

2025 Rule of Law Report
Country Chapter on the Rule of Law in Malta
Update from the Office of the Malta Parliamentary Ombudsman

The Institution

The Office of the Malta Parliamentary Ombudsman (“**the Office or the Ombudsman**”) plays a pivotal role in upholding the rule of law and ensuring fairness in the public administration. As an independent and autonomous Officer of Parliament, the Ombudsman investigates acts or omissions amounting to maladministration in the public sector. Separate and distinct from the Executive and government bodies, the Ombudsman is open to complaints from any aggrieved persons, whether physical or legal persons. Central to the mission of the Office is the promotion of a good public administration.

Accessible to all free of charges of any sort, the Office of the Ombudsman is committed to conducting investigations in a fast, fair and equitable manner according to law. Its mandate extends across a broad spectrum, covering actions taken by the public administration, government departments, authorities, ministries, public officers, statutory bodies, local councils, and other organisations in which the Government has a controlling interest.

Accountable solely to Parliament, the Ombudsman oversees the Government’s administrative performance in fulfilling its obligations including the observance of the principles of good governance. When an investigation validates a complaint, the Ombudsman may recommend appropriate remedies and redress.

Replies by the Office of the Ombudsman

The Office will focus its commentary on matters directly associated with the institution, the improvement of the services of the public administration, and the safeguarding of human rights, primarily within Section IV of the questionnaire: *Other institutional issues related to checks and balances*.

In this section, we shall address the following specific issues:

- i. Establishing a National Human Rights Institution (NHRI) in Malta. Incorporating Protocol 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms into the European Convention Act (Chapter 319 of the Laws of Malta).

- ii. Ensuring that Parliament debates reports with recommendations submitted by the Ombudsman.
- iii. Suspending the period of prescription when the Ombudsman is investigating a complaint.
- iv. Integrating the right to good public administration in Maltese domestic law.

These targets will enable the Office to provide detailed and impactful commentary on these areas of critical public interest, to ensure that the principles of fairness, accountability, and transparency become part and parcel of the public administration in Malta.

i. Establishing a National Human Rights Institution (NHRI) in Malta

The present status

The 2024 Rule of Law Report by the European Commission highlighted the fact that there was no progress in the establishment of a National Human Rights Institution (NHRI) in Malta. The 2023 report had already stressed on the need for Malta to establish such an institution in line with the UN Paris Principles.

A solution

The Office of the Ombudsman has long advocated in favour of the constitution of an NHRI in Malta. The Office has also made its position clear in the sense that its house is in order to become the NHRI for Malta should its present mandate extended by legislation.

The Office of the Ombudsman as the NHRI

In November 2023, the Office of the Ombudsman submitted a clear proposal to the Prime Minister with its credentials. The proposal outlined the benefits of using the existing institutional framework, thereby avoiding the need for a separate institution to serve as the NHRI for Malta.

The existing infrastructure, experienced staff, and established procedures of the Office already provide a solid foundation for a broader human rights mandate. This reachable approach would enable the rapid implementation of NHRI functions while reinforcing public trust through the Ombudsman's already proven and respected role.

The Prime Minister was quick to refer the proposal for further discussion to the Parliamentary Secretary for Reforms and Equality.

A meeting was held in February 2024, where the Ombudsman explained the rationale behind the proposal.

Unfortunately, the meeting was completely inconclusive in the sense that the Parliamentary Secretary stated that the Government was still exploring the best way forward and had not adopted a definitive position.

To date, no developments have been made public from the side of the Executive on this matter.

European Network of National Human Rights Institutions (ENNHRI) Associate Membership

In February 2024, the Office of the Ombudsman submitted a formal application for Associate Member Status of the European Network of National Human Rights Institutions (ENNHRI).

In the application, the Office stated that, given the lack of progress on establishing a standalone NHRI after the dissolution of Parliament in 2022, it had again proposed integrating NHRI functions within the already functionally present Ombudsman structure.

The ENNHRI board officially accepted the application, and the Office of the Ombudsman became an Associate Member of ENNHRI.

Review of the present Ombudsman Act

Following its acceptance as an Associate Member of ENNHRI, the Office sought assistance from ENNHRI in an effort to review the Ombudsman Act to ensure full alignment with the Paris Principles.

Between April and May 2024, ENNHRI conducted a detailed review, identifying key areas for improvement, including:

- Expanding the mandate to include promoting and protecting human rights.
- Strengthening the selection and appointment process to ensure transparency and pluralism.
- Enhancing the Office's independence and securing adequate resources.
- Engaging more actively with civil society.

A new Ombudsman Bill

In response to these findings, the Ombudsman drafted a new fully-fledged Ombudsman Bill rather than resort to fragmented amendments to the present law.

