

WORKING TOWARDS EQUALITY AND INCLUSION IN MALTA: THE CIVIL SOCIETY PROJECT

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The European Documentation Centre of the University of Malta was designated a Jean Monnet European Centre of Excellence in October 2004. Contemporaneously, it won a grant from the Jean Monnet Project to work on a range of issues connected to citizenship and civil society, and the general issues raised by actual membership of the European Union for Malta and Malta's role as a Member. This would include the Euro-Mediterranean dimension of Malta's role, a theme that we plan to introduce from the second year, starting in October 2005.

It is clear to any observer that Maltese civil society is itself in its tender years. It is itself in need of nurturing. Malta is not the only Member State where this is the case. Yet, Malta's experience in developing the role of civil society can be of direct relevance in the assertion of an effective Euro-Med role for Malta. It was decided that in the first year of the five-year Project it would be salutary, and a good grounding for further work, to focus on Malta's own experience, including that of its fledgling civil society, in adapting to the *acquis communautaire* in legal and socio-political terms. It is clear that at some point in the near future the Project will turn also to the Mediterranean dimension. A fundamental question in this second context is whether the lessons learnt in Malta and in Europe generally can be transposed as such to the non-Member Mediterranean countries. Even putting it in these terms is problematic, because no country, let alone region, is like any other and generalizations are only to be very cautiously made after exhaustive study. Therefore, we should start from the premise that lessons learned in Malta need to be analysed, but that the Mediterranean dimension involves an approach that does not start from any preconceptions about ease of transposition of these lessons, or indeed of those offered up by the experience of other Member States, to the Mediterranean context. The fact of Union membership itself, a crucial factor in the case of Malta, but not for the moment even foreseeable for our southern neighbours, is also a fundamental distinguishing factor that cannot be ignored.

Having said this, it is core and primary to the Project to monitor, examine, and add value to, Malta's membership experience. This will continue. The current study has focused on Anti-Discrimination, Inclusion and Equality under the *acquis* and Maltese law and practice. It was carried out between October and June 2005, and states the position effectively as at

May of 2005. This means that as far as implementation of the *acquis* is concerned, the studies report on the state of play at that time. The deadlines for transposition of certain measures have not yet elapsed. Even so, the studies indicate what amendments to current law may be required. Beyond that, in the absence of any legislative proposals in that regard having been tabled by the government, it has been only possible to say that such need to be tabled and passed. This applies in particular in the field of racial discrimination conceived broadly as including the treatment of refugees and asylum seekers. It is anticipated that study of this area will continue or be resumed under the Project at a later date. As far as Gender equality is concerned, several of the studies indicate the changes that are required for the *acquis* in this area to be fully implemented, with the required areas of amendment of Maltese law being identified.

This and subsequent studies in this Project will highlight what may be called ‘horizontal’ questions. The foremost among these is the need for legislation in Malta regulating NGOs. The current lack of regulation leaves NGOs in a limbo of non-recognition, non-regulation and consequent non-influence and non-accountability, as well as deprived of the sort of assistance that is their due -from the state and under EU programmes- in return for their contribution to the welfare of society. This would be a major step forward in the nurturing of civil society in Malta. While a White Paper and a Bill are known to have been in draft form for many months, they have not been made public by the time of conclusion of this report although pressure is being exerted on government all the time and we may shortly hear news on this front.

The studies included in this report point to a number of conclusions that will be the subject of discussion at the National Conference at which the report will be presented formally and discussed, and also beyond. These include:

1. Transposition of EU Directives is not always precise. This applies not only to obvious points such as the scope (in the sense of reach or coverage) of the law, or the definition of conduct that is prohibited, but also to the less obvious such as the adequacy and effectiveness of sanctions and remedies. In some cases, such as the question of remedies, only the building up of a body of case-law will fully expose the suspected deficits, but already many contributors express serious concerns on these points.
2. NGOs often feel that there is room for fuller consultation and debate before matters are decided by government. This is a concern for NGOs. Examples include the question of “one equality Body or several?” Other examples are put forward by the authors of the reports on race/religious and age discrimination.
3. There has been little debate in Malta on Positive Action. Even the NGOs themselves have no ‘Positive Action Agenda’. Nevertheless, there are signs that official government thinking in this area may be changing, though this does not seem to be mainly as a result of input by the NGOs. This means that there is much thinking to be done, with further study of the Maltese situation and comparative research to indicate the broad lines on which a policy may develop where required to establish real equality of opportunity. While some of the contributors argue for positive action as needed, such as in the gender

or religion or race fields, others are more circumspect about it in the field they cover, such as with regard to addressing sexual orientation discrimination.

