

The impact of the Racial Equality Directive:
a survey of trade unions and employers
in the Member States of the European Union

Malta

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1. Demographic background

Malta is a small island state covering an area of 316 sq. km of land with a total population of 410,210. The country has limited natural resources and lies approximately 93km to the south Sicily and approximately 300km north of Africa. The total number of persons in the labour market during the third quarter of 2008 was 159,875 (LFS, 002/2009).

According to the 2005 Census, 97% of the population was made up of Maltese nationals while the other 12,112 or (3% of the population) were foreigners. Some 74% (9,055) of these foreign nationals were from the EU or other European countries. Just 1.6% of the population (198) was declared to be stateless. The British, Italians and Germans constitute the biggest groups of foreign nationals in Malta and in general they do not face serious cases of discrimination (Farrugia, 2007).

When one speaks about racial equality in Malta, there is a general tendency to link this issue exclusively to undocumented migrants referred to as 'klandestini' in the Maltese language. This is because Malta in recent years has seen an increase in the arrival of such migrants by boats coming from the North African coast. The growing number of undocumented migrants has created negative perceptions amongst the majority of Maltese. This hinders the migrants' prospects in finding adequate work and housing and limits their access to goods and services (Farrugia, 2007). These migrants are often employed in the informal economy with poor conditions especially in the construction industry. Some manage to work formally in low skilled jobs which the Maltese often refuse to do, like garbage collectors and cleaners in the hotel and catering industry.

Malta has a strict detention policy for immigrants who arrive through irregular channels. This can last between twelve months (for asylum seekers who have not been granted this status) and eighteen months (for those who applied for asylum but whose application has been rejected and for those who have not made an application for asylum). The Government justifies this detention in closed centres, as being a deterrent to potential migrants, in view of the country's miniscule size and limited resources.

The Migrant Integration Policy Index (2007) reports that 'Malta is one of just four countries where only a minority thinks that ethnic diversity enriches the national culture (31.7%). The Maltese are consistently the least supportive of migrants' rights in the EU-27, whether polled about equal social rights, family reunion rights or facilitated naturalisation'. They are also 'the most supportive in the EU-25 of deporting all legally established third-country nationals (35%), especially if they are unemployed (63.6%). Over two-thirds of Maltese believe ethnic discrimination is fairly widespread and the majority thinks it got worse from 2001 to 2006. The population is divided over whether the country should do more to combat discrimination. Just 18.7% knew about a law punishing ethnic discrimination in the labour market'.

2. Industrial Relations background

According to Zammit (2003) the established model of industrial relations in Malta is that of 'voluntary, bi-partite, collective bargaining at the enterprise level in a traditionally polarised relationship between employers and trade unions' (p.68). He adds that 'during recent decades, this model has tended towards a pattern of corporate, tri-partite, bargaining at the national level based on social partnership. This pattern is emerging in response to shifts in the balance of economic power as well as in response to economic exigencies such as the need to retain jobs, to re-structure existing enterprises and to attract foreign investment in a competitive, international environment that is limiting the range of collective bargaining' (p.68). The transposition of the EU employment directives has placed the Maltese Industrial Relations more in line with those in Europe, although elements of the Anglo-Saxon model persist.

Union density in Malta, although declining, is still relatively high with around 52% of employees belonging to unions. Malta's two biggest unions are the General Workers' Union (GWU) and the United Workers' Union (UHM). The GWU is the largest union in Malta and represents over 50% of unionised workers. The union has 41,343 members and covers a wide section of workers (DIER, 2009).

The United Workers' Union (UHM) covers many workers in the public sector and has 26,246 members, whilst the Malta Union of Midwives and Nurses is a smaller union representing midwives and nurses and has 2,578 members (DIER Report 2008). The UHM together with other smaller unions form part of the Confederation of Malta Trade Unions (CMTU) whilst the MUMN forms part of another group of unions known as the Forum Unions Maltin (FORUM)

3. Trade union and employer awareness

3.1 Trade unions

The three correspondents from the unions were to a certain extent aware of the of the equality laws enacted in Malta to combat racial and other grounds of discrimination. However they were less conscious of the Racial Equality Directive and the specific areas this covered. They all admitted that Malta is still in the early stages in fighting racial discrimination.

When asked about the Directive, the respondent from the General Workers' Union (GWU) mentioned *'the set pieces of EU equality laws'* which he described as being *'the norm'* and which *'offer protection regardless of one's race, gender and age'*. He mentioned that the Directive had been transposed into Maltese laws but that this was not being well implemented. He remarked that the Maltese government was *'not acting properly,'* and *'was not taking action against those who blatantly break the law'*.

