



The Right to strike in the public sector

Malta

Contents

1. Legal basis
 2. Who has the right to call a strike?
 3. Definition of strike
 4. Who may participate in a strike?
 5. Procedural requirements
 6. Legal consequences of participating in a strike
 7. Case law of international/European bodies
 8. Recent developments
 9. Bibliography
- Notes

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1. Legal basis

International level

Malta has ratified:

UN instruments¹

International Covenant on Economic Social and Cultural Rights

(ICESCR, Article 8)

International Covenant on Civil and Political Rights

(ICCPR, Article 22)

ILO instruments²

Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise

(ratification on 4 January 1965)

Convention No. 98 concerning the Right to Organise and to Bargain Collectively

(ratification on 4 January 1965);

Malta has not ratified:

Convention No. 151 concerning Labour Relations (Public Service)

Convention No. 154 concerning the Promotion of Collective Bargaining

European level

Malta has ratified:

The Revised European Social Charter, including Article 6§4 – the right to collective action)
(ratification on 27 July 2005)³

Malta has not ratified

The Collective Complaints Procedure Protocol⁴

European Convention on Human Rights (ECHR), including Article 11 (the freedom of assembly and association)

(ratification on 23 January 1967)⁵

National level

The Constitution of Malta

Malta does not have Constitutional provisions on the right to strike.

Applicable law

- **In general :**
 - Employment and Industrial Relations Act XXII of 2002 (“EIRA”)⁶;
 - Recognition of Trade Unions Regulations, 2016⁷.
- **Specific law(s) for public sector:**
 - Various Laws (Trade Union Membership of Disciplined Forces) Act, 2015⁸.
- **Collective agreements:**
 - Collective Agreement for Employees in the Public Service 2017 - 2024⁹.

2. Who has the right to call a strike?

Only trade unions that are registered can call a strike.¹⁰

According to Recognition of Trade Unions Regulations, 2016¹¹ “union” means a single trade union registered in terms of the Employment and Industrial Relations Act.

For the purposes of the above mentioned regulations, a “union” shall also mean more than one union who act jointly. Provided further that unions which acquire joint recognition in terms of these regulations shall, whilst such recognition remains, negotiate collectively jointly and not register separate disputes on collective issues with the employer but may only register a joint dispute with the employer and shall not order any industrial action on a separate basis and any action taken separately on a collective matter shall be null and void (Article 2(1) of the Recognition of Trade Unions Regulations).

The same Regulations provide that during the verification process, commencing from the request until the final result, the unions involved in the said process shall not initiate industrial action at the place of work concerned in furtherance of a dispute relating to recognition (Article 9(13) of the Recognition of Trade Unions Regulations) .

3. Definition of strike

Indirect reference to industrial action is contained in the Employment and Industrial Relations Act (EIRA) insofar as this act establishes the immunity of trade unions and employers' associations to actions in tort as a consequence of such industrial action (Article 63 of the EIRA).¹²

Immunity is granted when the action is taken in "contemplation or furtherance of a trade dispute" (Articles 63 and 64 of the EIRA).

Article 2 of the EIRA defines 'trade dispute' as a dispute between employers and workers, or between workers and workers, which is connected with any one or more of the following matters:

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment as between workers or groups of workers;
- (d) matters of discipline;
- (e) facilities for officials of trade unions;
- (f) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures;
- (g) the membership or non-membership of a worker in a particular trade union.

The law does not specifically mention the legal types of industrial action, but it refers to it as an act done by a person in contemplation or furtherance of a trade dispute and in pursuance of a directive issued by a trade union, whether he belongs to it or not.¹³

Reports show that, in Malta, the following forms of collective action are allowed:

- **all-out strike,**
- **partial strike,**
- **slow-down,**
- **disregarding a specific instruction** issued by the employer,
- **picketing,**
- **solidarity action.**¹⁴

On the contrary, **work-to-rule is illegal.**¹⁵

4. Who can participate in a strike?

Workers in the **public sector** have access to collective bargaining through their unions.¹⁶ However, there are restrictions on the right to take collective action for certain categories of workers as shown below.

