



European Network of  
National Human Rights Institutions

# Implementing the Council of Europe Recommendation on National Human Rights Institutions: The State of Play

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**The situation in Malta**



# Malta Country Report

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## Overview

### Name of NHRI and mandate:

- Malta does not have a National Human Rights Institution.

### Sources:

- ENNHRI: [State of Rule of Law in Europe in 2022, Malta Country Report](#)
- CoE Independent Bodies: [Venice Commission opinion on Malta \(2018\)](#); [ECRI Country Report on Malta \(2018\)](#)

### Good practices and improvements:

- **CM Recommendation 2:** Maltese authorities have initiated discussions on a draft Bill on the Human Rights and Equality Commission in Malta, which would establish an NHRI and have taken steps towards the body being entrenched in the constitution. Still, as expressed in the Venice Commission's opinion, there is room to strengthen the language of the suggested constitutional amendment.

### Key recommendations which require improvement:

- **CM Recommendation 1:** National authorities should ensure that an institution with a broad human rights promotion and protection mandate is established with a view to full compliance with the UN Paris Principles. In this regard, authorities can rely on the findings of independent bodies, such as the Venice Commission.

- **CM Recommendation 15:** In establishing the mandate and functioning of the Human Rights and Equality Commission in Malta, national authorities should ensure that the competences and relationship between the new institution and existing bodies is regulated, to avoid fragmentation in the human rights protection framework and inefficient use of resources, as well as to ensure clarity for individuals seeking to address the institution.

## Specific findings per Principle

The tables below include data on the assessment of the implementation of Principles (i.e. the individual parts) within the Recommendation from two sources: ENNHRI and Council of Europe independent bodies. Overall, the findings are considered in four overall groups: the establishment of NHRIs; the strengthening of NHRIs; a safe and enabling environment for NHRIs; and cooperation with and support for NHRIs.

### I. Establishment of NHRIs

<b>Principle 1</b>	<p>Member States should ensure that NHRIs are in place and that they are established, accredited and function in full compliance with the Paris Principles</p>
<b>Assessment of implementation by ENNHRI</b>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 1</i></p> <p>In the past years, national, regional and international stakeholders have called on Malta to establish a NHRI. This recommendation has featured prominently during the Universal Periodic Review of Malta.</p> <p>On July 2019, the Bill on the Human Rights and Equality Commission was presented to the Maltese Parliament, which would establish an NHRI.</p> <p>As far as ENNHRI is aware, the revised Bill is still being discussed before the relevant Parliamentary Committees, but there has not been considerable progress since 2019.</p>
<b>Assessment of implementation by CoE independent bodies</b>	<p><i>Venice Commission Opinion on Malta, 2018, p. 3 (Para.1)</i></p> <p>The Minister for European Affairs and Equality of Malta, requested an opinion from the Venice Commission on the Draft Act Amending the Constitution (introducing the Human Rights and</p>

	<p>Equality Commission), the Draft Act on the Human Rights and Equality Commission, and the Draft Act on Equality.</p>
<p><b>Principle 2</b></p>	<p>Member States should provide a firm legal basis for NHRIs, preferably at the constitutional level, and/or in a law which defines the mandates and functions of such institutions, guarantees their independence and provides them with the means necessary to accomplish their functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on NHRIs, in particular the Paris Principles and their interpretation developed by GANHRI's Sub-Committee on Accreditation.</p>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>Venice Commission Opinion on Malta, 2018, p. 5 (Para.5)</i></p> <p>The Draft Act Amending the Constitution introduces Article 64B, which establishes the Human Rights and Equality Commission (the HREC) as a constitutional body.</p> <p>The entrenchment of the HREC in the Constitution is important but it should refer to the broad mandate it is to be granted to protect human rights, promote equality and combat discrimination.</p> <p><i>Venice Commission Opinion on Malta, 2018, p. 11 (Para.43)</i></p> <p>New Article 64B of the Constitution mentions only the function of the HREC to “investigate alleged cases relating to equal treatment and the principle of non-discrimination”.</p>

