



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination Seventy-ninth session

### Summary record of the 2114th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 24 August 2011, at 3 p.m.

*Chairperson:* Mr. Kemal

*later:* Mr. Prosper (Vice-Chairperson)

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*Fifteenth to twentieth periodic reports of Malta*

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*The meeting was called to order at 3.15 p.m.*

**Consideration of reports, comments and information submitted by States parties under article 9 of the Convention** (*continued*)

*Fifteenth to twentieth periodic reports of Malta (CERD/C/MLT/15-20)*

1. *At the invitation of the Chairperson, the delegation of Malta took places at the Committee table.*
2. **Mr. Camilleri** (Malta) said that the Constitution and the European Convention on Human Rights, which had been incorporated into domestic law, explicitly prohibited racial discrimination. Under the Criminal Code of 2009, a person who was an accessory to or who instigated acts of racially-motivated violence or hatred, whether committed against an individual or a group, was liable to prison. The provision also applied to offences committed against a particular group during war or civil unrest, on the grounds of its race, colour, religion, national or ethnic descent or origin, and when the perpetrators of such acts were legal persons.
3. Malta had developed a legal framework, including the press act, the Criminal Code and the electronic communications act, enabling the State to prosecute persons whose comments online and in the media incited racial hatred. The Criminal Code stipulated that xenophobia was an aggravating circumstance and that penalties were increased by one degree when an offence was committed by a public officer. A person who intentionally inflicted pain on any discriminatory grounds was liable to 5 to 9 years' imprisonment, unless another applicable provision provided for a harsher penalty. Members of the security forces or other public servants convicted in criminal court were also liable to disciplinary sanctions.
4. Since submitting its previous periodic report in 1999, Malta had adopted the Equal Treatment of Persons Order which reversed the burden of proof in civil actions for racial discrimination. Article 39 of the Constitution guaranteed the right to equal treatment before the courts and there was virtually no racial discrimination in access to justice. No complaints of racial discrimination had been recorded between 2001 and 2005, or in 2007 and 2010. A mere two actions had been brought in 2006 and only one in 2008 and 2009. Although the Criminal Code did provide for compensation for victims of racial discrimination, no request for reparation had ever been made to the courts. The Constitution and the European Convention on Human Rights guaranteed all citizens their civil and political rights and prohibited any racial discrimination in the exercise thereof. Any law deemed to be discriminatory could be challenged and ruled unconstitutional.
5. He briefly described the legal provisions Malta had adopted to give effect, with no distinction of race or ethnic origin, to the rights covered by article 5 of the Convention, such as the right to freedom of movement, the right to marriage and choice of spouse, the right to own property, the right to inherit, the right to freedom of thought, conscience and religion, the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association. He invited Committee members who wished for further information on those topics to turn to paragraphs 40 to 63 of the report under consideration.
6. The right to equal participation in cultural activities was not explicitly guaranteed, but any person barred from a cultural event due to their race could invoke article 32 of the Constitution which guaranteed equal protection under the law. Furthermore, the Equal Treatment of Persons Order provided additional protection against racial discrimination in areas such as the provision of public or private goods and services, social services, health care, housing and education. Under the European Convention on Social and Medical Assistance, to which Malta was party, citizens of other States parties who resided legally in the country and did not have the means to obtain care were entitled to the same social and

medical assistance as Maltese nationals. Consequently, there was no discrimination in access to health care in Malta and the State had instituted universal medical coverage. Illegal immigrants and foreign nationals who held valid work permits also had full access to health care through the public health-care system, with the exception of some dental and eye care. Policies implemented by the Housing Authority were in keeping with the provisions of the Equal Treatment of Persons Order and were therefore not discriminatory. Regarding access to the rental housing market, the Housing Authority reviewed all applications for social housing and allocated units solely on the basis of objective criteria.

