OMBUDSMAN

The setting up of a NATIONAL HUMAN RIGHTS INSTITUTION

A proposal by
The Office of the Parliamentary Ombudsman

October 2013

The setting up of a NATIONAL HUMAN RIGHTS INSTITUTION in Malta

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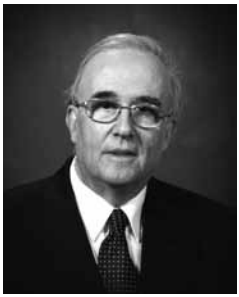

For years the Office of the Ombudsman has been actively engaged in promoting both locally and abroad the need to set up in Malta a National Human Rights Institution (Istituzzjoni Nazzjonali għall-Ħarsien tal-Jeddijiet Umani). NHRI's are considered as central players in national human rights protection systems and play a crucial part to promote and monitor the effective implementation of international human standards at the national level. A role that is increasingly recognised by the international community.

In fact, the Office of the Ombudsman in Malta has unofficially been recognised by major European Union and Council of Europe institutions as a NHRI. The European Commissioner for Human Rights and various delegations from these institutions regularly request to be updated on the state of observance of human rights in Malta and discuss with him sensitive areas that require to be addressed. This Office has put forward the proposal to set up a NHRI to the outgoing administration that had expressed its readiness to consider it positively. It again raised the issue with the present administration during the discussion on this year's Ombudsplan and the Government appeared receptive to its proposal.

This document is a further contribution to raise public awareness of the need to set up the necessary structures for a National Human Rights Institution that would further strengthen and safeguard the rights of the citizen to enjoy fully the exercise of his fundamental rights. A right that lies at the core of the State's duty towards the citizen to ensure a good public administration. Essentially, the State is bound to provide through Parliament the necessary institutions to oversee and ensure not only that all the acts of the public administration, but also those outside that area in the private domain, respect fundamental rights. It has the duty to provide adequate means of redress, both judicial and non-judicial when those rights are violated or threatened.

The NHRI, whether within the ambit of the Office of the National Ombudsman or otherwise, is today universally recognised to be the most important, autonomous monitoring mechanism that works within the framework of an international network, accredited to the United Nations and that affords the maximum protection to citizens in this vital area. I believe that the setting up of such a body in Malta is long overdue. Hopefully this document will help the Government and its advisers to take wise and appropriate decisions.

Credit is due to Dr Monica Borg Galea, our Head of Investigations and Mr Jurgen Cassar our newly appointed Research and Communications Officer for their sterling help in the compilation of this report. Credit is also due to Mr Michael Sant who was, until recently, the Manager Corporate Affairs of this Office and who for the last years closely collaborated with me in the promotion of the proposal that a NHRI should be set up in Malta and that the Office of the Ombudsman was ideally suited to carry out that role.

Chief Justice Emeritus
J Said Pullicino
Parliamentary Ombudsman

Introduction

Throughout the years both the role and the vision of Ombudsman institutions have been extended and widened. Originally tasked with the scrutiny of administrative action by public authorities, several Ombudsmen have in recent years seen their remit extended to cover the protection, promotion and enhancement of fundamental human rights. This extension of the Ombudsman's scope of action beyond administrative decisions further served to bestow upon the Institution of the Ombudsman a stronger role in the protection of fundamental rights.

As a result of these developments, there is now a stronger trend towards convergence in most ombudsman institutions. European Ombudsmen are increasingly fulfilling their functions on three overlapping and mutually supportive elements: legality; principles of good administration, and human rights. In this regard Ombudsmen can play a valuable role in giving empowerment to citizens, raising the quality of the public administration and serving as an alternative non-judicial avenue of redress when the rights of individuals are not respected.

Mindful of this reinforcement of the role of the Ombudsman and of how this institution has developed in recent years, this Office is in favour of the widening of its original mandate as laid down in its founding legislation, Act XXI of 1995, to serve also as Malta's national human rights institution.

Background

National Human Rights Institutions

National Human Rights Institutions (NHRIs) are independent bodies established by domestic law with the specific role of protecting and promoting human rights in a State. The mandate of NHRIs generally encompasses the full gamut of human rights, from civil and political to economic, social and cultural rights.

The normative departure point for discussion of NHRIs is "*The principles relating to the status of national institutions*" known as the Paris Principles, devised in 1991 and adopted by the UN General Assembly in 1993. These principles recognize that each State is entitled to adopt the legal framework for NHRIs that is "*best suited to its particular needs to the national level*"[1]. In formulating a definition, the Principles pay particular attention to the following attributes of a NHRI, that:

- it is established in the national constitution or by law;
- it is clearly specified and the mandate is as broad as possible;
- there is pluralism in governing structures and independence of appointment procedures;
- its infrastructure is proportionate with its functions, with particular importance attached to the need for adequate funding;
- the institution has the ability:
  - to perform a monitoring, advisory and recommendation function on various matters relating to human rights;
  - to relate to regional and international organisations;
  - to promote public awareness, teaching and research on human rights; and
- it recognises the possibility of NHRIs possessing 'quasi-jurisdictio nal' functions e.g. the handling of individual complaints or petitions on human rights grounds.

NHRIs should be well known to the public to boost their efficiency and credibility. A coherent structure at the national level must be established. Moreover the establishment of a single NHRI in every Member State would make the system significantly more accessible for citizens.[2]

The Paris Principles – UN – ICC Accreditation

The Paris Principles are minimum standards that may be widened by the State to grant additional powers and a wider mandate to the NHRI. In terms

1. UN General Assembly (1193a) part 1. Para. 36.
2. European Union Agency for Fundamental Rights (FRA) MEMO/7 May 2010.

of these principles NHRIs are required to assume five principal functions: (1) to promote human rights; (2) to advise governments on human rights protection; (3) to review human rights legislation; (4) to prepare human rights reports; and (5) to receive and investigate complaints from the public. The UN-affiliated International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) identifies 119 NHRIs worldwide, with 63 fully accredited in accordance with the Paris Principles.

There are currently 12 NHRIs in the EU in 10 member states with A status, that is, fully compliant with the Paris Principles. A number of these, perform the functions of national ombudsman. Nomenclatures can be very misleading because of the various models adopted by different countries. It is interesting to note that practically all EU Member countries, except Malta have an accreditation to the ICC at level A or B[3]. There is a growing tendency for ombudsman institutions to assume the role of defender of all citizen's rights including first and foremost fundamental rights. However, one has to examine the functions of the institution to establish whether the designation of the institution corresponds to the functions it actually carries out.

In fact and in practice, NHRIs take a variety of forms and their strict adherence to the Paris Principles vary considerably, especially in terms of composition and function. This is not surprising given the different expectations and demands attached to these institutions in a diverse range of political, institutional and historical context.

The Belgrade Principles

The 2012 International Seminar on the relationship between NHRIs and Parliaments, organised amongst others by the Office of the United Nations High Commissioner for Human Rights and the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, have adopted the Belgrade Principles aimed at providing guidance on how the interaction and cooperation between NHRIs and Parliaments should be developed.

The Belgrade Principles, recognised that the principles relating to the status of national institutions (the Paris Principles, adopted by United Nations General Assembly Resolution 48/134) provide that NHRIs shall establish an "*effective cooperation*" with Parliaments, and noted that NHRIs and Parliaments have much to gain from each other in performing their responsibilities for the

3. Reference is made to Annex 4 on NHRIs and their ICC status by EU Member States - attached with this Report - which was published in the Official Handbook on the establishment and accreditation of NHRIs in the EU.

promotion and protection of human rights. It further recalled the need to identify areas for strengthened interaction between NHRIs and Parliaments bearing in mind that the different institutional models of NHRIs should be respected.