Article 64 of EIRA includes a range of workers who are not protected if they act “in contemplation or furtherance of a trade dispute”.¹⁷

The EIRA presents a list of **essential services** and the **minimum levels of service** in Article 64(6), including the following:

- persons employed as **Air Traffic Controllers** at the Malta International Airport and in the said **Airport Fire Fighting Section** (Article 64§6 a) of EIRA);
- members of the **Assistance and Rescue Force** set up in terms of the Civil Protection Act (Article 64§6 b) of EIRA);
- persons employed to provide pilotage and mooring, tug services, firefighting, medical health services and pollution combating services, as may be required in cases of **port emergency** (Article 64§6 c) of EIRA);
- such minimum number of persons needed to guarantee that life is not endangered through the non-import or discharge into Malta of **wheat, grain, domestic gas, aviation fuel, diesel and petrol and oil fuel for the operation of air transport facilities and power generation and water facilities**, as agreed upon by their respective employer and the recognised trade union or, in default of such agreement, as shall be decided by the appropriate controlling body or in the absence of such body, the Industrial Tribunal (Article 64§6 d) of EIRA);
- such minimum number of persons as may be required to guarantee the combined production, provision and distribution of **water and electricity**, as agreed upon by their respective employer and the recognised trade union or in default of such agreement, as shall be decided by the Industrial Tribunal (Article 64§6 e) of EIRA);
- such number of persons as may be required to maintain the continued and uninterrupted services listed in the Schedule to this Act and required to be manned at all times for the **continued provision** by the Government of **essential services to the community** (Article 64§6 f) of EIRA);
- such number of persons in such posts as the Minister may by notice in the Gazette prescribe, as being necessary to provide **service at the level of one-half of the public passenger transport services** in Malta and Gozo and **one-half of the scheduled public ferry services** between Malta and Gozo and it shall be deemed to be an implied condition of the contract of employment of any employee employed in the public passenger transport services and scheduled ferry transport services that the said employee shall be obliged to perform duties as directed by the employer thereof in order to constitute the number designated as aforesaid and any employee failing to perform such duties without justification shall be liable to dismissal (Article 64§6 g) of EIRA);

Provided that, for the purposes of subparagraphs (d) and (e) if no agreement is reached as aforesaid within a period of one month from the date of coming into force of EIRA, the

matter shall be referred to the appropriate controlling body or Industrial Tribunal, as the case may be, at the request of any one of the parties.

Where the number of public officers holding or employed in any of the offices aforesaid is greater than the number indicated in the said Schedule as essentially required, Article 64(6) shall apply **only to the more senior** among those officers who together make up that number (excluding only any of them who are on leave authorised expressly for the purposes of this sub-article, and only while they are so on leave), seniority being determined by any seniority inherent in the office itself or, in the absence of such seniority, by the length of the officers' service in the office held by them or in which they are employed at the relevant time, and in cases of equal lengths of service by the age of the officers having the same length of service (Article 64 (7) of EIRA).

Any public officer employed in the essential services referred to above shall have his **service with the Government terminated** forthwith if, in contemplation or furtherance of a trade dispute or of any other action taken by two or more public officers or other workers (whether or not in pursuance of a directive issued by a trade union), or in support thereof or in sympathy therewith, such officer **refuses or otherwise fails to carry out those duties that are necessary for the continued provision of the essential service**, in accordance with the EIRA and with the terms of service or conditions of employment and under the direction of the competent authorities of the Government (Article 64 (8) of EIRA).

Should a **dispute** arise about the **conditions of work** of the workers identified as performing an **essential service** (as above), the matter will be deliberated by a special **Joint Negotiating Council**. The Council shall consist of not more than four members representing the Government, and not more than four members representing the trade union having as its members the largest number of persons providing the essential service in the relevant section or area involved in the dispute.

