Overview of the Proposed Human Rights & Equality Commission Act

Human Rights Day Conference

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BACKGROUND

WHITE PAPER
TOWARDS THE ESTABLISHMENT OF THE HUMAN RIGHTS AND EQUALITY COMMISSION
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Paris Principles (General Assembly resolution 48/134 of 20 December 1993)

States should establish independent national institutions to:

1) Promote and protect human rights
2) Advise government on human rights compliance and protection
3) Review human rights legislation and ensure compliance with international human rights instruments
4) Prepare human rights reports
5) Receive and investigate complaints from the public
Examples of Foreign Models

- The Danish Institute for Human Rights
- The Netherlands Institute for Human Rights
- The Scottish Human Rights Commission
- UK Equality and Human Rights Commission
“The Human Rights and Equality Commission (HREC) will have the task to address human rights issues and violations; monitor and advise on human rights priorities in Malta; focus on potential and occurring systematic violations of human rights; and contribute to prevent these violations.”
"The Human Rights and Equality Commission (HREC) will be … an autonomous authority with a mandate to:

i. Protect and promote human rights in Malta;

ii. Look at horizontal relations to monitor compliance with Maltese equality and equal treatment laws, which include a complaints mechanism"
“The autonomous framework of the HREC remains one of the most essential conditions that would allow the HREC to flourish and be effective in the long term”

“For the HREC to remain independent and effective, it also must be financially sound to do so. The HREC will manage its own budget that is allocated independently from government finances.”
HREC will act as a legal successor to the National Commission for the Promotion of Equality (NCPE) established under Chapter 456 of the Laws of Malta – Equality for Men and Women Act.

The NCPE will be transformed from an equality body with limited powers into a fully fledged human rights and equality commission with enforcement powers.
Proposed Act: Establishment

There shall be established a commission, to be known as the Human Rights and Equality Commission, to promote and protect human rights including the right to equal treatment and non-discrimination in Malta in accordance with the functions and powers assigned to it by this Act.
Establishment

The Commission shall be composed of a chairperson who shall be called the Commissioner for Human Rights and Equality and not less than six but not more than twelve other members who are suited to deal with issues of human rights and equality, and, or legal and administrative issues connected therewith. One of the members of the Commission shall be the chairperson of the National Commission Persons with Disability.

The Commission will therefore be enlarged and will be able to ensure a wider representation of society.
Establishment

The Commission may appoint an Executive Director who shall act in accordance with such policies established by the Commission and such instructions as may be given to him by the Commissioner.

The Commission may also appoint such officers and employees as necessary in order to perform its functions and duties under this Act.
The members of the Commission shall be appointed by the President acting in accordance with a resolution of the House of Representatives: Provided that the nomination of the person to act as Commissioner shall be supported by a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members of the House. The House of Representatives shall ensure that there is a balanced representation of men and women, and, as far as possible, a wide and pluralist representation of civil society.
Political Independence

National Commission for the Promotion of Equality (NCPE) :
- appointment and termination of office by the Executive (Prime Minister)

- Fund allocated by the Minister
Political Independence

The Commission shall be responsible to Parliament, and shall perform its functions with impartiality and independence.

The Commissioner and the other members of the Commission shall, in the performance of their functions under this Act, be officers of Parliament.

In the exercise of their functions under this Act, the members of the Commission shall not be subject to the direction or control of any other person or authority.

The HREC will thus no longer fall under a Ministry.
Political Independence

The members of the Commission shall be appointed by the President acting in accordance with a resolution of the House of Representatives: Provided that the nomination of the person to act as Commissioner shall be supported by a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members of the House. The House of Representatives shall ensure that there is a balanced representation of men and women, and, as far as possible, a wide and pluralist representation of civil society.

It is only the President who may terminate the appointment of any member of the Commission, on one of the grounds established by law.
Financial Independence

A financial plan prepared by the Commission is to be approved by the House of Representatives each year (no longer dependent on the Ministry).

