

**Council of Europe contribution for the 17th UPR session
regarding Malta**

Prevention of torture

CPT periodic visit in May 2008

On 17 February 2011 the Council of Europe's Committee for the Prevention of Torture (CPT) published a report on its fourth periodic visit to Malta in May 2008, together with the response of the Maltese Government. Both documents are attached below.

In the course of the visit, the CPT examined the treatment of persons detained by the police, irregular immigrants detained under the Immigration Act and prisoners in the Corradino Correctional Facility. It also visited several wards at the Mount Carmel Hospital as well as the Fejda Programme and Jeanne Antide establishments for female minors and juveniles.

The 2008 visit report states that the majority of persons met by the CPT's delegation made no complaints of ill-treatment by police officers. The report does however refer to one specific allegation and makes recommendations concerning the treatment of vulnerable persons in police custody, the conduct of inquiries into allegations of ill-treatment and the use of electro-shock weapons by the police. Further, the right of a person detained by the police to consult in private with a lawyer was still not in force at the time of the visit. In addition to calling for this right to be applied without any further delay, the CPT also recommends that the Maltese authorities extend this right to all criminal suspects deprived of their liberty and that it include the possibility for a lawyer to be present during police interrogations.

As regards foreign nationals detained under the Immigration Act, the report refers to a particular incident of alleged ill-treatment of detainees at Safi Barracks. It recommends that a criminal investigation be carried out every time credible allegations of ill-treatment by public officials are made by persons deprived of their liberty. Recommendations are also made to improve the material conditions, regime and health care provision in immigration detention centres.

As regards Corradino Correctional Facility, the report states that the findings of the visit were of such scope and seriousness that the CPT considered it essential to recommend that an independent and comprehensive audit of the establishment be carried out. In particular, concerns are raised about the lack of trained staff, the absence of an allocation and classification system in the prison, and the existence of informal power structures which place numerous inmates in a submissive position vis-à-vis gang-type practices and allow a considerable amount of drug trafficking to take place.

The report also criticises the material conditions in several wings of the prison and makes a number of recommendations to improve the provision of health care and to put in place formal disciplinary procedures that are properly applied. Particular concern is raised in relation to the detention in the prison of children of less than 16 years of age.

In respect of Mount Carmel Hospital, the report states that no allegations of ill-treatment of patients were received. Reference is made to the good living conditions on several wards; however, those on the Forensic, Maximum Security and Irregular Immigrants' Wards are criticised. Several recommendations are made concerning the lack of staff resources and the use of means of physical restraint and seclusion/ "time out" rooms. The report also makes a number of comments on the draft of the new Mental Health Act.

The two institutions for female juveniles and children, Fejda Programme and Jeanne Antide, were found to offer acceptable living conditions for relatively short stays only. A number of recommendations are made in particular aimed at improving health care provision.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.¹



CPT ad hoc visit in September 2011

A delegation of the CPT carried out an *ad hoc* visit to Malta in September 2011. The main objective of the visit was to examine the situation in the prison system, having regard to the recommendations made by the Committee after its 2008 visit. The Maltese authorities have not yet requested publication of the CPT's report on its 2011 visit.

Council of Europe Commissioner for Human Rights

On 9 June 2011, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, released a report from his visit to Malta in March 2011.

The report focuses on the following selected human rights issues²:

- I. Reception of migrants including asylum seekers³
- II. Access to international protection⁴
- III. Durable solutions for migrants in Malta⁵

For each issue the Commissioner provides specific conclusions and recommendations.⁶

Upon releasing his report the Commissioner for Human Rights said that “many migrants in Malta face inadequate living conditions and have little chance of integrating durably in society”. According to the Commissioner, Malta should establish a human-rights compliant system of reception and integration of migrants. “European solidarity is key to this endeavour”, he said; “this means more avenues enabling migrants to move to other countries, but also financial and other assistance to improve the material conditions, asylum determination procedures and integration opportunities in Malta. This is even more urgent today, as Malta has seen new arrivals of migrants from Libya since the end of March”.

The Commissioner considered the policy of mandatory administrative detention for arriving migrants, including asylum-seekers, as irreconcilable with human rights standards. He called on the Maltese authorities to implement alternatives to detention and to make effective remedies to challenge detention available to migrants.

