

2024 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The annual Rule of Law Report lies at the centre of the Annual Rule of Law Cycle, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, four editions of the Rule of Law Report have been published in 2020, 2021, 2022 and 2023.

The Commission would like to invite stakeholders to provide contributions to the 2024 Rule of Law Report. This survey provides information on the type of information and topics that will be covered in the 2024 Rule of Law Report, in order to allow stakeholders to provide input. More targeted input may be requested at a later stage of preparation of the 2024 Rule of Law Report, including in the context of country visits, or bilateral contacts.

The 2024 Rule of Law Report will continue to deepen the assessment under the existing four pillars, and will also follow-up on the implementation of the recommendations to Member States, that were issued as part of the 2023 Rule of Law Report. The contribution to be provided should include **(1) information on measures taken to implement the recommendations addressed to the Member State in the 2023 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2023^[1] falling under the ‘type of information’ outlined in section II.**

The input should consist of a short summary, if possible in English, covering the areas referred to below. Legislation or other documents may be referenced with a link. Contributions should focus on significant developments since the last Rule of Law Report both as regards the legal framework and its implementation in practice.

[1] Unless the information was already submitted in the input for the previous Rule of Law Reports.

Type of information

The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

A) Legislative developments

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

B) Policy developments

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

C) Developments related to the judiciary / independent authorities

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire[2])

D) Any other relevant developments

- Respondents are free to add any further information, which they deem relevant; however, this should be short and to the point.

Please also indicate whether the developments reported are linked to the implementation of reforms and investments under the RRP, where applicable.

If there are no changes, it is sufficient to indicate this and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

[2] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

About you

* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☒ Civil society organisation/NGO

- ☐ International organisation
- ☐ Judicial association or network
- ☐ Media organisation or association
- ☐ Public authority or network of public authorities
- ☐ Other

* Organisation name

250 character(s) maximum

aditus founation

Main Areas of Work

- ☒ Justice System
- ☐ Anti-corruption
- ☐ Media Pluralism
- ☒ Other

If "Other", please specify

Human Rights

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

500 character(s) maximum

<https://aditus.org.mt/>

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

455286844374-86

* Country of origin

Please add the country of origin of your organisation

- ☐ Afghanistan
- ☐ Albania
- ☐ Algeria
- ☐ Andorra
- ☐ Angola
- ☐ Antigua and Barbuda
- ☐ Argentina
- ☐ Armenia
- ☐ Australia
- ☐ Austria
- ☐ Azerbaijan

- ☐ Bahamas
- ☐ Bahrain
- ☐ Bangladesh
- ☐ Barbados
- ☐ Belarus
- ☐ Belgium
- ☐ Belize
- ☐ Benin
- ☐ Bhutan
- ☐ Bolivia
- ☐ Bosnia and Herzegovina
- ☐ Botswana
- ☐ Brazil
- ☐ Brunei Darussalam
- ☐ Bulgaria
- ☐ Burkina Faso
- ☐ Burundi
- ☐ Cabo Verde
- ☐ Cambodia
- ☐ Cameroon
- ☐ Canada
- ☐ Central African Republic
- ☐ Chad
- ☐ Chile
- ☐ China
- ☐ Colombia
- ☐ Comoros
- ☐ Congo
- ☐ Costa Rica
- ☐ Côte D'Ivoire
- ☐ Croatia
- ☐ Cuba
- ☐ Cyprus
- ☐ Czechia
- ☐ Democratic Republic of the Congo
- ☐ Denmark
- ☐ Djibouti
- ☐ Dominica
- ☐ Dominican Republic
- ☐ Ecuador
- ☐ Egypt
- ☐ El Salvador
- ☐ Equatorial Guinea
- ☐ Eritrea
- ☐ Estonia
- ☐ Eswatini
- ☐ Ethiopia

- ☐ Fiji
- ☐ Finland
- ☐ France
- ☐ Gabon
- ☐ Gambia
- ☐ Georgia
- ☐ Germany
- ☐ Ghana
- ☐ Greece
- ☐ Grenada
- ☐ Guatemala
- ☐ Guinea
- ☐ Guinea Bissau
- ☐ Guyana
- ☐ Haiti
- ☐ Honduras
- ☐ Hungary
- ☐ Iceland
- ☐ India
- ☐ Indonesia
- ☐ Iran
- ☐ Iraq
- ☐ Ireland
- ☐ Israel
- ☐ Italy
- ☐ Jamaica
- ☐ Japan
- ☐ Jordan
- ☐ Kazakhstan
- ☐ Kenya
- ☐ Kiribati
- ☐ Kuwait
- ☐ Kyrgyzstan
- ☐ Laos
- ☐ Latvia
- ☐ Lebanon
- ☐ Lesotho
- ☐ Liberia
- ☐ Libya
- ☐ Liechtenstein
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Madagascar
- ☐ Malawi
- ☐ Malaysia
- ☐ Maldives
- ☐ Mali

- ☒ Malta
- ☐ Marshall Islands
- ☐ Mauritania
- ☐ Mauritius
- ☐ Mexico
- ☐ Micronesia
- ☐ Monaco
- ☐ Mongolia
- ☐ Montenegro
- ☐ Morocco
- ☐ Mozambique
- ☐ Myanmar
- ☐ Namibia
- ☐ Nauru
- ☐ Nepal
- ☐ Netherlands
- ☐ New Zealand
- ☐ Nicaragua
- ☐ Niger
- ☐ Nigeria
- ☐ North Korea
- ☐ North Macedonia
- ☐ Norway
- ☐ Oman
- ☐ Pakistan
- ☐ Palau
- ☐ Panama
- ☐ Papua New Guinea
- ☐ Paraguay
- ☐ Peru
- ☐ Philippines
- ☐ Poland
- ☐ Portugal
- ☐ Qatar
- ☐ Republic of Moldova
- ☐ Romania
- ☐ Russian Federation
- ☐ Rwanda
- ☐ Saint Kitts and Nevis
- ☐ Saint Lucia
- ☐ Saint Vincent and the Grenadines
- ☐ Samoa
- ☐ San Marino
- ☐ Sao Tome and Principe
- ☐ Saudi Arabia
- ☐ Senegal
- ☐ Serbia

- ☐ Seychelles
- ☐ Sierra Leone
- ☐ Singapore
- ☐ Slovakia
- ☐ Slovenia
- ☐ Solomon Islands
- ☐ Somalia
- ☐ South Africa
- ☐ South Korea
- ☐ South Sudan
- ☐ Spain
- ☐ Sri Lanka
- ☐ Sudan
- ☐ Suriname
- ☐ Sweden
- ☐ Switzerland
- ☐ Syrian Arab Republic
- ☐ Tajikistan
- ☐ Tanzania
- ☐ Thailand
- ☐ Timor-Leste
- ☐ Togo
- ☐ Tonga
- ☐ Trinidad and Tobago
- ☐ Tunisia
- ☐ Turkey
- ☐ Turkmenistan
- ☐ Tuvalu
- ☐ Uganda
- ☐ Ukraine
- ☐ United Arab Emirates
- ☐ United Kingdom
- ☐ United States of America
- ☐ Uruguay
- ☐ Uzbekistan
- ☐ Vanuatu
- ☐ Venezuela
- ☐ Viet Nam
- ☐ Yemen
- ☐ Zambia
- ☐ Zimbabwe

