

Overview of pertinent references to Malta in selected recent reports produced by the European Union Agency for Fundamental Rights (FRA)

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1. Essential points on immigration

1. Mandatory detention

The Maltese Immigration Act provides in Article 14.2 that a person against whom a removal order is made “shall be detained in custody until he is removed from Malta”. Moreover, the law forbids the Immigration Appeals Board to release such a person, in case of certain circumstances such as the need to verify identity, or where the person poses a threat to national security or public order.¹ In practice, this results in a situation of systematic detention for irregular migrants in Malta, as these are in most cases undocumented and their identity not established.²

Source: http://fra.europa.eu/sites/default/files/fra_uploads/1306-FRA-report-detention-december-2010_EN.pdf page 23

2. Judicial review

When the decision to order or extend the deprivation of liberty is taken by the immigration or police authorities, the individual has normally the right to appeal such decision to a court or tribunal. In Malta, the law foresees that appeals are lodged with the Immigration Appeals Board.³ In 2005 the Court of Criminal Appeal overturned a decision of the Court of Magistrates, which had granted habeas corpus review under Article 409 A of the Criminal Code, arguing that once it was established that the detention was lawful under the Immigration Act the criminal courts are not competent to test whether the detention is unlawful under any other laws.⁴ A judicial review of the legality of the detention is in principle possible under the Fundamental Human Rights provisions in Chapter IV of the Constitution of Malta and under the European Convention Act.⁵ Such judicial review tends however to be rather lengthy in time normally lasting over 18 months. This may be one reason why it is rarely used in practice.⁶

Source: http://fra.europa.eu/sites/default/files/fra_uploads/1306-FRA-report-detention-december-2010_EN.pdf pages 41-42

3. Detention of children and vulnerable persons – time it takes to release them

Malta, for example, has a mandatory detention policy under Article 14 (2) of the Immigration Law. The AWAS is responsible for identifying vulnerable persons in detention and organising their release. The system is based on referrals from the police or organisations working in the detention facility.

¹ Maltese Immigration Act Article 25A.11.

² UN Working Group on Arbitrary Detention, see UNDOC A/HRC/13/30/Add.2; Human Rights Council, 13th session, *Report of the Working Group on Arbitrary Detention*, Mission to Malta, 19-23 January 2009.

³ Malta, Immigration Act at 25A.5. While an information leaflet on how to challenge detention is provided to all detainees and contacts with NGOs can be established by detention staff, the UN Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, Mission to Malta 19 to 23 January 2009 (Human Rights Council, 13th session UN General Assembly, A/HRC/13/30/Add.2, 18 January 2010, paragraph 45) reported practical difficulties in accessing the Board, indicating that the “Board has no registry or office, and there are no clear, publicly available instructions explaining where to file an application or what procedures should be followed”.

⁴ Report of Working Group on Arbitrary Detention, Mission to Malta, paragraph 47, available at <http://www2.ohchr.org/english/issues/detention/docs/A-HRC-13-30-Add2.pdf>.

⁵ Constitution of Malta Act, Article 46; Chapter 319 of the Laws of Malta, European Convention Act, Article 4.

⁶ See UNDOC A/HRC/13/30/Add.2; Human Rights Council, 13th session, *Report of the Working Group on Arbitrary Detention*, Mission to Malta 19 to 23 January 2009, paragraph 48: “It takes approximately two years for a final decision to be handed down, which exceeds the maximum immigration detention period in terms of Government policy, as described above. The Government referred the Working Group to other cases in which judgment was delivered by the court of first instance within four or five months and the appeal heard and decided within the following five months.” The UN WGAD (ibid at paragraph 50) further reported that it “is unaware of a single case in which a legal challenge to immigration detention was successful” which may be another reason why in practice such remedy is not often used.

Persons with ‘non-visible’ vulnerabilities, such as those with mental health issues or victims of trafficking may, however, be overlooked. Moreover, the release of vulnerable persons takes time, usually two-to-three weeks, but sometimes also longer. Delays in the identification process and the release from detention also surfaced in Malta. For separated children, in the first seven months of 2012, the average time until release was 13 days,⁷ but individual cases can take longer. One child who arrived in Malta in 2009 spent eight months in detention. Some minors who arrived in 2011 were only released from detention after six to eight months, the Jesuit Refugee Service told FRA. Such delays cover the time during which the Agency for the Welfare of Asylum Seekers (AWAS) conducts its assessment and identifies appropriate accommodation.

Source: FRA, Fundamental rights at Europe’s southern sea borders – forthcoming 25 March 2013

2. Making hate crime visible in the European Union: acknowledging victims' rights

http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf

Table 1: Classification of official data collection mechanisms pertaining to hate crime, by EU Member State

Limited data	Good data	Comprehensive data
<i>Few incidents and a narrow range of bias motivations are recorded</i>	<i>A range of bias motivations are recorded</i>	<i>A range of bias motivations, types of crimes and characteristics of incidents are recorded</i>
<i>Data are usually not published</i>	<i>Data are generally published</i>	<i>Data are always published</i>
Bulgaria Cyprus Estonia Greece Hungary Ireland Italy Latvia Luxembourg Malta Portugal Slovenia Spain Romania*	Austria Belgium Czech Republic Denmark France Germany Lithuania Poland Slovakia	Finland Netherlands Sweden United Kingdom

Notes: *No evidence on hate crime data collection was found for Romania. Information as of September 2012.

