

**Three Day Workshop:**

**“Building the First Network  
of Human Rights Action Planning”**

**“Having a National Human Rights Institution:  
The Malta Experience”**

**Presentation by Judge Joseph Zammit McKeon  
Parliamentary Ombudsman of Malta**

**University of Liverpool  
03 – 07 June 2025**

## **Introduction**

The Office of the Parliamentary Ombudsman of Malta was constituted in 1995 by an Act of the House of Representatives. Despite that it is not a young institution in age, it is certainly not an anachronism, nor has it reached its retirement age.

With passion and without bias, I state without hesitation that this institution is still very relevant for our community, an institution with which to reckon as it stands for justice, good governance and the rule of law, an institution that because it does not have to roll the drums to fight unfairness and injustice, all can comfortably turn to when they feel aggrieved by acts or omissions of Government.

The institution has been faithful to the full implementation of the Venice Principles. Over the years, it has remained fresh and crispy in its actions and has managed to make a positive difference in the lives of people. Despite the conflictual political climate we live in this country, typical of our Mediterranean temper, the political class has over the years acknowledged the importance of the institution by moving forward the institution from one regulated by an Ordinary Act of Parliament to a Constitutional Office in 2007 and further reinforced in 2020.

## **NHRI Models**

The Paris Principles of the UN establish the standards that govern NHRIs. They are separate and distinct from the Venice Principles.

The profile of an NHRI is generally administrative in nature in the sense that it is neither judicial nor law-making. As a rule, NHRIs have on-going, advisory authority in respect of human rights at the national and/or international level. This mandate is pursued either through opinions and recommendations, or through the consideration and resolution of complaints submitted by persons. In some countries, the Constitution itself provides for the establishment of an NHRI. More often, such institutions are created by legislation.

The majority of existing national institutions can be grouped in two broad categories: "human rights commissions" and "ombudsmen". Less common are the "specialised" national institutions which function to protect the rights of a particular vulnerable group such as ethnic and linguistic minorities, indigenous populations, children, refugees or women.

## **The Malta Experience**

Malta is one of the 10 Member States of the Council of Europe and one of the 2 Member States of the European Union that does not have a National Human Rights Institution (NHRI).

It is my strong belief that in the case of Malta, the Ombudsman should be the institution with a mandate to act as NHRI as well rather than opt constituting anew a human rights commission or specialised commission.

The Paris Principles allow for flexibility in structure in a way that each country can tailor its NHRI to fit its legal, social and political context.

The establishment of NHRIs within the framework of Ombudsman institutions is no experiment but a success story in a number of European countries including Cyprus, Croatia, Slovenia, Kosovo, Serbia, Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Estonia, Finland, Georgia, Latvia, Lithuania, Moldova, Poland, Portugal, Ukraine, Azerbaijan, Andorra Spain, Hungary, North Macedonia, Czechia and Greece.

## **2013**

The Office of the Ombudsman has consistently advocated in favour of the setting up of an NHRI in Malta consistent with the Paris Principles to monitor, promote and ensure the observance of fundamental human rights in the country.

The proposal was in the sense that the Office should act as a catalyst and focal point of other institutions. The model proposed was designed to offer a comprehensive overview of the protection afforded to persons against violations of their fundamental rights.

## **2015**

The Government of Malta published a White Paper titled "*Towards the Establishment of the Human Rights and Equality Commission*" (HREC).

The Office acknowledged that there was consensus on the need for such a commission. However, the Ombudsman emphasised that the setting up of the HREC had to complement existing institutions, including the Ombudsman, without diminishing their roles.

Eventually two bills were presented before the House of Representatives: The Equality Bill and the Human Rights and Equality Commission Bill.

In particular, the Ombudsman raised concerns on the Equality Bill, cautioning against oversimplified interpretations that could lead to jurisdictional conflicts between existing bodies. Furthermore, thorough consultation was recommended to ensure that the proposed HREC would be integrated effectively into Malta's legal framework.

Although the two Bills were debated in the House of Representatives, they never became law.