4. With specific reference to race and/or religious discrimination, this sensitive area has rarely if ever been the subject of public discussion or even of academic enquiry. Malta is under an obligation to implement measures in the field of justice and home affairs that impact directly on the treatment of persons of other nationalities, races and creeds as they seek asylum on our shores, as also after they have been accorded a status that should secure them rights on a basis of equality. There is an urgent need to fully implement Directive 2003/9/EC. The integration of such persons and their families has to become a priority concern, supported by good policies in this regard. There is evidence of some government thinking on these lines. But the issue also relates to persons of Non-Catholic religious belief, even Maltese nationals by birth, such as Muslims, whose number is not negligible (numbers are not easy to come by, but it seems a few thousand would not be far off the mark), and who appear from the reports in this study to live their lives in a measure of alienation as a result of their faith, often adopting stratagems to avoid social interaction for fear of discrimination, or suffering in other ways that may include outright discrimination, overt or covert. Clearly there is much to be done to find a *modus vivendi* based on mutual respect and understanding. Forceful papers appear in this section of the Report; they ask difficult questions of the majority of the population, which is asked indeed to look closely at itself, and to ask itself the meaning not only of tolerance but of respect going beyond tolerance. By the same token, the invitation is to minority groups to respect the views of others, which happen to be the majority of the population. Government, and all constituted bodies and authorities clearly have a great responsibility to re-think policies, not just on employment but in all spheres; and to create an inclusive society where balance is appropriately struck and discrimination, fear and victimization eradicated, for these ills clearly exist not only in peoples' minds but in day to day life in Malta. This study has only scratched the surface of the problem; but it is clear that much is hidden that needs to be brought to the surface. Future studies must continue to bring the truth out into the open. In the meantime, government has announced that a single equality body will be organized 'around' the existing gender equality body to assume the obligations deriving from the Race Directive. This body will shoulder a large part of this task and may yet have an even broader remit covering all grounds of discrimination. But nor must it be left only to a government body to champion equality, and NGOs in general will have a role to play in identifying the problem and forming part of the solution. They too must be empowered .
5. Social factors, including values and culture, generally play a large part in the equation. Facing up to one's own prejudice is never easy; nor is it easy to reach out to 'the other'. It may be that those who would be 'helped' themselves resist such 'help', that the 'assistance' on offer is not wanted or appreciated, or that a *modus vivendi* has been found (be this alternative sources of income, legitimate or not; over-reliance on family or social support structures). The studies in this Report testify, as have some other studies produced by other quarters, that this phenomenon is present - for example in the gender and the disability fields. Altering a status quo begs questions that many may not be prepared to contemplate. But being asked to do so at least causes one to question that status quo, and to ask whether other models on offer are not more truly consonant with

respect, including respect for fundamental human rights and enhanced personal development.

6. Then, as these studies show, Malta has made important strides forward, in terms of implementation of the *acquis communautaire*, and this in practically all areas. Indeed, it is even possible to say that in some areas Malta is well advanced (especially in the disability field), yet there appear to be two main problem areas in general. The first is the one referred to already: problems of enforcement, and the ability of the citizen to mobilize his or her rights and remedies. This extends from information about rights (both for the beneficiary of the right and those who might deny it) to access to bodies able to effectively represent the injured party and assist in the enforcement of rights, through to the imposition of adequate and dissuasive sanctions. The second refers to the area of positive action and the drawing up and implementing of pro-equality policies and legislation as well as ‘soft law’ or non-law measures.

There will be those who disagree with parts or all of this analysis. The Conference that is called to discuss this Report will be a major occasion to discuss the findings and these preliminary conclusions. In any event this is the first time that a Maltese project has approached and sought to present the issue of discrimination and equality in a holistic way. The Conference presents a prime opportunity to compare the approaches being taken -both at Union and at national level- to address in policy and implementation terms the issues raised by the various grounds of discrimination. Much can be learned from experience gained in the fight against one form or ground of discrimination that is transposable to the fight against other grounds of discrimination.

Every effort has been made to publish this Report in advance of the Civil Society Conference that is planned by the EDRC for September. It will there be assumed that attendees have become acquainted with its contents. We shall be hearing from a number of expert speakers from overseas as to trends and priorities in Union policy and the experience of other Member States. The object of the Conference workshops will be to juxtapose the findings of this Project and the aspirations of civil society here in Malta with these trends and experiences, and in this way to carry debates and efforts forward in the common task of working towards equality and inclusion.