In October 2024, the draft Bill was forwarded to ENNHRI for further review. In that same month, during the ENNHRI General Assembly, the Ombudsman participated in a parallel meeting with ENNHRI representatives to discuss the proposed Bill and explore potential enhancements.

ENNHRI commended the efforts of the Office to align with the Paris Principles and its wish for an extended mandate as an NHRI. ENNHRI noted that significant amendments had been introduced to support this mandate, including:

- A broad human rights remit, covering the protection and promotion of human rights through awareness-raising, education, advising on national legislation, and reporting on the national human rights situation.
- A comprehensive definition of human rights, encompassing rights set out in international, regional, and domestic instruments, as well as those recognised by national and international courts.
- Strengthening the Ombudsman's authority to follow up on recommendations made to national authorities.
- Reinforcing the Ombudsman's independence by expressly stating that the Ombudsman shall not be subject to direction from any other person or authority.

ENNHRI provided additional technical advice, which the Ombudsman reviewed and adopted where appropriate. These measures are included in the proposed new Ombudsman Bill.

Conclusion

The new Ombudsman Bill was formally presented to the Prime Minister of Malta for his consideration and of the Cabinet of Ministers on the 19 November 2024. The Bill offers a resource-efficient solution for establishing a National Human Rights Institution in Malta. By expanding the existing framework of the Office of the Ombudsman, it seeks to ensure compliance with the Paris Principles while addressing the pressing need for a strong and independent NHRI. This proactive initiative reflects a clear commitment to safeguarding and promoting fundamental human rights and freedoms in Malta. For the record, to date, there has not been an official response from the Prime Minister of Malta.

The meaningful and constructive efforts of the Ombudsman have received an encouraging and positive confirmation by virtue of Resolution taken by the United Nations Security Council of the 17 December 2024 on *The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law*.

ii. The inclusion of Protocol 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the European Convention Act (Chapter 319 of the Laws of Malta)

The present status

In the Ombudsplan for 2025, tabled in Parliament on 4 October 2024, the Ombudsman reiterated his concern that Protocol No. 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms was not transposed into the European Convention Act (Chapter 319 of the Laws of Malta) despite that Malta ratified Protocol No. 12 on 8 December 2015, and came into effect on 1 April 2016. This means that although Malta is bound by the Protocol, persons are still unable to seek redress before the Maltese courts and have to proceed directly to the Strasbourg Court.

The importance of Protocol No. 12

Protocol No. 12 establishes freedom from discrimination as a stand-alone fundamental human right, stating that all persons are equal before the law and entitled to its equal protection. It underlines the fundamental right of persons to be free from non-discrimination by public authorities in exercising their functions. Section 22(1)(b) of Chapter 385 requires the Ombudsman to determine whether any decision, recommendation, act, or omission under investigation was unreasonable, unjust, oppressive, or improperly discriminatory. Given this mandate, the Office of the Ombudsman has both the right and the duty to provide an opinion on discriminatory behaviour and recommend redress if such behaviour is well-founded.

The anomaly and implications

The failure to incorporate Protocol No. 12 into Chapter 319 is a serious matter. The anomaly was highlighted by the Constitutional Court in May 2023, where it was stated that although the Maltese State had ratified the Protocol, it could not be recognised before the Maltese Courts because it was not included in Chapter 319.

The Commitment of the Office

The Office is committed to urging the Government to address this matter without further delay. It is not enough for Malta to ratify Protocol No. 12 without allowing Maltese Courts to hear and rule on lawsuits. The Office reiterates its call for an amendment to Chapter 319 of the Laws of Malta for the inclusion of Protocol No. 12 in the Schedule to the European Convention Act.

Conclusion

Through the appropriate amendment to European Convention Act persons would have a wider access to justice where non-discrimination and equality are concerned.

The Office will continue to advocate for this vital amendment, aligning Maltese legislation with international human rights standards and providing effective legal remedies for those subject to discrimination.

iii. **The Need for Parliament to Debate Final Reports with Recommendations Submitted by the Ombudsman that were not implemented by Government and the public administration**

The present status

In its response to last year's questionnaire, the Ombudsman noted the practice of referring Final Opinions to Parliament when recommendations are not implemented by Government and the public administration in general. The Ombudsman and the Commissioners send final reports to Parliament only after their recommendations have been rejected outright or have not been implemented.

Upon reception, the Speaker of the House of Representatives promptly tables these final reports. They are then published on the website of the Office and are, more often than not, covered by the media. However, in real terms the process effectively there, as there is no legal or formal parliamentary procedure for debating these final reports. The Ombudsman has consistently called for these reports to be discussed in an appropriate select parliamentary committee.

In its 2018 *Opinion on Constitutional Arrangements, Separation of Powers, and the Independence of the Judiciary and Law Enforcement*, the Venice Commission recommended that Parliament should be obliged to debate reports submitted by the Ombudsman. This recommendation was reiterated in its 2020 Opinion.