It adopted the following principles as guidelines on how this interaction should be developed. These state that -

- when drafting legislation for the establishment of a NHRI, Parliament should consult widely with relevant stakeholders;
- Parliament should ensure NHRIs are financially independent;
- that there should be a transparent selection appointment process, as well as dismissal procedures;
- the NHRI reports directly to Parliament, on its activities, and on the human rights situation in the country;
- NHRI and Parliament should agree on forms of cooperation with Parliament and any amendments to legislation where necessary to harmonize local and international human rights standards;
- NHRIs should cooperate with Parliament in relation to legislation;
- cooperation with Parliament should also occur in relation to international human rights mechanisms;
- NHRIs are to cooperate with Parliament in education, training and awareness raising of Human Rights; and
- they are to monitor the Executive's response to Court and other judicial and administrative bodies' judgements concerning human rights.

The model proposed by the Belgrade Principles is similar to the legislative framework in which the Maltese Parliamentary Ombudsman functions.

Council of Europe Resolution 1959 of 2013

The Office of the Ombudsman has just been notified with a resolution of the Parliamentary Assembly (No 1595/2013) adopted on 4 October 2013 which is being reproduced at Annex 3 attached with this document.

In the resolution the Assembly, *inter alia,* calls on Member States of the Council of Europe to ensure that –

i) the remit of the Office of the Ombudsman *"should cover cases of maladministration of the executive branch* ***as well as the protection of human rights and fundamental freedoms****";*

ii) *"refrain from multiplying ombudsman/type institutions if it is not strictly necessary for the protection of human rights and*

fundamental freedoms; a proliferation of such bodies could confuse individual's understanding of means of redress available to them";

iii) *"to consider seeking ombudspersons accreditation at the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in light of the Paris Principles."*

The situation in Malta

It is an undeniable fact that while awareness of fundamental human rights as an essential component of democracy gained momentum immediately after the second world war, the need to establish proper structures both nationally and internationally to promote and protect these rights materialised later. This as a reaction to the excesses of international totalitarian regimes that, by their very nature, suppressed them.

It would appear that the reason why no National Commission for Human Rights, or indeed no NHRI, has ever been set up in Malta is essentially historical. These institutions were mainly created and proliferated in the new emerging democracies, mostly after the collapse of Communism.

Historical Background

Historically therefore, the need for setting up NHRIs and National Commissions for Human Rights was understandably felt in those countries that had just regained new found freedoms from dictatorship throughout the world and more markedly in Eastern European Countries. In these countries these institutions, that generally function as national ombudsman, eventually created a formidable international network for the protection of fundamental rights. They were seen as the foremost guarantor of these freedoms, even more effective in some countries than the judicial structures themselves. Their international dimension meant that they could rely on the backing and support of international institutions of global width like the United Nations and its agencies. They have become a very effective instrument monitoring violations of fundamental rights, identifying potential threats and ensuring adequate protection.

Malta's constitutional development, though not without its negative periods and dark episodes, was spared the trauma of extreme threats to fundamental human rights generally inherent in totalitarian regimes. Boasting of a first Bill of Rights that goes back to 1802, it has always been aware of the values of

fundamental freedoms. Successive Constitutions emphasise specific protective provisions guaranteeing their exercise. The 1964 Independence Constitution provides for the right of individual petition to Courts with special constitutional jurisdiction that ensure redress against actual or threatened violations of fundamental rights as set out in the Constitution itself. In 1987, this judicial protection was further strengthened when Malta ratified the European Convention of Human Rights and extended the right of individual petition to the European Court of Human Rights and later to the judicial organs of the European Union following accession in 2004.

Protection through Judicial Procedures

Against this background, it would appear that successive administrations were of the opinion that the human rights scenario in Malta was such as to suggest that the interest of society would be better served by ensuring their protection through effective judicial procedures, directly accessible to citizens, rather than through the setting up of NHRIs which, though effective, are essentially non judicial and cannot therefore afford the same level of executive protection.

Moreover, it was felt that it was perhaps wiser to limit the interpretation of delicate issues of fundamental rights and their limitations to specialised judicial organs. That system still obtains today. It aims at uniformity of interpretation of conventions and human rights statutes to the extent that, other judicial organs which have a jurisdiction to identify actual or potential violations of human rights, are bound by the Constitution to refer them for decision to the appropriate constitutional judicial court.

Developments

This modus operandi has up to now worked relatively well. However, developments in this field, both nationally and internationally, require a radical rethinking not only on how to raise the awareness of society on the relevance of fundamental human rights, but also on the widening of ways and means to be adopted in their defence. It is today widely accepted that human rights should be the concern of every administrative and executive organ of society.

They should not be exclusively the concern of the judicial organs of the State that can only be seized of a human right issue if there is an allegation of an actual or potential threat. Prevention is better than cure. The aim should be to pre-empt any situation that could endanger the enjoyment of fundamental freedoms. This is precisely where NHRIs are useful in countries like Malta

where judicial protection is substantially adequate. It is recognised today that every effort should be made to ensure the observance of fundamental rights on all aspects of administrative action and that consequently there is a need for a watchdog to oversee that this duty is duly observed by all.

Models adopted by other Countries and Institutions

The Council of Europe

The Council of Europe Commissioner for Human Rights stated that the existence of specialized institutions might weaken the general ombudsman and public cause confusion. It was also observed that: "*In a period of transition and financial insecurity, it would be more rational to concentrate all available resources on the office of the existing national ombudsman and, where appropriate, appoint deputies to deal with specific issues.*[4]"

The European Union

In European Union (EU) Member States there has been considerable movement in recent years on the question of whether issues of discrimination and equality are best addressed through a single body addressing all grounds for discrimination, or multiple specialised bodies. EU directives are agnostic on this issue and, indeed, some do not even require the creation of an equality body.

The existing NHRIs in EU Member States have varying organisational structures. There is neither a universally accepted ideal 'model' of a NHRI nor a recognised standard structure. Indeed, the Paris Principles do not dictate any particular model or structure for a NHRI, with the result that NHRIs vary depending on the legal and political traditions.

The main models of NHRIs, typically used to depict the wide spectrum of existing bodies, include: commissions, ombudspersons institutions and institutes or centres.

The Racial Equality Directive (2000/43/EC) requires Member States to "*designate an independent body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin*". This body "*may form part of agencies charged at national level with the defence of human rights or the safeguarding of individual rights*". Directive 2006/54/EC on gender equality contains a similarly worded requirement. The Framework Directive on discrimination on the grounds of religion or belief, age, disability, or sexual orientation does not require Member States to establish an equality body for monitoring and implementing non-discrimination on these various grounds.

4. Council of Europe, Office of the Commissioner for Human Rights. 2000. Conclusions of the meeting between the Ombudsmen of Central and East Europe and Mr Alvaro Gil-Robles, Commissioner for Human Rights, Budapest 23–24 June 2000.

A recent report of the EU's Fundamental Rights Agency (FRA) strongly favours a single institution:

"The existence in many Member States of several different independent public bodies with human rights remits contributes to a diffusion of resources and gaps in mandates. In some cases it also results in overlapping mandates. As a result, it is more difficult for those seeking redress to be sure where to turn.[5]*"*

Portugal

When investigating an issue, the Portuguese Ombudsperson Institution has significant powers. It can, for example, carry out inspections without prior notice and pursue any line of investigation or inquiry deemed necessary or convenient, using all reasonable means for collecting and producing evidence, provided those means do not collide or conflict with the rights and legitimate interests of citizens.

Civil and military public entities have a duty to cooperate fully with Ombudsperson requests for documents and files and to allow Ombudsperson inspections. To ensure cooperation with its requests, the Ombudsperson Institution is empowered to compel the presence of any citizen, civil servant or official. Unjustified non-compliance with the duty to cooperate constitutes a crime of disobedience.

Should the Ombudsperson Institution find illegality or unfairness, it can issue a suggestion, a critical remark or a formal recommendation for the relevant body to address[6].

Spain

The United Nations High Commissioner for Human Rights renewed the accreditation of Spain's National Ombudsman in December 2012 as the national institution for the defence of these rights. Spain's National Ombudsman Institution has its independence guaranteed in constitutional provisions and specialised legislation. It enjoys parliamentary immunity and may be dismissed only in certain circumstances stipulated by law[7].

