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REVISED EUROPEAN SOCIAL CHARTER

3rd National Report on the implementation of
the European Social Charter (revised)

submitted by

THE GOVERNMENT OF MALTA

(Articles 2, 4, 5, 6, 26, 28 and 29
for the period 01/01/2005 – 31/12/2008)

Report registered by the Secretariat on 29 January 2010

CYCLE 2010



**THIRD REPORT ON THE
EUROPEAN SOCIAL CHARTER (REVISED)**

submitted by the

Government of Malta

(1 January 2005 – 31 December 2008)

2009

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Group 3 - Labour Rights

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** N.B. No report on Articles 2(4), 21 and 22 were provided since these were not ratified by Malta.*

Report made by the Government of Malta in accordance with Article 21 of the European Social Charter, on the measures taken to give effect to the following accepted provisions of the European Social Charter, the instrument of ratification of which was deposited on the 4th October, 1989:-

Articles 2, 4, 5, 6, 26, 28 and 29 for the period 1 January 2005 to 31 December 2008.

No observations have been received from the organisations of workers and employers regarding the practical application of the provisions of the Charter, of the application of legislation, or other measures for implementing the Charter.

I. INTRODUCTION

This Report by Malta is drafted within the context of the form for submission as adopted by the Committee of Ministers on the 26th March 2008.

The following information is to supplement previous information submitted by Malta with respect to the same provision under the European Social Charter and should be taken as additional information. Where a new provision of the Revised Charter has not been reported upon in previous Reports from Malta, full details of the situation of the respective Article in Malta will be provided.

II. PROVISIONS OF THE EUROPEAN SOCIAL CHARTER (revised)

Article 2 – All workers have the right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

- 1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
- 2 to provide for public holidays with pay;
- 3 to provide for a minimum of four weeks' annual holiday with pay;
- 4 to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
- 5 to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
- 6 to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
- 7 to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Appendix to Article 2§6

Parties may provide that this provision shall not apply:

- a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;
- b. where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations

Article 2§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

By virtue of the Organisation of Working Time Regulations, 2003 (L.N. 247 of 2003) every worker (including a posted worker) is entitled to:

- a) a minimum daily rest period of 11 consecutive hours per 24 – hour period during which the worker performs work for his employer.
- b) A rest break of at least 15 minutes if the working day is longer than six hours.
- c) A minimum uninterrupted weekly rest period of 24 hours, in addition to the daily rest period of 11 hours referred to in (a) above for each seven –day period during which the worker works for the employer.

The average working time for each seven-day period of a worker, including overtime shall not exceed 48 hours. However a worker, if he or she so wishes can agree with his/her employer in writing to work more than the average of 48 hours. The rates of overtime pay are stipulated in several Wage Regulation Orders which determine different rates of pay for different sectors.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

An information leaflet on Working Time was compiled and published by the Department of Industrial and Employment Relations. This leaflet was distributed in the Customer Care Sections of the Department and of the Employment and Training Corporation.

3) *Please provide pertinent figures, statistics and factual information, in particular: average working hours in practice for each major professional category; any measures permitting derogations from legislation regarding working time.*

The Organisation of Working Time Regulations 2003 do not apply where other legislation laying down more specific provisions relating to the organisation of working time for certain occupations or occupational activities are in force. They do not apply also to seafarers on board sea going vessels, whether publicly or privately owned.

Article 2§2

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

The Organisation of Working Time Regulations, 2003 (L.N. 247 of 2003) stipulate that every whole time employee shall be entitled to the national holidays and to all public holidays with full pay. (Regulation 8 (5)).

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

The Department of Industrial and Employment Relations, through its Inspectorate Section, provides information to the public on conditions of employment through its customer care service. This section also provides assistance for employees who allege that their rights are violated. Inspections at work places are carried out to ensure compliance with minimum conditions of employment as they emerge from any recognised conditions of employment established under the Employment and Industrial Relations Act. The main functions of the Inspectorate Section are to secure enforcement of legal provisions relating to employees such as provisions relating to hours, wages, overtime etc, and to supply technical information and advice to employers and employees concerning the compliance with legal provisions as regards the recognised conditions of employment.

Inspecting officers are empowered to:

- a) to enter freely and without previous notice at all reasonable times any premises or place liable to inspection under the Employment and Industrial Relations Act;

- b) to carry out in any such premises or place any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the provisions of employment legislation are being observed and in particular :-
 - a. to interrogate alone or in the presence of witnesses, the employer and/or the employees on any conditions of employment
 - b. to require the production of any books, registers or other documents the keeping of which is prescribed by any employment law and to copy such documents.

3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

At present, in Malta there are fourteen Public Holidays

Article 2§3

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

By virtue of the Organisation of Working Time Regulations, 2003 (L.N. 247 of 2003), every worker is entitled to paid annual leave of at least the equivalent in hours of four weeks and four working days calculated on the basis of a 40-hour working week, and an 8-hour working day (192 hours per year) (Regulation 8).

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

The Department of Industrial and Employment Relations, through its Inspectorate Section, provides information to the public on conditions of employment through its customer care service. This section also provides assistance for employees who allege that their rights are violated. Inspections at work places are carried out to ensure compliance with minimum conditions of employment as they emerge from any recognised conditions of employment established under the Employment and Industrial Relations Act. The main functions of the Inspectorate Section are to secure enforcement of legal provisions relating to employees such as provisions relating to hours, wages, overtime etc, and to supply technical information and advice to employers and employees concerning the compliance with legal provisions as regards the recognised conditions of employment.

