



MALTA POLICE UNION

Your Choice. Your Voice.

13th September 2021

Subject: Right of Industrial Actions for Police Officers in accordance with Article 28 of the Charter of Fundamental Rights of the EU and the European Social Charter.

Dear MEP,

The Malta Police Union is submitting these facts as till date, Malta does not afford full rights to police representative Associations/Unions as these do not have the right to call industrial Actions including the right to strike.

We understand that this right cannot be absolute, but with adequate legislation, a balance can be found. The Union already prepared a legislative draft.

Summary:

These submissions are being made against Malta to grant full trade union rights for 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.¹

Police Associations/Unions in Malta are only allowed to negotiate conditions of employment and to participate in dispute resolution, but shall not be entitled to take any other action in contemplation or furtherance of a dispute.²

This means that Police representatives are being denied their right to negotiate fully on behalf of their members, such as those on salaries in the public service.

The Charter of Fundamental Rights of the European Union.

Article 28 [Right of collective bargaining and action] states that ‘Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.’

The Charter of Fundamental Rights of the European Union has been legally binding since the entry into force of the Lisbon Treaty on December 1, 2009. Also reference may be made to case JONES CECIL HERBERT vs AVUKAT GENERALI - 95/2018/1 - CIVIL FIRST HALL (CONSTITUTIONAL JURISDICTION), MALTA.

Malta is not compliant with the provisions of this Article as the restriction imposed in Article 67A of Chapter 452 of the Laws of Malta are absolute, making the collective bargaining right, a collective begging one.

¹ Article 28 of the Charter of Fundamental Rights of the European Union and Article 6 of the European Social Charter.

² Chapter 452 Article 67A (2)(b) <https://legislation.mt/eli/cap/452/eng>

The European Social Charter.

Malta ratified the European Social Charter on 04/10/1998 as well as the amending protocol to the Charter on 16/02/1994. It ratified the Revised European Social Charter on 27/05/05, accepting 72 of the Revised Charter's 98 paragraphs.

Below is the table of accepted provisions by Malta³

Table of Accepted Provisions

Grey = Accepted provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1 ¹	27.2	27.3	28	29	30	31.1
31.2	31.3										

¹ Sub-paragraph c.

The Malta Police Force operates under the Police Act, Chapter 164 of the Laws of Malta. However the right for Police officers in Malta to join a Trade union emanated from the provisions of the Employment and Industrial Relations Act, Chapter 452 of the Laws of Malta, Article 67A.

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

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

(a) shall not be entitled to limit its membership to any particular rank in the said force;

³ <https://www.coe.int/en/web/european-social-charter/malta-and-the-european-social-charter>

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

Provided that notwithstanding the provisions of this article, the right of members of the Armed Forces of Malta to be members of a trade union shall be regulated only under the Malta Armed Forces Act.

Article 2 of the Employment and Industrial Relations Act define 'trade dispute' as a dispute between employers and workers, or between workers and workers, which is connected with any one or more of the following matters:

(a) terms and conditions of employment, or the physical conditions in which any workers are required to work;

(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;

(c) allocation of work or the duties of employment as between workers or groups of workers;

(d) matters of discipline;

(e) facilities for officials of trade unions;

(f) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures;

(g) the membership or non-membership of a worker in a particular trade union.

In Malta, the following forms of collective action are allowed: all-out strike, partial strike, slow-down, disregarding a specific instruction issued by the employer, picketing and solidarity action.

ECSR Conclusions;⁴

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

Also, the Committee asked the Government if there are public officials whose right to strike is restricted and under what circumstances this may occur. The Committee recalled that the right to strike of certain categories of public officials may be restricted. Under Article G these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest.

Consequently, the Committee invited the Government of Malta to state, in relation to every service subject to restrictions with regard to the right to strike, if and to what extent work stoppages may undermine respect for the rights and freedoms of others or threaten the public interest, national security, public health, or morals.

In this context, it also asks whether such restrictions are in all cases proportionate to achieve the objective of ensuring, in a democratic society, the abovementioned respect. Also, the Committee noted from Eironline (Union Rights Granted to Police Officers but not Other Security Services) that police officers are prohibited from striking.

The Committee recalled that, concerning police officers, an absolute prohibition on the right to strike can be considered in conformity with Article 6(4) only if there are compelling reasons justifying it. On the other hand, the imposition of restrictions as to the mode and form of such strike action can be in conformity with the Charter.⁵

However, the next report on Malta did not really answer these questions. The Committee notes, however, that Article 64, paragraph 6 of the Employment and Industrial Relations Act (EIRA) provides for restrictions on the right to strike for certain categories of workers (Air

⁴ ECSR Conclusions 2018 – Malta – Article 6(4)

⁵ Full decision here [Conclusions 2014 - Malta - Article 6-4 \(coe.int\)](#)

Traffic Controllers, members of the Assistance and Rescue Force, workers involved in port emergency) or when this is necessary to ensure a minimum service (essential services, import of certain products, transport, water, energy).

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

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

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

Violation of the European Social Charter;

Article 6(4) of the European Social Charter is being violated.

Article 6 – The right 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.**

Conclusion;

This complaint shows how the government of Malta is attempting to restrict Police officers' rights and basic freedoms by curtailing their fundamental right to strike. While the unregulated and absolute right without any restrictions may be justified, procedural rules and requirements to provide minimum levels of essential services further to limit this right to ensure the national security and safety of the people in Malta should be implemented. This is already in place in the Schedules of the Employment and Industrial Relations Act in the health services sector.

The right to strike has been crucial to many of the rights and benefits we take for granted today, including holidays and holiday pay, sickness benefits, unemployment insurance and minimum wages, equal pay and health and safety laws.

As the International Trade Union Confederation (ITUC) makes clear in its report, The right to strike and the ILO, **that without the right to strike, a right to collective bargaining amounts to no more than a right to "collective begging"**.

As the UN Special Rapporteur on freedom of peaceful assembly and association Mr. Maina Kiai said, “protecting the right to strike is not simply about States fulfilling their legal obligations. It is also about them creating democratic and equitable societies that are sustainable in the long run”.

In line with the provisions of the European Union Act, Chapter 460 of the laws of Malta, which at Article 3 states that;

(1) From the First day of May 2004, the Treaty and existing and future acts adopted by the European Union shall be binding on Malta and shall be part of the domestic law thereof under the conditions laid down in the Treaty.

(2) Any provision of any law which from the said date is incompatible with Malta’s obligations under the Treaty or which derogates from any right given to any person by or under the Treaty shall to the extent that such law is incompatible with such obligations or to the extent that it derogates from such rights be without effect and unenforceable.

In view of these submissions, the Malta Police Union is asking your intervention in the matter and assist us within the European Union in order to have our rights.

Kind Regards,

Neville Mercieca
Secretary