The finance approved by the House of Representatives for the expenses mentioned in subarticle (1) shall be a charge on the Consolidated Fund without any further appropriation other than this Act.
Financial Independence

The remuneration and allowances payable to the Commissioners and the other members of the Commission shall be set by the House of Representatives. Such remuneration and allowances are not to be diminished during the Commission’s term of office.
Functions

- to submit to Government, Parliament and public bodies, on an advisory basis, either at the request of the authorities concerned or on its own initiative, opinions, recommendations, proposals and reports on any matter concerning the promotion and protection of human rights and the right to equal treatment and non-discrimination;

- to examine legislative or administrative provisions in force, as well as bills and legislative proposals, and to make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights and the right to equal treatment and non-discrimination, and if necessary, to recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
Functions

- to receive complaints from the public, whether from one or more petitioners, or from any person, whether corporate or unincorporate, and to set up a complaints mechanism for such purpose;
- to investigate violations or potential violations of human rights or the right to equal treatment and non-discrimination which it decides to take up, either on a complaint being lodged or on its own initiative;
- to ensure the prevention or cessation of infringements of human rights and the right to equal treatment and non-discrimination in accordance with the provisions of this Act;
Functions

- to provide independent assistance, where and as appropriate, to persons who are victims of human rights violations or persons who are suffering from discrimination.
- to prepare reports on the national situation with regards to human rights or the right to equal treatment and non-discrimination in general, or one any one or more specific matter or sector;
- to promote and ensure the harmonisation of national legislation, regulations and practices with international human rights instruments to which Malta is a party, and their effective implementation;
Functions

- to maintain consultation and, where it considers it so appropriate to better fulfil its functions, to co-operate with governmental organisations responsible for the protection of particularly vulnerable groups such as children, migrants, refugees and persons with disability (e.g. National Commission for Persons with Disability – KNPD, Commissioner for Children).

- to maintain consultation and co-operate with non-governmental organisations responsible for the promotion and protection of human rights or the elimination of discrimination or which are devoted to protecting particularly vulnerable groups;

- to prepare or contribute to the reports which are to be submitted to international and regional institutions that are competent in the area of human rights pursuant to the obligations assumed by Malta by treaty;
Functions

- to contribute in the formulation of programmes for the teaching of, and research into, human rights, equal treatment and non-discrimination, and to take part in their execution in schools, universities and other educational establishments;
- to enhance public knowledge on human rights and efforts to combat all forms of unjust discrimination, especially through the dissemination of information and education;
- to co-operate with other organisations such as trade unions, non-governmental organisations and social and professional organisations in order to promote and protect human rights, and the right to equal treatment and non-discrimination;
- to contribute to global and regional human rights developments;
- to perform any such other function as may be assigned to it by this Act or any other law.
Complaints Mechanism

Without prejudice to any other remedy available at law, a person who believes that he is a victim of a human rights infringement or discrimination may submit a complaint to the Commission.

Any association, organization or any legal entity which has an interest in the protection of human rights may lodge a complaint on behalf or in support of a person, with his or her approval.
Complaints Mechanism

Any such association, organization or any legal entity may also lodge a complaint despite that it is not individually and directly concerned, provided that the complaint is of general concern or concerns a particular sector, minority or group of society.
Complaints Mechanism

The Commission may in its discretion decide not to investigate a complaint if in its opinion -

- the subject-matter of the complaint is trivial; or
- the complaint is frivolous or vexatious or is not made in good faith;
- subject to the right of associations to lodge complaints of general concern or concerning particular groups, if the complainant has not a sufficient personal interest in the subject-matter of the complaint; or
- other adequate means of redress is or are available to the complainant under any other law.
Complaints Mechanism

- The Commission shall not proceed to investigate any complaint on the subject-matter of which proceedings are pending in a court or other tribunal.

- The Commission shall not proceed to investigate any complaint on the subject-matter of which an investigation is pending by the Ombudsman in terms of the Ombudsman Act.

- The Commission shall not proceed to investigate any complaint concerning any act which is the subject of an investigation by the National Commission Persons with Disability under the Equal Opportunities (Persons with Disabilities) Act.
Powers of Investigation

The Commission may, in response to a complaint or on its own initiative, decide to carry out an investigation to determine whether a human rights infringement or discrimination has taken place or is taking place.
Powers of Investigation

Power to summon witnesses and to administer an oath to any witness and to any person, and require them to give evidence or produce documents.

Power to enter any premises occupied by any government department or public authority, and inspect the premises and carry out therein any investigation falling within the scope of this Act.

Power to carry out on site investigations and require access to all places other than a dwelling house without the consent of the occupant.
Infringements

National Commission for the Promotion of Equality (NCPE) has no proper enforcement power. It may report the matter to the Police where the action complained of constitutes an offence.

Where the action does not constitute an offence, it may call upon the person to redress the situation or act as a mediator.
Finding and termination of a human rights infringement

Where, after making any investigation under this Act, acting on a complaint or on its own initiative, the Commission is of opinion that there has been, or that there is going to be, a breach of human rights by a government ministry, department, public authority or local council, the Commission shall by decision in writing, after giving its reasons there for, make such recommendations as it considers fit and appropriate in the circumstances to ensure the prevention or cessation of the infringement, as the case may be.
Finding and termination of a human rights infringement

- The decision may request the government ministry, department, public authority or local council to notify the Commission, within a specified time, of the steps that it proposes to take to give effect to its recommendations. The Commission shall also send a copy of its decision to the Minister concerned and to the mayor in the case relating to a local council.

