



**PRESERVERE**

Preventing Racism and Discrimination -  
Enabling the Effective Implementation of the  
EU Anti-Racist Legal Framework

# ***THE TRANSPOSITION AND IMPLEMENTATION OF THE EU ANTI- RACISM LEGAL FRAMEWORK IN MALTA***



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**PRESERVE** is concerned with fighting intolerance, racism, xenophobia and discrimination against vulnerable ethnic and racial groups and, in particular, Roma, Jews, Muslims and people of African descent. Starting from the premise that any system tasked with protecting the vulnerable from discrimination must, first and foremost, rely on an effective legal framework, the project implements activities concerned with the better enforcement of the law.

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# THE TRANSPOSITION AND IMPLEMENTATION OF THE EU ANTI-RACISM LEGAL FRAMEWORK IN MALTA

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## 1. Introduction

The issue of racial equality in Malta is often associated with undocumented migrants arriving by boat from the coasts of Northern Africa, commonly called ‘klandestini’ in the Maltese language. The reason for this is the dramatic increase of migrants in recent years. Malta has always been a country of emigration rather than immigration, and this new inflow of people has had significant consequences on the Maltese society. As irregular immigration has continued during these years, the government has adopted several protectionist policies to stop this. The issue has increasingly become a social and political problem, leading to racism and inequalities against black communities.<sup>1</sup> There are no Romas living in Malta, and Jews are, for the most part, integrated into society. As a result, this report refers to Muslims and persons of African descent. Participants interviewed in the project identified asylum seekers and refugees as the most vulnerable victims in Malta.

The main findings of the desk research show that Malta’s anti-racism legal framework is overly complex, with many provisions scattered across multiple legislative Acts. Victims are given different rights according to the context in which discrimination occurs, and it is not always clear which laws apply in a particular situation. Many protections foreseen by the two Directives are either weakly transposed or not implemented at all.

The main findings of the empirical research indicate that legal professionals, frontline workers, and victims in Malta have little to no knowledge of the Directives. In practice, relying on these Directives in Malta is challenging due to language barriers, socio-economic pressures, the cost and length of court procedures, and a general reluctance to report discrimination, among other issues. Furthermore, the implementation of the Directives is fragmented. Malta is just meeting the minimum criteria of the Directives, as there are concerns with the right to translation and interpretation, as well as legal aid, and an absence of promising practices.

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<sup>1</sup> Björn Kårén, Malta and Immigration <<https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1317141&fileId=1317142>> accessed 22 June 2022, 2

Chapter 2 describes the methodology, while Chapter 3 sets the scene and Chapter 4 discusses the anti-racism legal framework in Malta based on qualitative legal research. Chapter 5 explores the implementation of the anti-racism legal framework using qualitative-empirical research, and Chapter 6 recommends steps forward that Malta needs to take to fight racial discrimination.

## 2. Methodology

This paper explores the extent to which the EU anti-racism legal framework is effectively implemented in Malta by using two research methods. The first consists of qualitative-legal research to determine how the EU Directives have been transposed into the national legislation. The research is written from a human rights perspective, based on a comparative analysis between the European anti-racism legal framework and the Maltese legislation. Maltese anti-discrimination law is fragmented, and numerous Acts implement the two Directives. For this reason, it was necessary to compare the Directives with the Maltese law, assessing each Article one by one. After reviewing the relevant laws, researchers looked for the application of those Acts by the judiciary. Case law is available on the eCourts online service, the website of the Court Services Agency, where the government publishes all the Maltese Courts' decisions<sup>2</sup> The website has a search function based on case references, parties, dates, and keywords. To find relevant cases, researchers used different keywords in both Maltese and English.<sup>3</sup> Researchers also searched cases by the name of the acts or Directives. Each case selected by the search engine was analysed in great detail to identify the parts and reasonings relevant to the research question. Besides these sources, academic literature was used to support and discuss normative notions and judicial decisions. Furthermore, other sources examined include documents written by EU organisations such as reports and general comments, policy documents, articles that explain legal issues, and reports produced by NGOs.

The second method consists of qualitative-empirical research to further examine the gaps between the letter of the law and its implementation. Interviews allowed the researchers to explore the Maltese anti-discrimination legal framework from a different perspective. The participants were selected based on their professional experience, keeping gender balance in mind. As Malta is a small country, most interviewees and focus group participants were identified through personal connections (i.e. the snowballing method was adopted to recruit participants). Researchers sought to include representatives from various fields, such as representatives of equality bodies, law enforcement branches tasked with promoting racial equality, civil society organisations, and frontline workers (police officers, nurses, reception centres workers, and social workers). Several activists from African groups, such as the Eritrean, Chad, and Sudanese communities, showed great interest in the project and accepted the invitation.

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<sup>2</sup> Malta eCourts online service <[lloggja biex Tidhol - eCourts.gov.mt](http://lloggja.biex.Tidhol-eCourts.gov.mt)> accessed 9 June 2022

<sup>3</sup> Under Article 5(3) of the Constitution of Malta, Judicial proceedings are conducted in the Maltese language. However, Articles 2 and 3 of the Judicial Proceedings (Use of English Language) Act 1965 stipulate that where the parties in civil or criminal proceedings are not Maltese-speaking, proceedings may be conducted in the English language. According to Article 7(c) of the same Act, parties are presumed to be Maltese-speaking unless this is proven to be otherwise.

Focus groups and interviews were conducted online using Zoom. Before focusing on the questionnaire, researchers prepared a speech and a short PowerPoint presentation. They introduced PRESERVE, explained the Directives, and then asked the questions following the order of the questionnaire. Interviews were recorded with the permission of interviewees, who were informed in advance via email and during the meeting. The following tables list the participants interviewed.

*Table 1. Profession of Interviewees*

<b>Participant 1</b>	Frontline worker for an NGO in Gozo
<b>Participant 2</b>	Frontline worker for an NGO in Gozo
<b>Participant 3</b>	Criminal and Human Rights lawyer and Professor at the University of Malta
<b>Participant 4</b>	Criminal and Human Rights lawyer, Professor at the University of Malta, and a former Member of Parliament
<b>Participant 5</b>	Manager at the Human Rights Directorate (HRD)
<b>Participant 6</b>	Member of Parliament

*Table 2. Gender and Profession of Focus Group 1 Participants*

<b>Participant 1</b>	Woman	Representative of the Department for Industrial and Trade Relations (DIER)
<b>Participant 2</b>	Woman	Representative of the International Organization for Migration (IOM), Malta
<b>Participant 3</b>	Woman	Representative of the National Commission for the Promotion of Equality (NCPE)
<b>Participant 4</b>	Man	Representative of the Victim Support Agency (VSA)
<b>Participant 5</b>	Man	Representative of an NGO focusing on international development, human rights, and migration
<b>Participant 6</b>	Woman	Nurse and a representative of the Chad Community
<b>Participant 7</b>	Woman	Representative of the United Nations High Commissioner for Refugees (UNHCR), Malta

Table 3: Gender and Profession of Focus Group 2 Participants

<b>Participant 1</b>	Man	Representative of the Chad community
<b>Participant 2</b>	Woman	Representative of an NGO that teaches English to migrants and refugees
<b>Participant 3</b>	Woman	Representative of an NGO that facilitated the integration of minority groups in Malta and the Sudanese community

Table 4: Gender and Profession of Focus Group 3 Participants

<b>Participant 1</b>	Man	Representative of an organisation that rescues migrants at sea
<b>Participant 2</b>	Man	Representative of the Eritrean community
<b>Participant 3</b>	Woman	Representative of Black Lives Matter, Malta
<b>Participant 4</b>	Man	Representative of a refugee-led youth organisation

There were several challenges in recruiting participants for the interviews and focus groups. Numerous professionals declined to participate because they had limited or no knowledge of the Directives. Researchers tried to overcome this by explaining they did not need to be experts on these Directives and that the scope of the research was to gauge how well these Directives are understood in Malta. However, some invitees did not change their opinion and refused to participate.