As concerns living conditions in closed and open centres, the Commissioner found the situation in the Hal-Far tent village inadequate even for short periods of time and recommended its closure. Material conditions in the Hangar Open Centre in Hal-Far, which had re-opened since the Commissioner's visit and following new arrivals from Libya, were also reported to be seriously sub-standard. “This is a very serious concern”, said the Commissioner, “especially as vulnerable individuals, including very small children are accommodated there”. Their accommodation in big open centres, including those in Hal-Far and Marsa, must be avoided.”

¹ pp. 67-81.

² A summary of the report appears on pp. 2-4.

³ Section I, paras 11-34.

⁴ Section II, paras 35-51.

⁵ Section III, paras 52-70.

⁶ Paras 14-18, 24-27, 33-34, 40-42, 49-51, 60-61, 68-70.

Commissioner Hammarberg praised the Maltese authorities' long-standing efforts to rescue irregular migrants at sea and encouraged them to keep the country's borders open for people in need of international protection, including those who were forced to flee from North Africa. He underlined the need to ensure effective access to adequate asylum determination procedures and to avoid returning individuals to countries where they would face a real risk of persecution or ill-treatment.

The Commissioner welcomed the progress made in several aspects of the asylum system in recent years in Malta, such as the shortening of the time needed to process asylum applications, improved provision of information to asylum seekers, and the increased rate of recognition of refugee status. However, further progress is necessary in law and practice concerning asylum proceedings. "The Maltese authorities should provide access to legal aid, and improve access to case files for asylum seekers and their representatives in first instance proceedings before the Refugee Commissioner. Furthermore, second instance proceedings must be made an effective tool for review".

As concerns migrants' integration into society, the Commissioner was concerned by the fact that the system currently in place to support migrants, including beneficiaries of subsidiary protection, perpetuates their social exclusion and leaves them at serious risk of destitution. He stressed that financial support for migrants should not be dependent on residence in the open centres and that all beneficiaries of international protection should benefit from financial support and social assistance.

Finally, Commissioner Hammarberg was seriously concerned at manifestations of racism and xenophobia in Malta. "These phenomena exacerbate the difficulties that migrants face across many areas of life, including employment, housing, access to services and places of entertainment. Stronger efforts are needed to counter this trend and to foster the durable integration of migrants in Malta. The media should also be more engaged in fostering mutual understanding and combating stereotypes in public debate."

Attached below is the Commissioner's report from his visit in March 2011 with the comments received thereto from the Maltese authorities.



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Malta.pdf

Fight against racism and intolerance

On 29 April 2008 the Council of Europe's European Commission against Racism and Intolerance (ECRI) released its fourth report examining racism, xenophobia, antisemitism and intolerance in Malta (attached below).⁷

ECRI recognizes that positive developments have occurred in Malta. At the same time, however, the report details continuing grounds for concern for the Commission. The legal and institutional framework against racism and racial discrimination has been strengthened and primary anti-discrimination legislation covering different areas of life has been introduced. But irregular migrants, asylum seekers, persons with humanitarian protection and refugees remain vulnerable to racial discrimination in accessing different services and to exploitation on the labour market.

⁷ A summary of the report can be found on p. 6.

The legal provisions against racist expressions and racially-motivated offences are not yet fully applied.

The report contains findings and recommendations regarding the following issues:

- International legal instruments⁸
- Criminal law provisions⁹
- Civil and administrative law provisions¹⁰
- Specialised bodies and other institutions¹¹
- Education and awareness-raising¹²
- Reception and status of non-citizens¹³
- Access to services¹⁴
- Employment¹⁵
- Vulnerable groups¹⁶
- Antisemitism¹⁷
- Media¹⁸
- Conduct of law enforcement officials¹⁹
- Monitoring the situation²⁰

Of specific issues ECRI draws attention to:

- Criminalisation of immigrants as a result of detention policy²¹
- Racially motivated violence²²
- The impact on public opinion of political and public debate concerning immigration²³



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Protection of minorities

The Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its third Opinion on Malta in October 2012, but for the time being the report is still restricted.

