



Strasbourg, 03 May 2006

ACFC/OP/II(2005)006

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

Second Opinion on Malta, adopted on 22 November 2005

EXECUTIVE SUMMARY

Malta has taken steps to address the findings of the first Opinion of the Advisory Committee, adopted in November 2000, and the Committee of Ministers' Resolution, adopted in November 2001.

Further efforts are needed to expand and consolidate Malta's legal and institutional framework for combating discrimination on ethnic or racial grounds. Existing efforts to promote integration need to be strengthened, including by taking further measures to increase awareness about the importance of tolerance and intercultural dialogue in the field of education and the media.

TABLE OF CONTENTS

I. MAIN FINDINGS..... 4

II. ARTICLE-BY-ARTICLE FINDINGS 5

Article 3 of the Framework Convention 5

Article 6 of the Framework Convention 5

III. CONCLUDING REMARKS 8

Positive developments..... 8

Issues of concern 8

Recommendations 8

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

SECOND OPINION ON MALTA

1. The Advisory Committee adopted the present Opinion on Malta in accordance with Article 26 (1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on information contained in the State Report, received on 1 December 2004, and other written sources consulted by the Advisory Committee.
2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Malta. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.
3. Both sections make reference to the follow-up given to the findings of the first cycle of monitoring of the Framework Convention, contained in the Advisory Committee's first Opinion on Malta, adopted on 30 November 2000, and in the Committee of Ministers' corresponding Resolution, adopted on 27 November 2001.
4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Malta.
5. The Advisory Committee looks forward to continuing its dialogue with the authorities of Malta as well as with non-governmental actors involved in the implementation of the Framework Convention. In order to promote an inclusive and transparent process, the Advisory Committee strongly encourages the authorities to make the present Opinion public upon its receipt.

I. MAIN FINDINGS

6. The Advisory Committee takes note of both the reservation and the declaration contained in the instrument of ratification deposited by the Maltese authorities. According to the declaration, Malta considers that no national minorities in the sense of the Framework Convention exist in its territory. The declaration explains that Malta ratified the Framework Convention as an act of solidarity, intended to further the aims of this legal instrument.

7. In view of the information gathered during the first monitoring cycle, the Advisory Committee and the Committee of Ministers considered that there remains potential for application of a number of provisions of the Framework Convention in Malta, albeit rather limited. The Advisory Committee returns to the matter of the application of the Framework Convention under Article 3 below.

8. The Advisory Committee welcomes the constructive spirit in which the Maltese authorities have approached the Framework Convention's monitoring mechanism. The authorities submitted a comprehensive set of comments in response to the first Opinion of the Advisory Committee and agreed to the Opinion's early publication, although more could have been done to distribute the Opinion, as well as the corresponding Resolution of the Committee of Ministers, to groups or organisations that might have been interested in them.

9. As regards the second State Report, the Advisory Committee welcomes the references it makes to the existence of groups, including asylum-seekers and refugees, that the Government does not consider, at this stage, to be covered by the Framework Convention. By providing information on measures taken to improve the situation of these groups, the Government of Malta demonstrates its willingness to engage in a dialogue with the Advisory Committee regarding the application of the Framework Convention.

10. Malta has taken a number of steps to address the issue of ethnic or racial discrimination since the first monitoring cycle, particularly through the adoption of the Employment and Industrial Relations Act in 2002, which prohibits discrimination in relation to private sector employment. However, incidents of discrimination on grounds of ethnic origin continue to be reported in fields that are not currently covered by specific anti-discrimination legislation and Malta still has to complete its institutional framework for monitoring discrimination on ethnic or racial grounds.

11. Malta's second State Report describes a number of measures undertaken by the authorities to facilitate the social and economic integration of non-citizens in Malta, including asylum-seekers and refugees. The Advisory Committee welcomes these measures and encourages the authorities to strengthen their efforts to promote mutual respect, understanding and tolerance between all persons living in Malta.

II. ARTICLE-BY-ARTICLE FINDINGS

Article 3 of the Framework Convention

Application of the Framework Convention

Findings of the first cycle

12. The Advisory Committee considered that, concerning persons belonging to an ethnic, linguistic or religious group other than the majority, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It encouraged the Maltese authorities to consider this issue in consultation with the persons concerned.

Present situation

a) Positive developments

13. By referring in their second State Report to the situation of non-citizens, including asylum-seekers and refugees, the Maltese authorities have adopted an inclusive approach in their dialogue with the Advisory Committee regarding the application of the Framework Convention. The Advisory Committee welcomes this positive attitude, particularly in light of the growing number of immigrants who, following Malta's accession to the European Union, are residing in Malta for increasing lengths of time.

b) Outstanding issues

14. The Advisory Committee is not aware whether any attempts have been made by the Maltese authorities to open a dialogue on the application of the Framework Convention with persons concerned in Malta.

Recommendation

15. The Maltese authorities should consider the possibility of applying the Framework Convention, in view of its objectives, on an article-by-article basis and in consultation with those concerned, to persons who do not share the language, religion or culture of the general population.

Article 6 of the Framework Convention

Efforts to combat discrimination

Findings of the first cycle

16. The Advisory Committee noted that some cases of discrimination on ethnic grounds had been reported in Malta, *inter alia*, in the renting of accommodation and in the access to certain places of entertainment. The Maltese authorities were encouraged to investigate those alleged cases of discrimination and to continue their efforts to prevent such cases from happening in the future.

Present situation

a) Positive developments

17. The Advisory Committee notes that there exist general anti-discrimination provisions in the Constitution of Malta and that an Ombudsman Office, in operation since 1995, has continued to conduct investigations and respond to complaints of discrimination.