The Jewish, Muslim, and Islamic communities declined the invitation. A member of the Malta Police Force working in a new hate crime department was invited to attend the focus group but was unable to participate due to health issues. Representatives from public agencies working with refugees and asylum seekers, such as the International Protection Agency (IPA) and the Agency for the Welfare of Asylum Seekers (AWAS) were invited. The IPA, however, declined to participate in the project as they believed that the subject of the research fell outside of their remit. While AWAS agreed to participate in the project, they did not attend the focus group due to their busy schedule.

### 3. Setting the scene

Malta is a small island of 516,100 people in the middle of the Mediterranean Sea, consisting of the main island of Malta and the smaller islands of Gozo and Comino.<sup>4</sup> Among EU Member States,

<sup>4</sup> Migrants-Refugees (2021) <[Migration Profile - Malta](#)> accessed 9 June 2022; The National Statistics Office, News Release (2021) [News Release - World Refugee Day](#) para 1

Malta has one of the highest proportions of non-nationals living in its territory. 20 percent of the population are foreign, with 8 percent of residents being citizens of other EU Member States and 12 percent being citizens of non-EU countries.<sup>5</sup>

According to Article 5 of the Constitution, Maltese and English are the official languages of Malta.<sup>6</sup> The Constitution also establishes Roman Catholicism as Malta's official religion; however, freedom of conscience and religious worship are guaranteed, and discriminatory treatment based on creed is prohibited.<sup>7</sup> Any restriction on freedom of religion should be reasonably justifiable and in the interest of public safety, order, morality, health, or protection of the rights and freedoms of others.<sup>8</sup> According to a 2018 survey by local newspaper Malta Today, 94 percent of respondents identified themselves as Catholic, 3.8 percent as Atheists, and 1.3 percent reported belonging to non-Catholic Christian denominations. The survey also found that 88.8 percent of people were against removing the designation of Catholicism as Malta's official religion from the Constitution.<sup>9</sup>

No official national data exists detailing the specific number of Muslims, Jews, and persons of African descent living in Malta. Information on these groups should be disclosed in the 2021 Census; however, the results have yet to be publicly released. According to the U.S State Department, the World Islamic Call Society estimates that 6 to 7 percent of the population in Malta is Muslim, primarily Sunni, with a smaller Shia and Ahmadi presence. On the other hand, Jewish community leaders estimate that the Jewish population comprises around 200 persons.<sup>10</sup> Migration has resulted in a sizable African presence in Malta. In 2020, the National Statistic Office revealed that 84.8 percent of persons brought to shore were citizens of African countries, and most of the applicants – 77,8 percent – applying to the IPA were African.<sup>11</sup>

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***The growing number of undocumented migrants has created negative perceptions amongst the Maltese***  
”

The growing number of undocumented migrants has created negative perceptions amongst the Maltese. Racism and distrust often hinder migrants' prospects of finding decent work and housing and limit their access to goods and services. These migrants typically work in the informal economy, with poor working conditions, especially in the construction industry. Others work in low-skilled jobs that Maltese people generally refuse to do, such as collecting rubbish, cleaning hotels, or catering.<sup>12</sup>

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<sup>5</sup> Eurostat (2022) <[Non-EU citizens make up 5.3% of the EU population](#)> accessed 30 March 2022

<sup>6</sup> The Constitution of Malta 1964, art. 5(1)

<sup>7</sup> The Constitution of Malta 1964, art. 2 (1)

<sup>8</sup> The Constitution of Malta 1964 art. 40 and art. 45

<sup>9</sup> Malta Today (2018) <[Maltese identity still very much rooted in Catholicism](#)> accessed 2 April 2018

<sup>10</sup> The U.S State Department, International religious freedom (2021), [Malta 2021 International Religious Freedom Report](#) para 4

<sup>11</sup> The National Statistic Office, News Release (2021) [World Refugee Day](#) para 2

<sup>12</sup> Borg. A. (No date) <[The impact of the Racial Equality Directive: a survey of trade unions and employers in the Member States of the European Union](#)> accessed 7 June 2022, 2

People of African descent in Malta are regularly discriminated against because of their skin colour, ethnic origin, or religion. According to a report detailing the experiences of persons of African descent by the European Union Agency of Fundamental Rights (FRA), employment and housing are areas where discrimination is particularly prevalent. For example, 30 percent of respondents in the FRA survey said they were discriminated against when searching for employment.<sup>13</sup>

In terms of housing, only two percent of persons of African descent live in accommodation they own, compared to 81 percent of the general population. Skin colour and citizenship status are said to be the leading cause of discrimination in access to decent housing. When asked about encountering racial discrimination in access to housing in Malta in the previous five years, 23 percent of persons of African descent reported that they had faced some type of discrimination, according to the FRA survey. At the same time, 84 percent of respondents were said to be living in overcrowded housing, compared to 3 percent of the general population.<sup>14</sup>

Analysing the opinions and attitudes of Maltese citizens in 2019, the Special Eurobarometer on Discrimination in the European Union indicates negative attitudes towards Roma, Jews, Muslims, and black people in Malta.<sup>15</sup> The survey found that a significant percentage of Maltese respondents would be ‘uncomfortable’ having a work colleague belonging to an ethnic or religious minority: 18 percent in respect of a Roma colleague, 9 percent for a Muslim colleague, 7 percent if asked to work alongside a Jewish colleague, and 6 percent if the prospective colleague was a black person.<sup>16</sup> When asked how comfortable respondents would feel if their child was in a ‘love relationship’ with someone from the same minority groups, the percentage who reported they would be ‘uncomfortable’ were notably higher: 39 percent for a Roma person, 24 percent if the person was Jewish, 35 percent if their child’s partner was Muslim, and 24 percent in respect of a black person.<sup>17</sup> In regards to this second question, the reported levels of Maltese discomfort were many percentage points above the EU average.