The **decisions** of the Joint Negotiating Council shall only be taken by a **unanimous vote**. Any decision so taken or agreement so reached shall be binding on the Government and on all public officers to whom that decision or agreement applies. In case of failure by the Joint Negotiating Council to achieve a unanimous vote, the Chairperson shall refer the matter to the Industrial Tribunal within fifteen days of such disagreement being registered and the Industrial Tribunal shall be bound to reach a final decision on the trade dispute (including the making of recommendations) by not later than two months from the referral, unless in the opinion of the Chairperson of the Industrial Tribunal, a longer period is necessary for a valid reason which must be stated and recorded in the proceedings of the Tribunal (Article 72 of the EIRA).

The EIRA was amended through the Various Laws (Trade Union Membership of Disciplined Forces) Act (IV of 2015), to the effect that the new added Article 67A of EIRA¹⁸ provides:

(1) A member of a **disciplined force** shall be entitled to be a member of a registered trade union of his choice.

(2) A trade union representing members of a disciplined force:

- (a) shall not be entitled to limit its membership to any particular rank in the said force;
- (b) shall be entitled to negotiate conditions of employment and to participate in dispute resolution procedures of a conciliatory, mediatory, arbitral or judicial nature on behalf of the members of the disciplined force which it represents, but it shall **not be entitled to take any other action** in a disciplined force **in contemplation or furtherance of a dispute**.

Notwithstanding the provisions of this article, the right of members of the Armed Forces of Malta to be members of a trade union shall be regulated only under the Malta Armed Forces Act (Article 67A of EIRA).

By “disciplined force” , it is included the **naval , military and air force** of Malta, the Malta **Police Force**, any other police force established by law in Malta, the Malta **prison services** and the **Assistance and Rescue Force**.¹⁹

‘Essential services’ in the strict sense of the term have been defined by the ILO as those services ‘the interruption of which would endanger the life, personal safety or health of the whole or part of the population’.²⁰

5. Procedural requirements

- The trade dispute must be first formally registered. After that, there is a conciliation procedure.²¹ However, the trade union is not forced to suspend the strike if the matter in dispute is under judicial scrutiny.²²
- Article 72 of the Employment and Industrial Relations Act establishes a Joint Negotiating Council as a special negotiating machinery with respect to trade disputes concerning the conditions of work of persons providing the essential services listed in Article 64§6 (detailed in section 4 above).

6. Legal consequences of participating in a strike

Participation in lawful strike

- In Malta the employment contract is suspended during the strike. No wage is paid to the workers on strike.²³
- Workers who do not take part in the strike, but continue to work, receive their remuneration and are still entitled to be paid even if, due to the strike, it becomes impossible for them to work.²⁴
- Article 64 (4) of the Employment and Industrial Relations Act provides that:
An act done by a person in contemplation or furtherance of a trade dispute and in pursuance of a directive issued by a trade union, whether he belongs to it or not, **shall not be actionable in damages** on the ground only that it consists in a breach of a contract of employment; and any act done as aforesaid, not being an act in breach of a collective agreement, or of a settlement, decision or which is still binding in accordance with the provisions of article 70 or 72, or of a decision or award of the Tribunal, **shall not by itself entitle the employer to terminate the contract of employment of, or discriminate against,** any person doing any such act as aforesaid, and shall not constitute a break in the service of such person.²⁵

Participation in unlawful strike

There is no possibility to claim damages from the trade union having called/organized the strike, because trade unions enjoy immunity from actions in tort where industrial action is executed in accordance with the law.

Article 63 of the EIRA provides immunity of trade unions and employers' associations to actions in tort as follows:

(1) (...) no action in tort or quasi-tort shall lie in respect of any act:

(a) alleged to have been done by or on behalf of a trade union or by or on behalf of an employers' association; or

(b) alleged to be threatened or to be intended to be done as aforesaid,

against the union or association in its own name, or against any members, officers or officials of the union or association on behalf of themselves and all other members of the union or association.²⁶

Nevertheless, trade unions may be subject to damages when the strike is deemed not to be in furtherance of a trade dispute or where the action is in breach of dispute procedures previously laid down in a collective agreement.²⁷

