circumstances of the case, is not or no longer required or, where, in the

[1] Suso Musa v. Malta (No. 42337/12, 23 July 2013), Aden Ahmed v. Malta (No. 55352/12, 23 July 2013) and Louled Massoud (No. 24340/08, 27 February 2010).

case of a person detained with a view to being returned, there is no reasonable prospect of return within a reasonable time-frame.

ECRI welcomes the good progress made in respect of asylum seekers and is pleased that its recommendation has been implemented concerning this group. However, the situation does not appear to have changed significantly as concerns other migrants. ECRI therefore concludes that its recommendation has been partially implemented.

3. In its report on Malta (fourth monitoring cycle), ECRI strongly recommended that the authorities amend the asylum procedure so as to ensure: free legal aid as from the outset of the asylum procedure, in particular at the time when the preliminary questionnaire is filled in; the asylum seeker's access to his/her case file; and a right in all cases to appear before the Refugee Appeals Board at the appeals stage.

ECRI notes that according to the legislation implementing EU Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, asylum seekers have the right to legal assistance and representation at their own cost. Free legal aid is only provided at the appeal stage of the asylum procedure. Therefore, this part of the recommendation has not been implemented.

As for access to the case file, ECRI, in its fourth report, stated that while asylum seekers receive a copy of their application form and their interview notes (verbatim transcript of the interview) and a copy of the decision is made available to them as soon as the case is closed, ECRI has received information indicating that asylum seekers have experienced difficulties in accessing their case files. While the applicant is usually granted a copy of the interview notes with a negative first instance decision, this is not always the case, and the applicant would have to make a separate request to be granted such a copy in preparation for his/her appeal. Also, even though all interviews are recorded as a matter of standard practice, the audio recording is rarely made available to applicants or their lawyers, and if so, only following a specific request to the Refugee Commissioner. Therefore, while asylum seekers do have access to their case files in theory, this does not always happen in practice.

As concerns the right to appear before the Refugee Appeals Board, amendments were made to the Refugees Appeals Board (Procedures) Regulations in 2012 granting this right. Article 5(1)(i) of the regulations states that the Refugee Appeals Board shall enable the applicant and the Refugee Commissioner (first instance decision-making body) or an authorised officer to be present at the hearing and present their case to the Board in person or through a legal representative or other authorised person. Therefore, this part of the recommendation has been implemented.

Overall, ECRI considers that its recommendation has been partially implemented.