First name

Carla

Surname

Camilleri

Email Address of the organisation (this information will not be published)

*** Publication of your contribution and privacy settings**

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- ☐ Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**
- ☒ Public - Your personal details (name, organisation name, transparency register number, country of origin will be published with your contribution).
- ☐ No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

☒ I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2024 rule of law report.pdf](#)

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[List of topics 2024 RoL Report.pdf](#)

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

N/A

Questions for contribution

The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member State in the 2023 Rule of Law report, as well as

developments with regard to the points raised in the respective country chapter of the 2023 Rule of Law Report and (2) any other significant developments since January 2023[3]. Please always include a link to and reference relevant legislation/documents (in the national language and/or where available, in English). Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

[3] Unless already covered in the input for the previous Rule of Law Reports.

Member State covered in contribution [only one choice possible]

If you wish to submit information concerning several Member States, please fill in the questionnaire separately for each Member State. There is no limit to the number of contributions submitted by a single participant.

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czechia
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☒ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain

I. Justice System

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system (if applicable)

5000 character(s) maximum

For the 3rd year running there has been no developments in relation to strengthening the appointment procedure for the appointment of the Chief Justice by involving the judiciary in such process. Whilst milestone 6.1 of the RRP refers to the amended procedure passed in 2020, this falls short of the Venice Commission and the Commission recommendations. We again reiterate the need to depoliticise the appointment of the Chief Justice due to the wide-ranging, critical and various roles played with the Maltese justice system. We also note that no female Chief Justice's have ever been appointed.

We thus feel that this recommendation has not been implemented and needs to be more strongly recommended in future Reports.

With regards to efforts to improve the efficiency of the justice system, which was flagged in 2022 and 2023:

- The Government launched a consultation to reform the system of complication of evidence and referrals procedure. This process was closed on 31st May 2023, however to date the results of the consultation nor the final text of any new provisions have been provided or presented to the public. The same document received some criticism from academics: <https://www.um.edu.mt/library/oar/handle/123456789/109963>.
- There is no publicly available information as to the remit, membership or results of the Working Group of the Family Courts which was mentioned in the previous report.
- 3 new judges were appointed, 1 of which was a presiding magistrate, whilst 2 judges retired. This results in a net increase of 1. 9 new magistrates were appointed in 2023, 4 of which to be assigned to magisterial inquiries, as stated by the Government. 3 of these magistrates were were previous employed with the prosecutor's office, one of which was deputy-Attorney General.
- There has been very limited development on the digitalisation of the justice system, which is also listed as Milestone 6.39 of the RRP. Whilst a Digital Justice Strategy 2022 - 2027 was published and its website does not have any information relating to the project team (<https://digitaljustice.gov.mt/project-team/>) and the action plan (<https://digitaljustice.gov.mt/action-plan/>). The results of a tender for the process mapping across several justice entities was published in October 2023, however an unsuccessful bidder filed an appeal in front of the Public Contracts Review Board and therefore implementation is unlikely in the near future. We are not aware of any other tender issued by the Ministry of Justice within the ambit of digitalisation although reference was made to them on page 7 of the 2023 Commission RoL report (<https://www.etenders.gov.mt/epps/quickSearchAction.do>). No action was carried out to address the issues identified by EU Justice Scoreboard were Malta is lagging behind in relation to digital technology in the courts online filings, electronic communication tools and the like.
- The Government's assertion on Page 7 of its 2023 Submission that "The online filing of cases across most civil courts was also introduced" is false, as the majority of civil cases, judicial review and human rights cases have to be filed in person at the courts (<https://courts.gov.mt/statistics/civil/year-2023/>).
- In a speech on the opening of the Forensic year the Chief Justice stated that the Courts were barely afloat due to the increased workload. He stated that the number of judiciary, the human resources in court, the space available as well as procedural laws, were not equipped to cater for such influx. We have not seen efforts to address these issues [<https://timesofmalta.com/articles/view/three-courts-barely-afloat-heavy-workload-chief-justice-warns.1058757>]. The Chamber of Advocates have called for an audit to address these shortcoming, instead of management by crisis.

We thus feel that this recommendation has not been implemented. We also encourage the Commission to urge the Government to include references in their written submissions in support of statements.

A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)

5000 character(s) maximum

Although the system has improved it should be noted that the Venice Commission, together with aditus foundation, has called on the government to strengthen the appointment system by making shortlisted candidates public before appointment by the President. It should be noted here that the President is appointed by the Parliament, and thus has a political role. Once the judges or magistrates are appointed there is no further information provided to the public as to the reasons why one candidate was chosen over another, no ranking system and no information as to how many applications were received in total including those that were not shortlisted. There is need for further depoliticisation of the appointment system and transparency.

As mentioned above, there has been no move to depoliticise the appointment of the Chief Justice. Furthermore, the Chief Justice should be appointed from amongst sitting magistrates or judges due to the need to have the necessary experience in this multifaceted role. It should also be noted that disciplinary proceedings, which could lead to removal, against judges and magistrates can only be initiated through a complaint submitted by the Chief Justice himself or the Minister for Justice to the Committee for Judges and Magistrates. This would make any complaints against the Chief Justice an impossibility, except in the event of a complaint by the Minister for Justice.

Appointment of judges on specialised boards:

The Government of Malta declared that "said tribunals already enjoy independence" and that "a full review of any decision issued by said specialised tribunals is already guaranteed" (pg 268 - Malta: Recovery and Resilience Plan, 2023 - <https://fondi.eu/wp-content/uploads/2023/11/Malta-Recovery-and-Resilience-Plan-2023-7.11.2023.pdf>). We make reference to our previous submissions on the appointment of members of specialised tribunals, and reiterate our recommendations.

This in spite of concerns by the Venice Commission, the EU Commission and CSOs (Galand A., GHSL Id-Dritt, Edition XXXIII <https://www.linkedin.com/feed/update/urn:li:activity:7066474791225958401/>; Galand, A. (2023). Accelerated procedures and the impossibility to reconcile them with human rights : What the practice in Malta has taught us. Mediterranean Journal of Migration, Edition 1 Issue 1 https://www.um.edu.mt/library/oar/bitstream/123456789/116345/1/Accelerated_procedures_and_the_impossibility_to_reconcile_them_with_human_rights_What_the_practice_in_Malta_has_taught_us%282023%29.pdf).