5. European Union Agency for Fundamental Rights (FRA) MEMO/7 May 2010
6. Portuguese Ombudsman Report to Parliament
7. Annex to the Handbook on the establishment and accreditation of NHRIs in the EU

Poland

The Defender for Human Rights (Ombudsman) possesses a wide range of powers in relation to individual complaints and litigation involving infringement of public freedoms and liberties – including arbitrary exercise of powers or inaction by public bodies which often overlap with human rights violations. Such powers include: investigatory powers and the right to demand the cooperation of the bodies, concerned, the power to take action against authorities/officials or intervene in legal proceedings, and, in the case of the Polish institution, the right to lodge a motion to punish[8].

Sweden

In 2008, after a two-year consultation, the Swedish Parliament passed the Discrimination Act. The new Act replaced four specialized ombudsman institutions with a single Equality Ombudsman. The Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination because of Sexual Orientation were all dissolved. The new institution was created as part of new legislation that harmonized the substantive protections against discrimination among the different groups[9].

The model adopted by Portugal, Spain and Poland is considered as an example of good practice by the European Union Agency for Fundamental Rights (FRA)[10].

8. Annex to the Handbook on the establishment and accreditation of NHRIs in the EU
9. Annex to the Handbook on the establishment and accreditation of NHRIs in the EU
10. National Human Rights Institutions in the EU Member States, Strengthening the fundamental rights architecture in the EU, May 2010

Objectives

The Ombudsman as a NHRI

A broad interpretation of NHRIs includes human rights commissions, hybrid or human rights ombudsmen, classical ombudsmen who perform a human rights function, and advisory committees.

Ombudsmen offices exist within a spectrum, with some closer to the classical mandate of administrative fairness and legality at one end and others which use human rights as explicit standards of control at the other end of the spectrum. Similarly, human rights commissions can also be said to have varying powers from, at one end, those that enjoy strong remedial powers and address individual complaints, to others that act as governmental advisory bodies or educational research institutes and do not receive and investigate citizens' grievances. The delineation of basic types of NHRIs raises a number of dilemmas as the lines between models become increasingly blurred. This is especially true of hybrid institutions found predominantly in Central and Eastern Europe and Latin America. Beyond institutional design, the litmus test of any NHRI is its contribution to human rights protection and promotion in practice.

Cooperation with the Commissioner for Human Rights

In recent years cooperation between the Council of Europe's Commissioner for Human Rights, Ombudsman offices and national institutions that uphold the promotion and protection of human rights in Member States of the Council of Europe has been enhanced. The Commissioner has put on record his wish to work in association and to develop closer ties with his "*natural*" partners – Ombudsmen and National Human Rights Institutions – to strengthen the protection of human rights at national level. Indeed, in line with his objective to foster the effective observance and full enjoyment of human rights in Council of Europe Member States, the Commissioner for Human Rights is mandated, among other things, to "*facilitate the activities of national ombudsmen or similar institutions in the field of human rights*". In this context the Commissioner regards Ombudsman institutions as important components of the human rights structures in Member States that can play a crucial role in monitoring the extent of the respect for human rights shown by national authorities towards their people.

In view of the ongoing structured dialogue between Ombudsmen, Human Rights Institutions and the Commissioner for Human Rights, Ombudsman offices can acquire a deeper and stronger edge to stamp out and correct breaches of human rights. This is particularly relevant in individual cases which might only come to light by way of the non-judicial nature and the conciliatory

thrust of the interventions of Ombudsmen as laid out in their mandates. These instances might otherwise not even surface at all if different rules of procedure, such as resort to judicial proceedings, are the only alternative available to complaints. This dialogue is backed by the Commissioner's initiative to widen his current cooperation with Ombudsmen and NHRIs by means of an active network of these institutions that would provide information on human rights and take appropriate action that is allowed by their respective mandates on alleged violations of human rights.

Adequate judicial guarantees

Respect for fundamental human rights in Malta is already adequately guaranteed and is enshrined in the Constitution which contains entrenched provisions with regard to respect for the basic individual rights and liberties. Individuals who allege that they have been denied their human rights and fundamental freedoms or who consider that these rights and freedoms are under threat can submit their grievances to the First Hall of the Civil Court which has jurisdiction to consider applications of this type. It has the power to provide remedial measures that are considered necessary for the purpose of enforcing, or securing the enforcement of human rights and fundamental freedoms of the person concerned. The Constitution also makes due provision for the right of appeal to the Constitutional Court from a judgement delivered by the First Hall of the Civil Court.

Furthermore, the European Convention Act (Act XIV of 1987) makes provision for the substantive articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and subsequent protocols to the Convention, to be enforceable as part of Maltese law. In addition, the European Convention Act states that where any ordinary law is inconsistent with these human rights and fundamental freedoms, these rights and freedoms shall prevail and any such ordinary law shall, to the extent of the inconsistency, be void.

A Role to Play

Despite the strong legal fabric that sustains the national commitment in favour of human rights and the fact that the country's political, legal and administrative environment is consonant with that prevailing in other EU Member States, the Office of the Parliamentary Ombudsman feels that it can still play an important role to promote human rights in the country. Indeed, although no such new and specific mandate in the furtherance of human rights was introduced in the constitutional amendment of 2007 regarding the Office of the Ombudsman, it is felt that now is the time to extend the role of the Parliamentary Ombudsman by a wider mandate that would enshrine fundamental human rights as a vital component in the concept of good administration to which all are entitled.

Such a step would be particularly significant especially since no national institution exists in Malta that is entrusted with the specific responsibility to promote and safeguard the fundamental rights of citizens. Moreover, it is felt that rather than creating yet another institution to act as a watchdog in this vital area, the function of a human rights institution could naturally be assigned to the Parliamentary Ombudsman who can adequately absorb it within his present sphere of activity. Such a development has been experienced in a significant number of European countries.

In this regard it is important to point out that the intrinsic significance that would be derived from an express recognition of the Ombudsman's role in human rights protection would be the fact that action by the institution could serve to identify in the bud any situations that are likely to give rise to violation of a citizen's fundamental rights. In this way any possible loss of human dignity and damage to a person's aspirations would be pre-empted. By means of preventive action the Ombudsman can signal to the authorities a potential threat to citizens' interests and can also, in the event that any such infringement has already occurred, contribute towards a resolution of the situation and avert resort to judicial proceedings on the basis of a just and effective settlement including, where appropriate, the implementation of the necessary sanctions and redress measures.

Advocating this principle for several years

The Parliamentary Ombudsman has for years been advocating that his Office should act as a catalyst and focal point for other national institutions and authorities, both public and private, having a specific human rights mandate, to coordinate and converge their activities from a national perspective.

The first contribution by the Parliamentary Ombudsman on the subject dates back to December 2006. In a letter to the Speaker of the House, before

the debate which entrenched the Office of the Ombudsman in the Maltese Constitution the Ombudsman highlighted that – "*Both the Commissioner for Human Rights of the European Union and of the Council of Europe are actively promoting the notion that national and regional Ombudsmen should take on a positive human rights dimension.*"

Subsequently, in September 2008, the Ombudsman was requested by the Ministry of Justice and Home Affairs to make a contribution to the compilation of an inter-ministerial UN Report (Universal Periodic Review – UPR).

In 2009, the Ministry of Justice and Home Affairs, sought the advice of the Ombudsman about the reasons why Malta had until then not established a National Human Rights Institution.

In 2010, the Ombudsman had formally submitted to Government, a proposal that, rather than setting up a new administrative structure, that the size of the country could not afford, the Ombudsman's original mandate should be widened to allow the Office the Ombudsman to serve and act as Malta's NHRI. This proposal was accepted in principle by the previous administration that had suggested that the Ombudsman submits a working paper for its consideration.

The proposal was once again made in June 2013, when the Ombudsplan was being discussed in the House Business Committee.