In the same year, the Migrant Integration Policy Index (MIPEX) described Malta’s overall approach to integration, giving a score of 48 on the 100-point MIPEX scale and placing it in the ‘Comprehensive integration (halfway favourable)’ category.<sup>18</sup> The low score received by Malta is partly due to its recent shift toward integration. The Maltese government adopted its first Migrant Integration Strategy and Action Plan, ‘Integration = Belonging,’ in 2017, and its first Anti-Racism Strategy in

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<sup>13</sup> The European Union Agency for Fundamental Rights (FRA) (2018) <[Being Black in the EU/Second European Union Minorities and Discrimination Survey](#)> accessed 8 June 2022, 55

<sup>14</sup> The European Union Agency for Fundamental Rights (FRA) (2018) <[Being Black in the EU/Second European Union Minorities and Discrimination Survey](#)>, 58-63

<sup>15</sup> The Special Eurobarometer (2019) <Discrimination in the European Union - Malta> accessed 9 June 2022, 2

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Migrant Integration Policy (2020) <[Main Findings Policy Indicators: Key Findings](#)> accessed 6 June 2022

2021.<sup>19</sup> Despite these recent advances, according to MIPEX, Malta's integration policies still create many obstacles to integration. As put by MIPEX:

Malta is trying to promote a comprehensive approach to integration but only goes halfway to actually guarantee equal rights, opportunities, and security for immigrants. Immigrants have greater obstacles to access these in Malta than in other countries with comprehensive policies.<sup>20</sup>

## 4. The anti-racism legal framework in Malta

### 4.1 *The chance for victims to rely on racial and ethnic anti-discrimination legislation*

Malta's anti-racism legal framework can best be characterised as chaotic, convoluted, and contradictory. Victims of racially motivated discrimination, harassment, or violence wishing to know their rights are confronted by more than 15 Acts of primary and secondary legislation containing potentially relevant provisions which tend to compete, rather than cooperate, with each other.

As described by the NGO Aditus:

The current legal framework is piecemeal and is found in various legal instruments, each having a different scope which in some instances overlap, a variety of actions for redress and different reporting or equality bodies.<sup>21</sup>

The fractured transposition of the Racial Equality Directive can most clearly be seen in the defined scopes of the implementing acts. Article 3 of the Racial Equality Directive lists the protected fields in which its provisions apply and prohibits discrimination based on race and ethnic origin. In Malta, these eight areas have been fragmented across three implementing acts.

The Equal Treatment in Employment Regulations scope covers the areas in Articles 3(1)(a)-3(1)(d) (access to employment; access to vocational training and guidance; employment and working conditions, including dismissal and pay; and membership and involvement in organisations of workers), with the exception of self-employment as found in Article 3(1)(a), which is covered by the Equal Treatment in Self-Employment and Occupation Order.<sup>22</sup> The latter Order also extends

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<sup>19</sup> The European Commission (No date) <[Governance of migrant integration in Malta](#)> accessed 6 June 2022; Government of Malta (2021) <[Press Release by the Ministry for Equality, Research and Innovation and by the Ministry for Tourism and Consumer Protection: Malta's First Anti-Racism Strategy Launched](#)> accessed 21 June 2022

<sup>20</sup> Migrant Integration Policy (2020) <[Key Findings - Malta](#)> accessed 6 June 2022

<sup>21</sup> Aditus, Unfulfilled potential: Human Rights and Equality Commission Bill and Equality Bill (2019) <[https://aditus.org.mt/Publications/inputonproposedequalityacts\\_2019.pdf](https://aditus.org.mt/Publications/inputonproposedequalityacts_2019.pdf)> para 3

<sup>22</sup> Equal Treatment in Employment Regulations 2004 LN 2004/461, arts. 1(4)(a)-1(4)(d); Equal Treatment in Self-Employment and Occupation Order 2007 LN 2007/86, art. 4

the substantive rights found therein to spouses of self-employed persons who are not formally a business partner or employee of their spouse, but who ‘habitually participate in the activities of the self-employed or occupied person and perform the same tasks or ancillary tasks.’<sup>23</sup>

The Equal Treatment of Persons Order covers the remaining areas of scope found in Articles 3(1) (e)-3(1)(h) of the Directive (social protections, including social security and healthcare; social advantages; education; and access to and supply of goods and services, including housing).<sup>24</sup> The Equal Treatment of Persons Order also expands the scope of the Directive by specifically prohibiting discriminatory advertising.<sup>25</sup> The segregation of the Directive’s scope across multiple Acts ‘illustrates the complexity of... the legal framework... resulting in the enormous difficulty that individuals and their legal advisors face when filing a complaint.’<sup>26</sup>

The previous government proposed remedying this fragmentation through the introduction of two Bills: the ‘Equality Bill’, Bill No. 96, which would have served as a single source of equality and non-discrimination legislation, seeking to ensure uniform, but tailored, protection across the protected grounds, and would therefore end the asymmetric protection offered under the current legislative framework.<sup>27</sup> At the same time, the government also introduced the ‘Human Rights and Equality Commission Bill’, Bill No. 97, which would have replaced Malta’s current main Equality Body, the National Commission for the Promotion of Equality (NCPE) with a new ‘Human Rights and Equality Commission’.<sup>28</sup> The new Commission was planned to be an independent body reporting directly to Parliament and able to open investigations by its own initiative, including proceedings against the Attorney General or before the Civil Court, First Hall in its constitutional jurisdiction.<sup>29</sup> The two Bills have been debated in parliament for several years and are not yet law. Protests and concerns raised by various groups in the Maltese community were one of the reasons preventing their enactment. For instance, the Medical Association of Malta (MAM) and the Chamber of Pharmacists raised concerns about Bill No. 96. In their view, the draft violates their professional and moral autonomy by not including a conscientious objection clause that would allow them to refuse to provide services such as abortion and euthanasia in Malta. They asked the Minister of Justice to consult appropriately with healthcare professionals before reformulating the law.<sup>30</sup> The two bills stalled following their Second Readings, and a new parliamentary session has since begun. No information is available on whether or not the new government intends to discuss the two bills.

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<sup>23</sup> Equal Treatment in Self-Employment and Occupation Order 2007 LN 2007/86, art. 4

<sup>24</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, arts. 4(1)(a)- 4(1)(d)

<sup>25</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, art. 8

<sup>26</sup> Aditus, Unfulfilled potential: Human Rights and Equality Commission Bill and Equality Bill (2019) <[https://aditus.org.mt/Publications/inputonproposedequalityacts\\_2019.pdf](https://aditus.org.mt/Publications/inputonproposedequalityacts_2019.pdf)> para 3

<sup>27</sup> The Parliament of Malta, Equality Bill (2019) <<https://www.parlament.mt/en/13th-leg/bills/bill-no-096-equality/?page=1&numItems=5&text=&number=96&totalItems=1>> accessed 8 June 2022

<sup>28</sup> The Parliament of Malta, Human Rights and Equality Commission Bill (2019) <<https://www.parlament.mt/en/13th-leg/bills/bill-no-097-human-rights/#:~:text=AN%20ACT%20to%20provide%20for,of%20human%20rights%20including%20the>> accessed 8 June 2022

<sup>29</sup> Human Rights and Equality Commission Bill (2019) art. 3

<sup>30</sup> The Malta Independent, Conscientious objection must be included in equality bill, pharmacists say (2020)

As opposed to the Racial Equality Directive, the implementation of the Victims' Rights Directive is fairly straightforward. However, its transposition is lacking in several key areas. In July 2019, the European Commission sent a letter of formal notice to Malta citing incorrect transposition of the Victims Rights Directive.<sup>31</sup> Following infringement proceedings, most of the Victims' Rights Directive has been implemented. On 16 April 2021, Act No. XVII of 2021 was adopted to amend the Victims of Crimes Act - Chapter 539, and in September 2021, the infringement proceedings were closed against Malta.<sup>32</sup>

Despite these numerous sources of law, Malta lacks adequate measures in several areas, particularly in the protections afforded to victims after experiencing a racially-motivated crime. The following paragraphs analyse the gaps in the Maltese legislation that prevent adequate redress and effective protection for victims and their family members.