Attention should be drawn to the recent ECtHR judgment A.D. v Malta decided in October 2023 (<https://hudoc.echr.coe.int/eng?i=001-228153>) which highlights the inaction of the Immigration Appeal Board (para 190). The tribunals were also mentioned in the previous case S.H. v Malta decided in 2022. A recent case was instituted by the Union of Professional Educators against Malta claiming that an Industrial Tribunal decision should be revoked because, amongst other claims, the tribunal was neither independent nor impartial as the members are appointed directly by the executive (<https://theshiftnews.com/2023/11/08/union-forced-to-take-legal-action-as-malta-draws-heels-over-pledges-made-to-receive-eu-funds/#:~:text=The%20pledge%20to%20ensure%20the,in%20communication%20with%20the%20Venice>).

The independence of the International Protection Appeals Board and of the Immigration Appeals Board are

also subject of Commission Complaints CHAP(2021)02127 and CHAP(2023)00168 respectively.

It should also be noted that Government's claim that there is always a guaranteed review of any decision by specialised tribunals is erroneous and misleading. In the Immigration Act, Article 25A(8) provides specifically that the decisions of the Immigration Appeals Board are final, except for EU nationals and their dependents and for migrants who are lawfully in Malta. However, the majority of appeals are filed by irregular and/or detained migrants pending age assessment appeals, removal appeals and detention challenges. Articles 7 (10) and 23(8) of the International Protection Act also provide that the decisions of the International Protection Appeals Board are final, conclusive and may not be challenged before any court of law.

We therefore find the Malta Government's statements on the tribunals in the Malta:

Recovery and Resilience Plan, 2023 to be extremely concerning and lacking in the commitment needed to carry out the necessary reforms. We remind the Commission that, in spite of the repeated recommendations, the Tribunals are still functioning and taking daily decisions with proper guarantees of scrutiny from independent courts in breach of appellants' fundamental rights.

We urge the Commission to seek assurance from the Maltese Government on their commitment to carry out the reform of specialised tribunals, in consultation with all stakeholders, in a timely manner.

Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

5000 character(s) maximum

Disciplinary procedures in relation to members of the judiciary are carried out by the Committee for Judges and Magistrates which is composed of members of the judiciary. However, this procedure can only be initiated by the Chief Justice or the Minister responsible for justice. Therefore, disciplinary procedures in relation to the Chief Justice can only be initiated by the Minister responsible for justice, and not judicial peers.

However, it should be noted that removal of members of tribunals or quasi-judicial bodies is usually the prerogative of the President acting on the advice of the Prime Minister. There is no right of appeal from removal nor any oversight from the Chief Justice or the Committee for Judges and Magistrates. These board members are not bound by any code of ethics or any disciplinary proceedings.

Please refer to our 2023 Rule of Law submission for more detailed information.

We strongly urge the Commission to recommend a change procedures before the Committee which allows any member of the judiciary to initiate procedures.

We strongly urge the Commission to recommend the strengthening of the removal procedure for members of tribunals. In addition, to recommend the binding of these board members to the judicial code of ethics: <https://judiciary.mt/wp-content/uploads/2022/09/Code-of-Ethics-Judiciary-2010-1.pdf>, in order to ensure independence until the conclusion of the tribunals reform in 2026.

Promotion of judges and prosecutors (incl. judicial review)

5000 character(s) maximum

There is no publicly available information on the promotion of judges and prosecutors. It is therefore not possible to comment on the system and on any judicial review or administrative review of any decision to promote or not to promote. However, Article 101A(13) of the Constitution grants the President, on advice of the Chief Justice, the power to decide on the subrogation of judges and magistrates and to the assignment of duties of judges and magistrates. The Judiciary website states that "the Chief Justice recommends to the Minister responsible for justice how Judges and Magistrates are to be allocated between the different courts, and the Minister, in advising the President of Malta as to the assignment of duties of Judges and Magistrates "shall...act in accordance with any recommendation on the matter by the Chief Justice". It is unclear as to the actual procedure adopted - <https://judiciary.mt/en/the-chief-justice/>

Prosecutors are regulated by a collective agreement which is not in the public domain, and therefore we cannot comment on procedures for promotion. The Internal Guidelines for Prosecutors are not public: <https://attorneygeneral.mt/guidelines/>.

We strongly urge the Commission to recommend transparency as to the procedures adopted for promotion of both judges and prosecutors.

Allocation of cases in courts

5000 character(s) maximum

Please refer to our 2023 Rule of Law submission.

Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

5000 character(s) maximum

Please refer to our 2023 Rule of Law submission, in specific the composition of the Commission for the Administration of Justice (CAJ) and the presence of two external persons appointed by government and opposition respectively. The Commission should be fully depoliticised in order for there to be full independence and impartiality.

The method for the public to file complaints to the should be revised and modernised in order for the procedure in front of the CAJ to be more transparent and accessible. Information on how to complain needs to also be public. Currently, the only information on how to file a complaint to the CAJ is found on the Chamber of Advocates website which states that in order to make a complaint against a lawyer one has to direct their complaint to "The Commission for the Administration of Justice, The Grandmaster's Palace, St George's Square, Valletta." (<https://www.avukati.org/faq/>). The Judiciary website briefly mentions the complaints procedure but does not provide full information: <https://judiciary.mt/en/faqs/>.

No information is made public as to how many complaints were received, how many followed up and how many were referred to the Committee for Judges and Magistrates by the Chief Justice and/or the Minister responsible for justice.

We strongly urge the Commission to recommend a change in composition of the CAJ.

We also urge the Commission to recommend further transparency on the complains procedure with regards to the CAJ and the Committee, including the publication of annual reports which would include statistical data which can be anonymised on procedures that were undertaken in any given year.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

5000 character(s) maximum

There have been very few prosecutions / impeachment of judges with the last one dating back to 2012 in relation to a charge of bribery. From publicly available information there have been no procedures in front of the Committee or the Commission for the Administration of Justice in relation to members of the judiciary.

Again there have been new calls for action against Magistrate Nadine Lia and her former husband Alessandro Lia (also a lawyer and a Commissioner for Justice) due to pending criminal charges against both have surfaced: <https://theshiftnews.com/2023/07/18/pressure-mounts-as-justice-commissioner-faces-charges-of-aggravated-grievous-bodily-harm/>; <https://theshiftnews.com/2023/11/10/justice-commissioner-in-hot-water-over-fresh-criminal-complaint/>. Alessandro Lia's father sits on the CAJ. There is no publicly available information of any disciplinary investigations, if any, being carried out. In another case, a lawyer during Constitutional Court procedures accused a sitting magistrate of exerting undue pressure on his client outside the court. The plaintiff claiming a breach of a right to a fair hearing and is attacking the provision of the law that allows judges and magistrates to decide themselves on a request for their recusal <https://timesofmalta.com/articles/view/lawyer-recounts-magistrate-exerted-pressure-client.1068945>. There is no publicly available information of any disciplinary investigations, if any, being carried out.

