

No one should be given a license to discriminate

The ongoing discussion in Parliament of the Equality Bill is very positive and encouraging. If the Bill becomes law, Malta will soon be in a much stronger position to address discrimination and inequality.

As the Commission responsible for the implementation of Malta's equality law, the National Commission for the Promotion of Equality (NCPE) is very well aware of the benefits of the equality legal framework on society and individuals. Alas, in our day-to-day work we constantly meet people who cannot be provided with the necessary protection from discrimination due to loopholes, inconsistencies and weaknesses in the law currently in force. For this reason, the NCPE was one of the main proponents of the Equality Bill way back in 2014.

The Equality Bill is structured around the same principles contained in the current national legal framework and EU Directives, while empowering the people to require that the principles of non-discrimination and equality are respected in practice. This will leave a tangible positive impact on individuals who are at risk of discrimination, but also on Maltese society at large. We emphasise that the negative effects of discrimination transcend the individual. Discrimination stifles societal development and well-being by acting as a barrier to the full contribution, by all social groups, to Malta's economic, political and cultural life.

People have a right to feel protected from unfair treatment and harassment because of personal characteristics such as sex, age, religion, ethnic origin, gender identity or sexual orientation. They also have a right to feel that, if discriminated against or harassed, accessible and effective legal remedies are available. It is thus essential that equality law avoids loopholes and ambiguities that would allow unfair treatment or would convey the message that discrimination and inequality can be somehow justified.

Surely, law should also give us clear parameters as to what is considered discriminatory and what is not. A list outlining differences in treatment that are *not* considered discriminatory is already included in the Equality Bill, and this provides for no less than fifteen such circumstances. For example, an employer is allowed to recruit a person with a specific personal characteristic if that characteristic constitutes a "genuine and determining requirement" for the job.

However, if other types of differences in treatment - not based on objective considerations about the need and legitimacy of different treatment - are added to this list, the Equality Bill would be weakened, leaving entire categories of persons unprotected.

Let's take the case of educational institutions run by religious organisations, irrespective of which religion. According to the Equality Bill, such institutions are free to impose their ethos and the Bill explicitly allows these institutions to require teachers to act in good faith and in line with the school policies. The Bill also clarifies that such requirement should not interfere with the private life of teachers outside that establishment. Thus, once enacted, the new equality law will not stop religious organisations from running educational institutions based on a faith-based ethos. What it prohibits is the discrimination against teachers based on their personal characteristics. This provision simply reaffirms the principle of non-discrimination in employment, applicable to the public, the private and the third sector. Should an exception to this rule be introduced in the Equality Bill - one allowing discrimination in employment when the employer is a religious institution - hundreds of teachers would be left uncovered by equality law and unprotected against discrimination in the sphere of employment.

Likewise, the Equality Bill does not prevent educational institutions run by religious organisations from transmitting the values and teachings of their faith. Educational institutions are only obliged to ensure that curricula and textbooks do not propagate discrimination, and to promote diversity and respect. An educational institution doing otherwise would be causing harm to both its students and society. Not representing, or unfavourably representing, certain social groups has a devastating impact on those students who are part of that social group as it engenders an educational environment that is exclusionary and/or hostile. It also has profound social ramifications. Just imagine a situation where children are taught that men are superior to women, or that LGBTIQ individuals are inferior to straight persons. This would contradict one of the main tenets of democratic society: the notion that we live together and relate to each, on the basis that we all are of equal value.

Similarly, including a clause on "conscientious objection", within the context of equality law, would go counter to the core principles of non-discrimination law itself, as well as to the fundamental values of a country aspiring for equality. Since the law covers the prohibition of discrimination against persons on the basis of their personal characteristics, "conscientious objection" here would simply mean a license to discriminate against others. Once discrimination against others is made possible, everyone can be a victim of discriminatory treatment. The Equality Bill covers the provision of goods and services within the social and public sphere, where one's actions will inevitably and directly impinge on the rights of others. If equality law allows persons to discriminate against others when invoking their own personal conscience, it would be disregarding the rights of those it is supposed to protect - persons experiencing discrimination and inequality. Current equality law already prohibits discrimination in the provision of goods and services. In fact, national legislation and EU Directives do not include any reference to "conscientious objection" in the context of non-discrimination.

The Equality Bill aims to ensure that individuals are not treated unfairly because of their personal characteristics, and that social groups do not become marginalized or placed in situations of inequality. Every exception to the rule prohibiting discrimination and harassment would translate to weaker protection against unfair treatment and abuse, and consequently, to more social inequality. Thus, the Equality Bill should continue to be guided by the principle that everyone has a right to a social experience that is free from discrimination and harassment.

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