The Office of the Ombudsman, has also been, for years informally considered to be Malta's NHRI by international authorities, including the European Ombudsman, the Commissioner for Human Rights of the European Union and the Commissioner for Human Rights of the Council of Europe, the UNHCR and others. They regularly seek his opinion on the level of observance of fundamental human rights in Malta.

Extension of the Mandate

Extension of the Mandate

As stated the Office of the Parliamentary Ombudsman, has proposed to the Government, the establishment of a Maltese national human rights institution. This proposal envisages the designation of the Office of the Ombudsman as the Maltese NHRI that would encompass and be required to work in consultation with other local authorities, entities, institutions and NGOs with a human rights component in their functions.

This mechanism would need to operate fully in accordance with the Paris Principles and on the model outlined in the Belgrade Principles, and also seek accreditation with the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) of the Office of the United Nations High Commissioner for Human Rights. Among its main tasks the Maltese national human rights institution would be expected to:

- promote understanding and awareness of and, protect the basic values and principles of human rights of persons in Malta including the rights, liberties and freedoms that are guaranteed under the Constitution of Malta and under the European Convention for the protection of Human Rights and Fundamental Freedoms;

- act as a source of information and provide advice to enable individuals to stand up for their fundamental rights in cooperation with other bodies who already perform other specialised limited functions in relation to individual rights;

- ensure that human rights legislation in areas such as work, education, health and social care service provision is applied fairly and without any improper discrimination and that existing national and international obligations and responsibilities in these fields are duly enforced;

- collaborate with the government so that human rights issues are given due importance in the legislative process and that human rights standards and norms are adequately upheld in Maltese legislation, policy and practice;

- in the event of evidence that human rights are not being upheld or not properly respected or are being threatened, to take appropriate action, including conducting own initiative enquiries or investigations, and the publication of reports to recommend to the Government necessary remedial action; and

- issue regular reports about the human rights situation in Malta and disseminate knowledge and assist public opinion on human rights issues by means of studies and the organisation of public seminars, discussions and educational programmes.

Proposed Structure

Autonomous Commission headed by the Parliamentary Ombudsman

The Office of the Ombudsman is proposing an autonomous Commission headed by the Parliamentary Ombudsman. The Commission would be composed of national bodies and representatives of non- governmental organisations having a strong human rights content in their functions.

The proposed Commission should be autonomous and not part of government. The Commission would carry out its duties in full independence and would be accountable to Parliament. To ensure effectiveness and to maximize accessibility to individuals, the Commission would operate in the already existing set up of the Office of the Parliamentary Ombudsman and would utilise the same administrative resources and infrastructure. It would also have a separate legal personality from the Office of the Ombudsman but it would utilize the administrative and investigative services of this office.

This Commission would serve as a "*hybrid office*" with the aim of strengthening the country's human rights structures.

The Parliamentary Ombudsman, traditionally concentrates on monitoring the legality and fairness of the public administration, but his remit includes the investigation of complaints also from a human rights perspective. He therefore often motivates his final opinions in the light of constitutional and conventional provisions that guarantee the protection of fundamental rights. The proposed Commission, on the other hand, would have an explicit mandate to promote and protect human rights. As a rule, its mandate should **not** only be limited to the public sector.

The proposed model, would focus on the investigation of complaints lodged with the office, own initiative investigation and surveillance of the observance of human rights at different levels, both nationally and internationally.

It is proposed that the Commission would also be authorised to make recommendations and proposals and issue opinions and statements on government policies and legislation related to, or affecting fundamental human rights.

The new human rights Commission would also engage in educational and training activities similar to those undertaken by human rights commissions.

The Benefits of a unified institution

The arguments favouring a single institution, as is being proposed, fall into six distinct areas: legal framework, institutional effectiveness, relationship with vulnerable groups, relationship with the authorities and public profile.

1. Legal Framework

A single NHRI with a single founding statute, applies a consistent standard to the rights of all groups and individuals. This consideration is particularly relevant where the work of the institution focuses on anti-discrimination. States that have accumulated anti-discrimination legislation over the years, incrementally adding new vulnerable groups, are likely to find considerable inconsistencies in the standards applied to different groups.

2. Institutional Effectiveness

There are broadly three arguments for the creation of a single NHRI that are commonly advanced in the area of institutional effectiveness. It is argued that diversity within the institution can lead to a productive cross fertilization between individuals, teams or departments working on different issues. Secondly, just as a single institution can work to a single legal standard, it can also offer a consistent service to anyone who approaches it, regardless of the human rights issue involved or the origin of the individual or group. Thirdly, a single human rights institution is able to make economies that allow it to be considerably more cost-effective than multiple institutions. Such a policy of convergence of institutions having analogous purposes has been promoted by the Ombudsman's Office and has been successfully implemented in recent years through the appointment of Commissioners.

3. Relationship with Vulnerable Groups

Several of the arguments for multiple specialised institutions relate to the capacity of these bodies to provide expert and empathetic service to vulnerable groups in society. Such bodies are most likely to be victims of human rights violations or to be 'clients' of the NHRI in some way or another. Essentially they would represent their rights and interests better. Yet, it can also be argued that a single NHRI has certain advantages since it relates with vulnerable groups that may not be available to multiple specialized bodies. A single institution makes it easier to identify the correct institution to approach. It is more likely to be physically accessible, provides a better service to its clients, and gives more equal coverage to all vulnerable groups.

4. Umbrella Organisation

It is not proposed that the NHRI should substitute those specialised authorities and organisations or hinder them in the proper exercise of their functions. It is intended to act as an umbrella organisation keeping them together with the common purpose to oversee the level of human rights observance in a comprehensive and holistic manner.

To further elaborate:

a) *Easier identification*: The clear advantage of a single institution is that it presents one unambiguous public profile on human rights issues;
b) *Accessibility*: There is a common argument that a specialised institution will be more accessible to vulnerable groups wishing to use it;
c) *Better service*: The greater cost-effectiveness of a single institution should create several ways in which the NHRI would provide a better service for vulnerable groups; and
d) *Equal coverage*: Advocates of the multiple-institution model usually argue that the shortcoming of a single institution is that certain vulnerable groups, for instance women, children, and ethnic minorities, would be downgraded in importance. No doubt this is a danger that should be guarded against, but actually there is a greater risk, within a multiple-institution set-up, that particular vulnerable groups who do not have their own human rights institution would be neglected.

5. Relationship with the Authorities

One of the strongest arguments in favour of a single institution is the greater ease and authority with which the NHRI will be able to relate to government and, as relevant, to other bodies over which it has jurisdiction. This improved relationship works both ways. Government authorities and other bodies will be able to relate more easily to a single institution charged with human rights and anti-discrimination.

6. Public Profile

The public culture of human rights, as well as the public legitimacy of the institution, may be an important factor in increasing the social weight and effectiveness of a NHRI. A single institution may be more effective than multiple institutions in generating both awareness of the institution itself and broad knowledge and support for human rights.

Conclusion

Conclusion

Why is the Office of the Parliamentary Ombudsman ideally suited to act as a NHRI?

1. The Parliamentary Ombudsman has for the last fifteen years focused on the state of observance of fundamental rights in Malta. It has regularly investigated complaints with a strong human rights content, identifying violations and recommending appropriate redress.

2. The Ombudsman enjoys a wide jurisdiction on all aspects of human rights violations. It is not focused on specific rights, nor is it limited to oversee particular aspects of these rights. The Ombudsman investigates all complaints that allege violations of fundamental human rights or a threat to these rights. He investigates all such complaints against the public administration and all other bodies that fall under his jurisdiction.

3. The legal structure of the Office fully conforms to the Paris Principles, the Belgrade Principles and the recently approved resolution of the Parliamentary Assembly of the Council of Europe regarding the "Strengthening of the institution of Ombudsmen in Europe" (Resolution 1959 of 2013). The Office has the required legal investigative expertise and legal support to enable it to provide the necessary human resources back up for the institution to function effectively.