Inspecting officers are empowered to:

- a) to enter freely and without previous notice at all reasonable times any premises or place liable to inspection under the Employment and Industrial Relations Act;

- b) to carry out in any such premises or place any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the provisions of employment legislation are being observed and in particular :-
 - a. to interrogate alone or in the presence of witnesses, the employer and/or the employees on any conditions of employment
 - b. to require the production of any books, registers or other documents the keeping of which is prescribed by any employment law and to copy such documents .

3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

During the period under review, the number of irregularities regarding vacation leave found during inspections was as follows:

2005 – 62 irregularities

2006 – 55 irregularities

2007 – 62 irregularities

2008 – 35 irregularities.

Article 2§4

Not accepted.

Article 2§5

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

By virtue of the Organisation of Working Time Regulations 2003 (L.N. 247 of 2003), every worker is entitled to a minimum uninterrupted weekly rest period of 24 hours for each seven-day period during which the worker works for the employer.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

The Department of Industrial and Employment Relations, through its Inspectorate Section, provides information to the public on conditions of employment through its customer care service. This section also provides assistance for employees who allege that their rights are violated. Inspections at work places are carried out to ensure compliance with minimum conditions of employment as they emerge from any recognised conditions of employment established under the Employment and Industrial

Relations Act. The main functions of the Inspectorate Section are to secure enforcement of legal provisions relating to employees such as provisions relating to hours, wages, overtime etc, and to supply technical information and advice to employers and employees concerning the compliance with legal provisions as regards the recognised conditions of employment.

Inspecting officers are empowered to:

- a) to enter freely and without previous notice at all reasonable times any premises or place liable to inspection under the Employment and Industrial Relations Act;
- b) to carry out in any such premises or place any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the provisions of employment legislation are being observed and in particular :-
 - a. to interrogate alone or in the presence of witnesses, the employer and/or the employees on any conditions of employment
 - b. to require the production of any books, registers or other documents the keeping of which is prescribed by any employment law and to copy such documents .

3) Please provide pertinent figures, statistics and any other relevant information, in particular: circumstances under which the postponement of the weekly rest period is provided.

The weekly rest period may be calculated over a 14-day reference period if the employer so determines and in such cases, a worker shall be entitled to either:

- a) two uninterrupted rest periods each of not less than 24 hours, each preceded by a daily rest period, in each 14 – day period during which the worker works for the employer or
- b) one uninterrupted rest period of not less than 48 hours, preceded by a daily rest period in each such 14 day period during which the worker works for the employer

Article 2§6

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

By virtue of the Information to Employees Regulations 2002, (L.N. 431 of 2002), the employer is bound to give to the employee a letter of engagement or a signed statement, by not later than eight working days from the commencement of employment which shall include the following information:

- a) the name, registration number and registered place of business of the employer and the identity card number, sex and address of the employee and the place of work,
- b) The date of commencement of employment ,
- c) The period of probation,
- d) Normal rates of wages payable,
- e) The overtime rates of wages payable,
- f) The normal hours of work,
- g) The periodicity of wage payments,
- h) In the case of a fixed term contract of employment, the expected or agreed duration of the contract period,
- i) The paid holidays, and the vacation, sick and the other leave to which the employee is entitled
- j) The conditions under which fines may be imposed by the employer,
- k) The title grade, nature or category of work for which the employee is employed,
- l) The notice periods to be observed by the employer should it be the case,
- m) The collective agreement, if any, governing the employee's conditions of work, and
- n) Any other relevant or applicable conditions of employment.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

The Department of Industrial and Employment Relations, through its Inspectorate Section, provides information to the public on conditions of employment through its customer care service. This section also provides assistance for employees who allege that their rights are violated. Inspections at work places are carried out to ensure compliance with minimum conditions of employment as they emerge from any recognised conditions of employment established under the Employment and Industrial Relations Act. The main functions of the Inspectorate Section are to secure enforcement of legal provisions relating to employees such as provisions relating to hours, wages, overtime etc, and to supply technical information and advice to employers and employees concerning the compliance with legal provisions as regards the recognised conditions of employment.

Inspecting officers are empowered to:

- a) to enter freely and without previous notice at all reasonable times any premises or place liable to inspection under the Employment and Industrial Relations Act;
- b) to carry out in any such premises or place any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the provisions of employment legislation are being observed and in particular :-
 - a. to interrogate alone or in the presence of witnesses, the employer and/or the employees on any conditions of employment
 - b. to require the production of any books, registers or other documents the keeping of which is prescribed by any employment law and to copy such documents .

3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

Malta has no issues to report under this point.

Article 2§7

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

It should be noted that the Organisation of Working Time Regulations, 2003 (L.N. 247 of 2003) provide for certain measures to protect night and shift workers.

A night worker's normal hours of work shall not exceed an average of eight hours in any 24 hour period calculated on a reference period as defined by an applicable collective agreement or in any other case by a period of 17 weeks.

Notwithstanding the above the employer shall ensure that no night worker whose work involves special hazards or heavy physical or mental strain shall work more than eight hours in any period of 24 hours.

Prior to assigning a worker to carry out night work and at regular intervals thereafter, the employer is bound to take necessary measures to ensure that the worker concerned undergoes a suitable health assessment to determine the workers' health status in order to ascertain fitness for the proposed work.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

The Department of Industrial and Employment Relations, through its Inspectorate Section, provides information to the public on conditions of employment through its customer care service. This section also provides assistance for employees who allege that their rights are violated. Inspections at work places are carried out to ensure compliance with minimum conditions of employment as they emerge from any

recognised conditions of employment established under the Employment and Industrial Relations Act. The main functions of the Inspectorate Section are to secure enforcement of legal provisions relating to employees such as provisions relating to hours, wages, overtime etc, and to supply technical information and advice to employers and employees concerning the compliance with legal provisions as regards the recognised conditions of employment.

