



15/02/2022

RAP/Cha/MLT/15(2022)

EUROPEAN SOCIAL CHARTER

15th National Report on the implementation of the
European Social Charter

submitted by

THE GOVERNMENT OF MALTA

Articles 2, 4, 5, 6 and 26

for the period 01/01/2017 – 31/12/2020

Report registered by the Secretariat on

15 February 2022

CYCLE 2022



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

submitted by the

Government of Malta

**for Thematic Group 3 – Labour Rights
(1 January 2017 – 31 December 2020)**

2021

INDEX

I.	INTRODUCTION	04
II.	PROVISIONS OF THE EUROPEAN SOCIAL CHARTER (revised)	

Thematic Group 3 – Labour Rights

Article 2	05
Article 4	07
Article 5	09
Article 6	10
Article 26	13

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, 21, 26 for the period 1 January 2017 to 31 December 2020.

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)

Thematic Group – Labour Rights

Article 2 - The right to just conditions of work

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;

MT reply

a) In practice cases are occasionally encountered where employees work more than 48 hours with their consent. In such cases, the Department of Industrial & Employment Relations (DIER) inspectors' monitor the situation to ensure that working conditions regulations and health and safety regulations are not breached. In cases where it is found that there is no written consent, the DIER inspectors investigate the situation and work with both the employer and employee to ensure that they are compliant with all rules while safeguarding the employees' rights.

A table below is provided on the number of investigations done relating to the organisation of working time provisions.

Table 1: Number of Investigations Relating to the Organisation of Working Time Regulations (ALL Investigations)

Investigations					
Total	Hours of Work	Vacation Leave	Rest Periods	Night Work	Other Issues Related to Organisation of Working Time
430	39	385	25	2	12
425	55	366	35	2	8
326	56	274	15	3	8
293	11	284	4	0	3
476	54	451	21	3	18
354	48	322	14	1	8
2304	263	2082	114	11	57

Source: DIER system as on 17th September 2021

c) The Employment and Industrial Relations Act does not provide for “on call” or for “on call allowance”.

The position of the regulator is that on call arrangements cannot be imposed upon the employee. The parties (employer and employee) are free to agree upon an on call

arrangement and for the payment of an on call allowance.

Being on call is not considered as being working time. It is only when the employee actually reports for work (which he is called to do so) when such hours start counting in terms of rest and remuneration purposes.

e) No legal amendments were made to facilitate flexible working arrangements as such provisions are already regulated through telework regulations. Furthermore, the Department of Social Security introduced four COVID related benefits, with one of specifically to cater for those parents with children of schooling age (who could not attend due to temporary closure of schools), who due to the nature of their work, could not work remotely from home due to the nature of their work, had to stay at home with their children. Circa 4,200 such parents were eligible and received the COVIDparent benefit (COPB) from March to October, that is until the reopening of the schools for the new scholastic year.

2. to provide for public holidays with pay;

MT reply

As regards to the comments that in certain sectors workers are only being paid “time and a half” for work performed during public holidays falling in the period Monday to Friday and this 50% increase is not being considered as adequate compensation, it should be noted that overtime rates are regulated by Wage Regulation Orders which regulate certain conditions of employment of employees working in specific sectors of industry.

It should be noted that out of 31 Wage Regulations in force, only seven Wage Regulation Orders do not provide for double payment rate. These seven Wage Regulation Orders cover employees working in the following sectors: Beverage industry; Cinemas and theatres, Printing, Public Transport, Seamen, Sextons and employees working in hotels; maintenance workers in hotels are paid double time on public holidays. All the other 24 Wage Regulation Orders provide for double time payment for work during public holidays.

As regards the query regarding how employees covered by collective agreements are paid for work on public holidays, we can safely say that normally, collective agreements provide for double rate payment for work done on public holidays.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the 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;**

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.

MT reply

The Department of Industrial and Employment Relations (DIER) has recently put a specific focus on investigating the working conditions of food couriers. Where there was a breach of conditions, remedy has been taken accordingly depending on the case.

- 2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;**

MT reply

a) Although 0-hour contracts of employment (locally commonly referred to as ‘casual work’) have become common practice in Malta, these type of contracts of employment are not regulated in terms of Maltese Law. In practice, casual workers are usually given a pro-rata entitlement to sick leave, vacation leave, statutory bonuses and any other entitlements stipulated by law. Such pro rata entitlement is calculated on the basis of the average number of hours worked every 13 weeks in line with S.L.452.79.