4. The Ombudsman Act lays down precise provisions regarding the conduct of investigations that have withstood the test of time since they started being adopted in 1995. They ensure that the rules of due process are adequately observed.

5. The system of convergence of different authorities within the structure of the Office of the Parliamentary Ombudsman has been successfully experienced and well-tried following the appointment of Commissioners for Administrative Investigations in specialised areas. That development has led to a unified structure for administrative review that could easily be extended to include the function of a NHRI.

6. Rather than setting up a new authority that the country can ill-afford, the Ombudsman has repeatedly recommended that his Office could provide the structure for the NHRI that would, under his Chairmanship act as an umbrella institution. It is proposed that the institution would be an autonomous body made up of the Ombudsman and the various Commissioners and Chairmen of national authorities and institutions that have a strong human rights content

in their functions, together with a number of representatives from non-governmental organisations (NGO's) dedicated to human rights protection. The institution would function independently and autonomously benefitting from the authoritative experience and expertise of its members in their respective fields of operation.

7. Such an institution, would also benefit from the constitutional status to which the Office of the Ombudsman was elevated in 2007. It should be stressed that international conventions not only insist that Ombudsmen should be appointed by Parliament and report to it, but also that the independence and impartiality of their Office should be enshrined in law and, if possible, in the Constitution.

The way forward

As stated, there are various models of National Human Rights Institutions in Europe and elsewhere. It is the government's prerogative to choose the model best suited to Malta's needs. In making its choice the government should endeavour not only to provide the individual with optimum protection for the enjoyment of his fundamental human rights, and this without unduly burdening the country with unnecessary additional expense, but also and more importantly, it should ensure that the model chosen would merit and receive the maximum level of accreditation – an A status – with the ICC.

As a member of the European Union that should pride itself on the level of respect of fundamental rights and their observance, Malta deserves nothing less.

Chief Justice Emeritus
J Said Pullicino
Parliamentary Ombudsman

ANNEX 1

Paris Principles – United Nations – www.un.org

ANNEX 2

BELGRADE PRINCIPLES ON THE RELATIONSHIP BETWEEN NATIONAL HUMAN RIGHTS INSTITUTIONS AND PARLIAMENTS

(Belgrade, Serbia 22-23 February 2012)

BELGRADE PRINCIPLES ON THE RELATIONSHIP BETWEEN NATIONAL HUMAN RIGHTS INSTITUTIONS AND PARLIAMENTS

(Belgrade, Serbia 22-23 February 2012)

The 2012 International Seminar on the relationship between National Human Rights Institutions (NHRIs) and Parliaments[11], organised by the Office of the United Nations High Commissioner for Human Rights, the International Coordinating Committee of National Institutions for the promotion and protection of human rights, the National Assembly and the Protector of Citizens of the Republic of Serbia, with the support of the United Nations Country Team in the Republic of Serbia,

In accordance with the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations General Assembly Resolutions 63/169 and 65/207 on the role of the Ombudsman, mediator and other national humans rights institutions in the promotion and protection of humans rights, 63/172 and 64/161 on National Human Rights Institutions for the promotion and protection of human rights and the Human Rights Council Resolution 17/9 on National Human Rights Institutions for the promotion and protection of human rights.

Recognising that the principles relating to the status of national institutions (the Paris Principles, adopted by United Nations General Assembly Resolution 48/134) state that NHRIs shall establish an "effective cooperation" with the Parliaments,

Noting that NHRIs and Parliaments have much to gain from each other in performing their responsibilities for the promotion and protection of human rights,

And recalling the need to identify areas for strengthened interaction between NHRIs and Parliaments bearing in mind that the different institutional models of NHRIs should be respected,

Adopts the following principles aimed at providing guidance on how the interaction and cooperation between NHRIs and Parliament should be developed:

11. The Conference was attended by experts from NHRIs, Parliaments and Universities from Ecuador, Ghana, India, Jordan, Kenya, Mexico, New Zealand, Portugal, Serbia and the United Kingdom

I. Parliament's role in establishing a National Human Rights Institution (NHRI) and securing its functioning, independence and accountability

A) Founding Law

1) Parliaments while deliberating the draft legislation for the establishment of a national human rights institution should consult widely with relevant stakeholders.

2) Parliaments should develop a legal framework for the NHRI which secures its independence and its direct accountability to Parliament, in compliance with the Principles related to national institutions (Paris Principles) and taking into account the General Observations of the International Coordinating Committee of national institutions for the promotion and protection of human rights (ICC) and best practices.

3) Parliaments should have the exclusive competence to legislate for the establishment of a NHRI and for any amendments to the founding law.

4) Parliaments, during the consideration and adoption of possible amendments to the founding law of a NHRI, should scrutinise such proposed amendments with a view to ensuring the independence and effective functioning of such institution, and carry out consultation with the members of NHRIs and with other stakeholders such as civil society organisations.

5) Parliaments should keep the implementation of the founding law under review.

B) Financial independence

6) Parliaments should ensure the financial independence of NHRIs by including in the founding law the relevant provisions.

7) NHRIs should submit to Parliaments a Strategic Plan and/or an Annual Programme of activities. Parliaments should take into account the Strategic Plan and/or Annual Programme of activities submitted by the NHRI while discussing budget proposals to ensure financial independence of the institution.

8) Parliaments should invite the members of NHRIs to debate the Strategic Plan and/or its annual programme of activities in relation to the annual budget.

9) Parliaments should ensure that NHRIs have sufficient resources to perform the functions assigned to them by the founding law.

C) Appointment and dismissal process

10) Parliaments should clearly lay down in the founding law a transparent selection and appointment process, as well as for the dismissal of the members of NHRIs in case of such an eventuality, involving civil society where appropriate.

11) Parliaments should ensure the openness and transparency of the appointment process.

12) Parliaments should secure the independence of a NHRI by incorporating in the founding law a provision on immunity for actions taken in an official capacity.

13) Parliaments should clearly lay down in the founding law that where there is a vacancy in the composition of the membership of a NHRI, that vacancy must be filled within a reasonable time. After expiration of the tenure of office of a member of a NHRI, such member should continue in office until the successor takes office.

D) Reporting

14) NHRIs should report directly to Parliament.

15) NHRIs should submit to Parliament an annual report on activities, along with a summary of its accounts, and also report on the human rights situation in the country and on any other issue that is related to human rights.

16) Parliaments should receive, review and respond to NHRI reports and ensure that they debate the priorities of the NHRI and should seek opportunities to debate the most significant reports of the NHRI promptly.

17) Parliaments should develop a principled framework for debating the activities of NHRIs consistent with respect for their independence.

18) Parliaments should hold open discussions on the recommendations issued by NHRIs.

19) Parliaments should seek information from the relevant public authorities on the extent to which the relevant public authorities have considered and responded to NHRIs recommendations.

II. Forms of co-operation between Parliaments and NHRIs

20) NHRIs and Parliaments should agree the basis for cooperation, including by establishing a formal framework to discuss human rights issues of common interest.

21) Parliaments should identify or establish an appropriate parliamentary committee which will be the NHRI's main point of contact within Parliament.

22) NHRIs should develop a strong working relationship with the relevant specialised Parliamentary committee including, if appropriate, through a memorandum of understanding. NHRIs and parliamentary committees should also develop formalized relationships where relevant to their work.

23) Members of the relevant specialised parliamentary committee and the NHRI should meet regularly and maintain a constant dialogue, in order to strengthen the interchange of information and identify areas of possible collaboration in the protection and promotion of human rights.

24) Parliaments should ensure participation of NHRIs and seek their expert advice in relation to human rights during meetings and proceedings of various parliamentary committees.

25) NHRIs should advise and/or make recommendations to Parliaments on issues related to human rights, including the State's international human rights obligations.

26) NHRIs may provide information and advice to Parliaments to assist in the exercise of their oversight and scrutiny functions.

