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**ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION
FOR THE PROTECTION OF NATIONAL MINORITIES**

**COMMENTS OF THE GOVERNMENT OF MALTA
ON THE SECOND OPINION OF THE ADVISORY COMMITTEE ON THE
IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES**

IN MALTA
(received on 25 April 2006)

**Comments by Maltese Authorities on the Council of Europe:
Advisory Committee on the Framework Convention for the Protection of
National Minorities – Second Opinion on Malta**

Following a request made in a letter dated 13th December 2005 addressed to Ambassador J Licari, from the Director General of Human Rights of the Council of Europe regarding the above captioned Second Opinion on Malta, the following are comments forwarded by the Refugee Commissioner; the Permanent Secretary, Ministry for the Family and Social Solidarity; and the Ombudsman.

The second opinion on Malta was adopted at the 24th Meeting of the Advisory Committee on the Framework Convention for the Protection of National Minorities on 22nd November 2005.

The Office of the Refugee Commissioner:

The Office of the Refugee Commissioner's basic role is to examine applications for recognition of refugee status in Malta and recommend or otherwise their acceptance.

The definition of a refugee, according to the Refugees Act, is the same one enshrined in the 1951 Geneva Convention.

The Office of the Refugee Commissioner is of the opinion that the existence itself of this office and the work that is being done in this area gives witness to our nations' commitment to offer protection to people, wherever they come from, who have a well-founded fear of persecution because of their race, religion, nationality, membership of a particular social group or political opinion.

**Comments by Permanent Secretary, Ministry for the Family and Social Solidarity,
regarding issues raised in the said report concerning this Ministry:**

Efforts to combat discrimination

Legal Notice 461 of 2004 has transposed the provisions of EU Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation and the employment and vocational training aspects of EU Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. An Equality Act has been drafted to transpose all the remaining non-employment related aspects of the latter Directive (2000/43/EC) which will afford protection against discrimination on the basis of racial or ethnic origin relating to, among other things, social protection including social security and healthcare, social advantages, education and access to supply of goods and services, including housing. The draft legislation also provides for the Minister responsible for equality to designate a National Body to promote equality of treatment, provide assistance to victims, conduct surveys, publish reports and make recommendations on issues relating to discrimination on the basis of racial and ethnic origin.

It is intended that the existing National Commission for the Promotion of Equality between Men and Women will be designated as the National Body for the purposes of this new legislation. The First Reading of the relevant Bill was approved by Parliament on the 27th June 2005. The Bill itself is pending the vetting by the Office of the Attorney General prior to publication.

Tolerance and Integration: Meeting the welfare needs of asylum seekers and refugees and efforts to promote integration.

In January 2005, the Government issued the policy document for Irregular Immigrants, Refugees and Integration. This document outlines the Government's policy with regards to the welfare needs of asylum seekers and refugees and the efforts to promote integration. Following this publication, the Ministry for the Family and Social Solidarity (MFSS) published the policy on unaccompanied minor asylum seekers, guidelines for children of refugee and asylum seekers and procedures for the release of vulnerable people from detention.

Government believes in the important role and experience of non-governmental organizations in working within this social welfare sector. An NGO Forum for Refugees and Asylum Seekers was set up within MFSS with the role to identify the best strategy to address the emerging welfare needs; assist in the development of operational services; coordinate the existing resources and promote social awareness on integration.

The first welfare priority was to secure adequate accommodation for refugees and asylum seekers. Refurbishment works to upgrade existing accommodation facilities, the opening of another Open Centre in Marsa, agreements with non-governmental organizations to extend their facilities are among the various initiatives taken to build the capacity and improve the quality to accommodate refugees and asylum seekers.

Initiatives and policy measures have been introduced to facilitate access to employment, health and education. Further initiatives and projects are currently underway to secure a more coherent approach that would strengthen the response to the welfare needs of asylum seekers and refugees and, particularly, to facilitate their integration.

