

Why Malta needs the Equality Act

As we go about our daily lives - working or searching for employment, boarding the bus or going to school, shopping from a pharmacy or visiting a doctor – it is fundamental that we have peace of mind about being protected from discrimination and harassment. Just imagine the opposite scenario; where people can be refused employment or be given inferior conditions of work because of their gender, skin colour or religion; where women, younger or older persons can be denied a service simply because of their sex or their age; where children of same-sex couples are ostracised and bullied at school because of their parents' sexual orientation. History teaches us a great deal about the consequences of a discriminating environment: environments where persons belonging to certain social groups feel that their social experience is one of discrimination and harassment – where others seem to have the power to treat them as inferiors, as individuals of less worth – not only lead to suffering and marginalisation for the individuals concerned, but they also erode the basis of our living together in a democratic society.

The principle of equal treatment is so fundamental that it is enshrined in the most significant international treaties and EU law as well as in the founding documents of almost all nation-states, including the Maltese Constitution. Unfortunately, the principle of equal treatment alone is not enough to guarantee protection from discrimination in practice. This is the reason why countries enact equality laws and set up bodies specifically responsible for their promotion and implementation. The National Commission for the Promotion of Equality (NCPE) is one such institution, established by Chapter 456 *Equality for Men and Women Act*, and responsible for investigating cases of discrimination and promoting equality in Malta. As the NCPE has been working within the Maltese legal framework on equality for the past sixteen years, from its inception in 2004, it is very well aware that the current legislation does a poor job at translating the fundamental principle of the right to equal treatment into protection from discrimination in practice.

The problems with the current equality legal framework are numerous. The law, that came into force in 2003 as part of Malta's accession to the EU, has been a patchwork exercise where provisions and Legal Notices were added or amended along the years simply to meet the minimum requirements of EU Directives. This has resulted in contradictory definitions and incoherent provisions. For example, while the NCPE is able to investigate a complaint from a gay person experiencing discrimination in employment or education, it cannot do so if that same person experienced discrimination whilst receiving a publicly available service. That's because the grounds of discrimination covered by the current law focus mainly on employment and do not protect all spheres of life. There are six grounds covered in the spheres of employment and education, but only sex and race/ethnic origin are covered in the access to and provision of goods and services.

Besides offering inadequate protection, such discrepancies also create confusion among the public and discourage people from reporting cases of discrimination.

Another major issue with the current law concerns the powers of the equality body – the NCPE – to act against cases of discrimination or harassment. Currently, the NCPE can only issue an opinion after investigating a case. It can neither make binding recommendations nor order compensation to the victim. This, too, is a strong disincentive for people to come forward and report cases of discrimination and harassment.

The proposed Equality Bill being discussed in Parliament would address these weaknesses and introduce legal provisions that are fit for purpose. It would add grounds of discrimination that are presently not covered, such as political opinion and health status, whilst also ensuring that these grounds are covered equally in all spheres of public life. The Bill does not regulate the private life of individuals, such as family matters. Most importantly, there would be an Equality Board to investigate cases of discrimination and harassment with the power to issue binding rulings and compensation to victims. This will have a direct positive impact on the lives of thousands of people who are experiencing, or might experience, unfair treatment. It would give people an effective means of redress against unlawful discrimination/harassment and, consequently, encourage victims to report such cases and demand that unlawful practices cease, whilst getting compensation.

The Equality Bill is a golden opportunity for Malta to enact a law that will improve our living together as a society based on democratic principles. The Equality Bill cannot, and should not, be weakened through the inclusion of provisions about conscientious objection. A conscientious objection clause, in the context of equality law, is antithetical to the purpose of the law: it introduces massive loopholes by allowing persons and institutions to discriminate against others, as long as it is their “conscience” telling them to do so. This would, once again, render equality law ineffective and fail citizens by denying them the protection they need from unjust and harmful practices. The inclusion of such provisions would constitute a regression even from the equality law currently in force since, as problematic as it may be, it still does not include clauses allowing people to discriminate against others on the basis of their conscience, a concept which also contradicts EU Directives which Malta is bound to follow. Both current law as well as the proposed Equality Bill already include provisions that allow difference in treatment when this is based on genuine requirements. However, if difference in treatment is allowed on any pretext other than genuine requirements, the protection afforded to all by equality law would be severely weakened and everyone could become victim of unjustified, unfair, treatment.



As the NCPE Commissioner I look forward to the enactment of an Equality Bill that makes a tangible, positive, change in people's lives and enables our equality body to strengthen its work when assisting victims of discrimination and harassment by providing them with the protection they deserve.

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