Malta has signed but not yet ratified the European Charter for Regional or Minority Languages. Thus, the country is not yet covered by the monitoring procedure set up under the Charter.

⁸ p. 7.

⁹ pp. 7-9.

¹⁰ pp. 9-10.

¹¹ pp. 11-12.

¹² pp. 12-13.

¹³ pp. 13-20.

¹⁴ pp. 20-21.

¹⁵ pp. 21-22.

¹⁶ pp. 22-23.

¹⁷ p. 23.

¹⁸ pp. 23-25.

¹⁹ pp. 25-26.

²⁰ pp. 26-27.

²¹ pp. 27-28.

²² pp. 28-29.

²³ pp. 29-31.

Social and economic rights

Malta ratified the European Social Charter on 04/10/1988 as well as the Amending Protocol to the Charter on 16/02/1994.

It ratified the Revised European Social Charter on 27/05/05, accepting 72 of the Revised Charter's 98 paragraphs.

Malta has neither signed nor ratified the Additional Protocol providing for a system of Collective Complaints.

Cases of non-compliance

Thematic Group 1 "Employment, training and equal opportunities"

▶ Article 1§2– Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

Access to posts in the public service and public sector is too restricted for nationals of other States Parties.

(Conclusions 2008, p. 8)

▶ Article 1§4 (9 and 15§1) - Right to work - Vocational guidance, training and rehabilitation
It has not been established that the right to vocational guidance in the education system is guaranteed.

People with disabilities are little integrated into mainstream training institutions. (Article 9)

It has not been established that mainstreaming of persons with disabilities is effectively guaranteed in training. (Article 15§1)

(Conclusions 2008, p. 9)

▶ Article 10§2 - Right to vocational training - Apprenticeship

It has not been established that nationals of other States Parties lawfully resident or regularly working in Malta are guaranteed equal treatment as regards access to apprenticeships.

(Conclusions 2008, p. 13)

▶ Article 10§5 - Right to vocational training - Full use of facilities available

It has not been established that the measures to monitor the efficiency of vocational training for young workers are adequate.

(Conclusions 2008, p. 16)

▶ Article 15§2– Right of persons with disabilities to independence, social integration and participation in the life of the community - Employment of persons with disabilities

It has not been established that persons with disability are guaranteed an effective equal access to employment.

(Conclusions 2008, p. 20)

▶ Article 24 – Right to protection in case of dismissal

Employees are excluded from protection against dismissal during a six months probationary period that might be extended until up to one year for certain categories of employees.

(Conclusions 2008, p. 28)

Thematic Group 2 "Health, social security and social protection"

▶ Article 3§3 - Right to safe and healthy working conditions - Enforcement of safety and health regulations

It has not been established that the labour inspection services are effective.

(Conclusions 2009, p. 9)

► Article 11§1 – Right to protection of health - Removal of the causes of ill-health

It has not been established that the health care system is fully accessible to the entire population.

(Conclusions 2009, p. 13)

► Article 11§2 - Right to protection of health - Advisory and educational facilities

It has not been established that:

- public information and awareness-raising is a public health priority;

- prevention through screening is used as a contribution to the health of the population.

(Conclusions 2009, p. 16)

► Article 12§1 – Existence of a social security system - Right to social security

The rates of sickness benefits for a single person, of unemployment benefits, including the Special Unemployment Benefit for a single person, and of the invalidity pension and the survivors' pension are manifestly inadequate; and the duration for which unemployment benefit is payable is too short.

(Conclusions 2009, p. 22)

► Article 13§1 – Right to social and medical assistance - Adequate assistance for every person in need

It has not been established that the right to assistance is guaranteed for as long as there is a need for it;

it has not been established that the right of appeal is effectively guaranteed;

it has not been established that the equality of treatment of foreign nationals legally resident or regularly working in Malta for eligibility to social assistance, is guaranteed.

(Conclusions 2009, pp.28-29)

► Article 13§3 – Right to social and medical assistance - Non-discrimination in the exercise of social and political rights

It has not been established that help and advice services operate in accordance with this provision;

it has not been established that nationals of other States Parties legally resident or regularly working in Malta are provided equal access to these services.