Source: FRA desk research and FRA analysis of data provided by the FRA’s research network

(p.8)

“The readiness of legislators in EU Member States to extend definitions of hate crimes to a wide range of categories is a clear trend observable in Austria, Belgium, Croatia, Finland, Latvia, Lithuania, Malta, the Netherlands, Romania and Spain. Other EU Member States, like Denmark, Hungary, Sweden and the United Kingdom have included at least sexual orientation as an additional category of discrimination.” (p.25)

⁷ Information provided to the FRA by the Maltese Ministry of Justice and Home Affairs, November 2012.

Asylum

“In 2011, 301,000 asylum applications were lodged in 27 EU Member States. Compared with the 2010 figure, this corresponds to an increase of 42,000 applications. Eurostat estimates – on the basis of the share of repeat applicants available for 21 EU Member States – that around 90% of these were new applicants and around 10% were repeat applicants. The main countries of citizenship from which the applicants came were: Afghanistan (28,000 or 9% of the total number of applicants), Russia (18,200 or 6%), Pakistan (15,700 or 5%), Iraq (15,200 or 5%) and Serbia (13,900 or 5%). The highest number of applications was lodged in France (56,300 applications), followed by Germany (53,300), Italy (34,100), Belgium (31,900), Sweden (29,700), the United Kingdom (26,400), the Netherlands (14,600), Austria (14,400), Greece (9,300) and Poland (6,900). These 10 EU Member States accounted for more than 90% of applicants registered in the EU27 in 2011. When compared with the population of each Member State, the highest rates of applicants registered were recorded in **Malta** (4,500 applications per million inhabitants), Luxembourg (4,200), Sweden (3,200), Belgium (2,900) and Cyprus (2,200).” (p. 40)

“Traditionally used in the criminal justice system, alternatives to detention have acquired increasing importance in the context of return procedures. In November 2010, only two-thirds of EU Member States provided for alternatives to detention in their national legislation. Over the reporting period this proportion increased and at the end of 2011 only two countries, **Cyprus** and **Malta**, had yet to introduce such alternatives⁸ This development can be explained in two ways – the need to transpose the Return Directive and the desire to reduce immigration detention. No alternatives are provided for in the Croatian legislation, except for Article 100 of the Aliens Act, which provides for the possibility of placing foreigners in an open facility if they cannot be detained for health or other justified needs or reasons.” (p.48)

“The European Commission sponsored a study on the implementation of Article 8 (6) of the Return Directive in 2011. This sub-section builds on the results of this study and reflects on the results as of 31 December. At least 13 Member States bound by the directive had not established an effective monitoring system by the end of 2011. This includes countries: with no monitoring system yet in place (**Cyprus, France, Italy, Malta, Poland** and **Slovenia**); where law enforcement authorities responsible for implementing the return operation carry out the monitoring (**Belgium** and **Romania**) or where it covers only specific cases (monitoring by the judiciary of certain expulsion cases in **Spain**); and where monitoring systems are not operational (**Bulgaria, Finland, Greece** and **Sweden**).” (p. 51)

Equality

“Large differences in pay between women and men – the so-called gender pay gap – remain a reality throughout the EU, as data published annually by Eurostat show (Figure 5.1). The latest available data show that although the gender pay gap decreased by 1% in the EU as a whole between 2008 and 2010, women were still paid, on average, 16.4 % less than were men. The lowest gender pay gaps in 2010 are found in Slovenia (4.4%), Italy (5.5%) and **Malta** (6.1%), and the highest in Austria (25.5%), the Czech Republic (25.5%) and Germany (23.1%). The gender pay gap decreased in 15 Member States between 2008 and 2010, generally modestly. The largest decreases were observed in Lithuania (-7%), Slovenia (-4.1%), Malta (-2.5%) and the United Kingdom!(-1.9%). The gender pay gap increased in seven Member States between 2008 and 2010, with the highest variations observed in Latvia (+4.2%), Portugal (+3.6%), Romania!(+3.5%) and Bulgaria!(+2.1%).” (p.129)

⁸ In Malta, Art. 25A(13) of the Immigration Act provides for the possibility to impose reporting duties, but only for individuals who have been released from detention.