III. Cooperation between Parliaments and NHRIs in relation to legislation

27) NHRIs should be consulted by Parliaments on the content and applicability of a proposed new law with respect to ensuring human rights norms and principles are reflected therein.

28) Parliaments should involve NHRIs in the legislative processes, including by inviting them to give evidence and advice about the human rights compatibility of proposed laws and policies.

29) NHRIs should make proposals of amendments to legislation where necessary, in order to harmonize domestic legislation with both national and international human rights standards.

30) NHRIs should work with Parliaments to promote human rights by legislating to implement human rights obligations, recommendations of treaty bodies and human rights judgments of courts.

31) NHRIs should work with Parliaments to develop effective human rights impact assessment processes of proposed laws and policies.

IV. Co-operation between NHRIs and Parliaments in relation to International human rights mechanisms

32) Parliaments should seek to be involved in the process of ratification of international human rights treaties and should consult NHRIs in this process of ratification, and in monitoring the State's compliance with all of its international human rights obligations.

33) NHRIs should give opinions to Parliaments on proposed reservations or interpretative declarations, on the adequacy of the State's implementation of human rights obligations and on its compliance with those obligations.

34) Parliaments and NHRIs should co-operate to ensure that the international treaty bodies are provided with all relevant information about the State's compliance with those obligations and to follow up recommendations of the treaty bodies.

35) NHRIs should regularly inform Parliaments about the various recommendations made to the State by regional and international human rights mechanisms, including the Universal Periodic Review, the treaty bodies and the Special Procedure mandate holders.

36) Parliaments and NHRIs should jointly develop a strategy to follow up systematically the recommendations made by regional and international human rights mechanisms.

V. Co-operation between NHRIs and Parliaments in the education, training and awareness raising of human rights12

37) NHRIs and Parliaments should work together to encourage the development of a culture of respect for human rights.

38) NHRIs and Parliaments should work together to encourage that education and training about human rights is sufficiently incorporated in schools, universities and other relevant contexts including vocational, professional and judicial training in accordance with relevant international standards.

39) NHRIs and Parliaments should work together to improve their mutual capacity on human rights and parliamentary processes.

40) NHRIs, Parliaments and all Parliamentarians should seek to work together in public awareness, education campaigns and encourage mutual participation in conferences, events and activities organized for the promotion of human rights.

VI. Monitoring the Executive's response to Court and other judicial and administrative bodies' judgements concerning human rights

41) Parliaments and NHRIs as appropriate should co-operate in monitoring the Executive's response to Judgments of Courts (national and, where appropriate, regional and international) and other administrative tribunals or bodies regarding issues related to human rights.

42) NHRIs should monitor judgements against the state concerning human rights, by domestic, regional or international courts, and where necessary, make recommendations to Parliament about the appropriate changes to law or policy.

43) Parliaments should give proper consideration to NHRIs recommendations about the response to human rights judgements.

44) Parliaments and NHRIs as appropriate should encourage the Executive to respond to human rights judgements expeditiously and effectively, so as to achieve full compliance with human rights standards.

12. In relation to the United Nations Declaration on Human Rights Education and Training

ANNEX 3

Parliamentary Assembly Council of Europe Resolution No. 1959 (2013) – Strengthening the institution of ombudsman in Europe

Rafael Ribó
Síndic

SÍNDIC
EL DEFENSOR DE LES PERSONES

Mr. Joseph SAID PULLICINO
Parliamentary Ombudsman of Malta
11 St Paul Street
VLT 1210 Valletta
Malta

Dear Joseph,

I am honoured to provide you with the Resolution number 1959 (2013) of the Parliamentary Assembly of the Council of Europe, unanimously passed by its members in plenary session on 4th October.

I would like to highlight that this resolution is the culmination of the work initiated by the Council of Europe and requested by IOI-Europe. Therefore, as a chairman of IOI-Europe at that time, I met the major leaders of the Council of Europe, starting with Mr. Thorbjørn Jagland (Secretary General of Council of Europe), to set up the need for explicit support of the European MPs to the Ombudsman institutions, at the current stage of economic crisis and serious challenges to the defence and protection of rights.

This resolution refers to all previous recommendations of the assembly, with a particular emphasis on the independence of the ombudsman. It is important to emphasize that its point six explicitly claims the need to avoid budgetary cuts that may result in the loss of independence of the ombudsman and even in its extinction. The resolution explicitly maintains the need of Ombudsman Institutions at national or regional level in law-maker territories in order to monitor the different administrations and executive authorities which enforce the law.

The resolution is accompanied by a memorandum with extensive previous considerations underlying the agreements.

During the drafting process, IOI-Europe was closely in touch with the head of the European Council, and especially with the reporter, the deputy Mr. Jordi Xuclà.

I would like to express my deepest gratitude to all of them. Moreover, I am at your disposal for any exchange on this subject.

Yours sincerely,

Rafael Ribó
Síndic de Greuges
Member of the IOI Executive World Board

Barcelona, October 11, 2013

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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1959 (2013)[1]
Provisional version

Strengthening the institution of ombudsman in Europe

Parliamentary Assembly

1. The Parliamentary Assembly, referring to its Recommendations 757 (1975) and 1615 (2003), reaffirms that ombudsman institutions, which are tasked with protecting citizens' against maladministration, play a crucial role in consolidating democracy, the rule of law and human rights.

2. The Assembly notes that there is no standardised model of ombudsman in Europe and across the world. Some countries have set up a single-member generalist ombudsman, while others have chosen a multi-institutional system, including regional and/or local ombudsmen and/or ombudsmen specialised in areas such as combating discrimination, minorities' protection or children's rights. Taking into account the variety of legal systems and traditions, it would not be appropriate to advocate a one-size-fits-all ombudsman model.

3. The Assembly nevertheless recalls the Council of Europe's previous work on promoting ombudsman institutions, including its own recommendations and the Committee of Ministers Recommendations Nos. R (80) 2, R (85) 2 and R (97) 14, and calls on its member States to implement them. It also invites them to pay particular attention to the document of the European Commission for Democracy through Law (Venice Commission) "Compilation on the Ombudsman institution" of 1 December 2011.

4. The Assembly calls on the member States of the Council of Europe which have set up ombudsman institutions to:

4.1. ensure that such institutions fulfil the criteria stemming from its Recommendation 1615 (2003), the Committee of Ministers' relevant recommendations and the Venice Commission's work on the ombudsman, in particular as regards:

4.1.1. the independence and impartiality of these institutions, whose existence shall be enshrined in law and, if possible, in the constitution;

4.1.2. the appointment procedure: the ombudsman shall be appointed by parliament and report to it;

4.1.3. their remit, which should cover reviewing cases of maladministration by all bodies of the executive branch as well as the protection of human rights and fundamental freedoms;

4.1.4. their access to documents and investigative powers as well as unrestricted access to all detention facilities;

4.1.5. their access to the Constitutional Court in order to challenge the constitutionality of flawed legislation;

4.1.6. direct access to the ombudsman for all persons, including legal persons, concerned by maladministration cases, irrespective of their nationality;

4.2. review, if need be, their legislation, in light of international and European standards on ombudsman institutions;

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1. *Assembly debate* on 4 October 2013 (36th Sitting) (see Doc. 13236, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Xuclà). *Text adopted by the Assembly* on 4 October 2013 (36th Sitting).

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4.3. refrain from multiplying ombudsman-type institutions, if it is not strictly necessary for the protection of human rights and fundamental freedoms; a proliferation of such bodies could confuse individuals' understanding of means of redress available to them;

4.4. strengthen the ombudsman institutions' visibility, especially in the media, and promote an "ombudsman-friendly" climate, in particular by guaranteeing easy and unhindered access to the ombudsman institution(s) and providing appropriate information/documentation in this respect, especially where the ombudsman institution does not yet have a long-standing tradition; provide ombudsman institutions with sufficient financial and human resources, enabling them to effectively carry out their tasks, and, if need be, taking into account the new functions assigned to them on the basis of international and/or European law;

4.5. consider seeking ombudspersons' accreditation at the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in light of the "Paris Principles".