With regard to on-call service replies under Article 2.1.

b) The right to fair remuneration as regards to overtime was not affected by the COVID-19 crisis. Claims of breaches of overtime compensation were investigated and action was taken accordingly. During the period from March 2020 till June 2021 there were 142 claims of breaches of overtime compensation, of which 61 claims were settled with the assistance of the Department of Industrial and Employment Relations, while another 16 claims led to the issuing of charges against the employer.

c) No additional or extraordinary measures were taken which affected overtime regulations during or having effect after the pandemic.

d) SL 452.110 was amended by Legal Notice 81 of 2015, where employees whose overtime rate is not covered by a Wages Council Wage Regulation Order shall be paid one and a half times the normal rate for work carried out in excess of a 40 hour week, averaged over a 4 week period or over the shift cycle at the discretion of the employer.

While there are no applicable exceptions to certain sectors of activity or categories of workers, in practice contracts relating to high remuneration packages (including senior management etc) often stipulate that the remuneration of any hours worked over the

standard weekly hours are included in the pay package.

The same Legal Notice introduced the Banking of Hours measure. In all sectors, whether these sectors are covered by a Wages Council Wage Regulation Order or not, the employer may introduce schemes to bank hours, whereby up to 376 hours of the normal annual working hours in each calendar year may be banked, thus allowing extra hours over and above the normal weekly working hours to be worked during periods of higher work activity which would be redeemed during periods of lower activity by having working hours below the normal weekly working hours. Notwithstanding the latter, the average weekly working time, including overtime, shall not exceed an average of 48 over the applicable reference period in terms of the Organization of Working Time Regulations, unless the employee concerned has given his consent in writing to work more than a weekly average of 48 hours.

The hours of work which may be banked shall be limited to those hours on any day in a week which attract the normal hourly rate of payment. Similarly any hours of work which have been banked in order to be utilized during weeks of lower work activity, shall only be so utilized on a weekly day of work where the hours of work are paid at a normal rate. Moreover, the parties may also agree to include hours which attract a special rate of pay and in this respect, the hours to be banked shall reflect such special hourly rate of pay.

3. to recognise the right of men and women workers to equal pay for work of equal value;

MT reply

b) On methods of pay comparison, for those that are covered by collective agreements, the Department of Industrial and Employment Relations acts as registrar of collective agreements and therefore looks at the conditions laid in the applicable agreement. It also asks for payslips of workers doing the same work. In the absence of a collective agreement, evidence from other employees such as contracts and pay slips are requested, while taking into consideration seniority and other factors.

It is not possible to make comparisons of pay and jobs outside the company directly concerned in equal pay litigation cases.

4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

MT reply

No specific arrangements on notice were made in response to the COVID-19 crisis.

The legal framework on general notice periods has remained the same. Employers and employees have never raised complaints in this regard.

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 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.

MT reply

a) As of 30th June 2021, 106,824 employees were union members which amounts to about 51% of the workforce. No changes have been made recently in regards to the right to organise.

b) The Employment Relations Board which is the tripartite consultation board, met regularly through the height of the pandemic to ensure that the crisis didn't deteriorate working conditions and rights related to the freedom to associate. To ensure that consultation continued, meetings were moved online and ad hoc meetings were planned on urgent matters when the need arose.

c) In regard to port workers and public transport workers, port workers are licensed and registered in terms of the Port Workers Ordinance (Cap. 171) and the Port Workers Regulations (S.L. 171.02). They are not considered as employees, except as provided hereunder. In this respect, they do not fall under the employment provisions and the hereunder query regarding unfair dismissal including for trying to organise a union is not applicable in this case.

However, all licensed Port Workers are represented by the Malta Dockers Union. In terms of the Ordinance and the Regulations, there is established the Port Workers Board, which also acts as a Disciplinary Board, the composition of which is also made up of representatives of the Union. There are also provisions where the registration of a Port Worker can be suspended or even cancelled.

Scheduled public transport workers are employed by a private company. They are represented by a Union (UHM) and any grievances are raised through this union to the company's management.

Regarding the unionization of Police, to date, there have been 1189 members registered with the Malta Police Association, 1356 members registered with the Police Officers Union and 165 members registered with the Union of Civil Protection. There have been no further requests for such unions to be registered and no requests have been rejected. A refusal of registration of a police union can be contested as with any other union.