Likewise, the respondent from the Malta Union of Midwives and Nurses (MUMN) knew little about the Directive and the specific areas it covers. He said that the union had *'received some sort of correspondence from the Health Division on it, but that*

nothing was discussed. However he said that the equality directive was much needed 'because of the freedom of movement of workers'.

When asked about racial equality legislation, the United Workers Union (UHM) respondent mentioned Article 13 of the European Union Treaty on equality which covers racial discrimination and on which the directive was based. She said that when the Directive came into force in 2000, Malta had not joined the European Union and so none of the unions were involved in the consultation process. The UHM respondent, however, said that her union was involved in the consultation process leading up to the Employment and Industrial Relations Act (EIRA) which covers multi-grounds discrimination in relation to employment.

3.2 Employers

The Malta Hotels and Restaurants Association (MHRA) unites and represents persons who operate in the hotel and catering sector and has 315 members. When asked about his awareness on racial equality laws, the respondent said that he did not know a lot about them and that there was no consultation at all with government on this issue. The same respondent mentioned that there was '*very little if any social partner dialogue*' on this issue, he said that '*this issue was never brought to the attention of the Malta Council for Economic and Social Dialogue (MCESD)*' of which MHRA is a member. He stressed that many of his members employ workers from different ethnicities and '*so far they did not seem to have a problem on this issue*'.

The Malta Employers Association (MEA) is a constituted body which brings together employers from all sectors of industry and commerce. It is, in effect, the 'trade union' of employers, and is formally registered as such under the Employment and Industrial Relations Act (2002). It has 350 members. The MEA respondent seemed more knowledgeable about the Directive. She remarked that this form of discrimination was already incorporated in the Equal Treatment in Employment Regulations law.

Both respondents from employers' associations said that their associations were not involved in the consultation process leading up to the Directive because Malta had not yet joined the EU. However the MEA was involved in the consultation process leading to the enactment of the Employment and Industrial Relations Act, which, as stated earlier, deals with all grounds of discrimination including racial equality at work.

4 Comments on the Equality Body

When probed about the National Commission for the Promotion of Equality (NCPE) the respondent from the General Workers' Union described it as '*toothless*'. The United Workers Union (UHM) respondent remarked that NCPE was still trying to 'find its feet and whilst a lot has been done to cover multi-ground discrimination, little has been done in the area of racial equality'. The Malta Union and Midwives and Nurses (MUMN) respondent remarked that NCPE sometimes

invites the union representatives to seminars; but he said *'that is as far as we are in contact with each other'*.

The Malta Employers Association (MEA) had good connections with the national equality body (NCPE) and in fact the Director General of this Employers' Association sits on the board and is directly involved in matters relating to equality. MEA was also involved in the campaign *'For Diversity Against Discrimination'* campaign which helps to raise awareness on equality issues and they distribute material from this campaign to their members.

An interview with the Chief Executive Officer of the National Commission for the Promotion of Equality (NCPE) revealed that as Malta's equality body was not given the remit to cover racial discrimination at work. Instead, this remit, was assigned to the Department of Industrial and Employment Relations (DIER). She remarked that the fragmented approach to racial equality was not beneficial to those seeking assistance because instead of a one-stop-shop they had to go to two different entities for redress. The interviewee remarked that the fragmentation of remit and duties between the NCPE and the DIER was limiting the awareness the equality body could raise. She said that she was concerned over this issue because, with this fragmentation, they were *'not providing the necessary tools to address these problems adequately'* especially in the case of multi-grounds discrimination.

The respondent from the National Commission for the Promotion of Equality (NCPE) added that employers and unions are becoming more conscious of this directive and subsequent laws. She remarked that when they recently organised training for employers in diversity management they had double the amount of persons they had planned to train. NCPE was also involved in various EU funded projects which deal with multi-grounds discrimination namely the *'Mosaic'* project, the *'Living Equality Project'* and the *'Voice for All Project'*.

5. Trade union and employer policies and measures

5.1 Trade union policies and measures

Out of the unions examined, the General Workers Union (GWU) seemed to be most actively engaged on the issue of racial discrimination. The respondent said that the union was still in the process of settings things up, but it had made *'a quantum leap'* with the set up of an office which deals exclusively with third country nationals. When the respondent, a former executive officer of an open centre hosting irregular immigrants, joined the union, a clear Policy Statement was issued in relation to racial equality. His main task is to mediate between the immigrant workers and the employers. Following his appointment, a number of these immigrants joined the union as members.