## **2022**

On 20 February, the House of Representatives was dissolved. As a direct consequence, the two Bills lapsed. After the General Election, the two Bills were not repropounded before the newly elected House of Representatives. That is still the position till this very day.

## **2023**

On 8 March, the present Ombudsman was elected by a unanimous vote of the House of Representatives.

In November, after acknowledging the absence of an NHRI in Malta, a proposal was submitted to the Prime Minister of Malta for the setting up of an NHRI by extending the mandate of the Ombudsman, thereby avoiding the need to create from scratch a separate institution. The infrastructure, experienced staff and established procedures of the Office were a solid foundation to build on. The strength of the Ombudsman to act also as a promotor and/or protector of human rights derives from his statutory and constitutional profile, an already proven and effective track record, and a non-dependent budget on the exigencies and/or priorities of Government. Furthermore, although the budget has to receive Parliamentary approval because the Ombudsman is an officer of Parliament the Office enjoys financial autonomy.

Over the years, the Ombudsman has proved to be a credible institution because people trust the institution, many a time by fostering a respectful non-necessarily confrontational relationship with the public service and the public administration.

The Prime Minister promptly referred the proposal for further discussion to the Parliamentary Secretary for Reforms and Equality.

## **2024**

The observance of human rights should be at the heart of the work of all Ombuds Offices, because the Ombudsman is a core component of the safeguards that persons should enjoy in a democratic state. By taking a human rights-based approach, the Ombudsman can place the rights of persons as a focal point of his work. When things have been done wrong by the Government, justice must be done and matters have to be put right. A human rights-based approach ensures that policies, processes and actions are shaped to respect and protect human rights.

In February, the Ombudsman had a meeting with the Parliamentary Secretary for Reforms and Equality, where the Ombudsman explained the rationale behind the proposal. Unfortunately, the meeting was inconclusive in the sense that the Parliamentary Secretary affirmed that the Government was still exploring the best way forward and had not adopted a definitive position.

Shortly after that meeting, the Ombudsman submitted a formal application for Associate Member Status of the



European Network of National Human Rights Institutions (ENNHRI) on the basis of the fact the Ombudsman Act 1995 as it stand at presents today empowers the Office to investigate complaints on maladministration of Government and declare them to be so when acts or omissions of the public service and/or the public administration are unreasonable, unjust, oppressive, or improperly discriminatory. After due scrutiny, ENNHRI officially accepted the application.

Following acceptance, the Office sought assistance from ENNHRI itself to review the Ombudsman Act to ensure full alignment of the Ombudsman Act with the Paris Principles.

In April/May, ENNHRI conducted a detailed review, identifying key areas for improvement. In a pro-active response to these findings, the Ombudsman drafted a new fully-fledged Ombudsman Bill rather than resort to piecemeal amendments to the present law.

In October the draft Bill was forwarded to ENNHRI for further review. In that same month, during the ENNHRI General Assembly, the Ombudsman participated in a parallel meeting with ENNHRI representatives to discuss the proposed Bill and explore potential enhancements. ENNHRI commended the efforts of the Office to align with the Paris Principles, its resolve for an extended

mandate, and noted that significant changes had been introduced to support the mandate, including:

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

ENNHRI provided additional technical advice, which the Ombudsman reviewed and adopted where appropriate.

In November, the draft Bill was presented to the Prime Minister of Malta for consideration by the Cabinet of Ministers.

There was no reaction from Government.

## **2025**

In February, the Bill was published on the website of the Office of the Ombudsman. The document proposes also an amendment to the Constitution of Malta.

There still has not been any reaction from Government.

## **Compare and contrast**

The highlights of the proposed Bill vis-a-vis the Ombudsman Act are the following :

1. Whereas until today the Ombudsman is the Commissioner for Administrative Investigations, the Bill while confirming that mandate extends the function of the Ombudsman to become the Promotor and Protector of Human Rights and Fundamental Freedoms. For both

mandates he has to be elected by a minimum two-thirds majority of the members of the House of Representatives.

2. Under the Bill when the Ombudsman acts a Commissioner for Administration Investigations, he investigates *administrative action* (which is defined) and when he acts as Promotor and Protector of Human Rights he investigates *action* (which is also defined).