“In **Malta**, the uninterrupted period of maternity leave was extended from 14 to 16 weeks as of January 2012 and will be further extended to 18 weeks as from 1 January 2013. However, this extension does not come along with an entitlement to full pay during these additional weeks (amendment to the Employment and Industrial Relations Act, Cap. 452).⁹” (p. 130)

“The greatest number of developments at national level concerned changes to the definition of ‘family member’ to include same-sex partners for the purposes of free movement and family reunification. Austria, Estonia, Greece, Latvia, **Malta**, Romania, Slovakia and Slovenia all instituted this change.” (p. 134)

“The Constitutional Court in **Malta** found in November 2010 that the impossibility of a transgender woman to marry a person of her choice violated Article 12 of the European Convention on Human Rights (ECHR), which protects the right to marry and establish a family. This judgment was overturned on appeal in May 2011. The court ruled that the applicant could not be considered a woman under the Marriage Act, even though an annotation had been made in her birth certificate as early as 2006 to reflect her preferred female gender.¹⁰” (p. 136)

“Lower rates of employment for younger and older workers could be indicative of indirect discrimination on the grounds of age in employment. Data collected by Eurostat on a quarterly basis thus show that younger persons between the ages of 15 and 24 and older persons between the ages of 55 and 64 have lower rates of employment compared to the active population (age group 15 to 64) as a whole. In addition, younger persons have lower rates of employment than older persons across most of the EU Member States, with the exception of Austria, **Malta**, the Netherlands and Slovenia (Figure 5.2).” (p. 143)

“In **Malta**, the Commission for Domestic Violence (CDV) commissioned research that found that one in four women reported having experienced violence at least once in their lifetime. Half of these reported that the violence was still taking place during the year the survey was carried out. Despite this, court protection orders are rarely implemented, nor do police have the power to remove suspected offenders from their homes.¹¹” (p.224)

5. Involuntary placement and involuntary treatment of persons with mental health problems

http://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems_en.pdf

“In 12 Member States, the existence of a significant risk of serious harm to oneself or others and a confirmed mental health problem are the two main conditions justifying involuntary placement. The need for a therapeutic purpose is not explicitly stipulated. This is the case, in **Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Germany, Estonia, Hungary, Lithuania, Luxembourg, Malta** and the **Netherlands**. (p. 31)

“In other EU Member States, the use of less restrictive approaches applies only to involuntary treatment. Such is the case in **Malta**, where according to Section 14 (3) of the Mental Health Act the two medical practitioners applying for an involuntary treatment measure “must specify

⁹ Malta (2011), Employment and Industrial Relations Act (Cap. 452).

¹⁰ Malta, Constitutional Court, Civil appeal 43/2008/2, *Joanne Cassar v. Director of Public Policy*, 23 May 2011.

¹¹ Fsadni *et al.* (2011); Laiviera (2011).

whether other methods of dealing with the patient are available and, if so, why such methods are not appropriate.”¹²” (p.33)

“A small number of EU Member States laws do not refer to the person’s opinion in the course of an involuntary measure. This is the case in the **Czech Republic, Greece, Latvia, Malta, Slovakia** and the **United Kingdom.**” (p. 34)

“In a few EU Member States the final decision remains a medical one. For example, in **Malta**, the decision is taken by the manager of the psychiatric hospital;¹³” (p. 37)

6. The Racial Equality Directive: application and challenges

http://fra.europa.eu/sites/default/files/fra_uploads/1916-FRA-RED-synthesis-report_EN.pdf

“Some questions have also been raised regarding the independence of equality bodies from central government. This is owed to the relationship that an equality body may have with government ministries. This may be physical (where an equality body shares its premises with a ministry), financial (where a ministry determines the level of funding), organisational (where equality body’s director is appointed by a minister or attached to a ministry). One or more of these concerns were expressed in relation to Italy, **Malta**, Hungary, Slovenia and Spain. While these issues may not affect the independence of the equality bodies in practice, they may give rise to unfavourable perceptions, affecting the confidence of victims to approach them. (...) Few Member States collect or publish data regarding the number of cases on racial or ethnic discrimination that are brought before a court. Where data on cases involving discrimination law is collected, the results are sometimes not disaggregated according to the ground of discrimination. Where information is available it suggests that the number of cases relating to racial or ethnic discrimination that go through the courts remain low for most Member States. [...] Again, some Member States have registered very few complaints. For instance, fewer than 20 were lodged with equality bodies in Estonia, Luxembourg, **Malta**, Portugal, Romania, the Slovak Republic, and Slovenia during 2008. At the other end of the scale the French equality body registered over 3,009 cases in 2009.” (p.12)

7. Fundamental rights of migrants in an irregular situation in the European Union

http://fra.europa.eu/sites/default/files/fra_uploads/1827-FRA_2011_Migrants_in_an_irregular_situation_EN.pdf

“Altogether, responses from 24 of the 27 EU Member States were received.¹⁴” (p.17)

¹² Malta, Mental Health Act 1981.

¹³ Malta, Mental Health Act, Section 16(1).

¹⁴ Completed questionnaires were received from all EU Member States except Luxembourg, **Malta** and Romania.