Inspecting officers are empowered to:

- a) to enter freely and without previous notice at all reasonable times any premises or place liable to inspection under the Employment and Industrial Relations Act;
- b) to carry out in any such premises or place any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the provisions of employment legislation are being observed and in particular :-
 - a. to interrogate alone or in the presence of witnesses, the employer and/or the employees on any conditions of employment
 - b. to require the production of any books, registers or other documents the keeping of which is prescribed by any employment law and to copy such documents .

3) *Please provide pertinent figures, statistics and any other relevant information, in particular: the hours to which the term 'night work' applies.*

In the Organisation of Working Time Regulations, 2003 (L.N. 247 of 2003), the term 'night time' is defined as the period between 10 p.m. of any one day and 6 a.m. of the next day. On the other hand, the term 'night worker' is defined as a worker who:

- a) works at least three hours of his daily working time as a normal course during night time; or
- b) works more than 50 per cent of his annual working time, or such lower proportion as may be specified in appropriate provisions of a relevant collective agreement during night time.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Appendix to Article 4§4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Appendix to Article 4§5

It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exception being those persons not so covered.]

Article 4§1

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

The Employment and Industrial Act (Cap 452) defines “wages” as remuneration or earnings, payable by an employer to an employee and includes any bonus payable under article 23 other than any bonus or allowance related to performance or production. The statutory minimum wage is adjusted each year to compensate for the increase in the cost of living. The minimum wages for the period under review were the following:

2005 – MTL 55.63

2006 – MTL 57.88

2007 – MTL 59.63

2008 – EUR 142.39 .

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

The Department of Industrial and Employment Relations, through its Inspectorate Section, provides information to the public on conditions of employment through its customer care service. This section also provides assistance for employees who allege that their rights are violated. Inspections at work places are carried out to ensure

compliance with minimum conditions of employment as they emerge from any recognised conditions of employment established under the Employment and Industrial Relations Act. The main functions of the Inspectorate Section are to secure enforcement of legal provisions relating to employees such as provisions relating to hours, wages, overtime etc, and to supply technical information and advice to employers and employees concerning the compliance with legal provisions as regards the recognised conditions of employment.

Inspecting officers are empowered to:

- a) to enter freely and without previous notice at all reasonable times any premises or place liable to inspection under the Employment and Industrial Relations Act;
- b) to carry out in any such premises or place any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the provisions of employment legislation are being observed and in particular :-
 - a. to interrogate alone or in the presence of witnesses, the employer and/or the employees on any conditions of employment
 - b. to require the production of any books, registers or other documents the keeping of which is prescribed by any employment law and to copy such documents .

3) Please provide pertinent figures, statistics and any other relevant information, in particular: national net average wage¹ (for all sectors of economic activity and after deduction of social security contributions and taxes; this wage may be calculated on an annual, monthly, weekly, daily or hourly basis); national net minimum wage, if applicable, or the net lowest wages actually paid (after deduction of social security contributions and taxes); both net average and minimum net wages should be calculated for the standard case of a single worker; information is also requested on any additional benefits such as tax alleviation measures, or the so-called non-recurrent payments made available specifically to a single worker earning the minimum wage as well as on any other factors ensuring that the minimum wage is sufficient to give the worker a decent standard of living; the proportion of workers receiving the minimum wage or the lowest wage actually paid.

Where the above figures are not ordinarily available from statistics produced by the States Parties, Governments are invited to provide estimates based on ad hoc studies or sample surveys or other recognised methods.

¹ The concept of wage, for the purpose of this provision, relates to remuneration – either monetary or in kind – paid by an employer to a worker for time worked or work done. Remuneration should cover, where applicable, special bonuses and gratuities. The Committee’s calculations are based on net amounts, i.e. after deduction of taxes and social security contributions. Social transfers (e.g. social security allowances or benefits) are taken into account only when they have a direct link to the wage. The national net average wage is that of a full-time wage earner, if possible calculated across all sectors for the whole economy, but otherwise for a representative sector such as manufacturing industry or for several sectors.

The statutory gross minimum wage in Malta for the period under review was as follows:

2005 – MTL 2892.76 (EUR 6738.32)

2006 – MTL 3009.76 (EUR 7010.85)

2007 – MTL 3100.76 (EUR 7222.83)

2008 – EUR 7404.28 .

Below are listed the average gross annual salary for employees by economic activity as in June 2009:

Agriculture, hunting and forestry	€ 11,344*
Fishing	€ 22,648*
Mining and quarrying	€ 13,138*
Manufacturing	€ 13,169
Electricity , gas and water supply	€ 15,710
Construction	€ 12,952
Wholesale and retail trade, repairs	€ 12,654
Transport, storage and communication	€ 15,620
Financial intermediation	€ 16,545
Real Estate, renting and business activities	€ 15,170
Public administration and defence, compulsory social security	€ 15,233
Education	€ 14,837
Health and social work	€ 13,961
Other community, social and personal service activities	€ 13,788
Private Households with employed persons	€ 6,600*
Extra –territorial organizations and bodies	€ 14,177*

* under-represented due to small ample size. Please note that these data must be interpreted with caution.

For the average gross annual salary for employees by economic activity for the period 2005 to 2008 , please refer to the attached folder “Average gross Annual Salary 2005 – 2008”

Article 4§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

A number of wage regulation orders issued by virtue of Maltese employment law apply

to particular sectors stipulate the overtime rates applicable, including the rate applicable on Sundays and public holidays.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

The Department of Industrial and Employment Relations, through its Inspectorate Section, provides information to the public on conditions of employment through its customer care service. This section also provides assistance for employees who allege that their rights are violated. Inspections at work places are carried out to ensure compliance with minimum conditions of employment as they emerge from any recognised conditions of employment established under the Employment and Industrial Relations Act. The main functions of the Inspectorate Section are to secure enforcement of legal provisions relating to employees such as provisions relating to hours, wages, overtime etc, and to supply technical information and advice to employers and employees concerning the compliance with legal provisions as regards the recognised conditions of employment.