There were allegations of anti-union dismissals by public officers, and reports of port workers and public transport workers who were excluded through legislation from the jurisdiction of industrial tribunals and only had recourse to a Public Service Commission.²⁸

7. Case law of international/European bodies on standing violations

ILO

Decisions of Committee of Freedom of Association (CFA)

There are no recent decisions of the CFA relevant for the right to strike.²⁹

In a previous case, the CFA decided as follows:

*Case No 2066 dated 21 of January 2000: the International Confederation of Free Trade Unions (ICFTU), the International Transport Workers' Federation (ITF) and the International Metalworkers' Federation (IMF)*³⁰

The complaint concerned a recognition dispute at Malta International Airport (MIA), a company wholly owned by the Government of Malta. The Committee also observed that the allegations in this case concerned the refusal to hold a recognition ballot, violations of the right to strike and police and military intervention in two instances of industrial action.

The CFA invited the Governing Body to approve amongst others the following recommendations:

- (a) Recalling that a ban on strikes related to recognition disputes (for collective bargaining) is not in conformity with the principles of freedom of association, the Committee requested the Government to amend its legislation so as to lift the ban on strikes related to recognition disputes. In this respect and as regards the other points made in its conclusions concerning the lack of clarity of the national legislation, the Committee drew the Government's attention to the fact that ILO technical assistance is available to facilitate a review of existing legislation and to assist in finding solutions to the types of difficulties encountered at Malta International Airport (MIA).
- (b) In accordance with its abovementioned conclusions, the Committee suggested that the Government may wish to give consideration to establishing a minimum service for the ports sector to be determined with the participation of the trade union organizations concerned.

Observations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)

*Observation adopted 2017, published 107th ILC session (2018), Convention No 98*³¹

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee recalled that it had previously requested the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals submitted

by public officers, port workers and public transport workers given that those categories are excluded from the jurisdiction of the industrial tribunal pursuant to section 75(1) of the Employment and Industrial Relations Act, 2002 (EIRA). Having further noted that public officers could appeal to the Public Service Commission, an independent body established under section 109 of the Constitution of Malta, the Committee requested the Government to indicate, with regard to cases of anti-union dismissal, whether the Public Service Commission was empowered to grant such compensatory relief – including reinstatement and back pay – as to constitute sufficiently dissuasive sanctions against acts of anti-union discrimination. The Committee also requested the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals of port workers and public transport workers.

The Committee noted the Government's indication that information about compensatory relief in case of anti-union dismissal of public officers is still being sought from the Public Service Commission and will be provided in the near future. The Government further stated that a new Legal Notice on Trade Union Recognition, also applicable to Government employees, will enter into force and will contain the following clause: "No person may interfere, intimidate, exert any force or otherwise cause, or threaten to cause, detriment to an employee ... for joining or attempting to join, or for leaving or attempting to leave a union." Recalling that, according to its *Article 6*, public servants not engaged in the administration of the State are covered by the Convention and that the issue of compensatory relief in case of anti-union dismissal of public officers had been pending for over a decade, the Committee *regretted* that the Government had not provided a more substantial reply in this respect. *The Committee thus requested the Government once again to indicate whether the Public Service Commission is empowered to grant such compensatory relief – including reinstatement and back pay awards – as to constitute sufficiently dissuasive sanctions against acts of anti-union discrimination that may affect public officers not engaged in the administration of the State. In addition, the Committee regretted that the Government had again failed to provide any information in relation to port workers and public transport workers and, therefore, requested it once again to indicate the procedures applicable for the examination of allegations of anti-union dismissals of these two categories of workers.*

The Committee further observed that the EIRA does not provide for specific sanctions for acts of anti-union discrimination and that the general sanctions set by section 45(1) – a fine not exceeding €2,329 – would thus apply to such cases. *Considering that this fine might not be sufficiently dissuasive, particularly for large enterprises, the Committee requested the Government to take the necessary measures, after consultation with the social partners, to provide for sufficiently dissuasive sanctions for acts of anti-union discrimination, so as to ensure the application of the Convention.*

Observation adopted 2017, published 107th ILC session (2018). Convention No. 87.³²

About the Article 3 of the Convention. Right of organizations to freely organize their activities and to formulate their programmes.

