

## Ensuring citizens' enjoyment of their human rights

Under the legal framework currently in force, the National Commission for the Promotion of Equality (NCPE) can investigate and decide on cases of discrimination. However, NCPE can only issue non-binding opinions. This may discourage those who have experienced discrimination from reporting their case to the Commission and is one of the main factors underlying the problem of underreporting of cases of discrimination.

EU Directives place an obligation on member states to establish sanctions against discrimination that are effective, proportionate and dissuasive. Moreover, the setting up of an institution that is more accessible than a court and which investigates and sanctions cases of discrimination and human rights infringements is recommended in a number of important international and European documents.

For example, the Paris Principles, which outline the benchmarks provided by the United Nations against which national human rights institutions (NHRIs) are accredited, state that: "*A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations.*" It then goes on to state that an NHRI can take "*binding decisions*" after hearing and considering such cases.

In Europe, twelve equality bodies have tribunal-type functions, meaning that they can investigate and decide cases of discrimination. A number of them are also empowered to impose penalties, and some can even award compensation to victims. The European Network of Equality Bodies (EQUINET) recommends that specific powers underpinning the tribunal-type functions should include such functions as to:

- Make findings in cases of discrimination
- Employ sanctions and award compensation that are proportionate, effective and dissuasive
- Make legally binding decisions in cases of discrimination
- Instruct perpetrators found to have discriminated to take a course of action to address the discrimination that occurred and to prevent any future recurrence
- Follow-up findings made to ensure implementation of decisions.

These Principles have been adopted as the basis of the proposed revision of the legal framework on equality and non-discrimination in Malta that aims at granting effective

protection to people who have experienced cases of discrimination and harassment as well as preventing such cases from happening in the first place. The drafts of the Equality Bill and the Human Rights and Equality Commission Bill, which would replace Chapter 456 and its subsidiary legislation, are based on principles that are mandatory under EU Directives and, thus, already present in our laws. If enacted, these Bills would simply make this framework stronger and more coherent, enabling the Commission to better address people's concerns related to discrimination, and extend the Commission's remit to cover human rights.

In order to ensure the separation of the new Commission's responsibilities, these Bills propose the establishment of a separate Human Rights and Equality Board within the Human Rights and Equality Commission. Among its functions, this Board would investigate cases and take decisions requiring the cessation or prevention of any infringement of human rights or of the right to equal treatment, as well as impose penalties when the decisions of the Board are ignored. The Court of Appeal will have the final say in those cases where a decision of the Board is appealed by the parties involved and recovery of the penalties imposed by the Commission would be suspended until the Court of Appeals decides on the case.

The structure of this Board that hears and decides on cases of discrimination and human rights infringements is an internationally recognised setup that guarantees a fair and just procedure to all parties and offers more accessibility to victims. Upgrading our laws in this direction would be one of the most significant and much needed changes to our equality framework since it would contribute to ensuring respect in practice for the fundamental principle of non-discrimination within the context of fair procedures.