5. The Assembly calls on member States which have established several ombudsman institutions, such as local, regional and/or specialised ones, to ensure appropriate co-ordination of these bodies and individuals' easy and unimpeded access to them.

6. The Assembly calls on member States to use all endeavours to avoid budget cuts resulting in a loss of independence of ombudsman institutions or even their extinction. In those places with particular legislative systems, i.e. with parliaments legislating on rights and freedoms, whether at the national or at the regional level, there is a function to be carried out by bodies supervising the administration, as Ombudsmen do by definition, in order to supervise the executive power in regard to applying the law.

7. The Assembly encourages member States which have not yet set up a national generalist ombudsman to promptly establish such a body with a broad mandate, allowing individuals to complain about maladministration cases and violations of their human rights and fundamental freedoms, whilst ensuring a clear division of competences between ombudsman institutions and judicial review of administrative acts, which must be available at least in case of violations of human rights and fundamental freedoms.

8. The Assembly recognises the crucial role played by the European Ombudsman of the European Union and the Council of Europe Commissioner for Human Rights in co-ordinating the activities of member States' ombudsmen.

ANNEX 4

Extract from the European Union Agency for Fundamental Rights Handbook on the establishment and accreditation on NHRIs in the EU (Appendices 5 and 6)

Appendix 5: NHRIs and their ICC-status by EU Member State

Table A1: NHRIs and their ICC status, by EU Member State

EU Member State	Status	NHRI (in English)	NHRI (in language of EU Member State)	Website
AT	B	Ombudsman Board	*Volksanwaltschaft*	www.volksanw.gv.at
BE	B	Centre for Equal Opportunities and Opposition to Racism (CEOOR)	*Centrum voor Gelijkheid van Kansen en voor Racismebestrijding/Centre pour l'égalité des chances et la lutte contre le racisme*	www.diversiteit.be
BG	B	Commission for protection against Discrimination of the Republic of Bulgaria	*Комисия за защита от дискриминация*	www.kzd-nondiscrimination.com
	B	The Ombudsman of the Republic of Bulgaria	*Омбудсман на Република България*	www.ombudsman.bg
DE	A	German Institute for Human Rights (GIHR)	*Deutsches Institut für Menschenrechte (DIMR)*	www.institut-fuer-menschenrechte.de
DK	A	Danish Institute for Human Rights (DIHR)	*Institut for Menneskerettigheder*	www.humanrights.dk
EL	A	National Commission for Human Rights (GNCHR)	*Εθνική Επιτροπή για τα Δικαιώματα τοθ Ανθρώπου (ΕΕΔΑ)*	www.nchr.gr
ES	A	Ombudsman	*Defensor del Pueblo Español*	www.defensordelpueblo.es
FR	A	National Consultative Human Rights Commission (NCHRC)	*Commission Nationale Consultative des Droits de l'Homme (CNCDH)*	www.cncdh.fr
HU	B	Commissioner for Fundamental Rights	*Alapvető Jogok Biztosa*	www.obh.hu

EU Member State	Status	NHRI (in English)	NHRI (in language of EU Member State)	Website
IE	A	Irish Human Rights Commission (IHRC)	Irish Human Rights Commission/ *An Coimisún um Chearta Duine*	www.ihrc.ie
LU	A	Consultative Commission on Human Rights (CCHR)	*Commission Consultative des Droits de l'Homme* (CCDH)	www.ccdh.public.lu
NL	B	Equal Treatment Commission	*Commissie Gelijke Behandeling* (CGB)	www.cgb.nl
PL	A	Commissioner for Civil Rights Protection	*Rzecznik Praw Obywatelskich* (RPO)	www.rpo.gov.pl
PT	A	Ombudsman Office	*Provedor de Justiça*	www.provedor-jus.pt
RO*	C*	Romanian Institute for Human Rights (RIHR)	*Institutul Român pentru Drepturile Omului* (IRDO)	www.irdo.ro
SE	B	Equality Ombudsman	Diskrimineringsombudsmannen	www.do.se
SI	B	Human Rights Ombudsman	*Varuh človekovih pravic*	www.varuh-rs.si
SK**				
Great Britain (UK)***	A	Equality and Human Rights Commission (EHRC)		www.equalityhumanrights.com
Northern Ireland (UK)***	A	Northern Ireland Human Rights Commission (NIHRC)		www.nihrc.org
Scotland (UK)***	A	Scottish Human Rights Commission		www.scottishhumanrights.com

Notes: ** Romania is listed at: www.nhri.net as having no status but a formal overview on the same site updated as of June 2009 records C status.*
***Slovakia's former B-status has lapsed.*
****United Kingdom has three NHRIs: in Great Britain the Equality and Human Rights Commission covering human rights issues in England and Wales, and certain human rights issues in Scotland (those not devolved to the Scottish Parliament); in Northern Ireland the Northern Ireland Human Rights Commission and in Scotland, the Scottish Human Rights Commission.*

Source: FRA, 2012

Appendix 6: Number of members and methods of appointment of the governing body of EU NHRIs

Table A2: Number of members and methods of appointment of the governing body of EU NHRIs

EU Member State	NHRI	Status	Number of members of the Governing Body	Method of appointment of the Governing Body	Legal provision
AT	Ombudsman Board	**B**	**3** One acts in turn as chairman	The National Council (Parliament) elects Ombudsman board members on the basis of a joint recommendation drawn up by the Main Committee in the presence of at least half its members. Each of the three parties with the largest number of votes in the National Council is entitled to nominate one member for this joint recommendation.	Article 148g (1) and (2) of the Austrian Constitution
BE	Centre for Equal Opportunities and Opposition to Racism	**B**	**21** 19 Commissioners, 1 President and 1 Vice-Chairman	The board of directors is appointed by the King, by Decree of the Council of Ministers upon the proposal of the Prime Minister.	Article 5 of the Act (15 February 1993); Article 1 (2) and (4) of the Royal Decree (28 February 1993) establishing the Organic Status of the Centre for Equal Opportunities and Opposition to Racism

EU Member State	NHRI	Status	Number of members of the Governing Body	Method of appointment of the Governing Body	Legal provision
BG	Ombudsman of the Republic of Bulgaria	B	**1** Ombudsperson and **1** Vice Ombudsperson	The National Assembly elects the Ombudsman, by secret ballot, for a term of five years. He/she may be re-elected one time only. The winner is the candidate who receives a majority of votes from the Members of Parliament who participate in the voting. Based on the Ombudsman's recommendation, the National Assembly elects the Deputy Ombudsman within one month of the Ombudsman's election and for the term under Article 8.	Articles 8, 10 (2) and 11 (1) of the Ombudsman Act
	Commission for protection against Discrimination of the Republic of Bulgaria	B	**9** Commissioners including 1 Chairman and 1 Vice-Chairman	According to the founding law, the Commission shall consist of nine members, at least four of whom should be lawyers. The National Assembly elects five of the Commissioners, including the Chairperson and Vice Chairperson, and the President of the Republic of Bulgaria appoints the other four.	Protection against Discrimination Act, Article 41

EU Member State	NHRI	Status	Number of members of the Governing Body	Method of appointment of the Governing Body	Legal provision
DE	German Institute for Human Rights	**A**	**20** 18 (Board of Trustees and 1 Chairperson and 2 Deputy Chairpersons), and 2 (Board of Directors)	The Board of Trustees has 18 members. The Government delegates five non-voting members; the Parliament's Human Rights Committee appoints two, and the Federal Commissioner for Migration, Refugees and Integration, one. The Forum Human Rights (a major network of human rights NGOs in Germany) elects three persons; the German Disability Council (umbrella organisation of Disability Organisations) delegates one. The General Assembly of the German Institute for Human Rights elects six members. The Board of Trustees elects a Chairperson and two Deputy Chairpersons, as well as, after a public call for applications, the Board of Directors. The Board of Directors consists of a Director and a Deputy Director.	Paragraph 24 and 25 of the Statutes of the German Institute for Human Rights

