



ACFC/SR/II(2004)011

**SECOND REPORT SUBMITTED BY MALTA
PURSUANT TO ARTICLE 25, PARAGRAPH 2
OF THE FRAMEWORK CONVENTION FOR
THE PROTECTION OF NATIONAL MINORITIES**

(Received on 1 December 2004)

Table of contents:

General Information on Malta.....	4
1. Country and People	4
Population.....	4
Population Structure.....	4
Religion	4
Language	5
Government.....	5
Judicial authority	5
Local Government.....	6
Economic and political integration	6
Economy.....	7
Gross Domestic Product for 2003	7
The labour market	7
Unemployment.....	8
Inflation	8
Monetary Policy in Malta.....	8
General legal framework for the protection of human rights.....	9
<i>Basic rights and fundamental freedoms</i>	9
<i>International human rights agreements</i>	9
Ratification of International Treaties	14
Foreigners in Malta	14
Asylum seekers and refugees	15
Detention of Asylum Seekers.....	17
Prohibited Immigrants.....	17
Persons granted Refugee and Humanitarian Status.....	17
Persons Repatriated	17
European Refugee Fund	17

Malta signed the Framework Convention on National Minorities on 11th May 1995; the Convention was ratified on 10th February 1998 and entered into force on 1st June 1998, with the following reservations:

The Government of Malta reserves the right not to be bound by the provisions of Article 15 insofar as these entail the right to vote or to stand for election either for the House of Representatives or of the Local Councils.

The Government of Malta declares that Articles 24 and 25, in particular, of the Framework Convention for the Protection of National Minorities of 1 February 1995 are to be understood having regard to the fact that no national minorities in the sense of the Framework Convention exist in the territory of the Government of Malta. The Government of Malta considers its ratification of the Framework Convention as an act of solidarity in the view of the objectives of the Convention.

The First Report was due on 1st June 1999 and was received by the Council of Europe on 27th July 1999. In their report, the Advisory Committee and the Committee of Ministers of the Council of Europe recognized that the application of certain provisions of the Framework Convention is limited, given the lack of national minorities in Malta.

General Information on Malta

1. Country and People

Malta is an independent republic in the Commonwealth of Nations, consisting of a small group of Islands – Malta, Gozo, Kemmauna, Kemmaunette, and Filfla. The area of the largest island, Malta, is 246 sq km (95 sq miles); of Gozo, 67 sq km (26 sq miles); and of Kemmauna, 3 sq km (0.12 sq miles). The total area is 316 sq km (122 sq miles). The Maltese Archipelago lies some 93 kilometres south of Sicily and 290 kilometres north of Libya. This strategic position has allowed Malta to develop as an important trading post. The capital and leading port is Valletta. The population of Malta (2004 estimate) is 406,342. With an area of 315.590 sq kilometers, Malta has a population density of 1,257 persons per sq km (3254 sq miles), which is the highest in Europe.

Malta's culture stems largely from the Islands' history of domination by Arab, Norman, European and British influences, as well as from the widespread prevalence of the Roman Catholic Church.

Population

The estimate of the total population for the Maltese islands for 2002 was 397,296 persons, made up of 196,836 males and 200,460 females. These included work and resident permit holders and foreigners residing in Malta. The number of foreign residents remained the same as in the previous year, representing 2.6 per cent of the total population; The end year 2002 the Maltese population (excluding permanent foreign residents) stood at 386,938 consisting of 191,975 males and 194,963 females.

Population Structure

The aged:child ratio for the population in the Maltese islands, in the year 2002, stood at 68:100.

Malta's population is still "young" by European standards. The 0-14 age group represents 18.9 per cent of the Maltese population, whereas the 65+ age group stands at 12.8 per cent. The number of potential workers for each pensioner is 5:3:1 in 2002 declining to 3:1:1 for the year 2025.

The Maltese people can look forward to longer life than that of previous generations. Life Expectancy in 2002 stood at 75.78 for males and 80.48 for females.

During 2002, there were 96 persons, 46 males and 50 females who left to settle abroad. There were 382 returning migrants made up of 219 males and 163 females plus 533 non-Maltese settlers and 801 naturalizations and registrations, which included 18 adoptions. This latter figure was the lowest ever recorded, since adoptions from Romania have stopped at the end of 2000.