## 4.2 Racial Equality Directive Implementation in Malta



***The result is that people have different rights in regard to anti-discrimination, depending on which context they find themselves in***



Assessing the compliance of the Maltese implementing Acts with the Racial Equality Directive is less than straightforward: while the scope of the Directive is divided across the three previously discussed Acts, those are not equal in their content. The result is that people have different rights in regard to anti-discrimination, depending on which context they find themselves

in. The following analysis of the Maltese transposition of the Racial Equality Directive will proceed according to the chapters of the Directive. The contents of each chapter will be compared to the contents of the three main implementing acts, highlighting important lapses and notable additions in terms of the rights and protections granted.

All three acts faithfully implement the principle of equal treatment found in the first Chapter of the Directive.<sup>33</sup> All three exclude differential treatment on the grounds of nationality from the concept of discrimination, in line with the Directive.<sup>34</sup> The definitions in the implementing Acts expand the definition of discrimination by adding that a failure to suppress harassment by employers or other individuals responsible for a workplace, organisation, or establishment constitutes a form of discrimination.<sup>35</sup>

<sup>31</sup> The European Commission (2021) <[July Infringement Package: Key Decisions](#)> accessed 9 June 2022

<sup>32</sup> Victims of Crime (Amendment) Act 2021

<sup>33</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, art. 2; Equal Treatment in Employment Regulations 2004 LN 2004/461, arts. 1-3; Equal Treatment in Self-Employment and Occupation Order 2007 LN 2007/86, arts. 2, 4

<sup>34</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, art. 2(2)(4); Equal Treatment in Employment Regulations 2004 LN 2004/461, art. 1(5)(a); Equal Treatment in Self-Employment and Occupation Order 2007 LN 2007/86, art. 2

<sup>35</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, art. 4(2); Equal Treatment in Employment Regulations 2004 LN 2004/461, art. 3(4)(b)

Chapter II of the Directive (on ‘Remedies and enforcement’) is moderately well transposed. The three main Maltese Acts give victims of discrimination the right to pursue action before a civil court and allow for organisations or associations with a legitimate interest to support victims in such actions (Article 7 of the Directive).<sup>36</sup> The Equal Treatment in Employment Regulations also gives victims the right to raise the issue with the Industrial Tribunal, as per the Employment and Industrial Relations Act.<sup>37</sup>

For issues which fall under the Equal Treatment of Persons Order, the chairperson of the National Commission for the Promotion of Equality (NCPE), dubbed the ‘Commissioner’, can also initiate investigations and assist individual victims in the complaint process.<sup>38</sup> In all of the aforementioned complaint actions and proceedings, the burden of proof is upon the person(s) alleged to have acted in a discriminatory manner, faithfully transposing Article 8 of the Directive.<sup>39</sup> The Equal Treatment of Persons Order strongly protects persons against victimisation (Article 9 of the Directive), forbidding it not only against a victim who complains or initiates proceedings on the grounds of the Order, but also against any person who participates in such proceedings, or who discloses ‘information, confidential or otherwise, to a designated public regulating body, regarding alleged acts of discrimination or discriminatory treatment.’ The other two implementing Acts, however, omit protection against victimisation, failing to transpose this element of the Directive.

Conversely, they do implement the provision regarding the dissemination of information (Article 10 of the Directive), while the Equal Treatment of Persons Order does not. Article 12 of the Equal Treatment in Employment Regulations requires employers and organisations to:

bring the provisions of these regulations as well as of any measure taken to further the aim of these regulations to the attention of his employees, or of the organisation’s members, as the case may be, or to any other persons who may be affected by the actions of the employer or the organisation concerned.<sup>41</sup>

The Equal Treatment in Self-Employment and Occupation Order refers to Article 12, implying this requirement.<sup>42</sup> None of the three Acts implement the provisions regarding social dialogue (Article 11 of the Directive) or dialogue with non-governmental organisations (Article 12 of the Directive).

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<sup>36</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, arts. 15-16; Equal Treatment in Employment Regulations 2004 LN 2004/461, arts. 10-11; Equal Treatment in Self-Employment and Occupation Order 2007 LN 2007/86, arts. 6-7

<sup>37</sup> Equal Treatment in Employment Regulations 2004 LN 2004/461, art. 10; Employment and Industrial Relations Act 2002, art. 30

<sup>38</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, art. 11

<sup>39</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, art. 13; Equal Treatment in Employment Regulations 2004 LN 2004/461, art. 10(3); Equal Treatment in Self-Employment and Occupation Order 2007 LN 2007/86, art. 6(2)

<sup>40</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, art. 7

<sup>41</sup> Equal Treatment in Employment Regulations 2004 LN 2004/461, art. 12

<sup>42</sup> Equal Treatment in Self-Employment and Occupation Order 2007 LN 2007/86, art. 4

### 4.3 Bodies for the promotion of equal treatment and sanctions

The designation of bodies for the promotion of equal treatment (Chapter III, Article 13 of the Directive) is another example of how complex is the implementation of the Racial Equality Directive in Malta.

The Equal Treatment of Persons Order refers to the National Commission for the Promotion of Equality (NCPE), as defined in the Equality for Men and Women Act.<sup>43</sup> The NCPE works to achieve general equal treatment against discrimination of racial and ethnic origin. In addition to this, the Commission commits to fight discrimination based on racial/ethnic origin and gender in access to goods and services which are available to the public, including housing.<sup>44</sup> On the other hand, the Equal Treatment in Employment Regulations states that the 'Department of Industrial and Employment Relations (DIER) shall act as the equality body in respect of issues relating to race or ethnic origin falling under these regulations.'<sup>45</sup> The DIER monitors compliance with employment laws in the following areas protected by the Racial Equality Directive: employment and occupation, vocational training, and membership of employer and employee organisations.<sup>46</sup>

The sanctions applicable to infringements of the Maltese law adopted under Article 15 of the Directive depend on the context in which discrimination occurs and, therefore, which of the three implementing Acts applies. As previously described, all three of the main implementing acts give victims the right of action before a civil court. If discrimination has occurred, a victim may ask the court 'to order the defendant to cease such unlawful acts' and, where applicable, request compensation.<sup>47</sup> Where the action is made in regards to the Equal Treatment of Persons Order, the court may also order the payment of further compensation beyond 'actually suffered' damages.<sup>48</sup> All three Acts also stipulate that a person who has violated the provisions therein may be criminally liable. Possible penalties for criminal liability are a fine up to 2,329.37 Euros and/or imprisonment for up to six months.<sup>49</sup> If a person experiences discrimination in the scope of the Equal Treatment in Employment Regulations and chooses to raise an action with the Industrial Tribunal, Article 30 of the Employment and Industrial Relations Act applies. This stipulates that the Tribunal may take action as it deems appropriate, including the possibility to order the cancellation of any discriminatory contracts or clauses or the payment of compensation for actual loss and or damages suffered.<sup>50</sup>

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<sup>43</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, art. 2(1); Equality for Men and Women Act 2003, art. 11

<sup>44</sup> NCPE Remit (2020) <[https://ncpe.gov.mt/en/Pages/About\\_Us/NCPE-Remit.aspx#](https://ncpe.gov.mt/en/Pages/About_Us/NCPE-Remit.aspx#)> accessed 9 June 2022