7. Malta had instituted free mandatory schooling for all children from the European Union and other countries who held a permanent residency permit. It nonetheless ensured that children of illegal immigrants and refugees also had access to education. Given the rising number of immigrants from North Africa, emphasis had been placed on promoting diversity in the school setting, and activities had been carried out to raise students' awareness of the culture, religion and history of immigrants and minorities. The National Commission for the Promotion of Equality was responsible for ensuring equal access to goods and services. It gave support to individuals who felt they had been discriminated against because of their race or ethnic origin, and raised awareness among corporate managerial and executive staff, as well as public servants, of the principles of equality, diversity and non-discrimination.

8. Maltese immigration law, which applied to all foreign nationals irrespective of race and ethnic origin, distinguished between citizens of the European Union and those of other countries. Measures concerning illegal entry into the country were also applied free of any considerations of race. Moreover, the principle of non-refoulement was covered in the Refugees Act and its implementing regulations. For further information on the treatment of irregular migrants, members of the Committee were invited to turn to paragraphs 125 to 129 of the report. Since 2002, the Office of the Refugee Commissioner had received a continuous flow of requests for international protection from irregular migrants. Although Malta fulfilled its obligations in that regard, the situation nonetheless caused some problems in the country. For fear that the local labour market would become saturated, the authorities had requested that some of the migrants be relocated to countries in the European Union and elsewhere. In 2009, as part of a project co-financed by the European Fund for Refugees, France had opened its doors to 95 persons benefiting from international protection and residing in Malta. Ten other European Union members had followed suit with a project that had led to the relocation of some 250 individuals in 2010. The United States of America had also answered Malta's appeal and authorized the relocation, between 2007 and mid-June 2010, of 514 persons benefiting from international protection.

9. In response to clashes in a detention centre in 2005, the authorities had re-examined the management of prison facilities and had created a prison administration service. Personnel of the three existing detention centres, who were recruited for the sole purpose of working there, now received more specialized training. The inmates involved in the 2005 incidents had been transferred to a distinct and independent cellblock. Moreover, journalists were now authorized to enter detention centres. The incidents that had occurred in 2008 had been provoked by immigrants who were demanding prompt return to their countries and were criticizing the sluggish procedures being carried out by the authorities to return them. Incidents had reoccurred at the Hal Safi detention centre on 16 August 2011 following the authorities' refusal to address international protection applications by migrants. Following an investigation, 22 foreign nationals had been brought before the courts and placed under judicial investigation. They had pleaded not guilty and had remained in detention.

10. *Mr. Prosper (Vice-Chairperson) took the Chair.*

11. **Mr. Saidou** (Country Rapporteur) noted that the State party faced a continuous flow of illegal migrants who suffered increasing discrimination, particularly in terms of housing

and employment. According to the European Commission against Racism and Intolerance of the Council of Europe, Arabs and individuals perceived as such were the most discriminated against in respect of admission to leisure facilities, and Muslims were the victims of prejudice. He asked for information on that situation and for details of the nationality of Arab and Muslim victims of discrimination. He wished to know how the international economic crisis had affected the social situation in the country and what measures had been taken to prevent and combat propaganda by extremist political parties. He asked if Malta had adopted a national plan of action against racial discrimination and if it was considering establishing a national human rights institution in line with the Paris Principles.

12. Turning to article 2 of the Convention, he asked the delegation to provide details on the amendments made to the Criminal Code in 2009, the various administrative penalties set out in the general civil service regulations and any follow-up to the Depasquale report on the incidents at the Hal Safi detention centre in 2005 and 2008. He wished to know whether the new legal and regulatory measures to combat racial discrimination had been made available to the population in both Maltese and English. Noting that criminal and civil provisions punishing racial discrimination did not apply to relations between private individuals and that civil and administrative law did not include anti-discrimination provisions in key areas such as housing and access to leisure facilities, he asked what steps, especially legislative, had been taken to rectify the situation. Regarding article 4 of the Convention, it would be useful to know which provisions of the Criminal Code punished racial offences and hateful statements and comments by political figures that were disseminated by the media, including via the Internet.