For a number of years, the Committee requested the Government of Malta to amend section 74(1) and (3) of the Employment and Industrial Relations Act, 2002 (EIRA) – according to which, if an amicable settlement of a trade dispute and conciliation has not

resulted in a settlement, one of the parties may notify the Minister, who shall refer the dispute to the Industrial Tribunal for settlement – so as to ensure that compulsory arbitration to end a collective labour dispute is only possible in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term.

Furthermore, the Committee recalled that arbitration to end a collective labour dispute or a strike should only be allowed based on agreement of the parties to the dispute or where the strike may be restricted or prohibited, that is in disputes in the public service involving public servants exercising authority in the name of the State, in essential services in the strict sense of the term or in the event of an acute national crisis.

The Committee, therefore, once again requested the Government to take the necessary measures, in consultation with the social partners, to amend section 74(1) and (3) of the EIRA to ensure respect for the abovementioned principles with regard to compulsory arbitration. It requested the Government to provide information on any developments in this regard.

Article 9. Armed forces and the police.

The Committee noted with *interest* the adoption of the Various Laws (Trade Union Membership of Disciplined Forces) Act, 2015 which amended the EIRA by adding a new section 67A, which gives members of the disciplined forces (defined in the EIRA as armed forces, police, prison service and assistance and rescue force) the right to become members of a registered trade union of their choice. Such a trade union shall not be entitled to limit its membership to any particular rank and shall be entitled to negotiate conditions of employment and to participate in dispute resolution procedures of a conciliatory, mediatory, arbitral or judicial nature on behalf of its members. *The Committee invited the Government to provide information on the application in practice of section 67A of the EIRA, in particular whether any trade unions have been formed and registered under this provision and the number of their members, and also whether any requests for such trade union registration are under consideration or have been rejected.*

European Social Charter

Collective complaints under article 6§4 ESC

Malta has not yet ratified the Additional Protocol providing for a system of collective complaints.³³

Conclusions of the European Committee of Social Rights (ECSR)

In its **Conclusions 2014** on article 6§4, the ECSR stressed that the report presented by Malta confirmed that strikes in favour of trade union recognition are possible prior to referral to the Industrial Tribunal or in the event the parties do not agree to refer the dispute to the Industrial Tribunal.

Also the ECSR asked the Government if there are public officials whose right to strike is restricted and under what circumstances this may occur. The Committee recalled that the right to strike of certain categories of public officials may be restricted.

Under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest. Consequently, the Committee invited the Government of Malta to state, in relation to every service subject to restrictions with regard to the right to strike, if and to what extent work stoppages may undermine respect for the rights and freedoms of others or threaten the public interest, national security, public health, or morals. In this context, it also asked whether such restrictions were in all cases proportionate to achieve the objective of ensuring, in a democratic society, the abovementioned respect.

Also, the Committee noted from Eironline (Union Rights Granted to Police Officers but not Other Security Services) that **police officers** were prohibited from striking.

The Committee recalled that, concerning police officers, an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it. On the other hand the imposition of restrictions as to the mode and form of such strike action can be in conformity with the Charter.³⁴

Conclusions 2018

However, the next report of Malta did not really answer the above mentioned questions.

The Committee noted however that Article 64, paragraph 6 of the Employment and Industrial Relations Act (EIRA) provides for restrictions on the right to strike for certain categories of workers (**Air Traffic Controllers**, members of **the Assistance and Rescue Force**, workers involved in **port emergency**) or when this is necessary to ensure a minimum service (essential services, **import of certain products, transport, water, energy**).

The Committee asked that the next report explain in detail the restrictions applicable to the right to strike in the light of the requirements of Articles 6§4 and G of the Charter. It considered that if such information should not be provided, there would be nothing to establish that the situation is in conformity with the Charter on this point. In the meantime, the Committee reserved its position.