Table 2: Policy options for persons not removed due to practical or technical obstacles – certification given to persons concerned

Country	No certification (Article 18(1)(a))	Residence permit	Administrative practice	Source
Austria	✓	✓		Residence Act, 69a (permit after 1 year possible) Aliens Police Act, 46a
Belgium	✓	✓		Aliens Act, 9bis
Bulgaria	✓		✓	Law on Foreigners, 24-25
Cyprus	✓	✓		Aliens and Migration Regulations, Article 15(1)(B) 1972
Czech Republic	✓	✓		Foreign Nationals Act, Sections 33 and 43 read with 179
Denmark	✓	✓		Aliens Act, 9(c)(2)
Estonia	✓			OLPEA, 14(5) and 7(3)
Finland	✓	✓		Aliens Act, 51,52,89
France	✓	✓		Code of Entry and Residence of Foreigners, Article L 513-4
Germany	✓	✓	✓	Residence Act, 60a (permit possible after some time, in line with special rules)
Greece	✓		✓	Law 3907/2011, 24-4
Hungary	✓	✓		TCN Act, 48(3)
Ireland	✓	✓		Immigration Act 1999, 3(3)b, 3(6) Temporary leave to remain
Italy	✓			Legislative Decree 286/98, Article 14 (as amended)
Latvia	✓			-
Lithuania	✓	✓		Legal Status of Aliens Act, 128, 132 Permit possible after 1 year
Luxembourg	✓			-
Malta	✓		✓	Administrative practice to issue visa to those released
Netherlands	✓	✓		Aliens Act, 8j and Aliens Act Implementation Guidelines at B/14/3.2.2
Poland	✓	✓		2003 Aliens Protection Act, 97, 98
Portugal	✓			-
Romania			✓	Emergency Ordinance 194/2002 republished, Chapter V, Section 6, Article 102-104
Slovakia	✓	✓		Aliens Act, 43(1)c
Slovenia	✓	✓		Aliens Act, 52
Spain	✓			-
Sweden	✓	✓		Aliens Act, Chapter 12 (Sections 1-19)
United Kingdom	✓			-

Notes: It is assumed that in all countries, at least some persons are not provided with any form of certification of their suspension of removal. General discretionary powers by the administration to grant a permit have not been included in this list.
Source: FRA, 2011, based on national legal provisions

“Similarly, in Malta, although the law does not provide for a suspension of removal, if rejected asylum seekers (or other migrants in an irregular situation) are released from detention and their removal is still pending, they can be issued by administrative practice with a short-term visa.¹⁵” (p.36)

“Promising practice; Taking a stand against exploitation and abuse of irregular labourers; The General Workers Union (GWU) in Malta, the country’s largest trade union, has taken a strong stand against the exploitation and abuse of irregular labourers in Malta. The Union acknowledged that providing irregular labourers with a fair wage and adequate work ing conditions would serve Malta and the union itself better by, for example, avoiding artificially

¹⁵ The visa is valid three months and generally renewable. Chapter 217 of the Laws of Malta, Immigration Act, Article 6.

low wages. Migrants in an irregular situation benefit the host society by taking jobs that the Maltese are unwilling to take, and are unfairly accused of causing unemployment.¹⁶” (p.56)

“In a second group of countries, persons renting accommodation to migrants in an irregular situation can be punished on the basis of general offences on facilitating irregular entry or stay. This appears to be the case in France, Lithuania, Malta, Romania, Sweden and the UK. (...) In Malta, it is a criminal offence to assist to reside or to harbour any person contrary to the provisions of the immigration legislation. By inference, sheltering persons without residence permits, visas or authorisations to land and remain in Malta may be considered an offence.¹⁷” (pp.61-62)

“The following EU Member States are examples of a more restricted access to social assistance for non-removed persons, as provisions for basic social rights such as food and clothing are conditional upon residence in accommodation centres: Denmark, Hungary, Bulgaria, Lithuania and Malta. The Danish Immigration Service provides financial aid and food to those with no other means for relief, but requires them to stay in accommodation centres.³³⁰ In the case of Hungary, once the maximum detention period of six months has passed, non-removed migrants are placed in so-called ‘community shelters’, maintained by the Office of Immigration and Nationality, where they are provided with basic material assistance such as food and clothing. In Bulgaria and Lithuania, individuals with a suspension of removal are not provided with any form of minimum social assistance unless they remain in accommodation centres. In Malta, at the end of the detention period, non-removed persons may stay in accommodation centres where they are entitled to financial support, which is managed by the Agency for the Welfare of Asylum Seekers (AWAS) which falls under the remit of the Ministry of Justice and Home Affairs.” (p. 69)

8. Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States

http://fra.europa.eu/sites/default/files/fra_uploads/1659-FRA-homophobia-synthesis-report-2011_EN.pdf

“Seven Member States (Czech Republic, Finland, Italy, Malta, Poland, Portugal and Spain) currently have no equality body covering sexual orientation discrimination.” (p.22)