Concerns were raised when prosecutors working for the Attorney General moved to the private defence of the accused. In 2020 an inquiry was opened when one of the prosecutors working for the AG resigned and then appeared for Yorgen Fenech, accused of masterminding Daphne Caruana Galizia's assassination, in court the very next day. The inquiry found that there were insufficient safeguards protecting "the image of correctness" in the office of the AG. He proposed that public prosecutors should be barred from appearing for persons or companies against whom criminal or civil proceedings were instituted during their period of employment. This proposal was not taken up. In 2022 another lawyer jumped ship from the prosecutors office to the defence team (<https://theshiftnews.com/2021/02/13/another-ag-lawyer-jumps-ship-to-help-defence-team-in-case-filed-by-his-former-office-this-time-its-not-yorgen-fenech-but-mark-gaffarena/>). This same lawyer was appointed to the Immigration Appeals Board and was questioned by the Police in relation to a payoff of witness in a separate case: <https://theshiftnews.com/2023/11/02/criminal-lawyer-in-alleged-witness-payoff-appointed-to-immigration-board/>. He remains on the Immigration Appeals Board. Again in 2023 another prosecutor took up the defence of two men, the convicted hitmen of Daphne Caruana Galizia, although he was involved in the prosecution of other actors in Daphne's assassination (<https://newsbook.com.mt/en/justice-ministry-sees-nothing-wrong-with-degiorgios-prosecutor-becoming-their-lawyer/>). No further information on any of the above is available.

The Government reported that the new AG contracts of employment for recruits prohibit the negotiation on terms of engagement as defence lawyers for private client while they are still in employment at the AG's office. Furthermore, prosecutors should not, prior to the termination of their employment, make any arrangements or preparations to act as lawyers or with a legal firm in the name of any person against whom they would have led a prosecution against or on whose case the AG's office would have given any advice on. However, firstly these new amendments only apply to new recruits and secondly do not prohibit negotiating or working for persons after the termination of their employment contract.

We urge the Commission to recommend to the Maltese Government to make public the number of proceedings or investigations carried out annually in relation to members of the judiciary.

We urge the Commission to recommend to the Maltese Government to take heed of the findings of the inquiry in relation to prosecution lawyers, current and future, moving to criminal defence in order to avoid conflict of interest.

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

5000 character(s) maximum

Please refer to our 2023 Rule of Law submission

Independence/autonomy of the prosecution service

5000 character(s) maximum

Please refer to our 2023 Rule of Law submission. However we would like to reiterate the importance of an independent prosecution service which is a key element for the maintenance of judicial independence. Whilst the appointment procedure is clear, the criteria for the appointment of the Attorney General (Art 91 of the Constitution) is simply that of being qualified for appointment as a judge of the Superior Courts.

There is nothing else in the procedure in the Constitution and in the Attorney General Ordinance that gives further clear criteria to "to gain public confidence and the respect of the judiciary and the legal profession" (as recommended by UNODC, the UN special rapporteur on independence of judges and lawyers & Venice Commission). All bodies underline the requirement of depoliticization. Whilst the new procedures see the setting up of Appointment Commission, the members of the Commission are handpicked by the Minister responsible for justice who in his opinion are respected and trusted by the public and are "technically qualified" to examine whether candidates for the office of Attorney General have the appropriate qualifications and other merit and suitability requirements. There is no further definition of what technically qualified" means or how someone can be considered to be respected and trusted by the public.

There are no public guidelines on standards to appoint senior or chief prosecutors besides the Attorney General, although it is recognised by Council of Europe bodies that there is a need for clear criteria defined by the law, reflecting the specific competencies and experience required for a chief prosecutor that must be higher than those for ordinary prosecutors.

We urge the Commission to recommend an appointments procedure for the Attorney General that includes the cooperation between various state organs and advice on the professional qualification of candidates should be taken from relevant experts including the legal community and civil society, as suggested by the Venice Commission.

Independence of the Bar (chamber/association of lawyers) and of lawyers

5000 character(s) maximum

Please refer to our 2023 Rule of Law submission.

We urge the Commission to recommend that the Chamber of Advocates be granted access to funds and/or HR support (such as seconded public servants) in order to increase their capacity.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

5000 character(s) maximum

The Chamber of Advocates issued three statements expressing concern in relation to what it perceived to be as attacks on judicial independence and impartiality by the Prime Minister.

In January 2023, it was reported that the Prime Minister spoke directly and informally to a member of the judiciary on matters relating to their work. The Chamber of Advocates issued a statement stating that this goes against the Code of Ethics of the judiciary - <https://www.avukati.org/2023/01/30/stqarrija-tal-kamra-tal-avukati-4/>; <https://timesofmalta.com/articles/view/adpd-slams-abelas-chat-magistrate-court-sentencing-policy-1010355>.

In July 2023, the Chamber expressed worry at the Prime Minister attacking the judiciary during a press conference relating to a controversial public inquiry and in having access to a confidential report that the Inquiring Magistrate passed on to the Attorney General (<https://www.avukati.org/2023/07/20/stqarrija-tal-kamra-tal-avukati-inkjesta-magisterjali/>; <https://theshiftnews.com/2023/07/20/sofia-inquiry-clear-that-magistrate-did-not-request-an-extension-chamber-of-advocates/>). In October 2023, the Chamber again issued a statement that the Prime Minister used his Parliamentary Privilege to undermined the independence and impartiality of the Courts when he implied that they were biased towards the Opposition party when it ruled that the corrupt hospitals deal was null and void (<https://www.avukati.org/2023/10/25/chamber-of-advocates-voices-concern/>; <https://timesofmalta.com/articles/view/chamber-advocates-hits-abela-implicating-pn-plays-home-court-1063404>).

In February 2022, the Malta Law Students' Society filed a complaint with the Commissioner for Standards in Public Life against the Prime Minister for meddling with the judiciary. The complaints relate to what they consider to be the Prime Minister's undue pressure on the judiciary, in particular the report where the Prime Minister stated that he spoke directly and informally to a particular Magistrate without going through the proper procedure.

<https://timesofmalta.com/articles/view/robert-abelas-conversation-magistrate-never-logged-documented-1029665>; <https://www.ghsl.org/latestnews/statement-following-the-comments-of-the-prime-minister-on-the-13th-of-july-2023-during-an-interview-with-maltatoday/>; <https://theshiftnews.com/2023/07/15/law-students-reported-prime-minister-to-standards-commissioner-five-months-ago/>.

B. Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section

2)

Accessibility of courts (e.g. court/legal fees, legal aid, language)

5000 character(s) maximum

Legal aid: Please refer to our 2023 Rule of Law submission. At the end of 2023 a new system of legal aid panels was set up and lawyers appointed as legal aid lawyers are placed on panels depending on legal expertise (pg. 15,056 <https://www.gov.mt/en/Government/DOI/Government%20Gazette/Documents/2023/12/Government%20Gazette%20-%2022nd%20December.pdf>). There are 19 criminal legal aid lawyers for Malta, and 3 for Gozo; 11 civil legal aid lawyers for Malta and 3 for Gozo; 11 for advice or legal representation in Court for victims of crime in Malta and 2 in Gozo.