<sup>45</sup> Equal Treatment in Employment Regulations 2004 LN 2004/461, art. 5A

<sup>46</sup> Equal Treatment in Employment Regulations 2004 LN 2004/461, art. 1(4)

<sup>47</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, art. 15(1); Equal Treatment in Employment Regulations 2004 LN 2004/461, art. 10(2); Equal Treatment in Self-Employment and Occupation Order 2007 LN 2007/86, art. 6(1)

<sup>48</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, art. 15(3)

<sup>49</sup> Equal Treatment of Persons Order 2007 SL 2007/460/15, art. 6; Equal Treatment in Employment Regulations 2004 LN 2004/461, art. 14; Equal Treatment in Self-Employment and Occupation Order 2007 LN 2007/86, art. 4

<sup>50</sup> Employment and Industrial Relations Act 2002, art. 30

Under Article 48(4) of the same Act, violations of the Equal Treatment in Employment Regulations are subject to fines of up to 11,646.87 Euros.<sup>51</sup>

In addition to the officially transposed sanctions, Article 82A of the Criminal Code criminalises incitement to violence or hatred against individuals or groups of persons on grounds including race, colour, language, and national or ethnic origin. Violation of this provision is punishable by a prison sentence between six and 18 months.<sup>52</sup>

#### 4.4 Victims Right Directive

Article 2 of The Victims of Crime Act defines a victim using the same wording as the Victims' Rights Directive. A victim is a 'natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence.'<sup>53</sup> Victims are also 'family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.'<sup>54</sup> In addition, Article 2(c) includes a third category not mentioned in the Victims' Rights Directive: 'minors who are witnesses to forms of violence'<sup>55</sup> As Article 2, many other articles in the Victims of Crime Act are just a literal transposition of the Directive, using the same order and structure. Although the wording is often identical, the Maltese Act fails to transpose many parts of the Directive; those gaps will be discussed below.

Maltese law successfully incorporates Chapter 2 of the Directive on Information and Support, except for the right to interpretation and translation. The Directive's provisions on the right to receive information from the first contact with a competent authority (Article 4 of the Directive), the rights of victims when making a complaint (Article 5 of the Directive), and the right for victims to receive information about their case (Article 6 of the Directive) are all faithfully transposed in Articles 4, 5, and 6 respectively of the Victims of Crime Act 2015.<sup>56</sup> Access to victims' support services (Article 8 of the Directive) and the support they should provide (Article 9 of the Directive) are completely transposed, with the addition to the Maltese law that victims should receive immediate medical treatment for as long as necessary.<sup>57</sup> Victim support services as referred to in Articles 8 and 9 of the Directive are provided by the government's Victim Support Agency. The VSA (Establishment) Order created the Agency in 2020.<sup>58</sup> Prior to its establishment, victim support was provided by the Victim Support Unit in the Malta Police Force, established in 2017; this unit now acts in cooperation with the Victim Support Agency.<sup>59</sup>

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<sup>51</sup> Employment and Industrial Relations Act 2002, art. 48(4)

<sup>52</sup> Criminal Code 1854, art. 82A

<sup>53</sup> Victims of Crime Act 2015, art. 2(a),

<sup>54</sup> Victims of Crime Act 2015, art. 2(b)

<sup>55</sup> Victims of Crime Act 2015, art. 2(c)

<sup>56</sup> Victims of Crime Act 2015, arts. 4-6

<sup>57</sup> Victims of Crime Act 2015, arts. 12-13

<sup>58</sup> Victim Support Agency (Establishment) Order 2020 SL 2020/595/37

<sup>59</sup> Malta Police Force (no date) <[Victim Support Unit](#)> accessed 7 June 2022

On the other hand, the right to interpretation and translation (Article 7 of the Directive) is weakly transposed into the Maltese act, omitting the minimum requirements as to which stages during the process a victim should receive these facilities.<sup>60</sup> The provision in Article 7(2) of the Directive regarding the use of communication technology is also not referred to in the Victims of Crime Act.

#### 4.4 Victims Right Directive

Many of the provisions found in Chapter 3 of the Directive on Participation in Criminal Proceedings are also absent from the Maltese Act. Such is the case in respect of the right to be heard during criminal proceedings (Article 10 of the Directive), while the rights a victim has in the event of a decision not to prosecute (Article 11 of the Directive) are significantly fewer than those foreseen in the Directive. For instance, Maltese victims have no right to challenge a decision not to prosecute under the Victims of Crime Act. The Victims of Crime Act dictates that in such circumstances a victim should be informed and given a reason as to why no prosecution will occur. This information will be disclosed only if it 'would not be contrary to the public policy or the internal public law of Malta,' and may be excluded 'if the ends of justice would be prejudiced if such disclosure is made.'<sup>61</sup> However, while the right to review a decision not to prosecute is not included in the official transposing act, one is present in Malta's Criminal Code.<sup>62</sup> This is not included in Malta's notification of national transposition to the Commission nor do the relevant provisions reference the Directive. Under Article 541 of the Criminal Code, the procedure to be followed depends on whether the responsibility for prosecution for the offence falls to the Police or the Attorney General. Generally, this depends on the severity of the offence.

If the case falls under the authority of the Police, the victim may write to the Court of Magistrates requesting an order that the Police institute proceedings.<sup>63</sup> If the application is successful, both the Commissioner of Police and the Attorney General are notified. The Attorney General may apply to the Criminal Court to request a reversal of the Court of Magistrate's decision.<sup>64</sup> The victim also has a right to appeal to the Criminal Court if the Court of Magistrates refuses the initial application.<sup>65</sup> On the other hand, if the authority to prosecute is held by the Attorney General, a different procedure applies. The victim must write to the Attorney General within one month of learning of the decision not to prosecute, requesting a reconsideration of this decision, and give reasons why the Attorney General should in fact reconsider.<sup>66</sup> The Attorney General has one month to respond. If no response is given in that time period or the Attorney General responds that they affirm the decision not to prosecute, the victim has the right to seek judicial review under Article 469B of the Code of Organization and Civil Procedure.<sup>67</sup> The weak transposition of Article 10 of the Directive into Maltese

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<sup>60</sup> Victims of Crime Act 2015, art. 7

<sup>61</sup> Victims of Crime Act 2015, art. 8

<sup>62</sup> Criminal Code 1854, art. 541

<sup>63</sup> Criminal Code 1854, art. 541(1)

<sup>64</sup> Criminal Code 1854, art. 541(3)

<sup>65</sup> Criminal Code 1854, art. 541(3)

<sup>66</sup> Criminal Code 1854, art. 541(4)(a)

<sup>67</sup> Criminal Code 1854, art. 541(4)(b); Code of Organization and Civil Procedure 1855, art. 469B

law means that victims have few rights in the context of criminal proceedings. Victims in Malta do have the right to legal aid and a reimbursement of costs as foreseen in the Directive (Articles 13 and 14 of the Directive), but this has limited value given the absence of a right to be heard.<sup>68</sup>

The Victims of Crime Act also fails to transpose Article 16 of the Directive regarding payment of compensation to victims by offenders. Malta separately has a ‘Criminal Injuries Compensation Scheme’; however, the scope of the scheme is quite limited, operating only in the event of a ‘violent intentional crime.’<sup>69</sup> The Criminal Injuries Compensation Scheme Regulations define a ‘violent intentional crime’ according to a limited number of offences found in Malta’s Criminal Code. The Scheme would operate where someone was the victim of a particularly violent racially-motivated assault, but would fail to apply in the discriminatory circumstances prohibited by the Racial Equality Directive.