Religion

The Roman Catholic Church is predominant in Malta. About 98% of the Maltese people celebrate births, marriages and deaths with a religious service. A Sunday Mass Census held in

the Maltese Islands in December 1995 showed an attendance of around 67%. The Church has parish centres for English, Italian, French and German speaking communities.

Relations between the Catholic Church and other religious denominations active in the country are good. Inter-religious dialogue is also good. For instance, an annual Ecumenical Service is organized by the Malta Ecumenical Council on the occasion of the Octave of Prayers for Christian Unity (18th to 25th January 2004). The Malta Ecumenical Council consists of representatives of the Roman Catholic Church, the Anglican Church, the Union of the Church of Scotland and the Methodists, the Evangelical Church of Germany, and the Orthodox Churches¹. The number of persons within the Muslim community in Malta is estimated to amount to 3,000. This figure includes Maltese and foreigners, of all ages².

Language

The National Language of Malta is Maltese. The English language is very widely used, especially for business and administrative activities. Most of the population has a good knowledge of either Italian, French and German.

Government

According to the terms of the constitution of 1964, substantially amended in 1974, Malta is a democratic republic. The head of the state is the President, who is appointed by Parliament to serve a term of five years. Legislative authority is vested in the House of Representatives, composed of a minimum of 65 members elected to five-year terms by universal adult suffrage on the basis of proportional representation. The head of government is the Prime Minister appointed by the President from among the members of parliament and responsible to the legislature. The prime minister is assisted by a cabinet. Malta joined the European Union on 1st May 2004.

Judicial authority

The Maltese judicial system is basically a two-tier system, with a court of first instance presided by a judge or magistrate, and a court of appeal composed of either three judges or one judge, depending on whether the appeal is from a court presided by a judge or by a magistrate respectively. The system caters for all civil and criminal proceedings in Malta and Gozo. The jury system prevails for the more serious criminal crimes. The Constitutional Court is the appellate court in matters relating to alleged violations of human rights, the interpretation of the constitution and invalidity of laws. There is also right of access to the European Court of Human Rights in Strasbourg. In addition, there are various tribunals for specialised areas with varying degrees of competence. Ten Local Councils deal with depenalised offences.

Judges and magistrates are appointed by the President of Malta and are constitutionally independent of the Executive organ of governance. They must have practised as an advocate in Malta for not less than twelve and seven years respectively. Judges and magistrates enjoy security of tenure and can only be removed by the President following a motion in parliament carried by a two-thirds majority of all the members. Retirement age is 65 for judges and 60 for magistrates. Besides the Chief Justice, there are currently 16 judges and 17 magistrates.

¹ Information provided by the Public Relations Office of the Archbishop's Curia in Malta

² Information provided by The World Islamic Call Society, Malta Branch

Local Government

The Local Councils Department is responsible for Local Councils. It ensures Local Councils have the legislative authority to respond to local needs and offers management and administrative support along with statutory funding to 68 Local Councils. It also acts as a stimulant to the devolution and decentralization processes.

The Local Councils Department was established on 1st June 1993, at the time when the Local Councils Act (CAP.363), the statutory document which sets up Local Councils and also regulates their operation, was approved by Parliament.

The Local Councils Department acts as a focal point for both the Local Councils as well as the Ministry responsible for Local Government, where it is expected to exercise a supportive, coordinative and supervisory role.

In conducting this role, the Department is primarily guided by:-

- The Local Councils Act and related legislation;
- The Regulations and Procedures enacted in terms of the Local Councils Act;
- Other legislation which directly or indirectly refer to Local Councils;
- The Council of Europe's Charter of Local Self-Government which Malta ratified on 6th September 1993.

In practice, whilst the predominant role of the Department is to facilitate the effective and efficient functioning of the 68 Local Councils (54 in Malta and 14 in Gozo), it simultaneously ensures that the Councils operate strictly within the parameters of the law.