Inspecting officers are empowered to:

- a) to enter freely and without previous notice at all reasonable times any premises or place liable to inspection under the Employment and Industrial Relations Act;
- b) to carry out in any such premises or place any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the provisions of employment legislation are being observed and in particular :-
 - a. to interrogate alone or in the presence of witnesses, the employer and/or the employees on any conditions of employment
 - b. to require the production of any books, registers or other documents the keeping of which is prescribed by any employment law and to copy such documents .

3) *Please provide pertinent figures, statistics (estimates, if necessary) and any other relevant information, in particular: methods used to calculate the increased rates of remuneration; impact of flexible working time arrangements on remuneration for overtime hours; special cases when exceptions to the rules on remuneration for overtime work are made.*

During the period under review, the number of irregularities found during inspections regarding overtime payments were as follows:

2005 – 45 irregularities

2006 – 45 irregularities

2007 – 54 irregularities

2008 – 46 irregularities.

Article 4§3²

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

The equal pay principle is enshrined in article 27 of the Employment and Industrial Relations Act (Cap 452). This stipulates that employees in the same class of employment are entitled to the same rate of remuneration for work of equal value. The law states that an employer and a worker or a union of workers through a collective agreement, may agree on different salary scales, annual increments and other conditions of employment that are different for those workers who are employed at different times, where such salary scales have a maximum that is achieved within a specific period of time. Article 27 also provides that any distinction between classes of employment based in discriminatory treatment otherwise than in accordance with the provisions of the Act or any other law shall be null and of no effect.

Article 30 of the Act states that any person who alleges that the employer is in breach of, or that the conditions of employment are in breach of article 27, may within four months of the alleged breach, lodge a complaint to the Industrial Tribunal (Labour Court) and the Industrial Tribunal shall hear such complaint and carry out any investigations as it shall deem fit. If the Industrial Tribunal is satisfied that the complaint is justified, it may take such measures as it may deem fit including the cancellation of any contract of service or of any clause in a contract or in a collective agreement which is discriminatory and may order the payment of reasonable sums of money as compensation to the aggrieved party. The same article holds that any action taken by a complainant shall be without prejudice to any further action that such complainant may be entitled to take under any other applicable law and shall be without prejudice to any other action to which the respondent may be subject in accordance with any other applicable law.

Another remedy available to the person alleging a breach of the equal pay principle is recourse to the Department of Industrial and Employment Relations which Department then initiates legal proceedings before the Court of Magistrates as a Court of Criminal Judicature as indicated by Article 44 of the Employment and Industrial Relations Act. The Department is obliged to initiate criminal proceedings whenever there is an offence against the provisions of the Act. Article 45 of the Act states that any employer who contravenes or fails to comply with any recognised conditions of employment prescribed by a national standard order or by a sectoral regulation order or collective agreement, or with any provisions of the Act or any regulations made there-under shall, unless a different penalty is established for such offence, on conviction be liable to a fine of not less than € 232.94 and not exceeding € 2329.37. Where the employer is convicted of having failed to effect payment of any moneys due to an employee under this Act or under any national standard order or sectoral regulation order or any other order made under this Act, the court shall, at the request of the prosecution, besides awarding the punishment, order the offender, on proof of the amount, to refund or pay

²Parties that have accepted Article 20 of the European Social Charter (revised) do not have to reply to questions on Article 4§3, but must take account of these questions in their answers on Article 20.

to the employee concerned, the said amount due by him. Any such order by the Court shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted between the employee concerned and the employer. It is stated that nothing shall derogate from any right of the employee, as the case may be, to recover by any other means any amount due to him.

As in all criminal proceedings, the evidence must be admissible and must prove that the accused is guilty beyond reasonable doubt. This is not easy and in fact, the complainant usually prefers to take action before the Industrial Tribunal where the level of proof is on the balance of probabilities, and thus less onerous

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

Malta has no issues to report under this point.

3) *Please supply detailed statistics and any other relevant information on pay differentials between men and women not working for the same employer by sector of the economy, and according to level of qualification or any other relevant factor.*

Below are listed the average gross annual salary for men and women by economic activity as on June 2009:

	MEN	WOMEN
Agriculture, hunting and forestry	€ 11,261*	€ 11,910*
Manufacturing	€ 13,683	€ 11,479
Electricity, gas and water supply	€ 15,838	€ 12,680*
Construction	€ 13,123	€ 10,791*
Wholesale and retail trade, repairs	€ 13,593	€ 11,049
Hotels and restaurants	€ 12,030	€ 9,484
Transport, storage and communication	€ 16,257	€ 13,466
Financial intermediation	€ 18,148	€ 15,371
Real estate, renting and business activities	€ 17,191	€ 12,091
Public administration and defence	€ 15,988	€ 13,797
Education	€ 16,468	€ 14,048
Health and social work	€ 15,433	€ 12,934
Other community, social / personal service activities	€ 14,786	€ 11,849
Extra-territorial organizations and bodies	€ 14054*	€ 14308*

* under-represented due to small sample size. Please note that these data must be interpreted with caution.