The report confirmed that members of **disciplined forces (naval, military and air force, police force, staff of prison services and Assistance and Rescue Force)** can join a trade union but are not allowed to strike. The Committee recalled that, concerning police officers, an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it. On the other hand the imposition of restrictions as to the mode and form of such strike action can be in conformity with the Charter (European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §211).

As the report did not provide any indication of the compelling reasons justifying an absolute restriction on the right to strike for the police, the Committee considered that the situation was not in conformity with Article 6§4 of the Charter on the ground that the absolute prohibition of the right to strike of the police goes beyond the limits permitted by Article G of the Charter.³⁵

8. Recent developments

It is reported that since the start of the **COVID-19 pandemic**, no use has been made of the emergency powers available under the Constitution (Article 47(2) provides the circumstances that are to be considered as periods of 'public emergency' such as in case of war or 'when democratic institutions in Malta are threatened by subversion') or under the Emergency Powers Act. Instead, use has been made of powers granted to the minister responsible for public health and to the superintendent of public health under the Public Health Act (Chapter 465 of the Laws of Malta). As authorised under that law, the Superintendent declared that a **public health emergency** existed in relation to the coronavirus pandemic.³⁶

A series of regulations and orders were issued by the health minister and the superintendent of public health respectively, under powers delegated to them by the Public Health Act, imposing measures such as quarantine, travel bans, the closure of schools and other public places, the suspension of organised events, etc. Ancillary measures were taken by other ministers under similar powers delegated to them under other laws such as: measures by the social welfare minister to ensure the continuation of essential social welfare services in the exceptional circumstances caused by the COVID-19 pandemic, and a provision for quarantine leave by the employment and industrial relations minister.³⁷ The '**quarantine leave**' is provided by the Minimum Special Leave Entitlement (Amendment) Regulations, 2020 and is defined as "leave to be granted to the employee without loss of wages in such cases where the employee is legally obliged to abide by a quarantine order confining the employee to a certain area or to certain premises as determined by the Superintendent of Public Health under the Public Health Act or by any public authority under any other law."³⁸

Reports show that in 2020 most of the trade disputes concerned the policies adopted or the measures taken to control the spread of the COVID-19 pandemic. The most active in this regard were the trade unions representing workers who, due to the social interaction that characterises their work, are exposed to greater risks of being infected with the virus, such as the Medical Association of Malta (MAM) representing the doctors, the Malta Midwives and Nurses Association (MUMN) and the Malta Union of Teachers (MUT). For example, following intense discussions between the Ministry of Education, MUT officials and the Superintendent of Health, an agreement was reached on the protocol to be followed by schools which included clauses related to wearing of masks, physical distance, sport activities, and alternating timetables.³⁹

In a Statement on COVID-19 and social rights adopted on 24 March 2021, the European Committee of Social Rights (the ECSR) recalled that Article 6§4 of the European Social Charter entails the right of workers to take collective action (e.g. work stoppage) for occupational health and safety reasons. The ECSR pointed out that strikes in response to a lack of adequate personal protective equipment or inadequate distancing, disinfection and cleaning protocols at the workplace would fall within the scope of the protection afforded by the Charter.⁴⁰