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;**

MT reply

No replies provided by the Ministry concerned yet.

- 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;**

MT reply

The right to bargain collectively was not hindered during the course of the pandemic. In fact 70 collective agreements were registered during the period of March 2020 till 15th October 2021.

The Department of Industrial and Employment Relations (DIER) assisted around a 1000 companies to implement short-time work arrangements through issuing of permits as per Article 42 of the Employment and Industrial Relations Act (EIRA, Chapter 452 of the laws of Malta), some of these requiring special agreements to allow for temporary changes to collective agreements. However, most of these arrangements have ceased.

In regards to the impact of the implementation of the Law on recognition of Trade Unions on minority trade unions, minority unions were not impacted as they can still issue directives for its members. When there is a collective issue affecting the majority of employees, the minority union notifies the employer of the issue and the employer has the obligation to inform the majority union.

To date, there have been 1189 members registered with the Malta Police Association, 1356 members registered with the Police Officers Union and 165 members registered with the Union of Civil Protection. There have been no further requests for such unions to be registered and no requests have been rejected.

- 3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;**

MTreply

In regards to the Committee's notes on the court of inquiry, DIER is proposing the deletion of article 69 (4) (a), 69 (5), and to amend articles 71 (b), 76 (2), 85 and article 2 of the EIRA. Malta commits to start the process to affect these changes, in consultation with stakeholders.

In regards to article 74 (1) and (3) allowing compulsory recourse to arbitration at the request of one party without consent of the other one, DIER is of the opinion that the Industrial Tribunal was set up by EIRA to hear and decide all cases falling under its exclusive jurisdiction, among which are trade disputes. This mechanism is to be used in case of failure of conciliation as facilitated under Art 69 of EIRA and no agreement can be reached between the two parties. The purpose of the Tribunal would be gravely undermined if we were to accept a scenario where a party cannot challenge another party unless the latter agrees. Furthermore, given that the Tribunal has 'exclusive jurisdiction' on trade disputes, the parties cannot resort to recourse through other means such as the civil courts.

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.

MT reply

In relation to services subject to restrictions with regard to the right to strike, Article 64(4) of Cap 452 states that, “An act done by a person in contemplation or furtherance of a trade dispute and in pursuance of a directive issued by a trade union, whether he belongs to it or not, shall not be actionable in damages on the ground only that it consists in a breach of a contract of employment; and any act done as aforesaid, not being an act in breach of a collective agreement, or of a settlement, decision or agreement which is still binding in accordance with the provisions of article 70 or 72, or of a decision or award of the Tribunal, shall not by itself entitle the employer to terminate the contract of employment of, or discriminate against, any person doing any such act as aforesaid, and shall not constitute a break in the service of such person.

This regulation is not applicable to:

a) persons employed as Air Traffic Controllers at the Malta International Airport and in the Airport Fire Fighting Section of the said airport; Cap. 411.

(b) members of the Assistance and Rescue Force established by virtue of article 8 of the Civil Protection Act;

(c) persons employed to provide pilotage and mooring, tug services, firefighting, medical health services and pollution combating services as may be required in cases of a port emergency;

(d) such minimum number of persons needed to guarantee that life is not endangered through the non-import or discharge into Malta of wheat, grain, domestic gas, aviation fuel, diesel and petrol and oil fuel for the operation of air transport facilities and power generation and water facilities, as agreed upon by their respective employer and the recognised trade union or in default of such agreement, as shall be decided by the appropriate controlling body or in the absence of such body, the Industrial Tribunal;

(e) such minimum number of persons as may be required to guarantee the combined production, provision and distribution of water and electricity, as agreed upon by their respective employer and the recognised trade union or in default of such agreement, as

shall be decided by the Industrial Tribunal;

(f) such number of persons as may be required to maintain the continued and uninterrupted services listed in the Schedule to this Act and required to be manned at all times for the continued provision by the Government of essential services to the community.

The police do not have the right to strike for reasons of public safety.