#### **4.5 Protection of victims and recognition of victims with specific protection needs**

As with the previous chapters of the Victims’ Rights Directive, Chapter 4 is poorly implemented in Maltese law. Of the seven articles within Chapter 4, only two are fully transposed in the Victims of Crime Act: the right to protection of victims during criminal investigations (Article 20 of the Directive) and the individual assessment of victims to identify specific protection needs (Article 22 of the Directive).<sup>70</sup>



**Maltese law includes the special measures to be provided to victims during criminal investigations but the measures for court proceedings are not transposed**



Maltese law includes the special measures to be provided to victims during criminal investigations (Article 23(2) of the Directive) but the measures for court proceedings are not transposed.<sup>71</sup> Victims in Malta therefore, are not afforded the ability to avoid visual contact with the offender when testifying or to give evidence without being physically present in the courtroom. There are also no provisions

forbidding unnecessarily intrusive and irrelevant questions about a victim’s personal life, nor on having the proceedings take place without a public presence. The transposition of the right to protection of child victims during proceedings (Article 24 of the Directive) is more faithful, however, the presentation of a child’s testimony in court via a pre-recorded interview is not foreseen in the Maltese act.<sup>72</sup> This is, however, possible for children below the age of 16 under the Criminal Code.<sup>73</sup> Children are further neglected by the Maltese act, as

<sup>68</sup> Victims of Crime Act 2015, arts. 10-10A

<sup>69</sup> Criminal Injuries Compensation Scheme Regulations 2012, art. 2

<sup>70</sup> Victims of Crime Act 2015, arts. 6(4), 12, 14(4)

<sup>71</sup> Victims of Crime Act 2015, art. 14B

<sup>72</sup> Victims of Crime Act 2015, art. 14

<sup>73</sup> Criminal Code 1854, art. 646(2)

the extra care to be taken in protecting the identities of child victims found in the right to protection of privacy (Article 21 of the Directive) is not included.<sup>74</sup> Also missing from the Victims of Crime Act is the right for victims to avoid coming in contact with offenders (Article 19 of the Directive).

Last but not least, Chapter 5 of the Directive including Article 25 on Training of Practitioners is not considered in the Maltese implementing Act. Malta is not ensuring that ‘officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training.’<sup>75</sup> Lack of training will be discussed in the last section of the report when suggesting the steps forward.

To conclude, the unequal protections afforded by the three Acts implementing the Racial Equality Directive, together with the many gaps in the implementation of the Victims’ Rights Directive leave victims in Malta with a patchwork assembly of provisions that are not fit for purpose. These issues, along with more practical problems affecting Malta’s anti-racism framework as identified during interviews, are further explored in the following sections.

## 5. Implementation of the anti-racism legal framework in Malta

### 5.1 Knowledge of the Directives

Participants in the focus groups and interviews displayed an overall lack of knowledge of the Directives. They generally reported having, at most, heard of them. Most participants had a basic comprehension of national anti-racism laws and procedures. However, they did not know how Maltese legislation related to the two Directives. There were exceptions to this, such as the two lawyers (Interviewees 3 and 4). Additionally, two of the participants in Focus Group 1 (Participants 3 and 4), were knowledgeable in one of the Directives, but not both. This is because of the nature of their work: Participant 3 works for the Maltese equality body, the NCPE, and thus was well-versed in the Racial Equality Directive, while Participant 4 is employed by the Victims Support Agency and was familiar with the Victims’ Rights Directive.

The frontline workers who took part were the least informed, admitting they and their colleagues were unaware of the Directives or how they could be used. As explained by Interviewee 1, a representative from an NGO that supports Malta’s migrant population, ‘there are not many programmes being run in Malta to help frontline workers to really understand what the laws are. I don’t think they are aware of these Directives.’ Many frontline workers agreed, however, that knowledge in this regard would be an asset and allow them to assist better the people they work with.

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<sup>74</sup> Victims of Crime Act 2015, art. 10B

<sup>75</sup> Victims of Crime Act 2015, art. 25(1)

When asked whether legal professionals were aware of the Directives, the two lawyers interviewed, Interviewee 3 and Interviewee 4, agreed that lawyers are not generally knowledgeable of the two Directives. Interviewee 3 could not recall the Directives being a topic of the many emails distributed or events held by the Chamber of Advocates, Malta's professional association for lawyers. Both interviewees also credited this lack of knowledge to the fact that lawyers focus on topics and legislation relevant to their field of practice. Interviewee 3 further elaborated on this point by explaining that lawyers in specific fields, such as environmental law, are generally well-versed in EU legislation. She continued, saying that, by contrast, anti-racism legislation, including the domestic provisions, is generally not an area to which Maltese lawyers pay attention to:

I think, in general, lawyers do know about the EU Law and if they want to make a point in Court they will research it. Whereas the anti-racism laws are ignored, keep in mind that we often think of anti-racism as something related to migrants, outsiders, or second-class citizens, not to Maltese; so knowing less about these laws is about the Maltese racist problem. It affects everyone: it is also about Maltese. The Directive deals with race, but for Maltese, who are probably white people who speak Maltese, there is this idea that racism is for outsiders, not locals.

Interviewee 4 argued that simply asking whether her colleagues were 'aware' of the Directives would not address what truly matters: competency (or, as is the case in Malta in her view, incompetency) in applying the Directives. Similarly to Interviewee 3, she also reflected that the reason for this may represent a deeper cultural problem:

How I would rather interpret this question is, are legal professionals sufficiently aware to use it in their cases? No, I don't think they are, not to that extent. I wonder whether that's because they follow the same cultural perception of race and racism. I mean, these Directives are a super starting point. For any graduated lawyer, they should technically not even need to be trained, but they can read them and understand them, and take action in that regard. However, no, I haven't seen that level of willingness. If they are aware, there hasn't been much practice on it.

Regarding victims, Focus Group Participants and Interviewees adamantly agreed that most (prospective) victims in Malta are unaware of their rights under domestic legislation and the two EU Directives. They also reported that in the rare cases where victims are better informed, they are usually unwilling to report the offence. Several frontline workers reiterated their desire to learn more about the Directives, as this would allow them to impart their knowledge to the communities they assist.

## **5.2 Knowledge of the Directives**

Empirical research and project participants' responses have revealed that Malta does not use the anti-racism legal framework. Analysis of Maltese court judgements issued between 2016 and 2021 revealed only six decisions on racial or ethnic discrimination cases. All these cases concerned

the use of hate speech as defined in Article 82A of the Criminal Code.<sup>76</sup> Neither the judges nor the attorneys in the cases, referred to either the two Directives or the national legislation which transposed them. There are several potential explanations for why these laws are so under-cited.

First, victims do not report racial discrimination incidents. In Focus Group 2, Participants 2 and 3 discussed how many victims, mainly migrants with little knowledge of Malta, do not know where to report incidents. Focus Group 1, Participant 5 described the social and economic vulnerabilities that disproportionately affect Malta's migrant community – those most likely to experience racial discrimination in the country. Difficulties obtaining housing might prevent someone from reporting their landlord, while fear of losing one's job and being deported would weigh heavily in a decision to complain about an employer. Interviewee 2 offered another explanation, crediting a lack of reporting to a general distrust of Maltese authorities by migrants.