18. Malta has taken steps to address the issue of racial or ethnic discrimination since the first monitoring cycle. The Advisory Committee welcomes in particular the adoption in 2002 of the Employment and Industrial Relations Act, which prohibits discrimination on any ground “not justifiable in a democratic society” in relation to private sector employment. This Act is one element in the efforts of the Maltese authorities to transpose the Racial Equality Directive (2000/43/EC) and Employment Equality Directive (2000/78/EC) of the Council of the European Union.

b) Outstanding issues

19. The current legislative framework for combating ethnic or racial discrimination in Malta is not yet comprehensive enough. The general anti-discrimination provisions found in the Constitution of Malta do not extend to relations between private persons and there are no civil and/or administrative law provisions pertaining to discrimination in certain key fields, including housing and access to places of entertainment, where isolated incidents of discrimination have been reported.

20. Malta is still in the process of designating a specialised body for collecting data pertaining to ethnic or racial discrimination and for monitoring the implementation of existing anti-discrimination provisions. Until such a body is established and begins to operate, it will be difficult to develop adequate measures for preventing and remedying discrimination. This is particularly important in view of the fact that the Ombudsman Office is only competent to investigate complaints of discrimination with respect to the actions of public authorities.

Recommendation

21. Malta should continue to extend its legal and institutional framework for combating ethnic or racial discrimination to ensure that it affords protection against discriminatory treatment by public authorities and private entities in relation to both citizens and non-citizens, and that it covers all relevant fields, including housing and access to places of entertainment. Malta should make it clear that access to the Ombudsman is also available to non-citizens.

Tolerance and integration

Findings of the first cycle

22. In the first monitoring cycle, the Advisory Committee noted the arrival of increasing numbers of migrant workers and refugees and highlighted the importance of promoting a spirit of tolerance and mutual respect between all persons living in the territory of Malta.

Present situation

a) Positive developments

23. The Maltese authorities recognise the importance of developing measures to facilitate the economic and social integration of non-citizens. A Refugee Services area has recently been set up within *Appogg*, Malta’s national social welfare agency, in order to provide asylum-seekers, refugees and persons with humanitarian status with assistance in their efforts to secure employment, accommodation and social services.

24. The Advisory Committee welcomes the commitment expressed in Malta's second State Report to improve the reception and situation of asylum-seekers and refugees. This was illustrated by the enactment of Malta's Refugee Act, in June 2000, aimed at transposing the principles enshrined in the Geneva Convention on Refugees into domestic law and providing recognised refugees with a wide range of social and economic rights.

25. A further important measure facilitating integration was the amendment of Malta's Criminal Code in 2002, making incitement to racial hatred through spoken or written words or behaviour a criminal offence, punishable by imprisonment for a term of 6-18 months. The Advisory Committee notes that the police authorities have taken action on the basis of these provisions.

b) Outstanding issues

26. The efforts made by the Maltese authorities to facilitate integration and promote a spirit of tolerance and intercultural dialogue have not yet yielded the desired results. Although activities to promote different cultures have begun in certain schools, there is still room for increasing awareness of human rights and intercultural issues within the school curriculum. The Advisory Committee has received disconcerting information about statements, however, isolated, made by public figures and reporting in certain media on non-citizens which may increase prejudices and stereotypes.

27. The Advisory Committee welcomes the open and self-critical manner in which the Maltese authorities have discussed issues relating to asylum-seekers and refugees in their second State Report. Although several projects are being developed to provide these groups with welfare support and other forms of assistance, difficulties remain in terms of securing the necessary human and financial resources to support these activities.

Recommendations

28. Further action is needed in the fields of education and the media to raise awareness about the importance of tolerance and intercultural dialogue and to avoid the development of stereotypes and prejudices among the general population.

29. The authorities of Malta should pursue further their integration efforts, including by providing the new Refugee Services area and other relevant entities with adequate resources to ensure they are able to meet the welfare needs of asylum-seekers and refugees.

III. CONCLUDING REMARKS

30. The Advisory Committee considers that the present concluding remarks could serve as a basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to Malta.

Positive developments

31. Malta has taken steps to address the findings of the first Opinion of the Advisory Committee, adopted in November 2000, and the Committee of Ministers' Resolution, adopted in November 2001.

32. The authorities have adopted an inclusive approach in their dialogue with the Advisory Committee. This is particularly important in light of the increasing cultural diversity of Malta's society.

33. Malta's legal framework for combating discrimination has expanded since the first monitoring cycle and various integration efforts have begun.

Issues of concern

34. Malta's legislative and institutional framework for combating discrimination remains incomplete.

35. While discrimination does not appear to be a widespread phenomenon in Malta, isolated incidents of discrimination on ethnic grounds have been reported in areas that are not currently covered by specific anti-discrimination legislation, namely, in the renting of accommodation and in access to places of entertainment.

36. Although efforts are being made to promote a spirit of tolerance and intercultural dialogue among all persons living in Malta, there is still scope for improvement in this area, particularly in view of the arrival of increasing numbers of migrant workers and refugees.

Recommendations

37. In addition to the measures to be taken to implement the detailed recommendations contained in chapters I and II of the Advisory Committee's Opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

- Pursue further efforts to expand and consolidate Malta's legal and institutional framework for combating discrimination on ethnic or racial grounds.
- Take further measures to raise awareness about the importance of tolerance and intercultural dialogue, in particular in the fields of education and the media.
- Provide increased support for measures promoting social integration.