



# **ENSURING SAFE AND UNOBSTRUCTED MOBILITY ON PUBLIC PAVEMENTS AND IN PUBLIC PLACES**

Position Paper of the  
Office of the Parliamentary Ombudsman

January 2026

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## **Introduction**

A matter of renewed concern was brought to the attention of the Office of the Ombudsman by the Commissioner for Older Persons on the need to ensure safe and unobstructed mobility for older persons in public places and on public pavements.

The matter was raised in the past from a much wider perspective as it affects the public in general, but especially vulnerable people, including families with young children, older persons and persons with disabilities.

As the question is of public interest, the Office will elaborate further following internal discussions in which the Commissioner for the Environment and Planning and the Commissioner for Health were involved.

## **The concern**

The issue is not a technical question of urban design but is becoming all the more a core human-rights observance matter.

Catering and other private establishments that occupy public pavements and public open spaces – with or without authorization or, worse, abusively – have not only become part of the commercial identity of this country but constitute one of the most visible challenges in post-Covid 19 life in Malta and Gozo.

The practice of placing tables and chairs on pavements is today widespread, often in a manner that puts at the side the safety of pedestrians, exceeds good order, and reduces to practically none the values of decent and prudent behaviour. The state of affairs as it stands at present disproportionately affects vulnerable persons, including the aged, persons with disabilities and families with young children or even infants, restricting their rights.

Unacceptable physical obstacles and other restrictions render difficult and complicated access to emergency services, particularly in high-density localities or during peak hours when pavement accessibility is most critical.

## Rights at stake

Public pavements are not commercial amenities. They are public infrastructure intended for use by pedestrians. For many people, including the aged, persons with disabilities and families with young children, they are the only safe and independent means of movement.

In particular, on the basis of the Convention on the Rights of Persons with Disabilities (CRPD) of the United Nations, States must ensure that public spaces are accessible, safe, and usable without assistance. Obstructed pavements effectively exclude people who use wheelchairs, walkers, white canes, guide dogs, or who have balance, vision, or cognitive impairments.

## Safe accessibility

There are cities around the world that promote pavement cafés and restaurants as symbols of urban vibrancy, economic assets and branding tools for tourism. However, factors of this nature cannot be allowed to proliferate without due regard to collective rights. When tables, chairs, menu boards, heaters, or planters restrict the physical width of pavements or create unpredictable obstacles, others including the vulnerable may be forced onto the carriageway, wheelchair users may be completely blocked, persons with visual impairments face serious safety risks. Likewise, people with young children.

## Responsibilities of Public Authorities

The challenge of obstructed pavements in Malta is not a sporadic or isolated issue. Many are the localities, especially with a concentration of catering establishments and significant tourism flows, where patterns of occupation of public walkways is the order of the day. In many cases, public land concessions are granted without disclosure, enforcement of rules and licences is inconsistent, and urban planning decisions fail to integrate accessibility requirements.

The result is a hostile pedestrian environment that undermines national policy objectives related to active ageing, disability inclusion, and public health.

For older persons, who may rely on mobility aids such as walking frames or simply require a steady, obstacle-free surface, pavement obstructions pose significant risks.

For persons with disabilities, particularly those who use wheelchairs or have visual impairments, a blocked or uneven path may render entire public areas difficult to access. Parents with young children also directly affected.

The physical obstruction of pavements is also a matter of public safety.

In zones that are reserved for pedestrians for most of the day, when emergencies arise, operational delays caused by catering equipment give rise to severe difficulties.

The problem is systemic.

# Legislation

Maltese law provides a solid foundation for enforcing accessibility and protecting the rights of the vulnerable, in particular persons with disabilities and older persons.

## Chapter 413

The Equal Opportunities (Persons with Disability) Act (Cap. 413) forbids discrimination on the basis of disability in all areas of public life, including access to public spaces and services.

The Act also establishes the principle of reasonable accommodation, requiring public and private entities to make modifications or adjustments to avoid disadvantaging persons with disabilities. Obstructed pavements, when left unaddressed, can amount to systemic discrimination should there be a failure in provision.

## Chapter 627

Following ratification by the EU, the Convention on the Rights of Persons with Disabilities of the United Nations was incorporated into the laws of Malta by virtue of Chapter 627.

Article 9 of the Convention provides that States must ensure access for persons with disabilities to the physical environment, transportation, information, and communications. The State must eliminate obstacles to accessibility in all public areas. The legal implications are very strong.