“In contrast, in 11 other Member States, no registered partnership exists in domestic legislation (Bulgaria, Cyprus, Estonia, Greece, Italy, Latvia, Lithuania, Malta, Poland, Romania, and Slovak Republic). In these Member States, either registered partners do not qualify as family members for the purposes of entry and residence, or the situation is unclear.” (p.29)

9. EU-MIDIS Data in Focus Report 5: Multiple discrimination

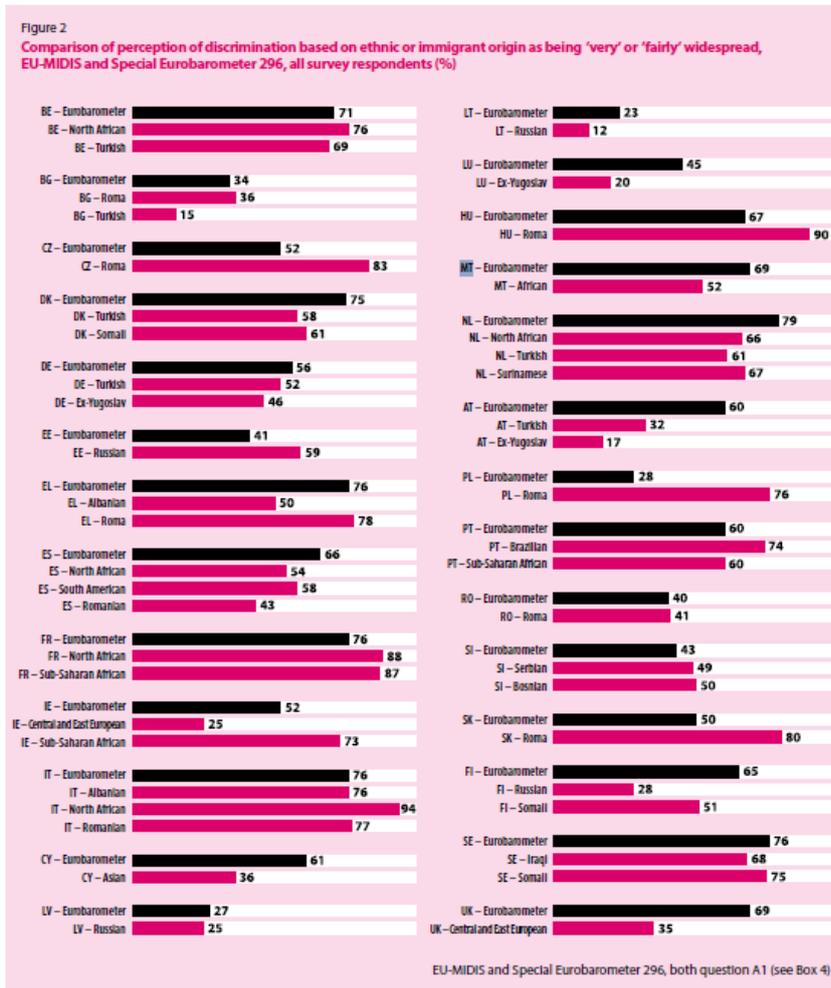
http://fra.europa.eu/sites/default/files/fra_uploads/1454-EU_MIDIS_DiF5-multiple-discrimination_EN.pdf

“Sampling approach: 1) Random route sampling with focused enumeration: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Greece, Estonia, France, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia and Spain 2) Address-based sampling: Denmark,

¹⁶ See the General Workers Union, available at: www.gwu.org.mt/documents/Migrants_Workers_Paper_110908.pdf.

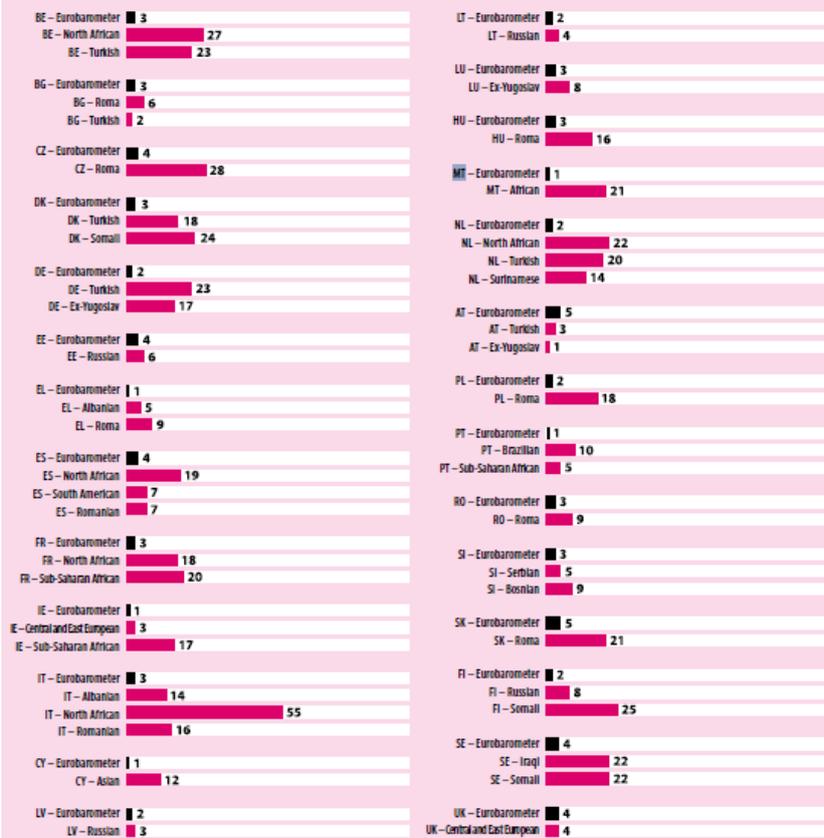
¹⁷ Malta, Immigration Act, Article 31(1)(a).