13. Further information would be helpful regarding measures taken to simplify the filing of complaints by victims of discrimination, provide them legal assistance and ensure perpetrators were prosecuted and convicted, particularly if they were members of the security forces. He asked if the State party had in fact replaced police officers and military personnel employed in detention centres for illegal immigrants by better-trained civilian staff, and whether steps had been taken to combat racial stereotyping of children of irregular migrants. It would be interesting to know if children of immigrants, asylum-seekers and refugees had access to school and, if so, in what languages they were taught. He recommended that school curricula integrate the Convention as a way to combat racial prejudice and promote mutual understanding among racial and ethnic groups.

14. He expressed surprise at the small number of complaints, legal actions and judgements in cases of racist acts and recalled that in the Committee's view, the scarcity or lack of complaints and judgements for acts of racial and ethnic discrimination was not necessarily positive since it could be symptomatic of misinformed victims, fear of reprisals, lack of trust in the police and justice system or the authorities' insufficient awareness of what constituted a racial offence.

15. **Mr. Avtonomov** asked why the Office of the Ombudsman had not received any complaints of racial discrimination involving the Government or a State body. He wished to receive additional information on the status of the Convention in the domestic legal order and the laws that directly incorporated its provisions. More precise data on the various communities living in Malta, especially the Amazigh population, were also needed in order to ascertain whether they suffered particular forms of discrimination, including indirect discrimination. He wished to know whether the provisions punishing racial discrimination by public servants also applied to discrimination against foreign nationals, including immigrants illegally residing in the country.

16. **Mr. de Gouttes**, noting the discrepancy between the abundance of anti-discrimination legislation and the small number of related complaints, legal actions and judgements, wondered if greater attention would be paid to future complaints of racism. He

asked about the effects of recent events in the Arab world on the influx of asylum-seekers and refugees to Malta, how the Government was handling the situation and what assistance member countries of the European Union had given Malta.

17. **Mr. Murillo Martínez** wished to know what the consequences had been of reversing the burden of proof in civil procedures for racial discrimination, what circumstances had impelled the Government to step up the fight against online racism, and in what context the various amendments to the Refugees Act had been made and whether they had led to tougher migration laws. He asked if measures had been taken to encourage companies to promote equal employment opportunities, for both women and migrants, in light of the similar discrimination faced by the two categories.

18. **Ms. Dah** wished to know if there were any programmes specifically geared towards protecting women from discrimination and to what extent the influx of African immigrants had changed Maltese society, including any national policies adopted in response to that trend. She asked why so few cases of racial discrimination were submitted to the relevant authorities, what steps the State party and the European Union had taken to deal with the significant influx of migrants from Arab countries, and whether the Government was considering setting up larger-scale shelter programmes given that the economic climate was likely to worsen the situation.

19. **Mr. Diaconu** asked for an explanation of the statement in paragraph 77 of the periodic report (CERD/C/MLT/15-20) that the principle of equal treatment in employment did not apply to any differences of treatment based on nationality. He requested further details of the types of complaint that could be brought before the Parliamentary Ombudsman since it was not, according to the report, competent to receive complaints against government bodies and would not hear complaints for racial discrimination in the private sector unless it was designated as a national human rights institution.

20. **Ms. Crickley** wished to know how the National Commission for the Promotion of Equality dealt with matters of racial discrimination and if the Government intended to grant it the status of national human rights institution or to establish an independent national institution. She requested additional information on the effects of legislative reforms on the effectiveness of the fight against inequality and racial discrimination and details of the effectiveness of any concrete measures taken in that regard, in particular access by minorities to education and employment. She wondered what results had been achieved by training to raise awareness among prison staff of the issue of racial discrimination and what steps had been taken to avoid any further riots in detention centres.

21. **Mr. Amir** believed that Malta should adopt more appropriate immigration policies in order to meet the needs of persons seeking asylum whilst democracy was being established in their country of origin. He drew attention to the inconsistency of promoting the emergence of democracy in Arab nations and closing the country's borders to the resulting migration flows.

