

Ref: CommHR/MOF/sf 132-2026

Rosianne CUTAJAR

Minister for Equality and Civil Rights
Malta

Strasbourg, 25 September 2026

Dear Minister,

My mandate is to promote the effective observance and full enjoyment of human rights in Council of Europe member states. To this end, I engage in dialogue with national authorities to assist them in their efforts to better implement their human rights obligations. With specific reference to human rights structures, my mandate is to encourage their establishment and facilitate their activities.

I am writing concerning Bill No. 3, establishing a National Commission for Human Rights and Equality, the consideration of which is expected to resume in Parliament soon. I welcome the Bill for establishing a National Human Rights Institution (NHRI) in Malta.

I particularly welcome the proposed constitutional basis of the Commission, the recognition of its independence and impartiality, and the provisions concerning adequate resources, protection against arbitrary budgetary reductions, and autonomy in staff selection. The Commission would also be entrusted with a broad range of protective, monitoring, advisory and promotional functions. The provisions concerning annual reporting to Parliament, pluralism, human rights education and awareness-raising, and the promotion of Malta's international human rights commitments are also positive features.

However, I note that certain aspects of the Bill would need to be amended to ensure that the Commission can fulfil its mandate with the necessary independence, authority and effectiveness, as required by international standards applicable to NHRIs, in particular the Principles relating to the status of national institutions (the Paris Principles), adopted by the United Nations General Assembly on 20 December 1993, and the Recommendation CM/Rec(2021)1 of the Committee of Ministers of the Council of Europe to member States on the development and strengthening of effective, pluralist and independent national human rights institutions.

First, I note that the proposed selection process for the Commissioner and members of the Commission, as outlined in Article 21 of the Bill, may not provide sufficient guarantees of an independent, transparent and participatory process. International NHRI standards, in particular the Recommendation CM/Rec(2021)1, General Observation 1.8 of the General Assembly of National Human Rights Institutions (GANHRI) and ECRI General Policy Recommendation No. 2, Article 23, call for the selection and appointment of institutional leadership to be transparent, participatory and merit-based, and to rest on clear and publicly accessible criteria. In particular, in relation to the appointment of the Commissioner, there is insufficient detail as to the safeguards to ensure an independent selection process, including concerning how the job vacancy is advertised, criteria for the nomination and selection process, and broad consultation or participation in the process. In relation to the appointment of Commission members, the role of a committee appointed by a minister in the nomination process could create a perception of executive influence. Furthermore, the process by which the Commissioner appoints members directly, following two unsuccessful public calls, does not provide for a transparent and participatory process.

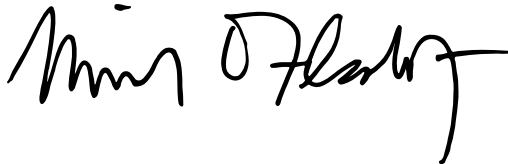
I therefore encourage you to consider a process that provides for open calls for candidates, objective selection criteria, and meaningful participation by civil society and other relevant stakeholders.

Second, the definition of human rights contained in Art. 2(1) of the Bill appears to limit part of the Commission's competence to rights contained in international treaties only insofar as those rights are directly enforceable before the Maltese courts. This definition risks resulting in a mandate that is narrower than that envisaged by General Observation 1.2 of GANHRI, which provides, in particular, that "[...] An NHRI's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights, which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights." The current definition would also sit uneasily with other provisions of the Bill, which confer broader functions on the Commission, including monitoring and promoting the harmonisation of national laws and practices with the international human rights instruments to which Malta is a party, and encouraging the ratification and effective implementation of international instruments to which Malta is not yet a party.

A third observation relates to the exclusions foreseen in Article 43 of the Bill, and in particular to the provision that would permit matters certified as affecting national security to be excluded from the Commission's competence. I recognise that legitimate national security interests may require appropriate arrangements. However, such interests should not result in broad areas of public action being placed beyond independent human rights scrutiny. I therefore encourage you to ensure that any such restriction is narrowly and precisely defined, strictly necessary, and subject to safeguards against arbitrary application, in line with GANHRI General Observation 2.6.

Furthermore, I encourage you to ensure that the legislation is adequately aligned with Recommendation CM/Rec(2021)1, ECRI's General Policy Recommendation 2: Equality Bodies to combat racism and intolerance at national level (CRI(2018)06, adopted on 7 December 2017), and GANHRI General Observations 1.6. and 1.11. In particular, I wish to underscore the importance of including clear provisions regarding reporting obligations, including the requirements that such reports be "widely circulated, discussed and considered by the legislature", and that the Government and other authorities provide a reasoned response to, and take follow-up action on, the institution's recommendations within a prescribed period.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael O'Flaherty', with a stylized, flowing script.

Michael O'Flaherty