Germany, Finland and Luxembourg 3) Interviewer generated and network sampling: **Malta** 4) Combination of (1) and (3): Ireland, Netherlands, Slovenia, Sweden, and the UK” (p.2)



(p.9)

Figure 4
 Comparing results from EU-MIDIS and Special Eurobarometer 296:
 discrimination experiences on more than one ground, last 12 months – all survey respondents (%)



EU-MIDIS question A2, and Special Eurobarometer 296 question QA3 (see Box 5)

10. The right to political participation of persons with mental health problems and persons with intellectual disabilities

http://fra.europa.eu/sites/default/files/fra_uploads/1216-Report-vote-disability_EN.pdf

“The **Hungarian** Constitution provides an explicit exception from the universal right to vote – only persons with full legal capacity can exercise it. Persons placed under full or partial guardianship, even if in an unrelated area (such as parental rights, or consent to medical treatment), are excluded from political participation. Similar constitutional provisions can be found in several countries: the **Czech Republic, Denmark, Estonia, Greece, Lithuania, Luxembourg, Malta** or **Poland and Portugal**, among others.” (p.15)

Table 7.1: The right to political participation of persons with mental health problems and persons with intellectual disabilities

Country	Exclusion	Limited Participation	Participation
AT			X
BE	X		
BG	X		
CY		X	X
CZ	X	X	
DE	X		
DK	X	X	
EE	X	X	
EL	X		
ES		X	X
FI		X	X
FR*		X	X
HU**		X	
IE	X		X
IT			X
LT	X		
LU	X		
LV	X		
MT	X	X	
NL			X
PL	X		
PT	X		
RO	X		
SE			X
SI		X	
SK	X		
UK			X
HR***	X		

Notes: A Member State can be represented in more than one column, as persons with health problems and persons with intellectual disabilities may be treated differently according to the national law of the respective Member State.

* Due to a legislative amendment which does not affect the right to vote, the relevant article is now: Article L3211-3 7° Public Health Code. ** Hungary, Article XXIII (2) Basic Law. *** Croatia, Act on Voter Registers, 30 April 1996.

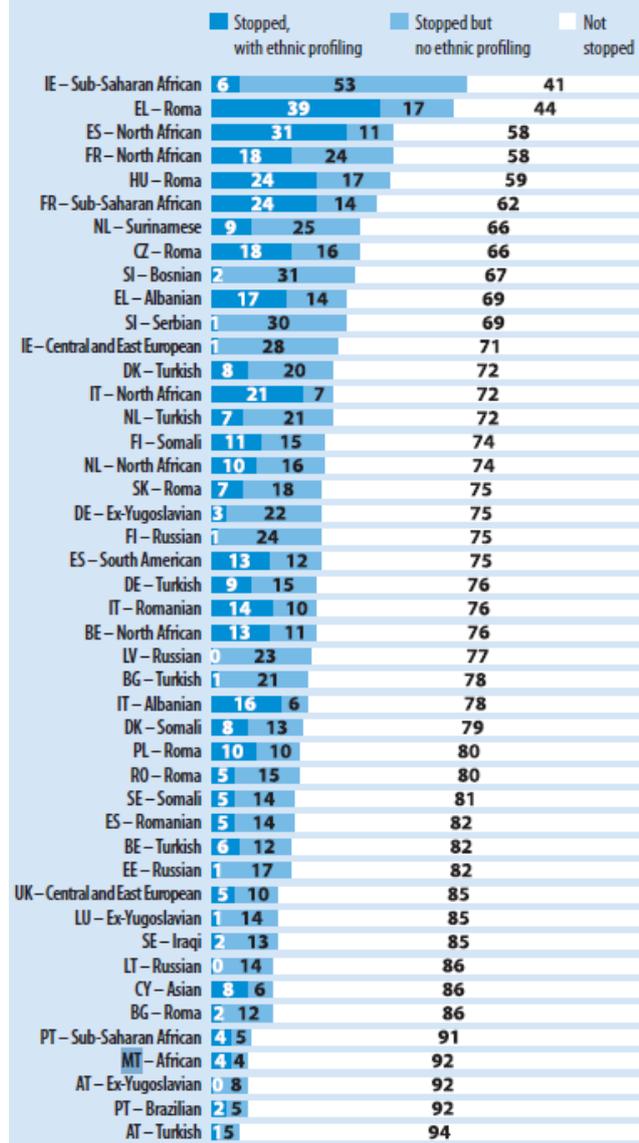
Source: FRA, 2011; based on information published in the FRA report on The right to political participation of persons with mental health problems and persons with intellectual disabilities in November 2010, p. 23.