Specific obligations include the identification and elimination of obstacles and barriers to accessibility in buildings, roads, transportation, and other indoor and outdoor facilities.

Malta is committed at law to implement all the obligations deriving from the Convention. Any systematic failure to remove or regulate physical obstructions, such as the unregulated placement of tables and chairs on public pavements, may constitute a breach of the country's international obligations.

## S.L. 413.03

The Accessibility Standards in the Built Environment Regulations (L.N. 198 – 2019) give the force of law to design and construction standards that before were only advisory in nature. The regulations establish minimum requirements for accessibility and include rules with regard to alterations in public infrastructure and matters like the placing of outdoor furniture on public pavements.

## Chapter 552

The Development Planning Act governs urban development and land use, makes provision for granting and enforcing development permits, including those related to outdoor catering. The Planning Authority is empowered to set conditions for permits, including the spatial demarcation of permitted areas.

However, enforcement remains limited, and inconsistencies persist between permit conditions and actual practice.

To address this, the Office of the Ombudsman recommended an amendment to Chapter 552 which empowers the forced removal of irregular movable objects, drawing on similar provisions found in the Traffic Regulation Ordinance (Chapter 65).

The obstruction of public thoroughfares by vehicles is not allowed and there are in force enforcement tools to remove such obstructions. The relative provisions can serve as a useful model for dealing with non-vehicular obstructions, such as outdoor furniture placed in violation of spatial permits. Extending enforcement powers to local councils and to regulatory agencies could significantly enhance compliance.

## National Policy Frameworks

### **National policy frameworks reinforce legal instruments.**

The National Strategic Policy for Active Ageing (2021–2027 and 2023–2030) states that independent living and social participation for older persons are contingent on accessible and age-friendly environments. It calls for the removal of physical barriers in public spaces and promotes urban planning that supports active mobility.

The National Strategy on the Rights of Disabled Persons, also known as the “Freedom to Live” strategy, articulates a comprehensive vision of accessibility and commits the State to auditing the built environment, enforcing compliance with accessibility regulations, and prioritizing inclusive design in urban development.

## European Union

At the EU level, Malta is bound by a robust legal and policy framework that affirms the rights of older persons and persons with disabilities to accessible and inclusive environments.

In Article 25 the Charter of Fundamental Rights of the EU recognizes the right of the elderly to lead a life of dignity and independence. Article 26 affirms the right of persons with disabilities to benefit from measures that ensure their independence and participation in community life.

### **Directive 2014/24/EU**

This Directive relates to public procurement and provides for accessibility criteria into calls for public tenders and contracts. Contracting authorities are required to take into account accessibility requirements when formulating technical specifications.

Any publicly funded refurbishment or infrastructure project must feature accessibility as a core deliverable. This creates opportunities for public bodies to proactively integrate barrier-free design into public space management.

## **EU Urban Mobility Framework**

An Urban Mobility Framework was adopted by the EU in 2021 that established policy priorities for sustainable and inclusive mobility. Member States are encouraged to place by way of priority walking and cycling and to design cities around vulnerable road users.

The Framework notes that older persons and persons with disabilities are particularly vulnerable to exclusion when public infrastructure is inaccessible or obstructed and recommends that national and local authorities adopt policies that ensure continuous, unobstructed pedestrian routes, enforce zoning and permit conditions, and support coordinated enforcement across agencies.

## **EU Strategy for the Rights of Persons with Disabilities**

The EU Strategy for the Rights of Persons with Disabilities (2021–2030) identifies accessibility as its first and most foundational objective. It calls for the creation of Accessible EU, a resource centre for best practices and knowledge-sharing on accessibility. It commits the European Commission to developing guidelines for Member States on how to create barrier-free environments. These developments sustain the notion that Member States have both a legal and moral obligation to ensure that public spaces, including pavements, are truly inclusively usable by all.

## Recommendations by the Office of the Ombudsman

The Office has consistently highlighted the adverse impact of pavement obstructions on the pedestrian mobility rights especially but not only older persons, persons with disabilities and families with young children.

Through its investigations, public statements, and recommendations, the Office has documented numerous instances where outdoor catering operations have spilled over into public pavements without due regard for pedestrian needs or permit boundaries.