(Conclusions 2009, p. 30)

Thematic Group 3 "Labour rights"

► Article 4§4 – Right to a fair remuneration - Reasonable notice of termination of employment

One week notice is insufficient for employees with less than six months' service;

two weeks' notice is insufficient for employees with more than six months' service;

four weeks' notice is insufficient for employees with three to four years' service.

(Conclusions 2010, p. 10)

► Article 4§5 – Right to a fair remuneration - Limitation of deduction from wages

It has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.

(Conclusions 2010, p.10)

► Article 5 – Right to organise

It has not been established whether there are adequate remedies against refusals to register police trade unions.

(Conclusions 2010, p.11)

► Article 6§3 – Right to bargain collectively - Conciliation and arbitration

It has not been established that decisions of the Court of Inquiry are binding on the parties only with their joint consent or that there are adequate procedures for conciliation and arbitration for all public sector employees.

(Conclusions 2010, p.14)

Thematic Group 4 “Children, families, migrants”

► Article 7§5 – Right of children and young persons to protection – Fair pay

It is not established that the allowances paid to apprentices are fair.

(Conclusions 2011, p. 8)

► Article 7§8 – Right of children and young persons to protection – Prohibition of night work

It is not established that the exceptions to the prohibition of night work in some economic sectors are necessary for a proper functioning of the relevant economic sector and that the number of young workers concerned is low.

(Conclusions 2011, p. 9)

► Article 7§10 – Right of children and young persons to protection - Special protection against physical and moral dangers

1. It has not been established that children are protected from sexual exploitation;
2. It has not been established that children are protected against the misuse of information technologies.

(Conclusions 2011, p.11)

► Article 16 - Right of the family to social, legal and economic protection

It has not been established that Malta implements a comprehensive policy to ensure the social, legal and economic protection of the family.

It has not been established whether the childcare facilities are affordable and of good quality.

(Conclusions 2011, p.17)

► Article 17§1 - Right of mothers and children to social and economic protection

1. Children born outside marriage are discriminated against in matters of succession and inequalities exist between children of a first and second marriage;
2. Corporal punishment in the home is not prohibited;
3. The age of criminal responsibility is manifestly too low.

(Conclusions 2011, p.19)

The Conclusions regarding Malta from 2008, 2009, 2010 and 2011 as well as a factsheet are attached below.



Malta2008_en.pdf



Malta2009_en.pdf



Malta2010_en.pdf



Malta2011_en.pdf



Malta2012_en.pdf



Malta_en.pdf

Action against trafficking in human beings

On 24 January 2013 the Group of Experts on Action against Trafficking in Human Beings (GRETA) published its first evaluation report on Malta²⁴, together with the final comments of the Maltese Government. Both documents are contained in the attachment below.

In the report, GRETA notes the progress made by the Maltese authorities to develop the institutional and legal framework for combating trafficking in human beings, including the adoption of the first national action plan on combating trafficking in persons in October 2011 and the setting up of the Human Trafficking Monitoring Committee and a Stakeholder Task Force against human trafficking.

The report states that only 25 people in Malta were found to be victims of human trafficking between 2003 and 2011, all of whom were foreign nationals trafficked for sexual exploitation. However, GRETA considers that these figures may not reflect the true situation, given the lack of a formal procedure for identifying victims. The report welcomes the efforts made by the Maltese authorities to review identification and urges them to improve the procedure and to focus more on detecting trafficking for labour exploitation.

The report also notes that most of the criminal cases which have been launched since 2006 are still pending. GRETA urges the Maltese authorities to ensure that offences linked to human trafficking are investigated and prosecuted promptly and effectively.

Furthermore, GRETA calls on the Maltese authorities to adopt a clear framework for the repatriation and return of trafficking victims, and to ensure that all victims are able to access the support and compensation which they are entitled to.

In its report GRETA provides concluding remarks²⁵ as well as a complete list of proposals to the Maltese authorities.²⁶



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Preventing and combating violence against women and domestic violence

Malta has signed but not yet ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence. For this reason, it is not yet concerned by the monitoring procedure to be carried out once the convention will enter into force.

²⁴ A summary of the report can be found on pp. 7-8.

²⁵ Paras 194-198.

²⁶ Appendix I.