As previously discussed, the courts' neglect of the anti-racism framework might also be explained by the lack of knowledge held by legal professionals. If attorneys do not know how to use the legislation and therefore do not include the Directives or the transposing Acts in their submissions to the Court, then the judges are unlikely to use them in their reasoning. Several participants also believed Malta's judges are, like the attorneys, unfamiliar with the Directives and their transposition. Interviewee 3 thought this might be due to the novelty of the framework – that judges simply had not had enough time to familiarise themselves. She also wondered whether judges had failed to interest themselves in the legislation because they held the same negative views about migrants highlighted as being endemic to the Maltese population. Focus Group 2, Participant 3 similarly believed that judges in Malta are indifferent to racism as it does not personally affect them. The same participant additionally noted that Maltese judges and magistrates struggle with caseloads, with insufficient judges to handle cases well and efficiently. This over-taxation might also mean that the judiciary in Malta simply does not have the time to learn about new legislation, especially if they believe it is not particularly relevant. Interviewee 4 conversely thought that the judiciary was probably capable of applying the Directives or the transposing Acts but had simply not been allowed to do so due to the lack of relevant cases:

I think the number of cases are so few that I can't truly assess whether it's the Court's lack of knowledge or the courts not being comfortable with the Directives. I've seen courts apply European Directives and International Law, and they were pretty comfortable with applying them. So, I would assume that if a case arose before them, they would be comfortable applying these Directives, as well their transposition into Maltese legislation, in a similar way that they've done with the Gender Directives on the gender equality aspect. There is not enough case law or proceedings for this question to be assessed on. I think, at least from my experience and from my angle, the judges and the judiciary would simply have a better understanding.

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<sup>76</sup> Criminal Code 1854, art. 82A

### 5.3 Role of equality bodies and other entities

There are several bodies in Malta which are directly implicated in the implementation of anti-discrimination measures. The primary body responsible is the equality body, the NCPE. One of the NCPE's main roles is to receive and investigate complaints regarding discriminatory conduct on various grounds, including racial or ethnic origin.<sup>77</sup> Once all the parties have been heard, the NCPE will decide whether or not the conduct amounts to discrimination. If the complaint is valid and the parties consent, the NCPE may attempt to mediate between the victim and offender. Otherwise, the NCPE can also issue a non-binding opinion. This will ask the responsible party to adopt a recommended form of redress towards the victim. Where it sees fit, the NCPE can choose to transmit the case to the Commissioner of Police (for a criminal investigation of the perpetrator), the Industrial Tribunal (for adjudication on discrimination in the context of employment), or the civil courts (for litigation between the parties). In addition to its role in receiving and assessing complaints, the NCPE institutes public initiatives and conducts awareness-raising campaigns. The NCPE has, however, been the subject of criticism. Interviewee 4 discussed several perceived failings of the NCPE, including limited outputs and politicking. She alleged that because the NCPE is not independent, receiving its funding and appointments from politicians, it avoids taking actions which might upset them.

Regarding workplace discrimination, victims can seek assistance by filing a case with the Industrial Tribunal, administered by the Department for Industrial and Employment Relations (DIER). The Industrial Tribunal has the power to make legally binding decisions, including issuing redress or compensation orders.<sup>78</sup> As described by Focus Group 1, Participant 1, regarding the Racial Equality Directive, 'we (DIER) don't directly transpose this Directive, but we facilitate it in our work.' In the years between 2016 and 2021, however, the Tribunal did not hear any racial or ethnic discrimination cases.

Implementation of the Victims' Rights Directive falls within the remit of the Victim Support Agency (VSA). The VSA provides a wide range of services for victims, including accompanying them to Court, liaising with police to keep victims informed about their case, and providing emotional support.<sup>79</sup> These services are available to all victims free of charge.<sup>80</sup> The VSA also conducts awareness-raising activities about hate crimes and the harm they cause. Supporting the VSA in its activities is the Victim Support Unit of the Malta Police Force. This unit was responsible for all victim support activities before founding the VSA and now works in coordination with the VSA.<sup>81</sup>

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<sup>78</sup> Department for Industrial and Employment Relations (DIER) (2020) <[Information about the Industrial Tribunal](#)> accessed 9 June 2022

<sup>79</sup> Victim Support Agency (VSA) (no date) <[About Us](#)> accessed 23 June 2022

<sup>80</sup> Victim Support Agency (VSA) (no date) <[FAQs](#)> accessed 23 June 2022

<sup>81</sup> Malta Police Force (no date) <[Victim Support Unit](#)> accessed 7 June 2022

<sup>82</sup> Employment and Industrial Relations Act 2002, art. 30

## 5.4 Availability of remedies

Different remedies are available depending on which body or Court the victim has accessed. As explained by Focus Group 1, Participant 3, proper, enforceable remedies are obtainable from the civil or constitutional courts or the Industrial Tribunal. They have the ability to order financial compensation or other methods of redress. The Industrial Tribunal can, for example, cancel discriminatory contracts or clauses.<sup>82</sup> If the criminal courts hear the case, no remedies are available, only criminal penalties for the offender: custodial sentences and/or fines. Where the case is before the NCPE, all a victim may expect is an opinion with no binding force. ‘The NCPE may transmit this opinion to the police or the courts; however, it has no legal value and the police and the courts are free to proceed as they so wish.’

## 5.5 Practical application of the Directives

There is a marked difference between the theoretical and practical ability of Maltese victims to rely on the transposed Directives. The focus group participants and interviewees identified many practical issues impeding the ability of prospective victims to pursue justice. Many participants alleged that the legal framework is simply not respected by law enforcement and the courts. In their opinion, the Directives and transposing Acts were legally transposed but not applied in practice. Interviewee 3 highlighted this disparity:

In general, the Directives will still apply in Malta. It is still possible to go to court and claim that [a victim’s] rights under EU Law have not been effectively protected. I can say for a fact that, in regards to the victims... definitely their rights are not being granted and they rarely have any information about the case.

Several other participants made statements to this effect. Interviewee 2, for example, stated, ‘I wouldn’t rely on it at all because I’ve seen with my own eyes that it’s not being followed.’ Participants also discussed the hesitancy of victims to report cases in the first place. This was discussed as being due to the socio-economic reasons, and mistrust of authorities previously identified, but also because of the slow pace of Maltese courts. According to a 2020 report by the European Commission for the Efficiency of Justice, Maltese courts take between twice and eight times as long to conclude a case as the EU average. Furthermore, Malta’s courts receive new cases at a higher rate than they can be resolved, leading to a backlog.<sup>83</sup> Focus Group 1, Participant 2 recounted those victims are fully aware of these delays and decide not to pursue cases because ‘this really awful thing happened to me... but I don’t want to wait years for this to be solved.’ Victims who want to move forward with a complaint are frequently deprived of the measures foreseen by the Victims’ Rights Directive or the Victims of Crime Act. Several participants described occasions when victims were not provided adequate translation or interpretation assistance.