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;**

MT reply

The National Commission for the Promotion of Equality (NCPE) continued working to safeguard equality and prevent sexual harassment, as per Cap. 456 of the Laws of Malta.

a) Awareness and Prevention Campaigns

Various **awareness raising initiatives** were taken by the NCPE with the aim of educating society on sexual harassment in the workplace through social media posts; participation in TV and radio programmes; articles and press statements; and newsletters. Such awareness covers topics such as sexual harassment as a form of gender discrimination; empowerment of victims to report their cases; information on NCPE's role in relation to sexual harassment; the 16 days of activism on violence against women; etc.).

In 2018 the NCPE organised a **conference** on International Women's Day on Sexual Harassment: At the Workplace and in the Social Context to raise awareness on the topic, and to strengthen the prevention and combating of sexual harassment in social, economic and political spheres. Social partners formed part of the panel on sexual harassment at the workplace to discuss respective rights and responsibilities emanating from law. Different stakeholders participated in the conference including public officers, academics, civil society representatives, and social partners. Two presentations and panel discussions focused on sexual harassment at the workplace and on sexual harassment in social spheres and power respectively.

Moreover, the NCPE continued providing **training** to both public and private sector organisations on various topics related to equality. With respect to sexual harassment, the NCPE carried out: (1) 39 sessions in 2017; (2) 41 sessions in 2018; (3) 36 sessions in 2019; and (4) 24 sessions in 2020.

Furthermore, the NCPE continued awarding the **Equality Mark** to companies that foster gender equality in their work policies and practices. By December 2020, 108 organisations with over 26,250 employees were Equality Mark Certified.

b) Measures taken during the Pandemic

During the pandemic most of the workforce was on remote/ tele-working. Thus, the NCPE carried out various initiatives in relation to the pandemic and equality:

In commemoration of the International Women's Day, in March 2021 the NCPE organised a conference on the COVID-19 pandemic and gender equality. In this regard, discussions mainly focused on: (1) how the pandemic has socio-economically affected women more than men, particularly older women, women victims experiencing domestic violence, pregnant women, women employed in precarious employment, and migrant women; and (2) the pandemic has affected different sectors, particularly education, work, and health. During this conference, NCPE's research on the distribution of work in households during the COVID-19 pandemic, was also presented and discussed.

Between June and July 2020 the NCPE disseminated an **online survey, the COVID-19 Pandemic: Research on the Distribution of Work in Households**, with the intent of gathering information on and looking into how paid and unpaid work was being distributed amongst women and men in Maltese households during the COVID-19 pandemic, a time in which most employees had to resort to teleworking or remote working. Research findings indicated that during the pandemic the increase in the number of hours spent doing household tasks and childcare increased more for women than for men, while the time spent on leisure, personal care and sleep decreased more for women than it did for men.

In June 2020, NCPE published a newsletter on equality and the COVID-19 pandemic¹ giving an overview of the pandemic's impact on different grounds of discrimination including gender. Reference was also made to teleworking; the role of equality bodies and the NCPE's on-going work during the pandemic. The newsletter was disseminated with different stakeholders and shared on NCPE's social media and website.

NCPE also published two articles in the context of the pandemic, highlighting the importance of equality during the pandemic as well as post the pandemic. A Press Statement was also published to disseminate the main results of NCPE's research.

NCPE developed various **social media posts** related to the pandemic, some of which focus on women's rights, gender-based violence, gender equality, and the role of equality bodies.

Liability of employers and remedies

The NCPE continued investigating complaints of alleged sexual harassment in the workplace. In this regard, the following are the number of complaints lodged with the NCPE on sexual harassment at the workplace, for the period starting from 01-01-2017 to 31-12-2020:

1

https://ncpe.gov.mt/en/Documents/News_and_Events/Newsletter/Newsletter_Issue12_Equality_and_the_Covid_19.pdf

2017: 0.
2018: 1 female.
2019: 0.
2020: 1 female.

Burden of proof

Article 9 of the CAP 456, the Equality for Men and Women Act prohibits sexual harassment. Moreover, Article 19(2) specifies that “in any proceedings concerning the application of the principle of equal treatment” it is the defendant who has to prove that there has been no breach of such principle:

Article 19(2) In any proceedings under sub-article (1) and in any proceedings concerning the application of the principle of equal treatment before a competent authority not being a Court referred to in sub-article (1), it shall be sufficient for the plaintiff or the person instituting the said proceedings to establish, before the Court or before such other competent authority, facts from which it may be presumed that he or she has been treated less favourably, directly or indirectly, on the basis of sex or because of family responsibilities, and it shall be incumbent on the defendant or on the person against whom such proceedings are brought to prove that there has been no breach of the principle of equal treatment, or that such less favourable treatment was justified in accordance with the provisions of this Act, and the Court or other competent authority shall uphold the complaint if the defendant or the person against whom the proceedings before the competent authority are brought fails to prove that he did not commit an illegal act.