For the average gross annual salary for men and women by economic activity for the period 2005 to 2008, please refer to the attached folder “Average gross Annual Salary 2005 – 2008”

Article 4§4

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Article 36 of the Employment and Industrial Relations Act (Cap 452) stipulates that a contract of service for an indefinite time can be terminated by the employer on the grounds of redundancy by giving notice to the employee. Such notice shall be of the following respective duration:

- a) if the employee has been in employment continuously with the same employer:
 - i. for more than one month but not more than six months one week;
 - ii. for more than six months but not more than two years two weeks;
 - iii. for more than two years but more than four years four weeks;
 - iv. for more than four years but not more than seven years eight weeks
 - v. for more than seven years , an additional one week for every subsequent year of service up to a maximum of twelve weeks
 - vi. or such longer periods as may be agreed by the employer and employee in the case of technical, administrative, executive or managerial posts.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

The Termination Section of the Department of Industrial and Employment Relations provides advice on matters relating to employment rights and obligations relating to termination issues emanating from the employment contract. In cases of alleged outstanding dues, this section investigates and issues claims as necessary.

One of the functions of the Terminations section is to receive reports of cases relating to termination of Contracts of Service and wage issues. The public can lodge claims for unpaid wages, overtime, notice money etc. In such cases the Department will issue a letter to the employer quoting the amounts due to his/her ex-employee. The employer is also notified that s/he is being granted 10 working days to rectify his/her position. If a reply is received from the employer within the compliance period, the Department will take note of the employer’s answer. The employer can either agree with the claim and hence agrees to settle any financial dues, or reacts quoting different financial dues. In case of the former , the employer is contacted to agree how s/he will be settling the amount claimed. In the case of the latter, if the letter doesn’t contain sufficient proof to

sustain the employer's claim or no reply is received within the compliance period, the case would be referred to court.

For the statistical data regarding the number of claims issued against employers, the number of cases settled amicably out of court, and how many cases were referred for court action, please refer to the attached Departmental Annual Reports for the years 2005, 2006, 2007 and 2008.

Article 4§5

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Article 15 of the Employment and Industrial Relations Act holds that except where expressly permitted by the provisions of this Act or required by any other law, or where ordered by or in virtue of an order of a competent court, or permitted in an agreement entered into between an employer or employers or an organisation of employers on the one hand and a trade union or trade unions representative of the employees concerned on the other, an employer shall not make any deductions nor enter into any contract with an employee authorising any deductions to be made from the wages to be paid by the employer to the employee. The above is also applicable to public sector employees.

Moreover, unless expressly provided by or under the Act or any other law, an employer shall not compute as part of the wages of an employee any other benefit or income, even though granted or paid by the employer, which is payable on account of any cause other than the contract of service.

Notwithstanding the above, however, at the request in writing of an employee, the employer may make deductions from the wages of such employee for the purpose of a superannuation or thrift scheme or for any purpose in the carrying out of which the employer has no beneficial financial interest, direct or indirect.

Article 15(4) states that deductions in the form of direct or indirect payments for the purpose of obtaining or retaining employment shall not be made from the wages of an employee by an employer, or by any intermediary or labour contractor or recruiter. Nor shall the employer make any deduction from wages by way of discount, interest or any charge of similar nature in view of any advance of wages made to any employer in anticipation of the covenanted date of payment thereof.

In so far, as fines are concerned, article 19 of the Employment and Industrial Relations Act states that unless otherwise prescribed in a collective agreement, where – (a) the terms of any written contract of service signed by the employees or the terms of written statement signed by an employer in accordance with article 7 specify in detail the fine or fines to which the employee may become liable in respect of an act or omission; and (b) the terms of any such contract or the terms of any such statement have been previously approved by the Director of Industrial and Employment Relations, it shall be lawful for the employer to make such deductions as may be authorised by such contract or such written statement.

This notwithstanding, where an employee fails without just cause to give to his employer the total number of hours of work as bound by the terms of any contract of service applicable to him, the employer shall not inflict on the employee any fine for such loss of work but may deduct from the total wages due to the employee that part thereof which corresponds to the work so lost.

1) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

During the period under review, the number of irregularities found during inspections concerning wages and bonuses were as follows:

2005 – 107 irregularities re: wages and 44 irregularities re: bonus.

2006 – 151 irregularities re: wages and 29 irregularities re: bonus.

2007 – 131 irregularities re: wages and 34 irregularities re: bonus.

2008 – 75 irregularities re: wages and 12 irregularities re: bonus.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Seven or more members can form a trade union or an employers' association, provided that they apply to the Registrar of Trade Unions for registration. The application should include two authentic copies of the rules of the organisation. The rules of the organisation applying for registration must comply with the provisions of section 50 of the Employment and Industrial Relations Act, 2002.

The objects which a trade union or an employer's association may pursue are implied in the definition of "trade union" and of "employers' association" at section 2 of the Act.

Cancellation of a trade union or of an employers' association can take place only for any of the reasons specified in section 55 of the Act. These reasons include the wilful contravention of the provisions of the Act, non conformity with any of provisions of the Act (as for example by failure to submit annual returns as required by law); and falling of the number of members to less than seven. The trade union or employers' association as the case may be has the right to appeal from the decision of the Registrar of Trade Union to the Court of Appeal.

There is no provision of the law hindering a trade union or employers' association from joining an international organization of worker' or employers.

It is confirmed that all Maltese workers with the exception of the police and the armed forces enjoy the right to establish and join trade unions.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Malta has no issues to report under this point.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

As at 30 June 2009, there were registered 30 Trade Unions with a total membership of 83,443 members and 18 Employers' Associations with a total membership of 8,641 members.

For the number of registered trade unions, employers' associations and their membership for the period 2005-2008, please refer to the attached Departmental Annual Reports.

Article 6 – The right of workers to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake

- 1 to promote joint consultation between workers and employers;
- 2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- 3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise

- 4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Appendix to Article 6§4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Article 6§1

1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.

