The Right to strike in the public sector

Malta

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This factsheet reflects the situation in June 2019. It was elaborated by Natalia Delgado (independent expert), updated by Stefan Clauwaert (ETUC/ETUI) and reviewed by EPSU/ETUI and sent for comment to EPSU affiliates in Malta.
1. Legal basis

International level

Malta has ratified:

**UN instruments**

| International Covenant on Economic Social and Cultural Rights (ICESCR, Article 8) |
| International Covenant on Civil and Political Rights (ICCPR, Article 22) |

**ILO instruments**

| 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)** on 27 July 2005.

Malta did not ratify

| The Collective Complaints Procedure Protocol |
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 of 2002 and updated on June 2016.\(^3\)
  - Recognition of Trade Unions Regulations, 2016\(^4\)

- **Specific law(s) for public sector:**
  - Act is the Various Laws (Trade Union Membership of Disciplined Forces) Act, 2014\(^5\)

- **Collective agreements:**
  - Collective agreement for Public Service employees of April 2017 \(^6\)
2. **Who has the right to call a strike?**

Only trade unions that are registered can call a strike.\(^\text{7}\)
3. Definition of strike

Article 2 of the Employment and Industrial Relations Act define ‘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.

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.\(^8\)

On the contrary, work-to-rule is illegal.\(^9\)
4. Who can participate in a strike?

Workers in the public sector have in principle access to trade disputes through their unions. However, it is not fully clear which categories of civil servants have the right to strike. For example, teachers who had participated in the strike action in the past had been penalised.

Initially, discipline corps such as assistance and rescue force or members of the Armed Forces and of the Police force were not allowed to go in strike. However, since 2014 the Article 67 A of the Employment and Industrial Relations Act states that ‘A trade union representing members of a disciplined 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’.

The Employment and Industrial Relations Act presents a list of essential services and the minimum levels of service in Article 64§6 including the following:

- administrative services,
- clinical services including doctors, surgeons and nurses,
- Air Traffic Controllers at the Malta International Airport and in the Airport Fire Fighting Section,
- members of the Assistance and Rescue Force.

The Article 64 of the Employment and Industrial Relations Act establishes minimum levels of service in essential services, enforceable through tort law, and a Joint Negotiating Council for essential services (article 72).

The Article 72 established a Joint Negotiating Council as a special negotiating machinery with respect to trade disputes concerning the conditions of work of persons providing the services listed in Article 64§6.
5. Procedural requirements

- The trade dispute must be first formally registered. After that, there is a conciliation procedure. However, the trade union is not forced to suspend the strike if the matter in dispute is under judicial scrutiny.

- 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 services listed in Article 64§6.
6. Legal consequences of participating in a strike

Participation in lawful strike

- In Malta the employment contract is suspended during the strike. The strikers lose their wage.

- Also ‘workers who do not take part in the strike but continue to work receive their remuneration and are still entitled to pay even if, due to the strike, it becomes impossible for them to work’.  

Participation in unlawful strike

In Malta strikes in favor of trade union recognition are not protected. 

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.

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.

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 have recourse to a Public Service Commission.
7. Case law of international/European bodies on standing violations

International Labour Organisation

Decisions of Committee of Freedom of Association (CFA)

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)  

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 requests 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 would draw 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 suggests 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)


The Committee noted with interest the provision of compensatory guarantees in section 72 of the Employment and Industrial Relations Act, 2002, in relation to those workers employed in the specified essential services and minimum services whose right to strike is limited or denied.
The Committee also noted that restrictions on strike action through a compulsory arbitration procedure constitute a prohibition that seriously limits the means available to trade unions to further and defend the interest of their members, as well as their right to organize their activities and to formulate their programmes.\textsuperscript{23}


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.\textsuperscript{24}

**European Social Charter**

**Collective complaints under article 6§4 ESC**

Malta did not ratify the Collective Complaints Procedure Protocol.

**ECSR Conclusions**

In its Conclusions 2014 on article 6§4, the Committee 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 Committee 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 asks whether such restrictions are 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 are 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.25

However, the next report on Malta did not really answer these questions. The Committee notes, 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 asks the next report to 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 considers that if such information is not provided, there would be nothing to establish that the situation is in conformity with the Charter on this point. In the meantime the Committee reserves its position.

The report confirms 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 recalls 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 does not provide any indication of the compelling reasons justifying an absolute restriction on the right to strike for the police, the Committee considers that the situation is 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.26
8. Bibliography

Notes

6 See ILO 2015, p.21 for the Collective agreement of 2010-2016. A new collective agreement for the sector was signed in 2017 according to the following website: https://publicservice.gov.mt/en/Pages/News/2017/20170420_FtehimKollettiv.aspx. Unfortunately, the information about this agreement was inaccessible.
7 ETUI Report No. 103 p. 50.
8 Ibid.
10 ETUI Report No. 108 p.120.
12 ETUI Report No. 108 p. 121. See ILO CFA Report No. 244, case no. 1349.
14 See http://www.labourlawnetwork.eu/national%3Cbr%3Elabour_law/national_legislation/legislative_development/s/prm/109/v_detail/id_4635/category_24/index.html
15 ILO 2015, p.21.
16 Ibid p. 50.
17 Ibid p. 51.
18 Ibid.
19 Kovacs, p.9.
20 ETUI Report No. 103 p. 51.
21 Novitz, T. p.20.
25 Find the full decision here: http://hudoc.esc.coe.int/eng#{"fulltext":"["malta"],"ESCArticle":"["06-00-000","06-03-000","06-04-000","05-00-000","06-01-000","06-02000"],"ESCCycle":"["2014"],"ESCDcType":"["CON"],"ESCDcIdentifier":"["2014/def/MLT/6/4/EN"]}
26 ECSR Conclusions 2018 – Malta – Article §(4).