## II. Strengthening of NHRIs

<p><b>Principle 3.1</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is <b>as broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>monitor and analyse</b> the human rights situation in the country, <b>publish reports</b> on these findings and <b>address recommendations</b> to public authorities at national, regional and local levels and, when applicable, to private entities, and present an <b>annual report</b> to the relevant authorities, including before parliament, for its consideration.</li> </ul>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>Venice Commission Opinion on Malta, 2018, p. 4 (Para.12)</i></p> <p>The HREC is to be a multi-mandate body, having a wide range of functions including [...] to prepare reports and studies and make recommendations</p>
<p><b>Principle 3.2</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>freely address public opinion, raise public awareness</b> on human rights and <b>carry out education and training</b> programmes;</li> </ul>

<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>Venice Commission Opinion on Malta 2018, p. 4 (Para.12)</i></p> <p>The HREC is to be a multi-mandate body, having a wide range of functions including: to educate the general public about non-discrimination and equality issues [...]</p>
<p><b>Principle 3.3</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <p>- <b>fully address all alleged human rights violations</b> by all administrative authorities, other relevant State entities and, when applicable, private entities</p>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>Venice Commission Opinion on Malta 2018, p. 4 (para.10)</i></p> <p>Under the Draft Act on the HREC, this body is established to promote and protect human rights and the right to equal treatment and non-discrimination. The notion of “human rights” is defined with reference to the constitutional rights, rights enshrined in the ECHR, as well as human rights enshrined in any other international treaty, “in so far as [such rights] are enforceable by any person according to, and as part of, the law of Malta, and those principles and, or practices recognised by the jurisprudence of the Maltese and international courts.</p>

<p><b>Principle 3.4</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- have <b>unfettered access to all relevant premises</b>, including places of deprivation of liberty, and to all relevant individuals, in order to be able to carry out a credible examination of all issues covered by their mandate and to all relevant information, subject to possible restrictions stemming from the protection of other rights and legitimate interests and with due respect for the confidentiality of information obtained;</li> </ul>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>Venice Commission Opinion on Malta 2018, p. 5 (para.15)</i></p> <p>In respect of the complaints lodged before it, the Board will have important investigative powers. Thus, in the process of such investigations the Commissioner (who is the chair of the Board and of the HREC at the same time) will have the power to enter private premises without court warrant (except private homes), and “inspect” them as well (Article 25 (a)), request and inspect documents, subpoena witnesses (Article 33), etc. During such investigations, the Board will be empowered to order binding interim measures in certain circumstances.</p>



<p><b>Principle 3.5</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>monitor existing and draft policies and legislation</b> with human rights implications before, during and after their adoption in order to <b>advise</b> the State about the impact of such policies and legislation on human rights and on the activities of human rights defenders, including by <b>making relevant and concrete recommendations</b>.</li> </ul>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>Venice Commission Opinion on Malta 2018, p. 4 (Para.12)</i></p> <p>The HREC is to be a multi-mandate body, having a wide range of functions including: [...] to facilitate the implementation of the equality legislation, to participate in the development of State policies in this field and to monitor their implementation.</p>
<p><b>Principle 3.6</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>contribute to an effective justice system</b> for all, through awareness-raising measures and facilitating access to rights and remedies and, as applicable, by providing legal assistance, being a party before the courts or, when applicable, receiving individual complaints;</li> </ul>