Consultation between workers and employers is regulated by the Employee (Information and Consultation) Regulations (Legal Notice 10 of 2006 as amended by Legal Notice 427 of 2007) and these regulations apply for undertakings which employ 50 employees and over.

By virtue of these Regulations, the employer is obliged to make the practical arrangements necessary at the appropriate level to allow his employees to effectively exercise the right to information and consultation. When defining or implementing practical arrangements for information and consultation, the employer and the employees' representatives shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests of both the undertaking and of the employees.

The employer must provide the information and consultation representative with information on:

- a) the recent and probable development of the undertaking's activities and economic situation;
- b) the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular, here there is a threat to employment within the undertaking
- c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations.

Such information must be given at such time , in such fashion and with such content as are appropriate to enable the information and consultation representative to conduct an adequate study and where necessary to prepare for consultation.

In cases where there is a recognized trade union, consultation shall be carried out with the representatives of that recognized trade union. In the case where there is no recognized trade union, consultation would be carried out with the representatives of the employees elected or appointed by means of a secret ballot.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Malta has no issues to report under this point.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Malta has no issues to report under this point.

Article 6§2

1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.

A collective agreement is a private contract, negotiated and concluded between management and labour at an enterprise level without interference whatsoever by third parties. Maltese law does not in any way allow interferences of any kind. It is only when a concluded collective agreement breaches the minimum conditions of employment prescribed by law that the state is allowed to intervene and to take the necessary actions.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Malta has no issues to report under this point.

3) Please provide pertinent figures, statistics and any other relevant information, in particular on collective agreements concluded in the private and public sector at national and regional/sectoral level, as appropriate.

As at October 2009, the number of collective agreements registered with the Department of Industrial and Employment Relations and are still in force is 115 and cover around 20,000 employees. For statistical data regarding collective agreements for the period 2005 – 2008, please refer to the attached Department of Industrial and Employment (DIER) Annual reports.

Article 6§3

1) Please describe the general legal framework as regards conciliation and arbitration procedures in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.

The Employment and Industrial Relations Act states that where a trade dispute exists or is apprehended, the parties to the dispute may agree to refer the dispute to the Director of Industrial and Employment Relations or to a conciliator chosen by the parties themselves or by the Director. The functions of the conciliator are to:

- (a) to communicate with the parties to the trade dispute immediately;
- (b) to organise and preside conciliation meetings between the parties as may be necessary in order to resolve the trade dispute;
- (c) to consider the causes and circumstances of the trade dispute;
- (d) to endeavour to bring about an amicable settlement of the dispute as expeditiously as possible and
- (e) to make such recommendations as the conciliator may deem fit in order to resolve the trade dispute

If an amicable settlement is reached, a memorandum of the terms of the settlement is drawn up in writing and signed by the parties or their representatives and a copy is delivered to the Minister responsible for labour. Such an agreement is binding for at least one year.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Malta has no issues to report under this point.

3) Please provide pertinent figures, statistics and any other relevant information, in particular: information on the nature and duration of Parliament, Government or court interventions in collective bargaining and conflict resolution by means of, inter alia, compulsory arbitration.

Conciliations and the Settlement of Trade Disputes

The Department of Industrial and Employment Relations always strives to take an increasingly more proactive approach towards the settlement of trade disputes to the mutual satisfaction of both the Enterprise and the Union involved. This mediation in the field of industrial unrest has largely contributed towards an increasingly stable industrial climate, avoiding strikes and other costly forms of litigation. In 2009 the Department intervened on 62 occasions throughout the year. Agreement was successfully reached in 54 cases while such agreement failed to be reached in only seven cases. Another case was referred to the Industrial Tribunal.

For statistical information for the period 2005-2008, please refer to the attached Departmental Annual Reports.

Industrial Tribunal

The Industrial Tribunal is an independent tribunal, set up in terms of the Employment and Industrial Relations Act and has a variable composition established by the law, depending on the nature of the case. This is either of a Chairperson [who is selected by rotation from a panel of Chairpersons] alone, or a Chairperson and two members, one selected from a panel of persons representing employers' interests, and the other from a panel of persons representing the trade unions. The Industrial Tribunal hears and decides trade disputes referred to it by the Minister responsible for employment and industrial relations, at the request of either one, or both of the parties involved in a dispute. It also hears cases of alleged unfair dismissal, discrimination, harassment and different remuneration for work of equal value. Sessions of the Industrial Tribunal are held at the Courts of Law.

The Department provides administrative support services for the Industrial Tribunal, to ensure its proper functioning.

For statistical information for the period 2005-2008, please refer to the attached Departmental Annual Reports.

Article 6§4

1) Please describe the general legal framework as regards collective action in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please also indicate any restrictions on the right to strike. Please specify the nature of, reasons for and extent of any reforms.

Article 64 of the Employment and Industrial Relations Act (cap 452) stipulates that an act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort or quasi –tort on the grounds that:

- (a) it induces another person to break a contract of employment; or
- (b) it consists in his threatening that a contract of employment (whether one to which he is a party or not) will be broken or that he will induce another person to break a contract of employment to which that other person is a party; or
- (c) is an interference with trade, business or employment of another person, or with the right of another person to dispose of his capital or his labour as he wills.

It shall be also lawful for one or more persons in contemplation or furtherance of a trade dispute to attend at or near

- (a) a place where another person works or carries on business; or
- (b) any other place where another person happens to be, not being a place where he resides,

for the purpose only of peacefully obtaining or communicating information or peacefully persuading any person to work or abstain from working.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

Malta has no issues to report under this point.