- If within the time fixed by the Commission, no action is taken which appears to the Commission to be adequate and appropriate, it may send a copy of its decision to the Prime Minister, and may thereafter make such report to the House of Representatives on the matter as it thinks fit.
Finding and termination of an infringement of the right to equal treatment and non-discrimination

Where, after making any investigation under this Act, the Commission is of opinion that there is, or that there is going to be an infringement of the right to equal treatment or non-discrimination, it shall by decision in writing, after giving its reasons therefor, require the entity concerned to take such measures which are adequate and appropriate to prevent the infringement or to bring it effectively to an end, as the case may be. The decision shall indicate the time within which such measures are to be taken.
Finding and termination of an infringement of the right to equal treatment and non-discrimination

Where after making any investigation under this Act, acting on a complaint or on its own initiative, the Commission is of opinion that there has been an infringement by an entity of the right to equal treatment or non-discrimination, it shall by decision in writing, after giving its reasons therefor, declare that the entity concerned has committed an infringement and shall specify the provision or provision of the Equality Act which has or have been breached.
Finding and termination of an infringement of the right to equal treatment and non-discrimination

Before taking decisions, the Commission shall give the entity which is the subject of an investigation the opportunity of being heard on the matters to which the Commission has taken objection and which have been notified personally or by registered letter to the entity concerned. The Commission shall base its decision only on objections on which the entity concerned has been given an opportunity to comment upon. The entity concerned shall be given a period of at least ten working days to respond to the allegations made in its regard.
Penalties

Where no action is taken by the entity concerned within the time fixed by the Commission, the Commission may, after giving the entity concerned the opportunity of being heard, impose a penalty of not more than ___ Euro on the entity concerned for its failure to adopt the required measures. The Commission may, by decision in writing, impose an additional periodic penalty payment of not more than ___ Euro per day for such time until the infringement is effectively brought to an end.
Penalties

Where the Commission finds that there has been an infringement by an entity of the right to equal treatment or non-discrimination, the Commission may impose a penalty of not more than ____ Euro on the entity concerned.
Interim Measures

In cases of urgency due to the risk of serious and irreparable harm to any person or group of persons, the Commission may, in its own discretion, by decision in writing, on the basis of a prima facie finding of an infringement, order interim measures which are adequate and appropriate to prevent such harm.

Such a decision shall apply for a specified period of time and may be renewed in so far as this is necessary and appropriate. It shall be notified on the entities required to adopt interim measures.
Commitments

Where the Commission intends to adopt a decision to prevent an infringement or requiring that an infringement be brought to an end and the entity concerned offers commitments to meet the concerns brought to its attention by the Commission, the Commission may by decision make those commitments binding on the entity concerned. Such a decision shall conclude that there are no longer grounds for action by the Commission.

The Commission may, upon a complaint or on its own initiative, reopen the proceedings:

(a) where there has been a material change in any of the facts on which the decision was based;
(b) where the entity concerned acts contrary to their commitments; or
(c) where the decision was based on incomplete, incorrect or misleading information provided by the entity concerned.
Right of Appeal

Any person who is aggrieved by a decision of the Commission may appeal to the Court of Appeal (Superior Jurisdiction) as constituted in accordance with article 41(1) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court within twenty calendar days from the date on which that decision has been notified to him.

Provisions to ensure that such appeals are heard without delay.
Annual Report

Not later than the 30th day of June of each year, the Commission shall prepare a report of its activities during the year.

The annual report shall include a general report of developments during the period to which it relates in respect of matters falling within the functions of the Commission and shall also include a report on the activities, recommendations, investigations, advice and other initiatives carried out by the Commission in furtherance of its functions to promote and protect human rights and to suppress discrimination during the period to which the report relates.

The annual report shall be submitted to the House of Representatives and laid on the Table of the House. A copy of the annual report shall also be submitted to the President and the Minister, and to such other bodies or organisations as the President may direct from time to time.
The Commission may from time to time in the public interest, or in the interest of any person, or department, or organisation publish reports relating generally to the exercise of its functions under this Act, or reports relating to any particular case or cases investigated. Such reports may be published whether or not the matters dealt with in the report have been the subject of a report to the House of Representatives under this Act.
THE END

Thank-you for your attention

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