http://fra.europa.eu/sites/default/files/fra_uploads/2211-FRA-2012_Annual-Report-2011_EN.pdf (p.189)

11. EU-MIDIS Data in Focus Report 4: Police Stops and Minorities

http://fra.europa.eu/sites/default/files/fra_uploads/1132-EU-MIDIS-police.pdf

Figure 1
 Stopped by the police in the past 12 months (%)

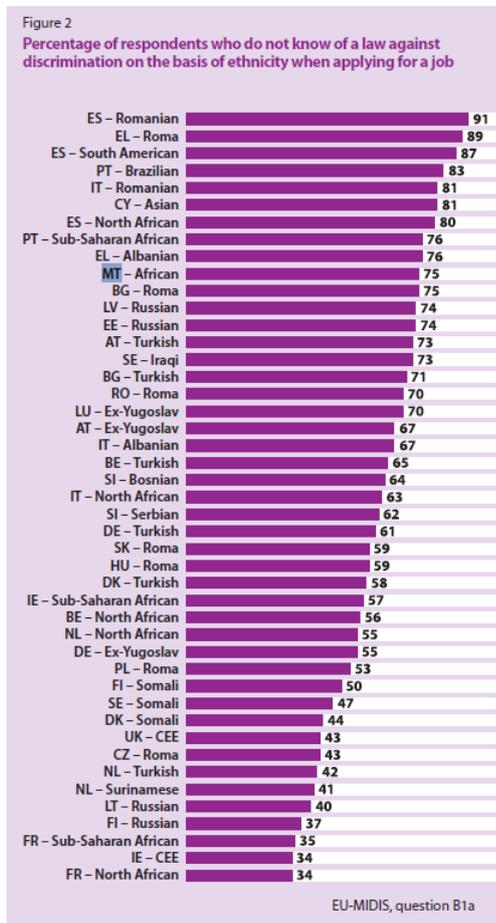


EU-MIDIS, questions F3 and F5

(p.7)

12. EU-MIDIS Data in Focus Report 3: Rights Awareness

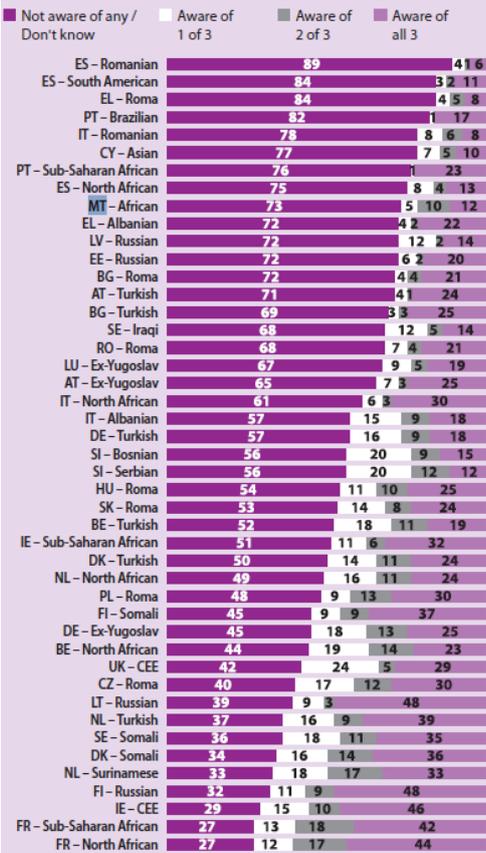
http://fra.europa.eu/sites/default/files/fra_uploads/854-EU-MIDIS_RIGHTS_AWARENESS_EN.PDF



(p.6)

Figure 5

Percentage of respondents who do not know of a law against discrimination of immigrants and ethnic minorities in any of the three situations