Economic and political integration

Accession talks for the EU were formally concluded on the 13th December 2002 in Copenhagen. Malta obtained 77 exemptions in the discussions aimed largely at protecting its industrial and agricultural sectors, but also including cultural issues such as the right to maintain the predominantly Roman Catholic country's ban on divorce. A non binding referendum was called for on the 8th March 2003 to determine whether the country would join the EU. Following an intensive campaign, 53.65% of the votes were cast in favour of joining the EU with 46.35% against. Former Prime Minister Eddie Fenech Adami whose mandate expired in 2004, called a general election for April 2003, four days before the proposed signing of EU accession treaty by 10 applicant countries, including Malta. At the general election that took place on 12th April 2003, the Nationalist Party won 51.8% of the votes while the Malta Labour Party took 47.5% and the environmentalist Alternative Demokratika (Green Party) 0.7%. The EU accession Treaty was signed on the 14th April 2003. In February 2004 Dr Lawrence Gonzi who until that point was the Deputy Prime Minister, took over as the new head of Government. Subsequently, Dr Fenech Adami was appointed President of the Republic.

Malta looks upon its contribution as a European Union member primarily from the perspective of being in a position to shape Europe's future from the inside through its participation in the decision-making process. This fact is particularly relevant in the external dimension, both on a general level, and more specifically in terms of focusing the EU's attention on issues pertaining to Malta's neighbourhood.

As an EU member state, Malta looks forward to strengthening even further sub-regional links between Europe and the Mediterranean. Malta's role in the Mediterranean area has always been an important one. In more recent past Malta has assumed a prominent role within the Mediterranean dimension of the OSCE (then CSCE) and of course within the Euro-Mediterranean Partnership.

As a European country with a Mediterranean personality, Malta cannot disassociate itself from developments taking place in the Mediterranean region. It is for this reason that Malta takes an active part in all the regional fora – The Western Mediterranean Forum (5+5), the Mediterranean Forum and the Euro-Mediterranean partnership. Malta hosted the Presidency of the 4+5 CIMO – Conference of the Ministers of the Interior of the Western Mediterranean from September 2003 to June 2004. The member states of CIMO were Malta, Algeria, Italy, Libya, Morocco, Portugal Spain, Tunisia. During the subsequent Tunisian Presidency, Mauritania first participated with an observer status and later requested its participation as a member country. Malta's role is to ensure the continuity of the process and endeavours to deepen the dialogue and to avoid polarization of positions by any side of the partnership.

Malta's co-operative foreign policy agenda therefore positions it favourably to progressively further the objectives which the Euro-Mediterranean Process is seeking to realise through its three chapters: namely, that of establishing a common area of peace and stability by institutionalising a political and security partnership, that of creating an area of shared prosperity by enhancing economic and financial interaction between Europe and the Mediterranean, and that of promoting exchanges between civil societies by developing a partnership in social, cultural, and human affairs.

Economy

Gross Domestic Product for 2003

Revised GDP data for the first three quarters of 2003 and provisional data for the last three months of the year show a substantial contraction of the Maltese economy. In the fourth quarter, this contraction was mainly brought about by a further deterioration in the external balance, with real imports rising in response to an increase in private consumption, and a decline in exports. Nevertheless, gross fixed capital formation continued to increase, while there was a significant rise in Government current expenditure. Malta's Gross Domestic Product (GDP) increased nominally by Lm26.5 million or 1.6 per cent to Lm1,712.2 million in 2003 compared to the previous year. In real terms the GDP contracted by Lm25.2 million or 1.7 per cent to Lm1,419.6 million.

The labour market

The labour market data compiled by the Employment Training Corporation (ETC) show that between September and November 2003 the labour supply contracted by 132 while the gainfully occupied population fell by 467. As a result, the number of unemployed rose by 335, pushing the unemployment rate up to 5.7%. The contraction in the gainfully occupied population between September and November was due to job losses in the public sector and in direct production, which more than offset a small increase in employment in market services. The number of the temporarily employed remained virtually unchanged over the period.

The decline in public sector employment was due to lower employment in public-controlled companies while, once again, the contraction in employment in private direct production was due to job losses in manufacturing. On the other hand, the increase in employment in private services was mainly due to increases in the wholesale & retail, insurance & real estate, and community & business sub-sectors. Together, these offset job losses in hotels & catering establishments and in the transport, storage & communications sub-sector.