9. Bibliography

- Clauwaert, S. (2016) *Le droit à l'action collective du point de vue de la Charte sociale européenne*, Revue de Droit du Travail, No. 6 – June 2016, pp. 438-447.
- Clauwaert, S. and Warneck, W. (2008) *Better defending and promoting trade union rights in the public sector. Part I: Summary of available tools and action points*, Report 105, Brussels: ETUI (<https://www.etui.org/publications/reports/better-defending-and-promoting-trade-union-rights-in-the-public-sector>).
- Clauwaert, S. and Warneck, W. (2009) *Better defending and promoting trade union rights in the public sector. Part II: Country reports*, Report 108, Brussels: ETUI (<http://library.fes.de/pdf-files/gurn/00358.pdf>).
- Kovacs, Erika (2005) The Right to Strike in the European Social Charter, 26 Comp. Lab. L. & Pol'y. J. 445
- Novitz, T. (2017) The Restricted Right to Strike: “Far-Reaching” ILO Jurisprudence on the Public Sector and Essential Services, Comparative Labour Law and Policy Journal, 38(3/ p. 353-374.
- Warneck, W. (2007) *Strike rules in the EU27 and beyond: A comparative overview*, Report 103, Brussels: ETUI (<https://www.etui.org/Publications2/Reports/Strike-rules-in-the-EU27-and-beyond>).
- Bruun, N., Lörcher, K., Schömann, I and Clauwaert, S (2017), The European Social Charter and the Employment Relation, “Article 6. The Right to Bargain Collectively. A Matrix for Industrial Relations” Dorssemont, F. pp. 249-288, Hart Publishing.
- ESC, Country profile: Malta (<https://www.coe.int/en/web/european-social-charter/malta>).
- ESC, 11th National Report on the implementation of the European Social Charter submitted by the Government of Malta, Cycle 2018, (<https://rm.coe.int/11th-report-from-malta/168077630f>).
- Eurofound, ‘Living and working in Malta’, 15 March 2021 (<https://www.eurofound.europa.eu/country/malta>).
- Eurofound, Saviour Rizzo, Malta: Working life in the COVID-19 pandemic 2020, 23 March 2021 (<https://www.eurofound.europa.eu/sites/default/files/wpof21024.pdf>).
- European Parliamentary Research Service, States of emergency in response to the coronavirus crisis: Situation in certain Member States II, Malta, pp. 8-9 ([https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651914/EPRS_BRI\(2020\)651914_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651914/EPRS_BRI(2020)651914_EN.pdf)).
- European Committee of Social Rights, Statement on COVID-19 and social rights, adopted on 24 March 2021 (<https://rm.coe.int/statement-of-the-ecsr-on-covid-19-and-social-rights/1680a230ca>).