Following investigations into related complaints, the Commissioner for Environment and Planning has made several recommendations to address these recurring issues:

1. The Lands Authority should publish all concessions granted on public land and enforce these transparently, including through the imposition of fines where irregular occupation is detected. A lack of transparency in the concession process has led to public confusion and difficulty in verifying the legality of furniture placements.
2. The Commissioner recommended that the Lands Authority establish clear regulations and procedures for marking areas on public land designated for tables and chairs. Only recently has the Planning Authority started to address this recommendation by requiring that designated areas be visibly marked before development permission is granted. Regrettably this measure was not applied retroactively, and issues related to previously approved developments remain unaddressed.
3. More active enforcement by the Planning Authority against the irregular placement of tables and chairs. The absence of consistent enforcement not only compromises accessibility but also places compliant establishments at a competitive disadvantage.
4. Regulatory changes were proposed in the Development Planning Act to allow for the confiscation of irregular movable objects. This would align planning enforcement mechanisms with existing provisions under the Traffic Regulation Ordinance that allow for the removal of obstructive vehicles and other impediments. In one case, the installation of an alarm system was used to facilitate emergency access in an area where physical access was regularly obstructed. While this could serve as a short-term solution, it should not replace the need for clear, enforceable, and permanent regulatory interventions.

### **The Setting of Standards**

Public authorities must set non-negotiable tangible accessibility standards, such as minimum clear obstacle-free pavement width; continuous, straight, detectable walking paths; no movable obstructions in designated access corridors. Any licensing of outdoor seating has to be conditional, revocable and regularly reviewed.

## **Enforcement**

Standards and rules cannot be allowed to become a mere paper exercise. The right to accessibility cannot depend on goodwill alone. Enforcement rests on public authorities.

Ineffective or no enforcement of rules and standards constitutes misrule of law. Public authorities have an obligation to conduct regular and verifiable inspections, respond quickly to complaints, apply or insist on the application of penalties consistently and remove illegal obstructions immediately.

## **Planning and Design**

Public authorities should designate specific zones (not anywhere) where outdoor seating is permitted and ensure predictable layouts for persons with visual or cognitive impairments. Furthermore, accessibility has to be taken into account at the planning stage, not added later as a concession or as an afterthought.

## **Practical and Balanced Solutions**

### **i. Clear Accessibility Corridors**

Unobstructed pedestrian routes must be clearly defined, maintained permanently, and strictly enforced. Anything blocking the route, including any type of furniture, must be removed and kept out at all times.

### **ii. Co-operation**

Policies should be developed after listening to stakeholders, including but not only the Commissioner for Older Persons and the Commissioner for the Rights of Persons with Disability. Their lived experience reveals obstacles that planners may miss.

### **iii. Public Awareness and Cultural Shift**

Accessibility is not a restriction. It is proof of an urban area's maturity. A truly livable urban area is one where persons can pass on foot without asking for permission, where no one is forced into danger of any sort and where no one is made invisible because no one else cares.

### **iv. The Ethical and Social Imperative**

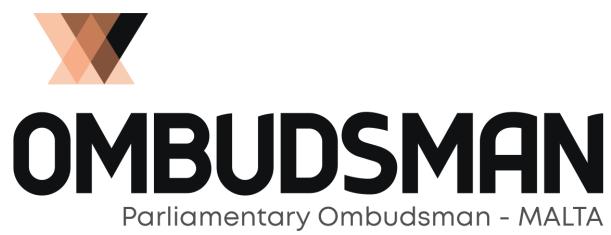
Designing public places only for the young, able-bodied, and economically active is short-sighted. The true test of a modern society is not how it markets itself, but how it treats those who move more slowly, see differently, or need more space.

## Conclusion

Public space belongs to everyone: equally, safely, and with dignity. When cultural practices conflict with fundamental rights, rights must prevail. Public authorities are not required to eliminate outdoor dining, but they are obliged to ensure that no one is excluded for any reason from public areas.

Enforcement of rules and standards is critical. Ensuring dignity and equity in pedestrian access should be the order of the day not the exception. With careful planning, outdoor cafés and inclusive, obstacle-free footpaths can co-exist without unnecessary inconvenience. Economic vitality is achievable without having to place in jeopardy the fundamental right of every person to move freely and safely on public pavements and spaces. The irregular, unlawful or unnecessary obstruction of pavements represents a failure to enforce existing laws, is a disregard of Malta's obligations under international treaties, and a breach of national policy goals relating to accessibility, ageing, and public safety. The current legal and policy frameworks at both national and EU levels provide clear grounds for action. What is lacking is consistent enforcement, inter-agency coordination, and a commitment to treating public space as a shared civic resource.

The Office of the Ombudsman calls on all stakeholders to reform and adjust legislation wherever necessary, with the adoption and putting into practice of enforcement strategies and actions, respectful of the dignity and rights of all.



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