On a year by year basis, the labour supply was down by 764 while the number of the gainfully occupied declined by 1,175. As a result, the number of the unemployed rose by 411 and the unemployment rate added 0.3 percentage points compared to a year earlier. The contraction in the gainfully occupied population over the year to November 2003 was primarily due to job losses in manufacturing and in public-controlled companies, in each of which employment was down by over 1,400. Conversely, employment in the private market services rose.

The total number of employed persons during the first quarter of 2004 was estimated to be 148,655. Of these 18.9 per cent were between the age of 15 and 24 years. The mean age of employed males was 40 years, whereas that of females worked out at 34 years.

Unemployment

From January to March 2004 the unemployment rate stood at 7.2 per cent. In absolute terms, the total number of unemployed persons were estimated to be 11,528 persons. The mean age of unemployed males was 32 years, whereas that of females worked out at 25 years. Among the total number of unemployed, 55.1 per cent had been looking for a job for over a year and a further 27.2 per cent had been looking for a job for less than 5 months.

Inflation

The downward trend in inflation in evidence since the second half of 2002 was halted during the fourth quarter of 2003. The twelve-month moving average rate of inflation rose from 1.1% in September to 1.3% in December, largely reflecting higher prices of food and of clothing & footwear. The increase in the standard VAT rate at the beginning of 2004 also had an impact on inflation, which continued rising to 1.7% in February 2004.

Monetary Policy in Malta

The Central Bank of Malta is responsible for the formulation and implementation of the monetary policy in Malta. The objectives of monetary policy are laid down in Article 4 of the Central Bank of Malta Act. According to law, the Bank's primary objective is to maintain price stability. Price stability is widely seen as the proper goal of monetary policy, essential to encourage sustainable economic growth. Without prejudice to this primary objective, the Bank promotes orderly and balanced economic development.

General legal framework for the protection of human rights

Basic rights and fundamental freedoms

A number of basic rights are enshrined in the Constitution of Malta. Article 32 of the Constitution states that “.... every person is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –

- a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- b) freedom of conscience, of expression and of peaceful assembly and association; and
- c) respect for his private and family life;

Other rights enshrined in the Constitution are: the protection of the right to life; protection from arbitrary arrest or detention; protection from forced labour, protection from inhuman treatment; protection from deprivation of property without compensation; protection for privacy of home or other property; protection of law; protection of freedom of conscience and worship; protection of freedom of expression; protection of freedom of assembly and association; prohibition of deportation; protection of freedom of movement; protection from discrimination on the grounds of race, place of origin, political opinions, colour, creed or sex; the right to the enforcement of protective provisions of the Constitution.

Article 46(1) of the Constitution states that any person who alleges that any of the provisions concerning the protection of fundamental rights and freedoms of the individual has been, is being or is likely to be contravened in relation to him apply to the Civil Court, for redress. Article 46(4) states that any party to the proceedings brought in the Civil Court, First Hall, in pursuance of this article shall have a right of appeal to the Constitutional Court.

Act XIV of 1987 provides for the substantive Articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms to be enforceable as part of the Law of Malta (Article 3(1)). Article 3(2) states that where any ordinary law is inconsistent with the Human Rights and Fundamental Freedoms, the said Human Rights and Fundamental Freedoms shall prevail, and such ordinary law, shall, to the extent of the inconsistency, be void. Article 5 states that no person shall be hindered in the exercise of his right to petition the Secretary-General of the Council of Europe. Article 6(1) provides that any judgment of the European Court of Human Rights, may be enforced by the Constitutional Court of Malta in the same manner as judgments delivered by that court and enforceable by it, upon an application filed in the Constitutional Court and served on the Attorney General containing a demand that the enforcement of such judgment be ordered.