Notes

- ¹ Status of ratification by Malta of UN instruments: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en> .
- ² Status of ratification by Malta of ILO conventions: https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103111 (accessed on 7 May 2021).
- ³ Status of ratifications of the Revised European Social Charter: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures?p_auth=jPYjkVEL (accessed on 7 May 2021); see also ESC, Country Profile: Malta (<https://www.coe.int/en/web/european-social-charter/malta>).
- ⁴ Status of ratifications of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p_auth=F3KSQtYr (accessed on 7 May 2021).
- ⁵ Status of ECHR ratifications: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=jPYjkVEL (accessed on 7 May 2021).
- ⁶ See the consolidated version of the EIRA (as amended last in 2020) at: <https://dier.gov.mt/en/Legislation/Pages/Main-Legislation.aspx> (accessed on 9 May 2021).
- ⁷ See Recognition of Trade Union Regulations (in English) at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12611&l=1> (accessed on 9 May 2021).
- ⁸ See Various Law (Trade Union Membership of Disciplined Forces) Act (in English) at: http://search.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=101025&p_country=MLT&p_count=293 (accessed on 9 May 2021).
- ⁹ The Collective Agreement for the public sector was signed in April 2017 according to the information available on following website: https://publicservice.gov.mt/en/Pages/News/2017/20170420_FtehimKollettiv.aspx.
- ¹⁰ ETUI Report No. 103, p. 50.
- ¹¹ See Recognition of Trade Union Regulations (in English), in particular Articles 2(1) and 9(13) at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12611&l=1> (accessed on 9 May 2021).
- ¹² ETUI Report No. 103, p. 50.
- ¹³ Eurofound, 'Living and working in Malta', Industrial action and disputes, 15 March 2021 (<https://www.eurofound.europa.eu/country/malta>).
- ¹⁴ ETUI Report No. 103, p. 50.
- ¹⁵ ETUI Report No. 103, p. 8.
- ¹⁶ ETUI Report No. 108, p.120.
- ¹⁷ See in particular Articles 64(4) and 64(6) of EIRA at: <https://dier.gov.mt/en/Legislation/Pages/Main-Legislation.aspx> (consolidated version consulted on 9 May 2021).
- ¹⁸ See Article 67A of EIRA at: <https://dier.gov.mt/en/Legislation/Pages/Main-Legislation.aspx> (consolidated version consulted on 9 May 2021).
- ¹⁹ ESC, 11th National Report on the implementation of the European Social Charter submitted by the Government of Malta, Cycle 2018, (<https://rm.coe.int/11th-report-from-malta/168077630f>).
- ²⁰ Compilation of decisions of the Committee on Freedom of Association (ILO CFA), 6th edition, 2018, Chapter 10, paras. 836 - 841 – ILO CFA has defined and listed as “essential services in the strict sense of the term” where the right to strike may be subject to restrictions or even prohibitions, the following: the hospital sector, electricity services, water supply services, the telephone service, the police and armed forces, the fire-fighting services, public or private prison services, the provision of food to pupils of school age and the cleaning of schools, air traffic control. The ILO CFA has stressed that compensatory guarantees should be provided to workers in the event of prohibition of strikes in essential services, see paras. 853 - 863; See also Clauwaert, S. and Warneck, W. (2008) *Better defending and promoting trade union rights in the public sector. Part I: Summary of available tools and action points*, Report 105, Brussels: ETUI, pp. 79-81.
- ²¹ ETUI Report No. 103, p. 50.
- ²² *Ibid* p. 51.
- ²³ ETUI Report No. 103, p. 51
- ²⁴ *Ibid*.
- ²⁵ See Article 64(4) of EIRA; and Eurofound, 'Living and working in Malta', Industrial action and disputes, 15 March 2021 (<https://www.eurofound.europa.eu/country/malta>).
- ²⁶ Article 63(1) of EIRA, see also Eurofound, 'Living and working in Malta', Industrial action and disputes, 15 March 2021 (<https://www.eurofound.europa.eu/country/malta>).
- ²⁷ ETUI Report No. 103 p. 51 ; Article 63 (2) of EIRA
- ²⁸ Novitz, T. p.20.
- ²⁹ Information available on 9 May 2021.
- ³⁰ See ILO CFA, Definitive Report - Report No 321, June 2000, Case No. 2066, Complaint date: 21 January 2000 (http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2905618)
- ³¹ ILO CEACR, Observation (CEACR) – adopted 2017, published 107th ILC session (2018), Convention 98, at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3337446,103111,Malta,2017
- ³² ILO CEACR, Observation (CEACR) - adopted 2017, published 107th ILC session (2018), Convention 87, at:

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3341072,103111,Malta,2017

³³ ESC, Country profile: Malta (<https://www.coe.int/en/web/european-social-charter/malta>) accessed on 9 May 2021.

³⁴ ECSR, Conclusions 2014, Article 6(4) Malta, <http://hudoc.esc.coe.int/eng?i=2014/def/MLT/6/4/EN> .

³⁵ ECSR, Conclusions 2018, Article 6(4) Malta, <http://hudoc.esc.coe.int/eng?i=2018/def/MLT/6/4/EN>

³⁶ European Parliamentary Research Service, States of emergency in response to the coronavirus crisis: Situation in certain Member States II, Malta, pp. 8-9

([https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651914/EPRS_BRI\(2020\)651914_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651914/EPRS_BRI(2020)651914_EN.pdf)).

³⁷ *Ibid*

³⁸ See Minimum Special Leave Entitlement (Amendment) Regulations, 2020 which amended the Employment and Industrial Relations Act (Cap 452) (<https://legislation.mt/eli/in/2020/62/eng/pdf>).

³⁹ Eurofound, Saviour Rizzo, Malta: Working life in the COVID-19 pandemic 2020, 23 March 2021.

(<https://www.eurofound.europa.eu/sites/default/files/wpef21024.pdf>).

⁴⁰ European Committee of Social Rights, Statement on COVID-19 and social rights, adopted on 24 March 2021, 'Right to organise and collective bargaining', pp. 5-6, (<https://rm.coe.int/statement-of-the-ecsr-on-covid-19-and-social-rights/1680a230ca>).