It should be noted that legal aid has always been available to any person irrespective of nationality or residence status, and therefore any requirement to access legal aid via an e-ID or in person can have the result that those that don't have a residence card would not be able to access the service (See required documents: <https://legalaidsystem.mt/en/services/civil-legal-aid-cases/>). Furthermore, although Social Workers/Professionals etc can refer on the Legal Aid Referral System, this also must be done with their personal E-ID as legal entities (such as NGOs, Law Firms etc) are not provided with an E-ID and this can

create issues of continuity and data protection.

A recent report on a particular criminal proceeding brought a spotlight on legal aid lawyers who fail to appear for court sittings: <https://timesofmalta.com/articles/view/marsa-murder-accused-complains-absence-lawyer.1077003>. This is a recurrent story we hear from migrant clients that visit our office. We are both shocked at the fact that the lawyer was not present, without any consequence, and that the sitting was allowed to continue. See also *Feilazoo v Malta* regarding access to legal aid in prison and in detention [para 58 & paras 128 - 130: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-208447%22%5D%7D>]]

Legal Aid for asylum and immigration cases are not provided within the ambit of the Ministry of Justice but via different system through the Ministry for Home Affairs that issues separate calls, appoints the lawyers and assigns cases. We are not aware of any case-management system or rotation of such lawyers. This can cause issues of conflict of interest where the same Ministry's agencies are the plaintiffs in each appeal.

We urge the Commission to recommend the following:

1. Ensure legal aid for all, irrespective of residence status or the possession of document;
2. Increase in the financial thresholds for eligibility for legal aid & widen the merit test for eligibility for legal aid to include pre-litigation advice;
3. Ensure continuous training for legal aid lawyers;
4. Ensure a quick and effective method of filing complaints and starting disciplinary proceedings against legal aid lawyers who fail to appear for hearings;
5. Ensure that court sittings are suspended if legal aid lawyers do not show;
6. Mainstream asylum & immigration legal aid with the general legal aid administered by the Ministry of Justice;
7. Ensure that the Legal Aid Agency publishes the list of legal aid lawyers and their contact details, statistics and an annual report on its activities;
8. To carry out a thorough review of the legal aid system to address the above issues.

Interpreters are assigned by the Court through a list of court interpreters (<https://courts.gov.mt/wp-content/uploads/2022/07/translatorList.pdf>). There isn't an official designation of "court interpreter" and most carry out ad hoc interpreting work if and when needed. Furthermore, the actual function of court interpreters isn't regulated by legal norms, although references to the right of interpreters are provided for in criminal legislation. Some languages such as Bengali, Urdu, Hindi, Tagalog and Tigrinya are not listed. This is concerning as a high number of Indians, Pakistanis and Filipinos reside in Malta.

There isn't the automatic right of the defendant to object to any particular interpreter if they have particular reservations. This has caused some problems with during criminal proceedings: https://www.maltatoday.com.mt/news/court_and_police/120820/interpretation_muddle_leaves_paceville_murder_hearing_postponed; <https://newsbook.com.mt/en/el-hiblu-defence-seeks-change-in-interpreter-saying-translation-is-not-loyal-to-what-is-being-said/>; https://www.maltatoday.com.mt/news/court_and_police/123597/lawyer_slams_justice_system_after_bail_request_filed_two_days_ago_only_reaches_court_on_thursday_.

We urge the Commission to recommend the following:

1. Introduce clear provisions on the regulation and function of interpreters in Court;
2. Carry out training to interpreters on interpreting in a court setting;
3. Introduce provisions that allow for the replacement of interpreters if the accused has reservations or difficulty in understanding.

Resources of the judiciary (human/financial/material)

(Material resources refer e.g. to court buildings and other facilities. Financial resources include salaries of staff in courts and prosecution offices.)

5000 character(s) maximum

As mentioned above in his speech on the opening of the Forensic year in October 2023 the Chief Justice stated that the Courts were barely afloat due to the increased workload. He stated that the number of judiciary, the human resources in court, the space available as well as procedural laws, were not equipped to cater for such influx of workload. This is in spite of the fact that according to the Justice Scoreboard 2023 Malta ranks 9th in the government total expenditure on law courts per inhabitant and 8th in the government's total expenditure on law courts as a percentage of GDP.

In November 2023 the Association of Judges and Magistrates of Malta issued a statement warning that the judicial system was on the brink of collapse due to a persistent lack of resources, staff and investment: <https://newsbook.com.mt/en/on-the-brink-of-collapse-judiciary-association-issues-stern-warning-over-resource-shortage/>.

Therefore there is a dissonance between high expenditure and the further deterioration of the efficiency of the justice system and the concerning lack of resources. It cannot be said that the latter two issues have been addressed over 2023.

We urge the Commission to include further investment in the resources available to the judiciary as a recommendation.

Training of justice professionals (including judges, prosecutors, lawyers, court staff, clerks/trainees)

5000 character(s) maximum

The annual budget allocated to the Judicial Studies Committee remains unchanged at €50,000 for all the judiciary. There are no legal requirements for judges (or lawyers) to carry out professional development training in order to retain their position or warrant. From the information we have, in 2023, there was one training organised in Malta for local judges, whereas 5 Maltese judges each attended 5 trainings or study visits overseas.

As mentioned above, lawyers and legal professionals are not required to carry out any continuing professional development training. This is a particular lacuna in not have a specific legal instrument regulating the legal profession. The government has been dragging its feet for 15 years and yet no lawyer's act has been tabled or discussed in parliament. The President of the Chamber of Advocates had alluded to "competing interests" as the cause of the delay: <https://newsbook.com.mt/en/justice-system-needs-an-audit-chamber-of-advocates-president-says/>.

We strongly urge the Commission to recommend the following:

1. Include mandatory training hours for all legal professionals in order to retain their warrant;
2. Include mandatory training for all members of the judiciary, including members of tribunals;
3. Introduce a lawyer's act in order to properly regulate the legal profession in the 21st century.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, procedural rules, access to judgments online)

5000 character(s) maximum

The government allocated, through EU funds, €3, 227,000 and a further €5, 200,000 on the digitisation in the justice system and yet Malta practitioners still do not have the digital tools necessary for an efficient and modern working environment.

The Government's assertion on Page 7 of its 2023 Submission that "The online filing of cases across most civil courts was also introduced" is false. General civil cases and constitutional cases cannot be filed online. It should be noted that in order to use this system, the legal practitioner has to use their personal E-ID with their personal (not professional) information, such as home address, date and place of birth. This creates privacy issues and issues of continuity in cases of change of legal representative.

There is no publicly available information relating to the Court Digital Transformation Project Team referred to on page 6 of Malta's 2023 RoL submission and therefore its progress is not known. From the information available the court information management system tender and the introduction of the e-signature has not been carried out.

We therefore urge the Commission to recommend to Malta a speedy implementation of its digitalisation strategy and to publish any reports of the Digital Justice Strategy Steering Committee (<https://digitaljustice.gov.mt/the-digital-justice-strategy-committee/>) on the progress of implementation. Furthermore, in its implementation the Government should engage in a wide stakeholder consultation.

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

5000 character(s) maximum

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

5000 character(s) maximum

C. Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)

Length of proceedings

5000 character(s) maximum

We cannot report any positive developments or initiatives on shorten the length of proceedings. Please refer to our 2023 Rule of Law submission.