The GWU respondent said that the union had intervened in cases involving irregular migrants who were injured in jobs involving manual trades and jobs in the construction industry. He also mentioned a case that the union took up when these migrants were not being paid at all. The union also obtained EU

funding to educate employers, union officials and members on racial equality, and more training was planned for union officials within the next 12 months.

The UHM respondent remarked that on the issue of racial equality '*we are still at the early stage*', and that a culture change is needed before things can improve. This is because '*so far, the country's priority was to get rid of them and not to find ways of integrating them*'. When asked whether the union had made any changes as a result of the directive, she said that cases involving racial discrimination often raise sensitive issues, and because of this, they are often dealt with at the highest level of the union, sometimes even by the Secretary General himself. When asked whether the union took any initiatives on the issue of racial or ethnic discrimination, the UHM respondent replied that as a union they try to pass on this message during radio and talk shows. She said that as a union they argue that

There should not be social dumping and that there should be equality, as otherwise, even the Maltese workers can suffer especially if foreigners are paid less.

The Malta Union of Midwives and Nurses respondent did not indicate that it had made any policy changes because of the Directive and subsequent local legislation. However, the respondent noted that in spite of this Directive, since Malta joined the EU, employees coming from within the EU were being favoured over third country nationals working in hospitals in Malta.

5.2 Employer policies and measures

The Malta Hotels and Restaurants Association (MHRA) respondent said that his organisation did not raise racial equality issues with its members. They see the inclusion of ethnic minorities in the labour market as

A natural progress as a result of staff shortages and not because of the introduction of racial equality laws.

When probed about diversity and anti-discrimination practices, the MHRA respondent claimed that he was not aware of any racial problems in the hotel and restaurants section. He remarked that '*there are quite a number of hotels which employ ethnic workers*' and they encourage their members to take them on as normal employees and to do so in the formal economy.

On being asked whether companies had taken any action to ensure racial equality or to implement diversity policies, the Malta Employers Association (MEA) respondent said:

Employers may not be aware that certain behaviour amounts to discrimination as there is little information on this subject The vast majority of companies in Malta are SMEs and they do not even have a HR Manager, and would not know anything about this.

The MEA respondent added that they had not received complaints on racial equality, and in the past, it had only received *'the odd query'* from employers on this issue. She added that they have policies and procedures dealing with all kinds of discrimination, but not exclusively on ethnic or racial minorities. The same respondent said that some of the larger companies in Malta have policies and procedures and train their employees on *'what is permissible and what is not.'*

6 Views on how better to tackle discrimination

All the Maltese unions stressed the need for more awareness-raising campaigns so that employers and employees could become more aware of their rights and obligations.

The General Workers Union (GWU) respondent said that the law on racial discrimination had not made any difference because people in general were not aware of their rights and obligations. He said that 'illegal immigrants', which constitute the most vulnerable group of third country nationals, allow themselves to be abused and work illegally 'because they need to eat' and have no other option.

The United Workers Union (UHM) respondent suggested that *'we now need to focus on the implementation of this Directive and the subsequent laws'*. She remarked that in order to do this, there needs to be 'a well resourced equality body with enough workers and finance to implement it'.

The respondent from the Malta Union of Midwives and Nurses (MUMN) said that there is a need *'to educate the Maltese and increase awareness, because as islanders, we tend to be too insular and we are still scared of outsiders'*. He added that the government and the opposition *'need to talk in the same language and to promote values'* that help the Maltese to be more tolerant and thus making it easier for immigrants to integrate in Maltese society.

The Malta Employers Association (MEA) respondent said that the Directive needed to be amended in order to give a better definition of what is ethnic and what is racial discrimination. She claimed that if a case was put forward at the European Court of Justice (ECJ), it would be very difficult to determine whether an action was discriminatory or not because of this. She said that it is assumed that everyone knows what an ethnic minority is or what ethnic origin is. She argued that for cases before the ECJ, things need to be much clearer and hence the need for clear definitions.

The Malta Hotels and Restaurants Association (MHRA) respondent on the other hand said that rather than raising awareness about immigrants' rights, Malta has to solve the burdens that boat people are causing *'as we are limited'*. He suggested that these people need training because if they cannot speak Maltese or English their integration within the labour market will be problematic. He suggested that Malta could use EU funds for this purpose.

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