3. *Human rights and fundamental freedoms* are defined for the purposes of the Bill. The definition is wide.

4. In the Bill the reasons for suspension or removal of the Ombudsman have been clarified and restricted to matters that relate to the conduct of the incumbent in the performance of his functions.

5. The Ombudsman presents to the House of Representatives his budget by the 15 September of every year. In the Bill there is included a provision that specifically refers and financially sustains his function as Promotor and Protector of Human Rights in a manner that is clearly identifiable from the budget of his operations as Commissioner for Administrative Investigations.

6. The Bill places on the Ombudsman the obligation not only to promote but also to protect the fundamental rights and freedoms of the person, which includes the right and duty to investigate without any limitation whatsoever alleged breaches of fundamental rights and freedoms of the person by the Government of Malta. The Bill lists in detail what this right and duty actually will entail. In particular paragraph 12(q) states within the role of the Ombudsman as proposed "*to advocate for the ratification of, accession and compliance with international human rights standards.*"

7. Whenever the Ombudsman is of the opinion that a legal provision is unconstitutional because it is in breach of the human rights and fundamental freedoms of the person, the Bill gives the Ombudsman the right to institute proceedings in his own name before the Civil Court (Constitutional Jurisdiction). This is indeed a new concept within the framework of what should the rule of law mean for all.

8. A corollary of this provision is the obligation of anyone who files court action for alleged breaches of human rights as protected by the Constitution of Malta and the European Convention to notify the Ombudsman who would have the right to full participate as intervenor in the proceedings.

9. In the Bill where, human rights are concerned there is no time limit for any person to request the

Ombudsman to investigate any action by the Government. Where administrative action is concerned, the six-month limit stays but during the entire period of investigation by the Ombudsman any period of prescription and/or forfeiture of any right of action of the person is suspended.

10. The investigation of alleged breaches of human rights vests in the Ombudsman. Investigations of this nature do not extend to the Commissioners whose specialised investigative powers remain within the confines of acts or omissions by Government of an administrative nature.

11. Unlike investigations of administrative acts or omissions, when the Ombudsman investigates matters that affect the protection of human rights, the Bill gives him the right to carry out unannounced visits and shall have free access to inspect and examine any premises, documents, equipment and asset without prior notice.

12. As is the case of administrative investigations, when the Ombudsman concludes investigations concerning the protection of human rights, he submits recommendations and does not give executive orders. At the same time, whatever the Ombudsman says is not subject to any review but any other Authority.

13. Where administrative investigations are concerned, the Bill introduces further clarity when persons avail themselves of the right to review recommendations submitted by the Commissioners.

14. In the Bill, the safeguard of secrecy is not only maintained but also extended for the protection of whistleblowers without reserve, meaning both in the case of administrative investigations and also as regards human rights protection.

15. The Bill reinforces the role of the Ombudsman as an Officer of Parliament by stating that every year or as frequently as he may deem expedient reports to the House of Representatives on the performance of his dual role. The report is tabled before the House by the Speaker and has to be discussed during a dedicated parliamentary sitting.

16. There is also proposed an extension of the protection of Art 64A of the Constitution to the Ombudsman as Promotor and Protector of Human Rights.

**The Resolution of the General Assembly  
of the United Nations**

The belief that the Office of the Ombudsman can satisfy the dual function has been strongly encouraged by the Resolution of the General Assembly of the United Nations of the 17 December 2024 titled *'The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law'*.

The Resolution acknowledges the crucial role Ombudsman institutions, in particular their credentials to act as NHRIs, to promote good governance and act as additional safeguard of the rule of law. The Resolution highlights the ability of Ombudsman Offices to address power imbalances between persons and public authorities, to promote transparency and accountability, and to foster respect for justice and equality.

Furthermore, the Resolution underscored the flexibility within the Paris Principles to allow Ombudsman institutions to assume NHRI functions, recognising their unique capacity to strengthen human rights frameworks, resolve grievances, and support Sustainable Development Goal 16 on effective, accountable, and inclusive institutions.