22. **Mr. Thornberry** asked how the authorities held the media to account for circumventing the ban on disseminating racist comments, by using innuendo and avoiding explicitly mentioning targeted groups by name. He wished to know if the press had a code of ethics and if a civil action could be brought against any media that violated article 4 of the Convention. He also wondered whether the spread of racist ideas on the Internet was an issue in Malta and, if so, how the authorities were combating the growing practice.

23. **Mr. Peter**, referring to article 2 of the Constitution which named the Roman Catholic Apostolic Religion as the State religion and made religious teaching of that faith compulsory in public schools, asked if the State party intended to change the article to take account of the growing number of immigrants belonging to other faiths. He wished to know why the right to work and the notion of gender equality were only mentioned in the

declaration of principles under chapter II, in other words in a non-binding section of the Constitution, and not in the charter of rights set out in chapter III. He also wished to know why the principle of equality was not among the fundamental rights and freedoms enshrined in the Constitution and why the State party had chosen to incorporate Council of Europe Directive No. 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin through a decree rather than an act.

24. He asked what the criteria were for determining a person's admissibility for the non-contributory social security scheme and why, at the appeals level, decisions of the Immigration Appeals Board could be reviewed only on points of law.

25. **The Chairperson** requested further details on the magnitude of the successive waves of migrants and asylum-seekers arriving in Malta in recent years and the reasons compelling them to leave their countries. He wished to know if the European Union had asked the Maltese authorities to take steps to avoid the spread of those migratory influxes to other European countries.

26. **Mr. Camilleri** (Malta) said that the Maltese authorities considered the events in North Africa as positive. All Mediterranean countries had a vested interest in the stabilization of the States concerned, which was why Malta was very active in the field of humanitarian aid and in coordinating international endeavours. The paucity of information contained in the report on the concrete implementation of laws arose from the fact that the problems facing Malta, especially the massive influx of immigrants, were new to the country.

27. **Mr. St. John** (Malta) said that the first influx of illegal immigrants had come in 2002 and that there had been 1,600 new arrivals that year. The figure had remained stable over subsequent years, except in 2008 when approximately 2,100 individuals had arrived in the country. The flow of migrants and refugees had slowed in 2010, but in 2011 it had markedly increased owing to the crisis in Libya. Most asylum-seekers were from East Africa, especially Somalia and Eritrea, while the rest came from West Africa, namely Ghana and Mali. The latest development in 2011 was that new entrants were not only passing through the Libyan Arab Jamahiriya but had also lived there for a time. There had been 1,500 recorded arrivals since the beginning of 2011. Although that figure was not very large in proportion to the Maltese population, which totalled some 500,000 inhabitants, it was nonetheless a challenge for the country.

28. Between 50 and 55 per cent of asylum-seekers were granted subsidiary protection, giving them the right to settle and work in Malta, despite the relatively restricted labour market and active population of 150,000 to 160,000 people. Moreover, because they generally lacked training, they had to vie for the rare low-skilled jobs. In order to deal with the issue, the State had set up an employment agency for asylum-seekers, providing career counselling and language classes. In addition, measures had been taken to relocate them in other European Union countries and the United States. Since 2007, the United States had taken in 700 refugees from Malta and, through a pilot project carried out in 2011, 220 individuals had been relocated in the European Union, primarily in France and Germany. The European Commission had agreed to extend the project and Germany had already committed to hosting 150 individuals. However, that was not enough to even out the situation, and the number of asylum-seekers arriving in the country continued to be higher than the number being relocated abroad. As the Dublin II Regulation of the Council of Europe applied to Malta, a person who applied for asylum in Malta could not undertake similar proceedings in another European Union country. Individuals who had been granted international protection by Malta did not have freedom of movement in the European Union and were therefore not meant to leave the country, unless they had lived there for five years and had obtained a temporary residency permit.

29. **The Chairperson** said that the Committee would continue its consideration of the fifteenth to twentieth periodic reports of Malta at the next meeting.

*The meeting rose at 6 p.m.*