International human rights agreements

Malta is a State Party to the following European and international agreements on the protection of human rights:

Convention	Date
Convention for the Protection of Human Rights and Fundamental Freedoms	Acceded on 23 rd January 1967
Convention Relating to the Status of Refugees	Acceded on 17 th June 1971
European Convention on Extradition	Signed on 19 th March 1996, ratified on 19 th March 1996; Entered into force on 17 th June 1996
European agreement on the abolition of visas for refugees	Signed on 17 th January 1989; Entered into force on 18 th February 1989
European Social Charter	Signed on 26 th May 1988; ratified on 4 th October 1988; Entered into force on 3 rd November 1988
UN Charter	Signed on 1 st December 1964
Protocol to the Convention for the protection of Human Rights and Fundamental Freedoms	Signed on 12 th December 1966
International Convention on the Elimination of All Forms of Racial Discrimination	Signed on 5 th September 1968
International Covenant on Economic, Social and Cultural Rights	Signed on 22 nd October 1968
International Covenant on Civil and Political Rights	Acceded on 13 th September 1990
Optional Protocol to the International Covenant on Civil and Political Rights	Acceded on 13 th September 1990
Protocol relating to the Status of Refugees	Acceded on 15 th September 1971
European Agreement Relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights	Signed on 6 th May 1969 Ratified on 30 th April 1971; Entered into force on 31 st May 1971
Protocol No 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms conferring upon the European Court of Human Rights competence to give Advisory Opinions	Signed on 12 th December 1966; Ratified on 23 rd January 1967; Entered into force on 21 st September 1970
Protocol No 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Signed on 12 th December 1966; Ratified on 23 rd

	January 1967; Entered into force on 21 st September 1970
European Convention on the Suppression of Terrorism	Signed on 5 th November 1986; Ratified on 19 th March 1996; Entered into force on 20 th June 1996
Convention on the Elimination of All Forms of Discrimination against Women	Acceded on 8 th March 1991
Convention on the Transfer of Sentenced Persons	Signed on 4 th November 1988; ratified on 26 th March 1991; Entered into force on 1 st July 1991
Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty	Signed on 26 th March 1991; Ratified on 26 th March 1991; Entered into force on 1 st April 1991
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Acceded on 13 th September 1990
Protocol No 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Signed and Ratified on 7 th March 1988; Entered into force on 1 st January 1990
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	Signed on 26 th November 1987; ratified on 7 th March 1988; Entered into force on 1 st February 1989
Convention on the Rights of the Child	Signed on 26 th January 1990
Protocol No 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Signed on 6 th November 1990
Protocol Amending the European Social Charter	Ratified on 16 th February 1994
Protocol No 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Signed on 7 th May 1992
European Charter for Regional or Minority Languages	Signed on 5 th November 1992
Protocol No 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	Signed and Ratified on 4 th November 1993; Entered into force on 1 st March 2002

Protocol No 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	Signed and Ratified on 4 th November 1993; Entered into force on 1 st March 2002
Protocol No 11 to the Convention for the protection of Human Rights and Fundamental Freedoms	Signed and Ratified on 11 th May 1994; Entered into force on 1 st November 1998
Framework Convention for the Protection of National Minorities	Signed on 11 th May 1995; Ratified on 10 th February 1998; Entered into force on 1 st June 1998
European Convention on the Exercise of Children's Rights	Signed on 20 th January 1999
European Agreement relating to persons participating in proceedings of the European Court of Human Rights	Signed on 3 rd November 1998
Additional Protocol to the Convention on the Transfer of Sentenced Persons	Signed on 16 th February 2000; Ratified on 16 th November 2003; Entered into force on 1 st March 2004
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty	15 th June 2000 – Withdrawal of reservation
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	Signed on 7 th September 2000
Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict	Signed on 7 th September 2000 and ratified on 9 th May 2002
Second Additional Protocol to the European Convention on Extradition	Ratified on 20 th November 2000; entered into force on 18 th February 2001
Additional Protocol of the European Convention on Extradition	Ratified on 20 th November 2000; entered into force on 18 th February 2001
ILO Convention No. 182 and Recommendation No. 190 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour	Ratified on 15 th June 2001
Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances	Signed and ratified on 3 rd May 2002; entered into force on 1 st July 2003
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	Ratified on 9 th May 2002; entered into