The current Speaker of the House of Representatives supports this approach. He has publicly proposed that a Standing Committee on Public Administration, similar to the Public Accounts Committee, be appointed to debate reports submitted by the Ombudsman and the annual governance action reports compiled by the Office of the Principal Permanent Secretary. He noted that the shared aim of the House of Representatives, the Ombudsman, and the Principal Permanent Secretary is to promote and ensure good governance and high standards in public administration, with a spirit of cooperation and civility.

An Ad Hoc Select Committee of the House of Representatives

Chapter 385 grants the Ombudsman (and Commissioners) wide powers to investigate. Their recommendations are not binding. Nonetheless the principal difficulty arises when a public body does not to implement a recommendation, and the Ombudsman refers the matter first to the Prime Minister and in case of no avail to the House of Representatives.

Past experience has shown that by the mere presentation of the final reports to Parliament there has not been an effective resolution to the deadlock caused to persons by the non-implementation of the recommendations.

In previous years, the Office advocated for parliamentary procedures to debate final reports. Even today this remains the consistent approach.

Before the House Business Committee on the 10 June 2024, the Ombudsman made an appeal for a solution to the current impasse.

The Office strongly believes that non-implemented final reports should be debated before an ad hoc Select Committee of the House, and that going this way is sensible. The Office is of the view that a Select Committee of this nature should be empowered not only to consider the recommendations of the Ombudsman on substance and merit but should provide for the betterment of the quality and standards of service across the public administration.

v. Suspension of the period of prescription when the Ombudsman is Investigating a complaint

The present status

The Ombudsplans 2024 and 2025 laid emphasis on prescription-related issues. As the law stands at present, actions against the Government for judicial review of administrative action have a six-month non-renewable time-bar. Other civil actions against the Government do have time limits that are subject to legal interruption.

As it stands at present, Maltese Law prevents concurrent proceedings before the Ombudsman and before Judicial and Quasi-judicial fora, where the latter have precedence.

Amendments

In the Ombudsplans 2024 and 2025, the Office proposed *inter alia* that the six-month peremptory period aforementioned and other time limits concerning civil actions against the Government be suspended.

The need for change

This proposal has yet to be addressed. Investigations carried out by the Office are distinct from judicial proceedings and can be an alternative route to litigation. As the law stands, matters referred to judicial bodies must take precedence, suspending Ombudsman investigations until those matters are finally determined.

By suspending prescription when an Ombudsman investigation is ongoing, access to justice would be greatly improved, ensuring that individuals are not disadvantaged by the time needed to complete an investigation. This reform would thus promote fairness and accountability in public administration.

Conclusion

The Office of the Ombudsman will continue to press for this amendment. Suspending the period of prescription when Ombudsman investigations are on-going is crucial to ensure that persons have sufficient time to seek redress, and that access justice is not impeded by procedural time limits. It would also enhance the Ombudsman's effectiveness, offering more comprehensive access to justice.

v. The Right to Good Administration part of Maltese Domestic Law

The present status

The right to good administration, as laid out in Article 41 of the Charter of Fundamental Rights of the European Union, is fundamental to the relationship between individuals and EU institutions. Following the Lisbon Treaty, the Charter became part of Maltese law. This principle requires public administration to be transparent, fair, and accountable.

In recent months, the Office of the Ombudsman in Malta has worked to encourage thorough discussion on placing this right into domestic legislation. Doing so would foster transparent

decision-making in public bodies, adherence to fair procedures, and the elimination of improper discrimination.

Malta's legal framework already includes key principles of good governance and administrative fairness. The Administrative Justice Act (Act V of 2007) sets standards for administrative tribunals; the Freedom of Information Act (Act XVI of 2008) promotes transparency and accountability by granting the public access to information; and the Public Administration Act (Act I of 2000) enshrines courteous, prompt, and impartial public service as a core value in pursuit of the common good.

At the initiative of the Office of the Ombudsman, ombudspersons and human rights defenders from the Mediterranean region and across Europe convened in Malta in October 2023, together with local academics and experts, to discuss the benefits of recognising good administration as a right under domestic law.

The need for change

To date, Article 41 of the Charter of Fundamental Rights, which establishes the right to good administration in the EU context, has not been directly applied to Maltese domestic law. The Office believes that carefully transposing these principles would broaden the rights of individuals and enhance democracy. Incorporating the right to good administration into domestic legislation would ensure that public administration operates transparently, fairly, and accountably, further strengthening governance and public trust.

Conclusion

The Office of the Ombudsman will continue to advocate for enshrining the right to good administration for the purpose of Maltese domestic law. Such a reform is necessary to promote transparent decision-making, fair procedures, and the rejection of improper discrimination, ultimately benefiting individuals and public bodies alike.

16.01.25



Judge Emeritus Joseph Zammit McKeon
Parliamentary Ombudsman of Malta