3) *Please provide pertinent figures, statistics and any other relevant information, in particular: statistics on strikes and lockouts as well as information on the nature and duration of Parliament, Government or court interventions prohibiting or terminating strikes and what is the basis and reasons for such restrictions.*

Year	Number of Strikes	Workers Involved	Man-days Lost
2003	8	1945	3313.5
2004	4	523	1651.5
2005	8	972	1340.6
2006	8	7023	2934.5
2007	5	1106	5763
2008	4	1522	1771

Article 21 – The right of workers to be informed and consulted within the undertaking

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

- a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
- b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Appendix to Articles 21 and 22

- 1 For the purpose of the application of these articles, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice.
- 2 The terms “national legislation and practice” embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers’ representatives, customs as well as relevant case law.
- 3 For the purpose of the application of these articles, the term “undertaking” is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
- 4 It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are “undertakings” within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
- 5 It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
- 6 The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Not applicable.

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

- a to the determination and the improvement of the working conditions, work organisation and working environment;
- b to the protection of health and safety within the undertaking;
- c to the organisation of social and socio-cultural services and facilities within the undertaking;
- d to the supervision of the observance of regulations on these matters.

Appendix to Articles 21 and 22

- 1 For the purpose of the application of these articles, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice.
- 2 The terms “national legislation and practice” embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers’ representatives, customs as well as relevant case law.
- 3 For the purpose of the application of these articles, the term “undertaking” is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
- 4 It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are “undertakings” within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
- 5 It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
- 6 The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Appendix to Article 22

- 1 This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.
- 2 The terms “social and socio-cultural services and facilities” are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children’s holiday camps, etc.

Not applicable.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

- 1 to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
- 2 to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Appendix to Article 26

It is understood that this article does not require that legislation be enacted by the Parties.

It is understood that paragraph 2 does not cover sexual harassment.

Article 26§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

The National Commission for the Promotion of Equality (NCPE) safeguards equal treatment on the grounds of gender and family responsibilities in employment and addresses sexual harassment at the workplace by virtue of Chapter 456 of the Laws of Malta - the Equality for Men and Women Act. In effect, NCPE empowers individuals through awareness raising campaigns and training on sexual harassment, and assists persons who feel sexually harassed at the work place by investigating their complaints.

The Legal Framework and Sexual Harassment

The legal framework and sexual harassment provisions are embodied in Chapter 456 of the Laws of Malta, the Equality for Men and Women Act, which states that:

“9. (1) ... it shall be unlawful for any person to sexually harass other persons, that is to say:

(a) to subject other persons to an act of physical intimacy; or

(b) to request sexual favours from other persons; or

(c) to subject other persons to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of any written words, pictures or other material, where the act, words or conduct is unwelcome to the persons to whom they are directed and could reasonably be regarded as offensive, humiliating or intimidating to the persons to whom they are directed; or

(d) the persons so subjected or requested are treated less favourably by reason of such persons' rejection of or submission to such subjection or request, it could reasonably be anticipated that such persons would be so treated.”

(Chapter 456 – Equality For Men and Women Act, Article 9(1))

Hence, according to the abovementioned law, sexual harassment entails any unwelcome physical acts, words or gestures having a sexual connotation, and display of sexually offensive material that occur in any workplace or educational establishments. In addition, Legal Notice 181 of 2008 - Access to Goods and Services and their Supply (Equal Treatment) Regulations extends the illegality of sexual harassment within both public and private sectors in the provision of goods and services that are available to the public.

In addition, Chapter 456 also delineates that persons that are responsible for any work place or educational establishment are to ensure that a culture of inappropriate behaviour does not develop, and are to prevent such behaviour at all times and places where there is a work-related activity being conducted. Similarly, persons responsible of organisations that supply goods and services are also to ensure that their respective organisations are free from a sexual hostile environment by virtue of Legal Notice 181 of 2008 - Access to Goods and Services and their Supply (Equal Treatment) Regulations.

Accordingly, NCPE raises awareness on sexual harassment and its consequences and assists persons who feel sexually harassed by investigating their complaints. A detailed overview of such initiatives is delineated in the sections below.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

NCPE seeks to inform employers, employees and the general public about their rights and responsibilities in relation to sexual harassment through training. Indeed, NCPE provides training on sexual harassment to public entities, private companies, legal workers, human resource managers, other managers and directors, Malta's Armed Forces, and any other group which may request such training. Such training entails an overview of the legislation on sexual harassment, as well as the penalties that may be incurred; a detailed description of what constitutes sexual harassment, including some examples; and the consequences of sexual harassment on the individual and on a group of colleagues are also explained. In addition, other examples as to what does not constitute sexual harassment are also given. During these training sessions a description of what can be done in the case of sexual harassment and who can be contacted for advice if the need arises is also delineated.

Moreover, as part of the EU co-funded project, 'Taking Gender Equality to Local Communities' local organisations and the general public were provided training on gender roles in public and private life; the benefits of gender mainstreaming and sexual harassment at the place of work.

In addition, NCPE empowers employers and human resource managers on the importance of having a sexual harassment policy at the place of work and assists them in drafting and reviewing such policies. Such Sexual Harassment Policies are intended to signify an organisation's commitment to prevent sexual harassment in concrete terms. Indeed, these policies include a clear definition of sexual harassment in line with relevant legislation; and a reference to the consequences of sexual harassment, the

unlawfulness of victimisation, the dignity and respect of persons; directions on how the policy will be implemented and communicated; a reference to training staff about the policy; and indications as to the consequences in case the policy is breached.

3) *Please supply any relevant statistics or other information on awareness raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.*

NCPE assists persons who feel discriminated against or sexually harassed by investigating their complaints. In effect, between the period of 2005 up to the end of 2008, NCPE has received 19 cases of alleged sexual harassment. All complaints submitted to NCPE are processed through an established procedure that ensures confidentiality during all phases of investigation and processing.