Comments by Ombudsman on paragraphs 20 and 21 of the opinion:

Page 6, para 20:

- a. This paragraph is consequential to the factual statements contained in the previous paragraph (19). The report notes that the current legislative framework for combating ethnic or racial discrimination in Malta is not yet comprehensive enough. I tend to agree that there are areas where the existing legislation needs to be focused on discrimination in its various forms providing a better safety net at primary legislative level to ensure wider and more effective respect to the fundamental human right of non-discrimination. To date, Malta has tended to rely mostly on the Constitutional and Conventional provisions though there have been areas where specific legislations was enacted to prevent discrimination or the fomenting of racial hatred.
- b. In this respect a general law aimed at eliminating unjustified ethnic or racial discrimination even in relations between private persons would go a long way to clarify and remedy the situation. Such a law would ensure that the enjoyment of the rights and freedoms set out by the Constitution and indeed, even if not in a completely identical manner, by the European Convention of Human Rights, would be assured to all without any discrimination. It has to be understood that equality of treatment is violated only when the distinction has no objective and reasonable justification, the existence of which is to be assessed in relation to the aim and effects of measures under consideration, having regard to the principles normally prevailing

in a democratic society. A treatment is also discriminatory whenever it is clearly established that there is no reasonable relationship of proportionality between the means employed and the legitimate aim sought to be realized.

- c. It is correct to state that the Ombudsman's Office is only competent to investigate complaints of discrimination with respect to the actions of public authorities. This in the wide sense of the term that includes entities in which the government has a controlling interest. There is no reason why the competence of this Office should not be extended to investigate complaints of discrimination in relations between private persons once this is regulated by appropriate legislation and subject to the availability of additional resources. Rather than setting up new specialized bodies to monitor the implementation of existing and future anti-discrimination provisions in a scenario where instances of discrimination exist but are by no means widespread, Government would be well advised to invest further in existing institutions that could adequately investigate the additional workload of specific instances of discrimination and recommend appropriate remedial measures.

Page 6, para 21:

- a. It is not correct to state that access to the Ombudsman was only available to citizens. It is available to any person who feels aggrieved by any administrative action taken by or on behalf of government or other authorities or entities in which it had a controlling interest. There have been many instances where this Office has investigated complaints by non-citizens resident in Malta and indeed even by non-citizens who were not residents but who felt they were adversely hit by an administrative decision. For example, this Office has made own initiative inquiries into the conditions in which irregular immigrants were being kept in detention centres and the treatment given to them in mental institutions.
- b. Contrary to the European Ombudsman, who could only investigate complaints by European citizens and any person residing (in the sense of being physically present) in a Member State, the Malta Ombudsman is competent to investigate any complaint by any person who can prove that he has a personal interest in the merits of the case. The last sentence of paragraph 21 is therefore incorrect both legally and factually. Any misunderstanding in this respect should be cleared.

Otherwise I am, in principle, in full agreement with the recommendations made in this part of the report.

Comments by the Malta Police:

As far as discrimination is concerned, whenever this constitutes a breach of enacted legislation, police action is taken accordingly. As regards the recommendations highlighted in Article 37 of the report, it is pertinent to point out that training in human rights law and police ethics with specific reference to the subject of 'discrimination', is given to both police recruits and to serving members undergoing in-service courses at our Police Academy. Furthermore, since April 2005, a Police Code of Ethics was published and distributed to each member of the Force. The subject 'discrimination' is dealt with under the heading "Our Obligations towards the Community".

Comments by entities within the Ministry of Education:**On discrimination:**

The relevant authority on employment and training, the **Employment & Training Corporation (ETC)**, does not discriminate against foreign nationals, national minorities, including asylum-seekers and refugees. At present, this ETC offers the possibility to all these persons to participate in ETC's programmes, whenever eligible along the same lines as Maltese citizens.

With regard to the employment licence function, ETC is also granting work permits automatically to both refugees and persons with temporary humanitarian protection status. In the case of bona fide asylum-seekers (those that have a pending asylum application), the corporation also grants a work permit. For all these persons we are also charging them the same fee as the one that applies to EEA citizens.

Finally, the ETC is currently implementing an Equal project that aims to integrate asylum seekers into Maltese society by giving them training in the English language, job seeking, life skills and active citizenship. In addition the Corporation is also offering a number of English literacy programmes to a group of refugees.

Cases of discrimination on ethnic grounds at places of entertainment:

The Maltese National Coordinator of the European Union Programme Unit (EUPU) agrees with the proposal that Malta should extend its legal framework for combating ethnic discrimination to cover the access to places of entertainment as indicated in point 21 of the report.

The Ministry of Education further suggests that **para 37 Recommendations (2nd point)** be amended to read:

- “Take further measures to raise awareness about the importance of tolerance and intercultural dialogue in the media.

Furthermore add to **para 37 Recommendations (3rd point)** as follows:

- “The teaching of tolerance and intercultural dialogue to be further promoted in schools”.