<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>Venice Commission Opinion on Malta 2018, p. 24 (para.97)</i></p> <p>The functions of the HREC could be expanded. In particular, it should be able, in specific cases, to enable mediation, and serve as amicus curiae in cases before the courts that are relevant to its mandate. It should also be able to conduct general inquiries.</p> <p><i>Venice Commission Opinion on Malta 2018, pp. 4-5 (para.13)</i></p> <p>The task of the Board will be to investigate and decide on cases of alleged discrimination and human rights abuse (Article 22 of the Draft Act).</p> <p><i>Venice Commission Opinion on Malta 2018, pp. 6-7 (Para.21)</i></p> <p>[...] pursuant to the Draft Act on the HREC, the Board will have the power not only to investigate, but also to render binding and enforceable decisions on the merits in individual cases.</p> <p><i>Venice Commission Opinion on Malta 2018, p. 24 (Para.97)</i></p> <p>The Human Rights and Equality Board (the Board) will have a very broad competency and will de facto perform a judicial function. In principle, it should be possible to entrust the Board with some quasi-judicial functions. However, the proposed model (with the overlapping competency of the Board and of the Civil Court, with two distinct chains of appeal, with the choice of jurisdiction belonging solely to the plaintiff, with the Board not being independent, not having judicial members, being closely linked to the HREC, and not offering procedural guarantees of a fair trial) is problematic from the constitutional perspective and may raise issues under the ECHR. Thus, if the judicial function of the Board is maintained, the Venice Commission recommends a comprehensive revision of the design of the Board in the light of Article 46 of the Constitution, and Article 6 of the ECHR.</p> <p><i>Venice Commission Opinion on Malta 2018, p. 24 (Para.97)</i></p> <p>Following the examination of complaints, the Board will be entitled to make binding orders and request reparations to be made to the victims, award pecuniary and nonpecuniary damages (the</p>
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	<p>latter up to a limit of 10.000 Euro). Decisions of the Board can be appealed to the Court of Appeal (Superior Jurisdiction).<sup>7</sup> Where the decision of the Board is ignored and no appropriate action is taken, the Board can impose a penalty up to a limit of 20.000 Euro in sum (Article 39 (1)) or 500 Euro per day (Article 39 (2)).</p>
<p><b>Principle 4</b></p>	<p>The process of <b>selection and appointment of the leadership of a NHRI</b> should be competence based, transparent and participatory, in order to guarantee the independence and pluralist representation of these institutions. It should also be based on clear, predetermined, objective and publicly accessible criteria.</p> <p>The duration of the appointment should be clearly set out in the founding legislation, so that the leadership posts of the NHRI do not stay vacant for any significant period of time.</p>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>Venice Commission Opinion on Malta 2018, p. 4</i></p> <p>[...] of the 18-20 members of the Commission, 8 are ex officio members which represent Government-appointed commissioners on various human rights issues. The other 10 (or 11, or 12) are elected members: they are elected by Parliament for four years from a list composed by the Speaker, following public consultations. For the Commissioner, nomination is made by the Minister. All elected candidates are finally appointed by the President, who must act “in accordance with a resolution” of Parliament. “Ordinary” elected members of the HREC are elected by simple majority, whereas the Commissioner is elected by 2/3 majority (see the last phrase of Article 6 (2)). The HREC designates one of its members as a Deputy Commissioner, who should also be approved by a 2/3 majority in Parliament.</p>

	<p><i>Venice Commission Opinion on Malta 2018, p. 5</i></p> <p>The Human Rights and Equality Board (the Board) will be composed of the Commissioner of the HREC on an ex officio basis, a person holding a degree in law and having experience in issues relating to human rights and the principle of equal treatment, and three other persons who shall be suited to deal with issues relating to human rights and the principle of equal treatment, having professional experience in working within the human rights sector for at least five years (Article 23 (1)). The members of the Board (except the Commissioner) are appointed by the HREC, by a qualified majority of votes. They hold their office for a term of four years and may be re-appointed for one further term at the end of their term of office (Article 23 (3)).</p> <p><i>Venice Commission Opinion on Malta 2018, p. 24 (Para.97)</i></p> <p>The Draft Act on the HREC does not sufficiently guarantee the independence of The Board. The process of selection of candidates and election of its members by Parliament (through qualified majority) should ensure – by an open and participatory procedure – a pluralist composition of this body, and representation of various sectors of society and political currents in it.</p> <p><i>ECRI Report on Malta 2018, p. 26 (Para.88)</i></p> <p>In its fourth report, ECRI recommended the authorities to ensure that the national specialised body for combating racism and racial discrimination is entirely independent.</p>
<p><b>Principle 5</b></p>	<p>To ensure <b>independence</b>, the enabling legislation of a NHRI should contain an <b>objective dismissal process for the NHRI leadership</b>, with clearly defined terms in a constitutional or legislative text. The dismissal process should be fair and ensure objectivity and impartiality and should be confined to only those actions which impact adversely on the capacity of the leaders of NHRIs to fulfil their mandate.</p>

