

**2024 Rule of Law Report**  
**Targeted Stakeholder Consultation**  
**Country Chapter on the Rule of Law in Malta**  
**Update from the Office of the Ombudsman in Malta**

**The Institution**

The Office of the Ombudsman in Malta is crucial in upholding the rule of law and ensuring a fair public administration. As an independent and autonomous Officer of Parliament, the Ombudsman investigate acts or omissions of malpractice by the public sector. Distinct from Government, the Ombudsman is open to complaints from any aggrieved persons, be they physical or moral. Central in the role of the Office is promoting good public administration.

Accessible to all without fees, the Office of the Ombudsman is committed to fairness in all inquiries. Its mandate extends across a broad spectrum, encompassing actions taken by government departments, authorities, ministers, public officers, statutory bodies, local councils, and other legally accountable entities.

Accountable only to Parliament, the Ombudsman's role oversees the government's performance in its obligations. When an investigation validates a complaint, the Ombudsman can recommend appropriate redress, keeping in mind the core principles of fairness and non-discrimination.

**Replies by the Office**

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

In this section, the Office of the Ombudsman will address these specific issues:

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

- iii. There is a need for Parliament to debate reports with recommendations submitted by the Ombudsman.
- iv. Suspension of the prescription period when the Ombudsman is investigating a complaint.
- v. The right to good administration to be part and parcel of Maltese domestic law.

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

### **The present status**

In the Country Chapter on the Rule of Law Situation in Malta of 2022, the European Commission noted that no progress was made in relaunching efforts to establish a National Human Rights Institution in line with the UN Paris Principles. The 2023 report recommended that Malta establish such an institution, yet no progress was observed, underscoring the pressing need for an NHRI in Malta.

### **Previous Attempts**

In 2015, Government issued a white paper titled '*Towards the Establishment of the Human Rights and Equality Commission*'. As a follow-up, the Office of the Ombudsman released a report, which is available on its website [ombudsman.org.mt](https://ombudsman.org.mt). The Ombudsman recognised the proposals arising out of the White Paper as a step in the right direction, emphasising the importance of ensuring that existing structures are neither weakened nor demotivated. The effectiveness of the proposed Human Rights and Equality Commission (HREC) would have to depend on its integration with and complementarity with existing institutions within Malta's legal order. On July 19, 2019, the Human Rights and Equality Commission Bill (Bill 97 of 2019) was presented to the Maltese Parliament.

### **Concerns and Recommendations**

The Ombudsman at the time had expressed concerns regarding the proposed Equality Act, cautioning against oversimplification and potential jurisdictional conflicts, counter-productive litigation, and contrasting decisions due to broad interpretations by judicial or quasi-judicial bodies. A recommendation was made for a comprehensive consultation with national authorities responsible for protecting vulnerable persons and specific human rights. The Ombudsman also stressed the need to debate and determine whether the HREC model meets Malta's needs, considering the level of democratic development, the general observance of human rights, and the quality and efficacy of the judicial and quasi-judicial authorities.

The dissolution of the Thirteenth Legislature on 20 February 2022 brought about the lapse of all pending bills, including the Equality Bill and the Human Rights and Equality Commission Bill, thereby making an eventual re-proposal before the new legislature necessary. So far, this has not yet been done.

## A solution

The Office of the Ombudsman in Malta has long championed this cause. To resolve the matter, the Ombudsman proposed to the Government that the Office should become the NHRI, as in the position in many European countries.

The proposal incorporates several significant advantages:

**Alignment with the Paris Principles:** The current Ombudsman Act (Chapter 385 of the Laws of Malta) is already aligned and aligns with the Paris Principles. This fact would facilitate a smooth transition to NHRI status.

**Established Institutional Framework:** Utilising the Ombudsman's existing framework ensures stability and enhances public trust and credibility.

**Efficiency in Resource Utilization:** The proposal avoids duplication of resources and administrative structures.

**Rapid Implementation and Continuity:** The Ombudsman institution allows for quicker implementation and continuity in the handling of issues of human rights.

**Enhanced Public Awareness and Accessibility:** The Ombudsman is an institution close to society and can, therefore, take the role of NHRI without having to engage in uncharted territory where public trust is concerned.

**International Recognition and Collaboration:** As an NHRI, the Ombudsman institution can collaborate more effectively with international bodies, enhancing Malta's international reputation.

Designating the Office of the Ombudsman as the NHRI in Malta presents a practical, efficient, and effective approach to strengthening the country's commitment to human rights.

The Office will be meeting with the Parliamentary Secretary in the Ministry for Home Affairs, Security, Reforms and Equality to discuss the proposal in more detail. The Parliamentary Secretary was delegated for this purpose by the Prime Minister himself.

**ii. Having Protocol 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms included as part of the European Convention Act (Chapter 319 of the Laws of Malta)**

In the Ombudsman for 2024, the Ombudsman highlighted a pending issue concerning Protocol No. 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Section 22(1)(b) of Chapter 385 mandates the Ombudsman, following any investigation conducted under the Act, to state whether, in his opinion, the decision, recommendation, act or omission under investigation was unreasonable, unjust, oppressive, or improperly discriminatory. Given the nature of this provision, the Office of the Ombudsman has the right and duty to give an opinion on whether improperly discriminatory behaviour by the public administration and recommend redress if said behaviour is well-proven.

The Convention upholds the principles of equality and non-discrimination as essential in safeguarding human rights. Protocol No. 12 of the Convention establishes freedom from discrimination as a fundamental human right per se and asserts every person is equal before the law and entitled to equal protection. It also lays emphasis on non-discrimination by public authorities in the exercise of discretion and the performance of their functions.