Moreover, in 2005, NCPE published 'Sexual Harassment: A Code of Practice', which is intended to disseminate information to employers, employees and the general public about sexual harassment, and the relative rights and obligations of employers as well as employees. This manual is meant to ensure that sexual harassment at the workplace is prohibited and that a number of sanctions can be imposed on perpetrators.

The Management and Personnel Office, in collaboration with NCPE, also compiled a set of guidelines about sexual harassment intended for the Heads of Department and public officers in the public service. 'The Public Service: Guidelines on what constitutes sexual harassment and on the procedures to be adopted in cases of sexual harassment' prohibits sexual harassment in the public service and promotes a dignified working environment to all public officers, irrespective of their gender. In fact, these guidelines describe how sexual harassment cases should be tackled in a fair, consistent way while ensuring standards of good practice.

Hence, as discussed throughout the mentioned initiatives, NCPE, in collaboration with key stakeholders, is relentlessly committed to raise awareness so as to promote the rights and responsibilities in relation to sexual harassment in the workplace and to enhance its prevention throughout.

Article 26§2

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

The Equal Treatment in Employment Regulations (Legal Notice 461 of 2004 as amended by Legal Notices 53, 338, and 427 of 2007 and 137 of 2008) stipulate that no person shall harass another person by subjecting him to unwanted conduct or request when such conduct or request takes place with the purpose or which has the effect of :

- (a) violating the dignity of the person who is so subjected , and
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the person who is so subjected

It should be noted that employers shall also be deemed to have discriminated against a person if they:

- (a) instruct any person to discriminate against another person,
- (b) neglect their obligation to suppress any form of harassment at their workplace.

Where an allegation is made that some form of harassment at the place of work has occurred, the person making the allegation or the Director of Industrial and Employment Relations have the right to send a written notification to the employer of the alleged harassment received, giving any relevant details and requesting a reply. On receipt of such notification, the employer shall submit a written reply within ten working days of the date of receipt of such notification giving the employer's version of events and any grounds for disputing the allegations as well as an explanation of any relevant procedures adopted by the employer to prevent harassment.

Any correspondence referred to above shall be admissible in proceedings brought before the Industrial Tribunal or other Court

A person claiming to have been subjected to harassment may within four months of the alleged breach refer the matter to the Industrial Tribunal and/or before the competent court of civil jurisdiction requesting the court to order the defendant to desist from such unlawful act and, where applicable, to order the payment of compensation for such damage suffered through such unlawful act. In any proceedings both in front of the Industrial Tribunal and the competent court of civil jurisdiction, it is up to the defendant to prove that no harassment has in fact taken place and the Court or Industrial Tribunal shall uphold the complaint if the defendant does not prove that he did not commit that unlawful act.

The Regulations also stipulate that it is the duty of the employer to take effective measures to prevent all forms of harassment in the workplace.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

For statistical information for the period 2005-2008, please refer to the attached Departmental Annual Reports.

3) *Please supply any relevant statistics or other information on awareness raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.*

Malta has no issues to report under this point.

Article 28 – Right of worker representatives to protection in the undertaking and facilities to be afforded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

- a they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;
- b they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Appendix to Article 28

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice"

1) Please describe the general legal framework, including decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.

Freedom of assembly and association is a basic human right prescribed in Article 42 of the Constitution of Malta. Moreover, Article 36 (14) of the Employment and Industrial Relations Act stipulate that an employer cannot dismiss an employee for the fact that the employee was a member of a trade union or is seeking office as, or acting or has acted in the capacity of an employees' representative.

It should be noted that collective agreements make provisions which stipulate that employees' representatives are afforded such facilities (such as office space and equipment, the use of a notice board etc.) and adequate time off to enable them to carry out their duties as union representatives accordingly.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Malta has no issues to report under this point.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Malta has no issues to report under this point.

Article 29 – The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Appendix to Articles 28 and 29

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

The Collective Redundancies (Protection of Employment) Regulations (L.N. 428 of 2002 as amended by Legal Notices 427 and 442 of 2004) stipulate that in all cases of collective redundancies, the employer proposing to declare the redundancies shall not terminate the employment of such employees before he has notified in writing the employees' representatives and has provided such employees' representatives with an opportunity for consultation. Such consultations between the employer and the employees' representatives shall begin within seven working days from the day on which the employees' representatives have been notified of the intended collective redundancies and such consultations shall cover ways and means of avoiding the collective redundancies or reducing the number of employees affected by such redundancies.

The employer is bound to supply the employees' representatives with a statement in writing all relevant information, such as the reasons for the redundancies, the number of employees to be made redundant, the number of employees normally employed by him, the criteria used for the selection of the employees to be made redundant, details regarding any redundancies payments which are due and the period over which redundancies are to be effected.

The employer is also bound to forward to the Director responsible for Employment and Industrial Relations a copy of the written notification and statement mentioned above.

Any projected collective redundancies shall only take place on the lapse of thirty days from the date of notification.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

The Director of Industrial and Employment Relations is asked to call a secret ballot to elect an employees' representative in the cases of collective redundancies and transfers of businesses.

The Director of Industrial and Employment Relations is asked to call a secret ballot to elect an employees' representative in the cases of collective redundancies and transfer of businesses. In fact during 2009, the Department intervened in six occasions for the appointment of an employees' representative in cases of collective redundancies.

3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

During 2008, four companies applied collective redundancies, which affected 246 employees. In 2009, fourteen companies applied collective redundancies and the number of employees effected was 499.

****END****