	force on 9 th June 2002
Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, as amended by Protocol 11	Signed, ratified and entered into force on 5 th June 2002
Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms	Signed and ratified on 15 th January 2003; entered into force on 1 st April 2003
Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data	Signed on 15 th January 2003, Ratified on 25 th February 2003 and entered into force on 1 st June 2003
Convention on Contact concerning Children	Signed on 15 th May 2003
United Nations Convention on Transnational Organised Crime	Ratified on 24 th September 2003
Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime	Ratified on 24 th September 2003
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime	Ratified on 24 th September 2003
Additional Protocol to the Convention on cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems	Signed on 28 th January 2003
Optional Protocol to the Convention against Torture and other Civil, Inhuman or Degrading Treatment or Punishment	Signed and ratified on 24 th September 2003
European Convention on Nationality	Signed on 29 th October
Additional Protocol to the Convention on the Transfer of Sentenced Prisoners	Ratified on 26 th October 2003
UN Convention relating to the Status of Refugees	Withdrawal of reservations of Article 11, 23 and 24 on 11 th February 2004
Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.	Signed and Ratified on 4 th October 2004

Ratification of International Treaties

Article 3 of the Ratification of Treaties Act of 1983 states that where a treaty to which Malta becomes a party after the coming into force of this Act is one which affects or concerns –

- a) the status of Malta under international law or the maintenance or support of such status, or
- b) the security of Malta, its sovereignty, independence, unity or territorial integrity; or
- c) the relationship of Malta with any multinational organization, agency, association or similar body,

such treaty shall not enter into force unless it has been ratified or its ratification has been authorized or approved as follows:

- 1) where such treaty concerns a matter referred to in (a) and (b), or concerns any provision which is to become, or to be enforceable as, part of the law of Malta, by Act of Parliament.
- 2) In any other case, by Resolution of the House of Representatives.

No provision of a treaty shall become, or be enforceable as, part of the law of Malta except by or under an Act of Parliament. The instrument of ratification shall be issued under the signature of the Minister responsible for foreign affairs.

Foreigners in Malta

Measures against racism and discrimination: Second report of the Council of Europe against Racism and Intolerance (ECRI)

The Council of Europe Second Report on Malta which was adopted on 14th December 2001 and made public on 23rd July 2002, states that Malta has recently started to take measures to address the issue of racism and discrimination through the introduction of new criminal law provisions to combat incitement to racial hatred, the ratification of further relevant international instruments and the putting in place of legislation and structures to deal with asylum seekers and refugees. ECRI has recommended that further action be taken in a number of areas to combat racism, xenophobia and discrimination. These recommendations cover, inter alia, the need to introduce civil and administrative law, provisions to combat discrimination in fields such as housing, employment and access to public places, the need to complement the legislation and structures put in place to process asylum requests with an organizational framework of practical assistance for refugees and asylum seekers residing in Malta, and the need to raise awareness in society of the existence of discrimination and prejudice and to provide special training for key sectors dealing with minority groups.

Malta has followed the recommendation by ECRI to sign the European Convention on Nationality on 29th October 2003 and has removed the its reservations as regards the UN Convention relating to the Status of Refugees on 11th February 2004.

Asylum seekers and refugees

Local legislation addresses various issues with regard to integration or at least giving refugees equal opportunities:

The Refugees Act which came into force on 29th October 2001 provides asylum seekers with access to state education and training in Malta and to receive state medical care and services (Article 10(1)), employment with the consent of the Minister (Article 10(2)(a), and shall reside and remain in places indicated by the Minister (Article 10(2)(b)).

A refugee is defined as a person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events is unable or, owing to such fear, is unwilling to return to it.

The Refugees Act has established the Office of the Commissioner for Refugees and the mechanism for dealing with such requests and the right to appeal from such decisions. The primary role of the Refugee Commissioner is to receive and process requests from asylum seekers who wish to apply for refugee status. The Commissioner of Refugees examines applications and determines whether persons who apply for refugee status should be granted such status or should be granted humanitarian protection, and makes such recommendation to the Minister. At the Refugees Appeals Board, a fair degree of transparency should be maintained during the hearing procedures and determining appeals, so that asylum seekers may have the assurance that due process was observed. The decision of the Appeals Board should be communicated to asylum applicants in a language they understand and subsequently communicated to them in writing outlining the reasons for the decision stated.

The Director Citizenship and Expatriate Affairs is responsible for issuing work permits to asylum seekers, who are granted temporary permission to stay in Malta by the Office of Commissioner of Refugees.