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.

MT reply

NCPE’s remit covers sexual harassment at the workplace as per CAP 456 Equality for Men and Women Act. Moreover, NCPE’s remit covers harassment in the access to and supply of goods and services on the ground of gender as per Legal Notice 181 of 2008 - Access to Goods and Services and their Supply (Equal Treatment) Regulations², and on the grounds of race and ethnic origin as per Legal Notice 85 of 2007 -Equal Treatment of Persons Order³.

a) As specified in reply to Article 26.1, NCPE carried out the following initiatives to raise awareness on **sexual harassment**:

Various **awareness raising initiatives** were taken by the NCPE with the aim of educating society on sexual harassment in the workplace through social media posts; participation in TV and radio programmes; articles and press statements; and newsletters. Such awareness covers topics such as sexual harassment as a form of gender discrimination; empowerment

² <https://legislation.mt/eli/ln/2008/181/eng/pdf>

³ <https://legislation.mt/eli/ln/2007/85/eng/pdf>

of victims to report their cases; information on NCPE's role in relation to sexual harassment; the 16 days of activism on violence against women; etc.).

In 2018 the NCPE organised a **conference** on International Women's Day on Sexual Harassment: At the Workplace and in the Social Context to raise awareness on the topic, and to strengthen the prevention and combating of sexual harassment in social, economic and political spheres. Social partners formed part of the panel on sexual harassment at the workplace to discuss respective rights and responsibilities emanating from law. Different stakeholders participated in the conference including public officers, academics, civil society representatives, and social partners. Two presentations and panel discussions focused on sexual harassment at the workplace and on sexual harassment in social spheres and power respectively.

Moreover, the NCPE continued providing **training** to both public and private sector organisations on various topics related to equality. With respect to sexual harassment, the NCPE carried out: (1) 39 sessions in 2017; (2) 41 sessions in 2018; (3) 36 sessions in 2019; and (4) 24 sessions in 2020.

Furthermore, the NCPE continued awarding the **Equality Mark** to companies that foster gender equality in their work policies and practices. By December 2020, 108 organisations with over 26,250 employees were Equality Mark Certified.

b) As specified in reply to Article 26.1, NCPE carried out the following initiatives in relation to the pandemic and equality:

In commemoration of the International Women's Day, in March 2021 the NCPE organised a conference on the COVID-19 pandemic and gender equality. In this regard, discussions mainly focused on: (1) how the pandemic has socio-economically affected women more than men, particularly older women, women victims experiencing domestic violence, pregnant women, women employed in precarious employment, and migrant women; and (2) the pandemic has affected different sectors, particularly education, work, and health. During this conference, NCPE's research on the distribution of work in households during the COVID-19 pandemic, was also presented and discussed.

Between June and July 2020 the NCPE disseminated an **online survey, the COVID-19 Pandemic: Research on the Distribution of Work in Households**, with the intent of gathering information on and looking into how paid and unpaid work was being distributed amongst women and men in Maltese households during the COVID-19 pandemic, a time in which most employees had to resort to teleworking or remote working. Research findings indicated that during the pandemic the increase in the number of hours spent doing household tasks and childcare increased more for women than for men, while the time spent on leisure, personal care and sleep decreased more for women than it did for men.

In June 2020, NCPE published a newsletter on equality and the COVID-19 pandemic⁴ giving an overview of the pandemic's impact on different grounds of discrimination including gender. Reference was also made to teleworking; the role of equality bodies and the NCPE's on-going work during the pandemic. The newsletter was disseminated with different stakeholders and shared on NCPE's social media and website.

NCPE also published two articles in the context of the pandemic, highlighting the importance of equality during the pandemic as well as post the pandemic. A Press Statement was also published to disseminate the main results of NCPE's research.

NCPE developed various **social media posts** related to the pandemic, some of which focus on women's rights, gender-based violence, gender equality, and the role of equality bodies.

4

https://ncpe.gov.mt/en/Documents/News_and_Events/Newsletter/Newsletter_Issue12_Equality_and_the_Covid_19.pdf