Malta ratified Protocol No. 12 on 8 December 2015, which came into effect on 1 April 2016. However, the Protocol itself was not incorporated in Chapter 319 of the Laws of Malta. Consequently, while Malta is internationally bound by the Protocol, and contracting states to the Convention may seek redress against Malta at the Strasbourg Court, persons in Malta who allege discrimination by a public authority in breach of Protocol No. 12 cannot seek redress before the Maltese Courts but must petition directly to the Strasbourg Court, facing challenges which such a process brings about. This inconsistency in governance needs urgent resolution.

The Office is committed to urging the Government to rectify this situation promptly. It is insufficient for Malta to ratify Protocol No. 12 without allowing Maltese Courts to hear and decide cases where enforcement of rights under that Protocol is sought.



**iii. The need for Parliament to debate reports with recommendations submitted by the Ombudsman**

In its response to the questionnaire of last year, the Office of the Ombudsman raised the issue of referring Final Opinions to Parliament when recommendations made are not implemented by public administration or entities.

The Ombudsman and his Commissioners, at times, have to refer reports to the Maltese Parliament to highlight unimplemented recommendations which are of significant public interest. The Ombudsman proceeds to Parliament only after his recommendations are either rejected outright or by non-implementation, first by the public administration concerned, followed by the Prime Minister.

The Speaker of the House tabled the recommendations immediately upon receipt. Once tabled, the reports are published on the Office's website and often in the media. However, the process practically stops there because there is no standard parliamentary procedure that provides for a formal debate of the reports. The Ombudsman has consistently advocated for discussing these Final Opinions in an appropriate Committee of the House.

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 be obliged to debate reports submitted by the Ombudsman. This recommendation was reiterated in the Venice Commission's 2020 Opinion on proposed legislative changes, stating that in urgent cases, the Ombudsman should be able to trigger a parliamentary debate on significant reports.

The current Speaker of the House of Representatives favours this approach when he publicly stated that similarly to how the Public Accounts Committee reviews reports of the Auditor General, a Standing Committee on Public Administration should deliberate on reports submitted by the Ombudsman and the annual governance action reports compiled by the Office of the Principal Permanent Secretary. He highlighted the common goal shared by the House of Representatives, the Ombudsman, and the Principal Permanent Secretary in promoting good governance and excellence in public administration, advocating for a spirit of civility and cooperation.

Upon his appointment on 8 March 2023, the current Ombudsman started discussions with both sides of the House, through the Whips, to address this issue. Although there was little progress other than raising public awareness, the matter will be followed up in the coming months.

**iv. Suspension of the period of prescription when the Ombudsman is investigating a complaint**

The Ombudsplan 2024 highlighted the issue of prescription. Under current law, actions against the Government for judicial review of administrative action, as governed by Section 469A of Chapter 12 of the Laws of Malta, become time-barred after a peremptory period of six months. General civil actions against the Government lapse within the time limits specified in Chapter 16 of the Laws of Malta.

Investigations conducted by the Office of the Ombudsman (Commissioners included) are distinct from judicial or quasi-judicial proceedings. In some respects, they can be alternatives to court litigation. At present, the law prevents concurrent proceedings. Litigation in judicial and quasi-judicial bodies takes precedence, and until issues are final and conclusive, the investigations of the Ombudsman come to a halt.

In the Ombudsplan 2024, it was proposed that the law be amended so that the six-month peremptory period of Section 469A of Chapter 12 be suspended for the entire duration of a complaint being filed and investigated by the Ombudsman and Commissioners in terms of Chapter 385 of Malta. Furthermore, Section 2122 of Chapter 16, which deals with suspension of prescription, should be broadened so that the period of prescription for any civil action against the Government, as defined in Chapter 385, be suspended while a complaint is under investigation by the Ombudsman and Commissioners.

Considering all considerations of law, it is in the public interest to foster a broad national debate on expanding access to the Ombudsman as an alternative means of redress.

**v. The right to good administration to be part and parcel of Maltese domestic law**

The right to good administration, as stated in Article 41 of the Charter of Fundamental Rights of the European Union, is fundamental in the context of relationships of persons with the institutions of the European Union. Following the Lisbon Treaty, the Charter became part of Maltese Law.

The fundamental principle of the right to good administration is based on the need of the public administration to function transparently, somewhat, and in an accountable manner. In recent months, the Office of the Ombudsman in Malta has concentrated on encouraging a comprehensive discussion on incorporating this right into domestic law.

Placing this right into a domestic legal framework would promote transparent decision-making in public offices, adherence to fair procedures, and the rejection of improper discrimination.

Malta's legal system already includes principles of good administrative behaviour. The Administrative Justice Act (Act V of 2007) outlines principles for administrative tribunals in public interactions. The Freedom of Information Act (Act XVI of 2008) grants public access to information for enhanced transparency and accountability. The Public Administration Act (Act I of 2000) enforces courteous, prompt, and impartial public service as a key value of public administration for the common good.

On the initiative of the Office of the Ombudsman in Malta, ombudspersons and human rights defenders from across the Mediterranean and Europe convened in Malta in October 2023, where they discussed with local academics and experts the benefits of having good administration recognised as a right in domestic law. A Malta Declaration on the Right to Good Administration was unanimously approved at the end of the Conference, where the following were agreed upon:

- i. Maladministration is a source of unfair decisions, poor public service, and unnecessary government expenditure.
- ii. Good administration upholds effectiveness and efficiency in state governance.
- iii. There is a desire for national laws to incorporate the right to good administration.
- iv. The authorities are encouraged to recognise this right in their legislation and policies for full implementation.

The Office of the Ombudsman will continue to strive to stimulate further debate because it firmly believes that making the public administration better and more accountable is to the benefit of persons and the administration itself.

**08.01.24**

Judge Emeritus Joseph Zammit McKeon  
Parliamentary Ombudsman of Malta