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<sup>83</sup> European Commission for the Efficiency of Justice (2020) <[European judicial systems CEPEJ Evaluation Report](#)> accessed 23 June 2022

Examples ranged from cases where the service was not provided to instances where the interpretation occurred in the wrong language or dialect. Interviewee 2, for example, described how a Somali man was given an Arabic interpreter on three separate occasions. This was despite the Court knowing he spoke Somali Arabic. Others expressed dissatisfaction with the quality of support given by Legal Aid Malta lawyers. Many cited the lack of adequate human and financial resources provided to the department, leading to its attorneys being overworked and under-informed. Interviewee 2 recounted:

I've seen the legal aid lawyer wait until the day before the trial to contact them. They don't provide them with the information they need. People don't get a reply. It takes months to get answers. That's why we tend to use NGOs because the state system doesn't provide adequate legal aid for people. We shouldn't have to rely on NGOs, they have thousands of clients, and are working under pressure.

Interviewee 4 offered a potential explanation for these disparities between what the law says and what happens in practice. She highlighted that many provisions from the Directives were merely 'copied' verbatim into national law. This is problematic for two reasons. The first is that by copying the text in this manner, the legal obligation is created but without the necessary supporting framework. Maltese legislators failed to include the details of how these obligations should be met. As put by Interviewee 4, 'the legal obligations need to be accompanied by other measures.' The other problem with this transposition method is that these provisions were not adapted to the Maltese context. Interviewee 4 believed 'the social, cultural, and political situation in the different Member States may require a different level to the minimum level. They may require a higher standard.' In other words, she explained, the Directives were 'transposed, but not necessarily effectively.' On the other hand, the participants agreed that NGOs were invaluable in filling the gaps left by legislators. When asked whether any good practices were taking place, Interviewee 2 stated:

There are good things going on, but a lot of the good things are done by NGOs. So, I can go on about NGOs having done great things, but not the government.

Interviewee 4 felt similarly, responding:

I'm sure there must be some good practices, but...I think if I had to consider the levels of racial discrimination, and the extent of victimisation of victims, I don't think I would really highlight too many good practices, except for the work of NGOs. For the work of NGOs, it is to their credit, not to [Malta's] credit. So it's not a good practice of the government or the state, I would say. But, this is from what I see from outside the field.

Above all, participants recognised that the primary barrier is that victims do not know where to make complaints or receive support. They agreed that for victims to rely on the law or support services, they must first have the necessary information enabling them to do so.

## 6. Steps forward

Based on a review of the law, its implementation, and the opinions of relevant stakeholders, it is clear that the Maltese anti-racism legal framework requires improvement.



***Many rights and protections envisioned in the Racial Equality Directive and the Victims' Rights Directive are omitted or only partially implemented***



Many rights and protections envisioned in the Racial Equality Directive and the Victims' Rights Directive are omitted or only partially implemented. While some aspects of Maltese implementation are more inclusive than the Directives, the benefits they offer are far outweighed by the detriments caused by the fragmentation of the Racial Equality Directive across multiple acts. Malta's complicated implementation means victims are unlikely to understand their rights without legal assistance.

The interviewees confirmed the issues identified in the desk research, mentioning the confusing implementation of the Racial Equality Directive and the gaps between Maltese legislation and the two Directives. A single anti-discrimination Act, such as the failed Equality Bill, would guarantee better harmonisation of the Directive. Further, rectifying the gaps requires reform in both legislative and practical terms. Equality bodies, victim support organisations, and interpreters need adequate resources to provide decent services.

Awareness also needs to be raised in minority communities about the available forms of assistance. Knowledge of the two Directives among frontline workers, legal professionals, and potential victims in Malta is virtually non-existent. This impedes the ability of victims to access services and for legal professionals to adequately represent their clients.

It is clear from the numerous responses during interviews and focus groups indicating a lack of familiarity that training in both Directives would be highly beneficial. Interviewees and Focus Group participants all agreed that increased knowledge of the Directives would be an asset, as it would strengthen their ability to assist victims. In this respect, the participants of Focus Group 3 wished to emphasise the underlying need for reform. The group acknowledged that training would help victims take advantage of the current protections, but that those protections were not sufficient. However, they ultimately conceded that in the absence of foreseeable legislative change, training was the best available solution. When asked who should receive training, participants believed it should be given to all legal professionals, including judges. The respondents also strongly felt that among frontline workers, police officers should be prioritised as recipients of training on the Directives. They further highlighted the employees of NGOs working with migrants, health care workers, construction workers or site managers, and educational staff as other potential trainees.

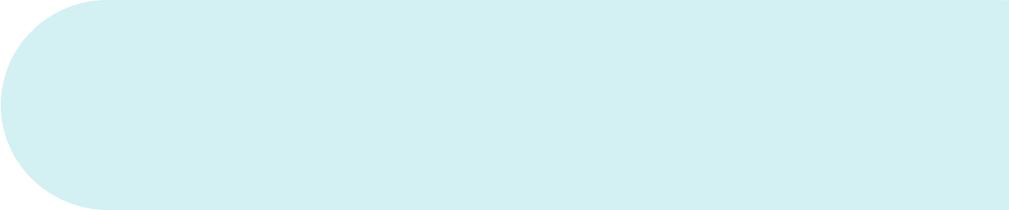
The participants identified several critical points in respect of any training. First, they emphasised that training should be tailored to its recipients. While judges and lawyers can easily understand a

highly legalistic training session, frontline workers are likely to become overwhelmed if presented with too many legislative details. In that respect, the context was considered especially important when designing different training programs. In addition to this profession-tailored training, Interviewee 2 suggested periodic meetings between police, legal professionals, and NGOs, in which attendees could exchange questions and advice. She also thought representatives from minority communities and former victims could attend to provide contextual insight into how the law could best help them.

The importance of context was also highlighted in respect of who would provide training. Interviewee 4 reported that foreign organisations usually give activities in Malta; however, this means the training is not tailored to Malta specifically. It should therefore fall to local organisations to provide contextualised and more relevant training on the Directives.

Personal knowledge was also considered necessary in respect of the impact of the Directives. Interviewees 1, 2, and 4 described how training is, in most cases, provided by individuals who are not personally affected by the content. It is essential that representatives of minority groups, especially past victims, be involved in the design and administration of the training. This would ensure the training is relevant and responsive to victims' needs. Hearing from past victims would also provide an emotional dimension to training, which would help emphasise the practical importance of the topic for trainees.

The continuity of any training on the two Directives must be ensured. Training should be given periodically, with its content updated to reflect the current situation. This connects back to the other points made regarding the importance of context. Focus Group 2, Participant 3 highlighted the high turnover rate in Maltese government agencies—as staff tends to change quite often, the training frequency for agency employees should be relatively high. Stakeholders would also benefit from continuous digital access to training materials and current information, as observed by Interviewee 2.



This e-book is the product of research that had been conducted for the purposes of **PRESERVE**, an EU-funded project focusing on the more effective implementation of the **EU anti-racism legal framework** through the training of legal professionals and frontline workers. The e-book consists of chapters on six EU Member States, namely Bulgaria, Cyprus, Greece, Italy, Malta, and the Netherlands. It also includes a chapter on the EU anti-racism legal framework, focusing in particular on the Racial Equality Directive and Victims' Rights Directive, and a chapter providing comparative analysis between the different case studies. The e-book is a useful supplementary guide to those undertaking the training provided by **PRESERVE** (that will remain publicly available after the conclusion of the project) and to whoever is interested in the implementation of anti-discrimination law more generally.