<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>Venice Commission Opinion on Malta 2018, pp. 4-5 (Para.11)</i></p> <p>The removal of the members of the HREC (including the Commissioner) is possible by simple majority in Parliament</p> <p>The members of the Board can be dismissed by a majority of 2/3 of the Commission, no substantive conditions being attached to this dismissal. The Commissioner may be dismissed by a simple majority of Parliament, with the President’s counter-signature, for “unfitness” to continue in office.</p> <p><i>Venice Commission Opinion on Malta 2018, p. 13 (Para.53)</i></p> <p>The notions of “unfitness” and “incompatibility” used in the text of the Draft Act open way to dismissal for reasons which are essentially political. It is necessary to amend this provision in order to protect the members of the HREC against arbitrary dismissals and develop some detail on the substantive conditions for dismissal. In particular, it is not clear if the member concerned will have the right to be heard and to challenge the dismissal before a court, whether the decision should be reasoned, etc.</p> <p><i>Venice Commission Opinion on Malta 2018, p. 24</i></p> <p>The Draft Act should ensure that its members have sufficient stability of mandate and are not removed for political reasons.</p>
<p><b>Principle 6</b></p>	<p>Member States should provide NHRIs with <b>adequate, sufficient and sustainable resources to allow them to carry out their mandate</b>, including to engage with all relevant stakeholders in a fully independent manner and freely determine their priorities and activities.</p>

<b>Assessment of implementation by CoE independent bodies</b>	<p><i>Venice Commission Opinion on Malta 2018, p. 11 (Para.42)</i></p> <p>The allocation of resources to its different functions and duties – within the limits of the general budget of the HREC – should rest essentially in the hands of the HREC itself. Otherwise the HREC’s independence and its power to set priorities in this field may be compromised. The legislation could encourage a balance in the allocation of resources between the two mandates.</p>
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### III. Safe and Enabling Environment

<p><b>Principle 11</b></p>	<p>Member States should ensure that NHRIs can <b>operate independently</b>, in an environment which is conducive to them carrying out their mandate in an effective manner and in a climate of <b>impartiality, integrity, transparency and fairness</b>.</p>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>Venice Commission Opinion on Malta 2018, p. 13</i></p> <p>The Draft Act contains several important safeguards which guarantee independence of the HREC. Thus, the HREC will have legal personality and a separate budget, to be approved by Parliament. The members of the HREC shall not be subject to the direction or control of any other person or authority in the exercise of their functions under this Act (Article 3 (3)). The HREC will be free to define its own agenda and able to set its own priorities and start investigations proprio motu (Article 14 (a)). The members of the HREC will not, throughout their term in office, hold any position which is incompatible with the correct performance of their official duties or with their impartiality and independence.</p>
<p><b>Principle 13</b></p>	<p>Member States should take all measures necessary <b>to protect and support NHRIs</b> against threats and harassment and any other forms of intimidation, including through ensuring <b>functional immunity</b>. Any cases of alleged reprisals or intimidation against NHRIs, their membership and staff, or against those who co-operate or seek to co-operate with them, should be promptly and thoroughly investigated and the perpetrators brought to justice.</p>

<b>Assessment of implementation by CoE independent bodies</b>	<p><i>Venice Commission Opinion on Malta 2018, pp. 13-14 (Para.53)</i></p> <p>The Draft Act should provide for functional immunity for the members of the HREC in carrying out their functions.</p>
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## IV. Co-operation and Support

<p><b>Principle 15</b></p>	<p>Member States should <b>take effective measures to enable NHRIs to communicate and co-operate</b> with, in addition to the various levels of administration in the member States, in particular:</p> <ul style="list-style-type: none"> <li>a. counterpart institutions, where appropriate through networking and exchange of information and practices, as well as through regular meetings such as those taking place within the framework of ENNHRI and GANHRI;</li> <li>b. civil society stakeholders, in particular non-governmental organisations and human rights defenders, who should enjoy easy and safe access to NHRIs as part of an enabling environment;</li> <li>c. other human rights structures, including regional, local and/or specialised institutions, notably Ombudsman institutions and equality bodies and their respective networks, where appropriate through jointly organised activities;</li> <li>d. international and regional organisations working in related or similar fields.</li> </ul>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>Venice Commission Opinion on Malta 2018, p. 11 (p.43)</i></p> <p>It is unclear how the mandate and powers of the HREC correlate with those of other bodies which have similar or overlapping mandates and powers and which are set out in the Constitution, such as, for example, the parliamentary Ombudsman, the Public Service Commission, and the Employment Commission. This should be clarified; otherwise the co-existence of several human rights and</p>

	<p>equality bodies may lead to an inefficient use of resources, and to the confusion and tactical or unwise choices amongst the complainants.</p>
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