Irregular immigrants who have been in detention for more than 18 months are released and transferred to Open Centres unless their case has been formally decided and are awaiting deportation. Unaccompanied minors are not kept in detention for more than two weeks from arrival. Unaccompanied minors are treated under the Children and Young Persons (Care Order) Act.

Article 11 of the Refugees' Act states that a person who is declared to be a refugee shall be entitled –

- a) to remain in Malta, and to be granted personal documents, including a resident permit; and if in custody in virtue only of a deportation or removal order, to be immediately released;
- b) unless he is in custody awaiting judicial proceedings for the commission of a criminal offence, or is serving a term of imprisonment, to be given a Convention Travel Document entitling him to leave and return to Malta without the need of any visa;

- c) to have access to state education and training in Malta, and to receive state medical care and services.

Dependent members of the family of a person declared to be a refugee enjoy the same rights and benefits as the refugee.

Article 12 states that any child or young person below the age of 18 years who is found under circumstances which clearly indicate that he is a child or young person in need of care, shall be allowed to apply for asylum, and shall be assisted in terms of the Children and Young Persons (Care Orders) Act, as if he were a child or young person under such Act.

The Minister of Justice and Home Affairs has created the post of Director, Third Country Nationals who is responsible for the administrative and policy issues related to irregular migration, including the social integration of refugees and other immigrants. He ensures the effective co-ordination with Police and other disciplined forces as regards security measures within the detention centres. Moreover, the Director establishes an ongoing contact with local and international organisations, working in areas of family reunification and repatriation. Each asylum seeker is informed of his/her right and obligation under the law and regulations governing the detention centres. A preliminary questionnaire is given to those wishing to apply for refugee status in a language understood by the applicants.

Once a refugee or humanitarian status is given, the well being of the individual concerned falls under the responsibility of the Ministry for Family and Social Solidarity. The latter is responsible for welfare, accommodation and general management of persons released from detention. It should also be noted that this Ministry is also responsible for the welfare services of asylum seekers in detention.

Moreover, the Government of Malta including the Ministry of Justice and Home Affairs, encourages and supports the role of NGOs working in this field. The latter provide material and legal assistance as well as counseling services.

To be mentioned also is the Employment and Industrial Relations Act (2002) which safeguards workers and prospective workers from discrimination by employers³.

Article 82(1) of the Criminal Code states that whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up racial hatred or whereby racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months. Racial hatred is defined as hatred towards a group of persons in Malta defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

³ Article 26 (1) It shall not be lawful for any person –

- (a) when advertising or offering employment or when advertising opportunities for employment or when selecting applicants for employment, to subject any applicants for employment or any class of applicants for employment to discriminatory treatment;
- (b) in regard to employees already in the employment of the employer, to subject any such employees or any class of employees to discriminatory treatment, in regard to conditions of employment.

Detention of Asylum Seekers

Detention will be resorted to verify documents, to determine the elements on which the refugee claim is based, and to protect national security and public order. Detention shall be resorted to for minimal periods and never for longer than absolutely necessary. Pending the evaluation of the application and where necessary the removal of detainees, these persons are in an administrative detention and not in a prison facility. The facility shall seek to give asylum seekers a degree of confidence in the authorities and in the legal process of their application.

Prohibited Immigrants

A person is considered to be a prohibited immigrant, unless otherwise exempted, if he is unable to show that he has the means of supporting himself and his dependents or if his dependents are likely to become a charge on the public funds (Immigration Act CAP 217, articles 5(2)(a)).

Persons granted Refugee and Humanitarian Status

From 1st January 2004 to date⁴ 4 cases involving 4 persons were granted Refugee Status and 429 cases involving 485 persons were granted Humanitarian Status.

Persons Repatriated

From 1st January 2004 to 4th November 2004, 586 persons were repatriated.

European Refugee Fund

Malta is annually budgeting a considerable sum to be used as a solidarity fund to aid refugees sheltered locally. Although Malta is placing increasing priority on its preparedness in the areas of reception and accommodation, the growing financial strain on government finances is becoming more and more of an issue. The Government through the Justice and Home Affairs Ministry has requested EU assistance in the form of a co-financing request for two projects from the European Refugee Fund. The aim is to provide financial support to two Non-Governmental Organisations (NGO's) which offer shelter to a number of refugees. The beneficiaries would be the Good Shepherd Home run by the Emigrants' Commission, and Dar Is-Sliem (Welcome Home) run by the Conservatorio Vincenzo Bugeja with voluntary involvement from the Jesuit Refugee Service.