EU Member State	NHRI	Status	Number of members of the Governing Body	Method of appointment of the Governing Body	Legal provision
DK	Danish Institute for Human Rights	**A**	**13** (The Institute Board)	The Board of the Danish Institute for Human Rights is responsible for all matters relating to substance and professional issues, including research and strategy. The Board consists of 13 members, serving in their personal capacity. Only 12 of them have voting rights. The Council for Human Rights appoints six members; the Rector of the University of Copenhagen, two; the Rector of the University of Aarhus, another two; the Danish Rectors' Conference, a further two; and the Institute's staff selects one member. Of the six members appointed by the Council for Human Rights, at least two should have a connection with ethnic minorities or a humanitarian organisation engaged in issues related to ethnic minorities (Subsection 2). The Council, in its composition, is also to reflect the composition of society (Subsection 5).	Chapter 2, Section 5, Subsection 2 of the Act No. 411 on 6 June 2002 establishing the Danish Centre for International Studies and Human Rights

EU Member State	NHRI	Status	Number of members of the Governing Body	Method of appointment of the Governing Body	Legal provision
EL	National Commission for Human Rights	**A**	**31** 1 President and 2 Vice-Presidents	The members of the Commission and their alternates shall be appointed by a decision of the Prime Minister for a term of office of three years. For the election of the President and the Vice-Presidents, the absolute majority of the members of the Commission present who have a vote is required.	Section A, Article 2 (2), (3) and (4) of Law No. 2667/1998
ES	Ombudsman	**A**	**3** Ombudsman, First Deputy Ombudsman and Second Deputy Ombudsman	The Parliament appoints a Joint Congress-Senate Committee which is charged with the relationship with the Ombudsman and which proposes in a simple majority vote the candidate or candidates to the post of Spanish Ombudsman. The Plenum of both Chambers of the Parliament votes on the candidates proposed. The candidate that obtains at least a three-fifths majority of the members of each House is elected.	Part 1, Chapter 1, Articles 2 and 5, Organic Act 3/1981

EU Member State	NHRI	Status	Number of members of the Governing Body	Method of appointment of the Governing Body	Legal provision
FR	National Consultative Human Rights Commission	**A**	**64** 60 Commissioners, 1 President, 2 Vice-Presidents, 1 Secretary-General	The Prime Minister, after consulting a committee comprising the Vice-Chairman of the State Council and former presidents of the Court of Cassation and Court of Auditors on the organs likely to make nominations, appoints the Members of the Committee and their alternates by decree. The Prime Minister chooses the President of the Commission. The plenary assembly elects two Vice-presidents. The Prime Minister further appoints a Secretary general based the President of the Commission's proposal.	Articles 5, 13 and 16 of the Decree No. 2007- 1137 of 26 July 2007

EU Member State	NHRI	Status	Number of members of the Governing Body	Method of appointment of the Governing Body	Legal provision
HU	Commissioner for Fundamental Rights	**B**	**1** Ombudsman	The President of the Republic shall propose a person for the role of Commissioner for Fundamental Rights between the ninetieth day and the forty-fifth day preceding the expiry of the mandate of the Commissioner for Fundamental Rights. The Commissioner is elected by a two-thirds majority of the votes for a six-year term. If Parliament does not elect the person proposed, the President of the Republic shall make a new proposal within, at the most, thirty days. The competent Parliament committee will hold a hearing with the person proposed for the post of Commissioner for Fundamental Rights. The Commissioner for Fundamental Rights may be re-elected once.	Paragraph 5 of the Act CXI of 2011 on the Commissioner for Fundamental Rights
IE		**A**	**15** 1 President and 14 Commissioners	The Government appoints the members of the Commission.	Section 5(10) of the Human Rights Commission Act 2000

EU Member State	NHRI	Status	Number of members of the Governing Body	Method of appointment of the Governing Body	Legal provision
LU	Consultative Commission on Human Rights	**A**	**21** 1 President, 2 Vice-Presidents and 18 Members	The Government appoints the members of the Commission. The president and the two vice-presidents of the Commission are appointed by a majority of the members voting.	Chapter 4, Article 4 (1) and Article 5 (1) of the Law no. A-No.180 establishing the Consultative Commission on Human Rights in the Grand Duchy of Luxemburg
NL	Equal Treatment Commission	**B**	**9** 1 Chairman, 2 Deputy Chairmen, 6 Commissiners	The members and alternate members are appointed by the Minister of Justice, in consultation with the Minister of the Interior, the Minister of Social Affairs and Employment, the Minister of Education and Science and the Minister of Welfare, Health and Cultural Affairs.	Article 16 (3) of the Equal Treatment Act of 2 March 1994
PL	Commissioner for Civil Rights Protection	**A**	**1** Commissioner (Human Rights Defender) and Deputy Commissioners	The Human Rights Defender shall be nominated by the lower house of parliament upon the approval of the Senate or by a group of 35 deputies.	Article 209 of the Constitution, Article 3 the Ombudsman Act

EU Member State	NHRI	Status	Number of members of the Governing Body	Method of appointment of the Governing Body	Legal provision
PT	Ombudsman Office	**A**	**3** 1 Ombudsman and 2 Deputy Ombudsmen	The Ombudsman shall be appointed by the Parliament by a two-thirds majority of the Members present, provided that the said majority is greater than the absolute majority of the Members in office.	Chapter II, Articles 5 (1) and 16 of the Statute of the Portuguese Ombudsman
RO	Romanian Institute for Human Rights	**C**	Steering Committee (**7** members) and the General Council	The Institute will be headed by the General Council appointed by the Standing Bureaus of the two chambers of Parliament. The Council appoints further a steering committee of its members, consisting of seven persons: politicians, scientists, NGO representatives and a chief executive.	Article 5 Law 9/1991 concerning the Creation of the Romanian Institute for Human Right
SE	Equality Ombudsman	**B**	**1** Ombudsman	The Government appoints the head of the agency, who is referred to as the Equality Ombudsman.	The basic principles governing a head of agency apply.
SI	Human Rights Ombudsman	**B**	**3 (maximum 5)** Ombudsman and 2 (or maximum 4 deputies)	The Parliament elects the Human Rights Ombudsman based upon the President of the Republic's nomination. The Ombudsman shall have not less than two but no more than four deputies. The Parliament shall appoint deputies based upon nominations made by the Ombudsman.	Art. 2, 12 and 13 of the Human Rights Ombudsman Act 7/1993

EU Member State	NHRI	Status	Number of members of the Governing Body	Method of appointment of the Governing Body	Legal provision
UK* Great Britain	Equality and Human Rights Commission	**A**	**Minimum 12 (Maximum 16)** 1 Chief Executive and 11-15 Commissioners	The Secretary of State appoints the Members of the Commission, which are to be no fewer than 11 and no more than 15. The Commission, with the consent of the Secretary of State, then appoints a chief executive.	Part 1, Article 1 of the Equality Act 2006
UK* Northern Ireland	Northern Ireland Human Rights Commission	**A**	**1** Chief Commissioner and 'other' Commissioners	The Commission consists of a Chief Commissioner and other Commissioners appointed by the Secretary of State.	Article 68 (2) of the Northern Ireland Act 1999
UK* Scotland	Scottish Human Rights Commission	**A**	**5** 1 Head of Commission and 4 Commissioners	The Queen, as Head of State, appoints the chair of the Commission on the nomination of the Scottish Parliament. Parliament appoints the other members.	Schedule 1, Article 1 of the Scottish Commission for Human Rights Act 2006

*Note: * The United Kingdom has three NHRIs: in Great Britain the Equality and Human Rights Commission covering human rights issues in England and Wales, and certain human rights issues in Scotland (those not devolved to the Scottish Parliament); in Northern Ireland, the Northern Ireland Human Rights Commission; and in Scotland, the Scottish Human Rights Commission.*

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