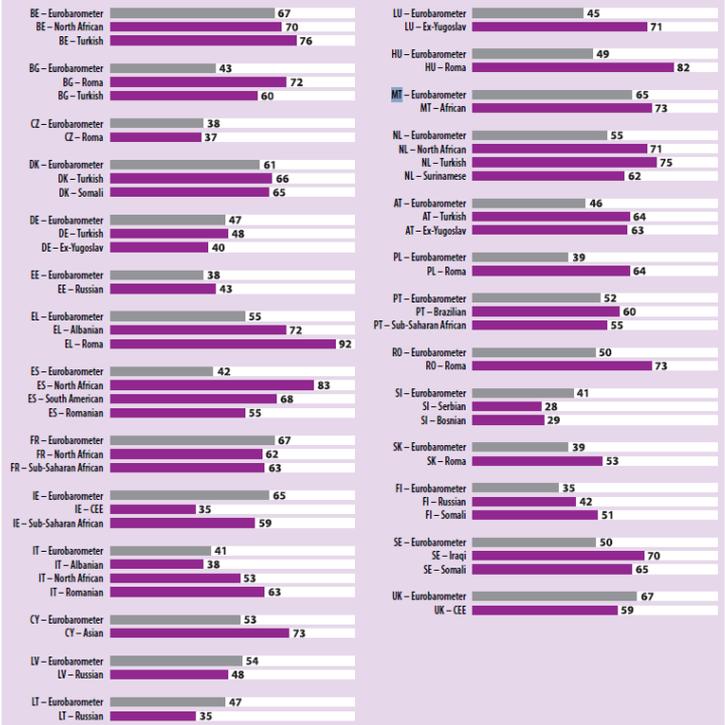


EU-MIDIS, questions B1a-B1c

(p.7)

Figure 6

Percentage of respondents who had never heard of the Charter of Fundamental Rights of the European Union



EU-MIDIS, question B3, and Flash Eurobarometer 213, question Q5

(p.8)

Figure 9
Awareness of Equality Bodies (or equivalent organisations) %

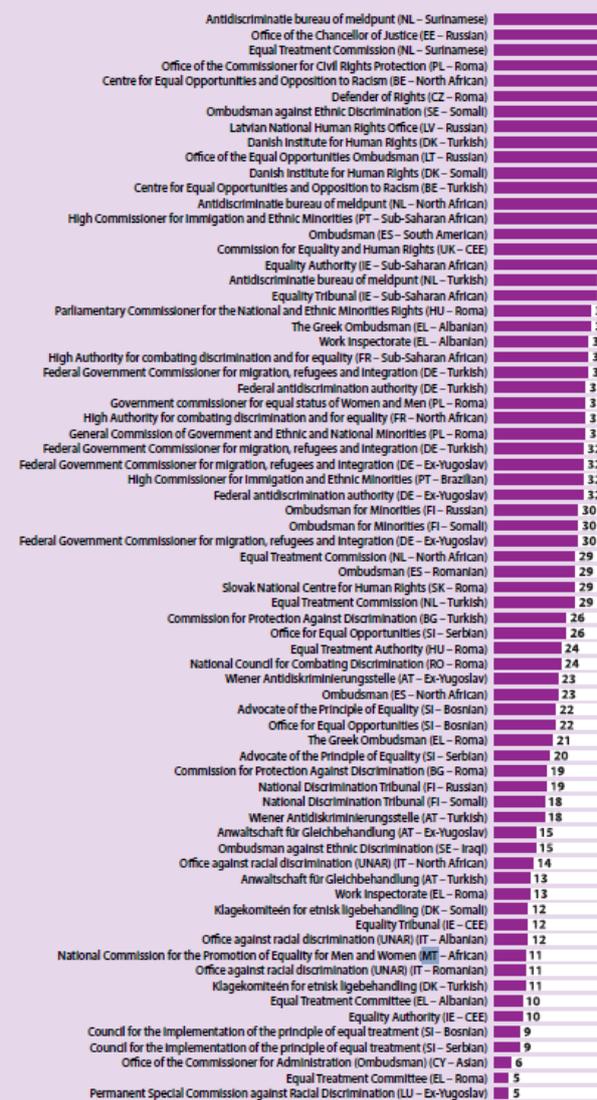
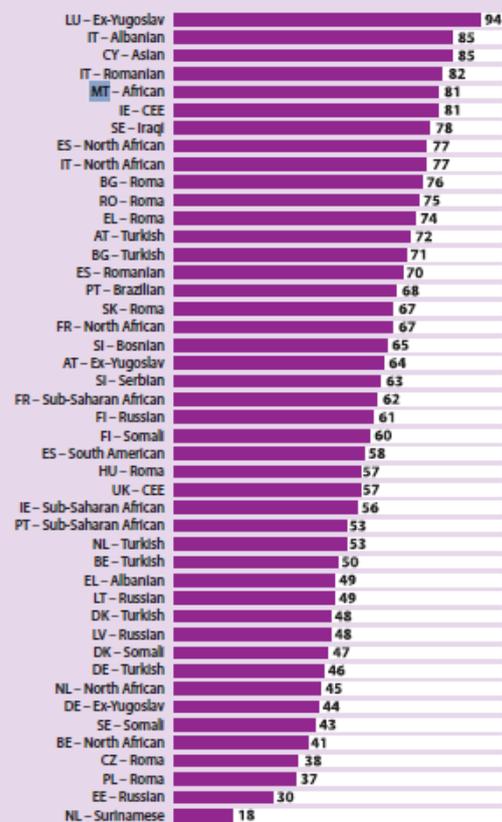


Figure 10
Percentage of respondents who have not heard of any of the Equality Bodies or equivalent organisations (up to three) in their country



EU-MIDIS, questions B2a-B2c

(p.11)