Other - please specify

5000 character(s) maximum

The number of preliminary references filed at the International Protection Appeals Tribunal and not submitted to the CJEU is now 5. The oldest one pending since 14/07/2022. One request was rejected by the

Tribunal on the basis of the acte clair principle, although we respectfully disagree such a decision (which related to the procedures with the Tribunal itself) could not be appealed.

It should be noted that both the Immigration Appeals Board and the International Protection Appeals Tribunal, both courts of last resort, have never acceded to a request for a preliminary ruling on questions relating to the interpretation of European Union law. The decisions refusing to refer or the refusal to take a decision on the request cannot be appealed to a court of law.

Whilst the independence of the tribunals has been discussed above, the arbitrary refusal to refer to the CJEU has been found to breach plaintiffs rights to a fair trial. This reflects generally on the Maltese judicial tradition which is reluctant to refer questions to the CJEU. The continuing refusal also impinges on the harmonised implementation of European Union law.

II. Anti-Corruption Framework

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the anti-corruption framework (if applicable)

5000 character(s) maximum

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic and with foreign authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

5000 character(s) maximum

Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption

5000 character(s) maximum

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators

5000 character(s) maximum

B. Prevention

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training)

5000 character(s) maximum

General transparency of public decision-making (including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing)

5000 character(s) maximum

Rules and measures to prevent and address conflicts of interest in the public sector. Please specify the features and scope of their application (e.g. categories of officials concerned, types of checks and corrective measures depending on the category of officials concerned)

5000 character(s) maximum

If available to you, for the three preceding questions, you are also invited to provide figures on their application, such as number of detected breaches/irregularities of the various rules in place and the follow-up given (investigations, sanctions, etc.).

Measures in place to ensure whistleblower protection and encourage reporting of corruption, including the number of reports received and the follow-up given

5000 character(s) maximum

Sectors with high-risks of corruption in your Member State:

- Measures taken/envisaged for monitoring and preventing corruption and conflict of interest in public procurement
- List other sectors with high risks of corruption and the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. healthcare, citizen /residence investor schemes, urban planning, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

5000 character(s) maximum

Any other relevant measures to prevent corruption in public and private sector

5000 character(s) maximum

C. Repressive measures

Criminalisation, including the level of sanctions available by law, of corruption and related offences, including foreign bribery

5000 character(s) maximum

Data on the number of investigations, prosecutions, final judgments and application of sanctions for corruption offences (differentiated by corruption offence if possible) including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds

5000 character(s) maximum

Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

5000 character(s) maximum

Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders

5000 character(s) maximum

Other - please specify

5000 character(s) maximum

III. Media pluralism and media freedom

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding media pluralism and media freedom (if applicable)

5000 character(s) maximum

A. Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Measures adopted to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

5000 character(s) maximum

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

5000 character(s) maximum

Existence and functions of media councils or other self-regulatory bodies

5000 character(s) maximum

B. Safeguards against government or political interference and transparency and concentration of media ownership

Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

5000 character(s) maximum

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

5000 character(s) maximum

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter

5000 character(s) maximum

C. Framework for journalists' protection, transparency and access to documents

Rules and practices guaranteeing journalists' independence and safety, including as regards protection of journalistic sources and communications, referring also, if applicable, to follow-up given to alerts lodged with the Council of Europe's Platform to promote the protection of journalism and safety of journalists

5000 character(s) maximum

Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

5000 character(s) maximum

Access to information and public documents by public at large and journalists (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

5000 character(s) maximum

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

5000 character(s) maximum

Other - please specify

5000 character(s) maximum

IV. Other institutional issues related to checks and balances

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the system of checks and balances (if applicable)

5000 character(s) maximum

Establishment of a National Human Rights Institution - There has been no progress in relation to the establishment of NRHI in line with the Paris Principles. In spite of the commitments declared in the 2023 Rule of Law Submissions that Malta (pg. 49) made no laws have tabled in Parliament. There have been no developments since our previous Rule of Law Submission, and no laws have been enacted in this regard in the 10 years since the launch of the reform in 2014.

In its UPR Submission the Government of Malta stated, in relation to the repeated recommendation relating to NHRIs, that "In the interim, the European Commission proposed two Directives that establish binding minimum standards for equality bodies. The national Bill is being reviewed in view of these proposals to ensure compliance once they are adopted at EU level prior to its reintroduction to Parliament. The legislative process will also include a public consultation": (<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/217/84/PDF/G2321784.pdf?OpenElement>, October 2023). This will further the delay of the implementation of the Commission recommendation.

In July 2023, the OHCHR also recommend the establishment of a fully-fledged and independent national human rights institution in compliance with the Paris Principles, whilst recognising the severe challenges being faced in Malta in relation to gender equality and the implementation of legislation, including EU anti-discrimination legislation - (pg.2. <https://www.ohchr.org/sites/default/files/documents/issues/women/wg/EoM-Statement-Malta-7July2023.pdf>).

We therefore feel that this recommendation has not been achieved.

Introduction of a framework for public participation in the legislative process - There has been no progress in relation to the introduction of a formalised process for public participation in spite of the recommendation. We make reference to our 2023 Rule of Law Submission: <https://aditus.org.mt/Publications/2023ruleoflawreports submission.pdf>. See also our submission to the UPR: https://aditus.org.mt/Publications/aditushumanistsupr_2023.pdf (pg. 14).

One of the commitments in Malta's Open Governance Partnership Malta Action Plan 2023-2025 is the creation of a justice forum which would have the task of discuss new and ongoing initiatives, and lacunae in justice-related initiatives. The forum will be composed of government stakeholders and CSOs (<https://www.opengovpartnership.org/members/malta/commitments/MT0018/>). Whilst we welcome this initiative and look forward to actively participating, we still urge for there to be a formal legal process of public participation for all legislative initiatives.

We therefore feel that this recommendation has not been achieved.

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (including consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase

[1] This includes also the consultation of social partners

5000 character(s) maximum

Please refer to our 2023 Rule of Law Submission in relation to the transparency and quality of the legislative process, in that there have been no legislative changes to address the recommendations put forward by the Commission.

As mentioned above, in the drafting of the Open Governance Partnership Plan for Malta (<https://www.>

opengovpartnership.org/wp-content/uploads/2024/01/Malta_Action-Plan_2023-2025_December.pdf), which was drafted with a very tight deadline for CSOs to provide suggestions and feedback, one of the commitments that was included was the creation of a Justice Forum which, headed by the Ministry for Justice, seeks to establish a consultation forum for justice-related initiatives that it will be working on. At the insistence of the CSOs involved the Forum will discuss proposals for initiatives in the justice sector brought to it by any of its participating entities, and not only those initiatives suggested by the Ministry and/or Government.