The co-financed projects targets:

- i. unaccompanied persons under the age of 18 years Dar Is-Sliem (Welcome Home)]
- ii. Adults granted Refugee and Humanitarian Status and others having different forms of protection in Malta.

The European Refugee Fund fosters solidarity between Member States and promotes balance in the effort they make in receiving asylum seekers, refugees and displaced persons.

⁴ 3rd November 2004

Appoġġ, which is Malta's national social welfare agency and falls under the auspices of the Foundation for Social Welfare Services within the **Ministry for the Family and Social Solidarity**, has recently set up, under the direction of the Ministry, a Refugee Services area. The aim of this service is to provide welfare intervention in a professional and humanitarian spirit to asylum seekers, refugees and persons granted humanitarian status to remain in Malta, mainly through open centre facilities. It also has a catalyst role in the development of a strategy for addressing the refugee situation in Malta. To date Appoġġ Refugee Services has been given the directive to co-ordinate renovation works and the management of the Hal Far open centre. Currently Appoġġ is carrying out a stocktake of the situation. The first step is the refurbishment of the buildings in order to create better standards of accommodation and a homely atmosphere. A room for persons with special needs will also be included. The persons living in these quarters will be empowered with the responsibility for the contribution in the running of these houses as well as a participatory involvement in the management of the centre. For this purpose a residents Committee is planned to be set up.

The overall aims are to create accommodation centres wherein there is no overcrowding, to provide, meet and ensure sanitary and health standards and that cultural and religious practices are respected. As an example, a prayer room for the Muslim residents is being refurbished as one of the priorities. It is important that the residents in the Open Centre live in a homely atmosphere, with respect for their dignity as human beings. Once these basic needs are catered for, other plans such as the setting up of educational courses in English, in cooperation with the Employment Training Corporation, as well as life skills by the Malta Red Cross and courses on Maltese culture will be targeted for implementation. A coordinator for the above-mentioned activities and management of the open centre at Hal Far has been established. Social workers shall be available to assist asylum seekers with their psycho-social needs, including assistance in family related issues. It is also intended that children should not be kept in a closed or in an open centre but should live in a family environment in the community. The Appoġġ Refugee Service aims to work with the various NGOs which have to date given a valuable contribution in the work with asylum seekers/refugees, for example the Malta Red Cross which specializes in assisting in medical issues, the Jesuit Refugee Services that assists in legal services among others, and the Malta Peace Laboratory which organizes various activities as well as provide accommodation. The service aims to clarify and complement these roles in working with the NGOs and consolidate these through Protocols. The Maltese Government is very aware of the importance of the input by NGOs, especially in the light of the scarcity of human resources and other resources in dealing with the increasing challenge of asylum seekers/illegal migrants entering Malta. Appoġġ's Refugee Service along with the different entities and authorities are very much aware of the human resources and financial assistance that are required in meeting such a challenge. The Appoġġ Service has drafted a comprehensive plan for the Minister's and Prime Minister's Office regarding the requirements for setting up further Open and Closed Centre facilities in the near future. One other important aspect which Appoġġ's Refugee Service is sensitive to the importance of the integration of refugees and persons granted humanitarian status within Maltese society. This was one of the issues covered in a Seminar held from 31st August to 2nd September and which focused on what has been done so far in this area, what still needs to be done regarding Open and Closed Centres, as well as addressing many other issues in working with asylum seekers' refugees. Various government representatives (such as the Refugee Commissioner) as well as NGOs, shall take part in the presentations as well as be invited to send their staff to attend.

Another project which exists is that of Dar is-Sliem, where unaccompanied asylum seekers/refugees of a minor age, and who are under a State Care Order (Care and Custody of the Minister), are being accommodated in a home environment.

The purpose of these projects is that the management of the asylum seekers/refugee issue in Malta should shift from being dealt with solely from a security perspective (that is handled solely by the Police and the Armed Forces) to a welfare aspect.