However, problems with regards to lack of stakeholder consultations continue to exist specifically in relation to media reform (<https://newsbook.com.mt/en/parliament-urged-to-hold-consultation-before-going-ahead-with-media-reform-laws/>), the short timeframes given for civil society and stakeholders to respond (e.g. one - two months: <https://www.gov.mt/en/publicconsultation/Pages/default.aspx>), and the extensive use of regulations and legal notices that do not go through the same parliamentary scrutiny as main legislative instruments: <https://legislation.mt/LegalNotices>. As previously mentioned, legal notices are subsidiary laws drafted and brought into force by the minister in accordance with the enabling powers vested in the primary legislation. For legal notices to become law, no parliamentary debates or motions are required for their enactment. However, the Interpretation Act (Article 11 - <https://legislation.mt/eli/cap/249/eng/pdf>) mandates that a legal notice must be laid in Parliament for 28 days. If a motion to annul or amend the legal notice is raised and passed during that period, the notice will cease to have effect or be amended accordingly. This process lacks transparency in that it is unclear which or when legal notices have been laid in Parliament and it is thus impossible for the public to track whether or not there have been any motions to annul or amend and the results of any such process: <https://parliament.mt/en/>.

No consultation process is included in any legislative instruments, and therefore the process and the publication of results is carried out on an ad hoc basis without any guidelines on implementation and follow-up. It should also be noted that there is no financial or any other support for academia or CSOs to participate in the OGP's Justice Forum or in any of the other stakeholder consultations.

We therefore urge the Commission to recommend that:

1. Legal provisions are introduced to allow for the public participation in the legislative process;
2. The use of legal notices needs to be made more transparent and open to public scrutiny.

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

5000 character(s) maximum

N/A

Rules and application of states of emergency (or analogous regimes), including judicial review and parliamentary oversight

5000 character(s) maximum

N/A

Regime for constitutional review of laws

5000 character(s) maximum

Please refer to our 2023 Rule of Law Submission for the law, jurisprudence and process which remains unchanged.

In this regard, It is not clear how many such cases have been tabled in Parliament and what action, if any, has been taken by Parliament. In 2023 an opposition MP asked the Prime Minister present the number of judgements ruling on the unconstitutionality of any provision of Maltese law that were laid in Parliament in accordance with 242(1) of the Code of Organization and Civil Procedure. In addition, this MP request the data on the number of times the Prime Minister took action to remove any inconsistency with the Constitution of Malta or with the right or fundamental freedom as intended in article 242(2) (<https://pq.gov.mt/PQWeb.nsf/7561f7daddf0609ac1257d1800311f18/c1257d2e0046dfa1c125899400370507!OpenDocument>).

The Prime Minister requested the Minister for Justice to respond, who in turn noted that in order to compile all the information as requested the advisory cost limit will be exceeded. It is not known what the advisory cost limit it, however we can only surmise that this means that there are large number of judgments so laid.

It is indeed disconcerting to know that such data is not being kept, also in view of the fact that the erga omnes principle is not adhered to. From a search on the Parliament's website, we found 119 such cases laid during this legislature (i.e. from March 2022 to date). A full list will be published with the word version of this submission.

The Maltese Government referred to the Law Commissioner in its 2023 Rule of Law Submission (page 50). However the remit and results of this office is unclear. The appointment to the role isn't laid down by law, and there is no public information available, except for the increase in salary from €200,000 to €260,000 in 2024 (<https://finance.gov.mt/wp-content/uploads/2023/10/fe24-24-Justice.pdf>).

We urge the Commission to recommend the erga omnes application of judgements finding Maltese legislation unconstitutional, also in view of the burden placed on the Courts with repeated judgements, and the proper application of 242(1) of the Code of Organization and Civil Procedure. We also urge the Commission to request the publication of the annual reports of the Law Commissioner.

B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)

5000 character(s) maximum

2023 saw the appointment of Justice Zammit McKeon as Parliamentary Ombudsman and Justice Joe Azzopardi as Commissioner for Standards in Public Life. Their appointments were seen as a compromise between Government and Opposition: <https://theshiftnews.com/2022/11/15/pm-insists-on-indecent-proposal-to-get-his-choice-of-standards-commissioner/>. The Office of the Ombudsman also incorporates 3 Commissioners for Health, Education and Planning: <https://ombudsman.org.mt/about-us/the-office-of-ombudsman/>. To date no woman has ever been nominated or appointed as Ombudsperson, Commissioner within the Office of the Ombudsperson nor Commissioner for Standards in Public Life.

The Ombudsman's noted in the 2022 Annual Report that a lack of proper consultation, and acute political bickering and confrontation contributed in no small measure to the deadlock in appointing the new Ombudsman and that it was not conducive to a proper, regular functioning of the Office. In the same Annual

Report, it was noted that the number of complaints filed decreased drastically. The Ombudsman decried the lack of commitment shown by the administration, exemplified by the lack of will by Parliamentarians to discuss the Ombudsplans for 2022 submitted to Parliament - <https://ombudsman.org.mt/wp-content/uploads/2023/06/Annual-Report-2022-EN.pdf>.

See comments in Section IV. above re NHRI.

We urge the Commission to recommend the strengthening of the Office of the Ombudsman and the introduction of a public and transparent method of appointment, as suggested in the Ombudsman's 2022 Annual Report including an anti-deadlock mechanism.

We urge the Commission to recommend that the candidates for these roles reflect diversity and inclusivity.

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years

5000 character(s) maximum

The Ombudsman's 2022 Annual Report contains the number of decisions taken and whether these were implemented or otherwise. Whereas the NCPE's Annual Report provides information regarding the amount of complaints filed (12 in total in 2022) but does not include information as to the outcome or implementation of any decision. Furthermore, no ex officio assessment or investigations were carried out by the NCPE - https://ncpe.gov.mt/wp-content/uploads/2023/11/ANNUAL_REPORT-22_FINAL.pdf.

The Auditor General (National Audit Office) complained that investigations requested by Parliament's Public Accounts Committee could be stalled due to the reluctance to provide information by the competent authorities. He also hit out at the partisan composition and behaviour of Parliament's Public Accounts Committee: <https://timesofmalta.com/articles/view/nao-probe-hit-brick-wall-entities-providing-information.1060638>. However, in its Follow-up Audits Report, 2023 found that 72% of the recommendations analysed by this Office were either implemented, in part or in full, or were in the process of being implemented by the entities concerned, while 28% showed no developments or little progress: <https://nao.gov.mt/en/press-releases/4/1329/follow-up-audits-report-2023-issued-by-the-na>.

C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

5000 character(s) maximum

Please refer to our 2023 Rule of Law Submission as there have been no developments.

Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

5000 character(s) maximum

Please refer to our 2023 Rule of Law Submission.

It should also be noted that the Opposition has tabled a private members bill that seeks to reform the judicial review process for administrative, legislative and judiciary acts: <https://parlament.mt/media/125037/motion-194-judicial-review-pmb.pdf>; <https://parlament.mt/en/14th-leg/motions/motion-no-204-european-convention/?page=3&numItems=10&text=&number=&totalItems=22&isPrivate=1&isFirst=0>; <https://theshiftnews.com/2023/11/20/law-students-organisation-opposition-proposes-reform-of-judicial-review-process/>.

The Judicial Review Bill seeks to:

1. Clarify the procedure for enhanced legal certainty;
2. Expand legal standing for NGOs and pressure groups to bring representative actions;
3. Extend the definition of Public Authority to encompass bodies performing a public function; and
4. Adjust the time-period for initiating a judicial review, with suspension upon referral to the Ombudsman.

In a recent judgement, Constitutional Court recommended that the law is amended allowing for plaintiffs to sue the government directly or alternatively the state advocate. The Court held that when taking into account the considerable number of constitutional proceedings filed against the government, it is of the opinion that the time has come to amend the law and stop wasting time on determining who is the appropriate respondent in a case and allow plaintiffs to sue directly the government or alternatively the state advocate as the government's principal legal counsel - Rki. Kost. 645/21/1 - Jean Noel Ambeau Yapi et v. Il-Prim Ministru ta' Malta et. (<https://ecourts.gov.mt/onlineServices/Judgements/Details?JudgementId=0&CaseJudgementId=141951>).

We urge the Commission to recommend to the Maltese government to take heed of judgements relating to the procedure of judicial review of administrative decisions and to have a proper public consultation process on the private member's bill relating to judicial review.

Rules and practices related to the application by all courts, including constitutional jurisdictions, of the preliminary ruling procedure (Art. 267 TFEU)

5000 character(s) maximum

The preliminary ruling procedure is referred to in Part X of the Court Practice and Procedure and Good Order Rules. Part X consists of one Article 21 - <https://legislation.mt/eli/sl/12.9/eng>. The Article is vague and simply lays down the general rules relating to preliminary reference procedure and the content of any such request to the CJEU. In this regard we note that there is nothing in this Article that relates to the duty of the court of last instance to refer, the urgency procedures in specific events, the rights of the parties requesting a referral to the national court and the basis on which they can be refused. Furthermore, there is no procedure on whether such decisions can be appealed or otherwise.

Maltese courts have been notoriously reluctant to refer and in almost 20yrs of membership, only 4 preliminary references were sent from Maltese courts to the EU courts.

In our years of representing clients at the International Protection Appeals Tribunals and the Immigration Appeals Board our requests for a preliminary reference on the interpretation of EU law have never been acceded to. To date the number of preliminary references filed at the International Protection Appeals Tribunal and not submitted to the CJEU is now 5. The oldest one pending since 14/07/2022. One request was rejected by the Tribunal on the basis of the acte clair principle, although we respectfully disagree such a decision (which related to the procedures with the Tribunal itself) could not be appealed.

It should be noted that both the Immigration Appeals Board and the International Protection Appeals Tribunal are both courts of last resort and all the cases filed concerned urgent proceedings within the ambit of Title V of Part Three of the Treaty on the Functioning of the European Union. The decisions refusing to refer or the refusal to take a decision on the request cannot be appealed to a court of law.

We therefore urge the Commission to recommend the following:

1. To clarify include clear provisions in the Code of Organisation and Civil Procedure on the procedures to be used by the Court in order to protect the rights of the parties, whilst keeping in mind the recent judgements relating to the duty to refer and its implications on the right to a fair trial.
2. To keep data relating the number of preliminary references requested, denied and acceded to.
3. Provide effective training to judges, magistrates, board members and lawyers on the preliminary reference procedure.

Follow-up by the public administration and State institutions to final (national/supranational, including the European Court of Human Rights) court decisions, as well as available remedies in case of non-implementation

5000 character(s) maximum

Please refer to our 2023 Rule of Law Submission and to the further data included in Part A - Regime for constitutional review of laws. Malta continues to have 15 leading ECtHR judgements pending implementation, with a view to increase further to A.D. v Malta and the general measures contained therein.

D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

5000 character(s) maximum

No significant developments.

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or on-line –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services

5000 character(s) maximum

A landmark judgement in 2023 found that denying journalists access to prison and to detention centres breach their right to freedom of expression (201/20TA - Emanuel Delia v. Byron Camilleri et): <https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=143021>.

The Civil Court, in its Constitutional jurisdiction, ruled that journalists, in their role as public watchdogs, must have access to detention centres in which migrants and asylum-seekers are held and to Corradino

Correctional Facility, Malta's only adult prison. The lack of proper access by journalists, NGOs providing services and lawyers results in the Government having absolute monopoly over the type of information, if at all, which is available to the public. Significantly, the Court held that the right to freedom of expression doesn't only cover the content of such expression but also the method in which such content is recorded or collected. It held that journalists should be allowed to take photographs, record interviews with microphones and also take videos, always whilst respecting detainees and prisoners right to privacy. The Court held that the denial of effective access creates a chilling effect on the carrying out of independent investigations and reporting of incidents in places of detention which the government would prefer to never come to light.

The Government has appealed and in spite of the judgment, in the interim, journalists are still being denied access to detention centres and to prison. It should also be noted that access to detention is also severely restricted to NGOs providing services, including lawyers.

We there urge the Commission to recommend to the Government to implement the Court's decision and allow access to prisons and detention to journalists and CSOs providing services. We also urge the Commission to recommend to the Government to recognise the role of CSOs as public watchdogs and not public enemies when they carry out their monitoring role.

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

5000 character(s) maximum

Please refer to our 2023 Rule of Law Submission.

There are no taxation / donation / incentive systems for human rights defender CSOs. Furthermore, there is no available core funding to CSOs in order to cover their basic expenses, such as rental and operational costs. Whilst the government has recognised the need to support economic operators due to rising inflation, in rental subsidies [<https://finance.gov.mt/wp-content/uploads/2023/11/Budget-Speech-2024.pdf>] this was not recognised for CSOs.

There are no clear guidelines or publicly available information on the granting of property / office space / support by the Government to CSOs. In 2023 alone the Government pledged to spend €10.4 million on the acquisition of properties previously being rented by village band clubs evicted further to a host of constitutional court judgements relating to the right to property of the original owner: <https://newsbook.com.mt/en/government-to-acquire-five-more-band-clubs-facing-eviction/>. It is not known if the band clubs presented their annual accounts, whether they have the financial means to buy or rent other property or whether the eviction was through any fault of their own.

We urge the Commission to recommend to the Government to make operational and core funding available to CSOs and to many information relating to the granting of property, core funding and operational support to CSO public.

Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

5000 character(s) maximum

As mentioned above, the setting up of the Justice Forum within the OGP can be seen as a step forward however much needs to be done to make consultation and participation a formal process. Please refer to A -

The process for preparing and enacting laws above.

E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society, education initiatives etc.)

5000 character(s) maximum

There have been no public initiatives to foster a rule of law culture by government or its agencies. A number of CSOs have rule of law projects relating to access to justice, independence of the judiciary, the safeguarding of the media and access to fundamental rights.

We urge the Commission to recommend to the Government to support rule of law dialogue and CSOs that work in the sector.

Other - please specify

5000 character(s) maximum

No further information.

Contact

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