

Malta: Individual disputes at the workplace – alternative disputes resolution

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The Maltese industrial relations system is increasingly relying on the application of ADR both in collective and in individual situations. Individual employees can resort to the ADR services provided by the Department of Industrial and Employment Relations (DIER) through the Enforcement and Inspectorate Section's officers in dealing with most of the difficulties encountered at the workplace. Statistics provided by the DIER indicate that the ADR system has gained in importance when compared to tribunals and law courts between 2005 and 2008.

(A) Recent trends (2005-2009)

1. What traditional or established methods are used in your country to seek to resolve individual disputes (e.g. labour courts/tribunals)? What ADR methods are now used as alternative or additional means to resolve individual conflicts?

The state in Malta plays a major role in regulating and maintaining a sound industrial relations environment.

The Employment and Industrial Relations Act (EIRA) 2002(Cap 452) is the main legislation regulating the conditions of employment in Malta concerning employees in the private sector. The conditions of employment of public officers are regulated by the Public Service Management Code (PSMC).

The Department of Industrial and Employment Relations (DIER) through its Inspectorate and Enforcement sections is responsible for the observance and the enforcement of the EIRA regulations.

Conciliations

Part II of the EIRA deals with the voluntary settlement of disputes providing for the set up of a Conciliation Panel (as further explained below). Where a trade dispute exists or is apprehended, the parties to the dispute may agree to refer the dispute for Conciliation. If the parties fail to nominate or to agree on the appointment of a Conciliator or where an appointed Conciliator reports a deadlock, the Director of Industrial and Employment Relations refers the matter to the Minister responsible for employment and industrial relations. The Minister may either: 1. appoint a court of inquiry to enquire into and establish the causes and circumstances of the dispute; or 2. following an application by both parties to the dispute, the Minister may refer such trade dispute to the Industrial Tribunal.

In cases where a voluntary settlement is reached, a memorandum with the terms of the agreement is drawn and signed by the parties involved or their representatives. Such a settlement is binding on the parties and on the workers represented.

Conciliations in the Public Service

In the Public Service Collective Agreement 2005, the government and the trade unions agreed about the setting up of a conciliatory structure, composed of a Chairman and two members, all three appointed by the government in consultation with the trade unions. Conciliation meetings are to be arranged prior to resorting to industrial action.

The Industrial Tribunal

The Industrial Tribunal is another arm of the DIER which consists of a Chairman and two members representing workers' interests and employers' interests respectively in cases of industrial disputes. In cases of alleged unfair dismissal, the tribunal is solely made up of a Chairman. Its decisions are binding and may not be appealed against for a period of at least one year, while in cases of unfair dismissals, the rulings may provide for the reinstatement or award compensation of the employee concerned.

The Law Courts

The Maltese general law courts reserve the right to investigate all cases that allegedly break the law.

DIER Inspectorate/Customer Care Unit

In recent years, this unit has put greater emphasis on its conflict resolution capacity in dealing with cases mostly involving non-unionised persons, without the need to refer such cases in front of Criminal Law Courts.

DIER Enforcement/Termination Section

The Enforcement Section of the DIER, offers its services to employees after the termination of their employment. The officers of this section discuss any alleged breach of the labour laws and regulations, is with the claimant and possibly also with the employer in order to find an amicable solution. Failure to find a solution would lead to the registration of a formal claim and the matter will be investigated by the officer concerned. If still no settlement is reached, the matter will be referred to the Police for Court action.

Trade union representation

Malta has a strong tradition of collective bargaining at company level and still enjoys a relative high density union membership. In unionised workplaces, the practice of dealing with minor disputes normally involves the intervention of the shop steward who takes the matter to the Human Resource manager. Union representatives nowadays receive training provided by the respective trade unions concerning conflict resolution

As mentioned above, Part II of the EIRA provides for the voluntary settlement of industrial disputes. The EIRA does not mention the concept of mediation, reflecting the fact that the system in Malta does not distinguish between conciliation and mediation. On the other hand, arbitration comes into effect once the dispute between the parties is referred to the Industrial Tribunal or the Criminal Law Court.

2. Over the last five years, i.e. since the beginning of 2005, have there been any changes in your country in the volume of cases dealt with by ADR and in the proportion of individual disputes dealt with by ADR?

As can be seen from Tables 1 the number of enquiries from workers and the number of irregularities found have both increased substantially between 2005 and 2008. Enquiries increased by 56%, while irregularities found increased by 81%. However, Table 2 shows that the number of new cases referred to the industrial tribunal remained constant over the same period. This indicates that the volume of cases dealt with by ADR have increased considerably in relation to the number of disputes lodged with the industrial tribunal.

Year	2005	2006	2007	2008
No. of Inspections	2,736	1,518	1,248	1,304
No. of Enquires by phone and/or personal/email *	16,776	21,000	27,554	26,145
No. of irregularities found	408	493	419	737
No. of claims issued	55	23	22	126
No. of cases settled	n/a	n/a	n/a	125
Considered for legal action	n/a	n/a	n/a	20

** The absolute majority of enquires indicated were about information on basic conditions of employment as part-time issues, probation and notice periods and vacation leave and sick leave.*

Adapted from DIER Annual Reports 2005-2008

Year	2005	2006	2007	2008
Unfair dismissal	74	90	92	84
Discrimination/harassment/victimisation	15	4	8	5
Trade Disputes*	9	5	10	4
Interpretation**	0	2	0	0
Others**	0	7	0	0
Total no. of new cases	98	108	110	103

**This data is about collective disputes*

*** It is unknown whether this data is about individual or collective disputes*

The number of claims issued relating to the termination of employment has increased by 35% between 2005 and 2008. The percentage of cases being referred to court has increased substantially when compared to those being settled out of court (from 42% in 2005, to 64% in 2008).

Year	2005	2006	2007	2008
No. of claims issued	264	258	269	357
Settled out of court	146	158	222	149
Referred to court	105	129	231	266

Adapted from DIER Annual Reports 2005-2008

3. What are the main categories of individual workplace disputes dealt with by each type of ADR?

The majority of individual workplace disputes are dealt with by the inspectorate/customer care and enforcement units of the DIER.

The Inspectorate/Customer Care Unit: irregularities registered mostly concern arrears of wages, infringement of the contract of service, and the non-concession of part time benefits such as statutory bonuses, vacation leave and sick leave. The rectification of the absolute majority of infringements was effected through the Section Officers' direct efforts.

The Enforcement Section: Irregularities registered were about arrears of wages, matters related to vacation leave, bonuses, overtime remuneration, and weekly allowances not granted.

Conciliation: Cases for conciliation normally involve disputes between trade unions and employers concerning matters related to collective agreements such as work practices, bonuses, allowances and increments. Conciliations also include disputes between trade unions in matters of recognition at company level. However, occasionally, conciliation is carried out in cases involving individual disputes. Such cases are usually complex ones involving professionals and high sums of money.

4. Does the use of ADR vary by industry sector and by occupational characteristics?

The application of ADR through the DIER services is available equally to all sectors. Any individual employee or workers' representatives can lodge a complaint with the department. The appropriate action would then be taken according to the case.

Most complaints are filed by non unionised workers. Workers from the construction sector and some subsectors of the services sector, such as hotels and call centres, use more ADR services. Besides, the users of ADR tend to be part-timers or precarious workers in manual or unskilled jobs (such as salesgirls, cleaners and so on).

5. What impact is the recession having on the number or volume of individual disputes and on the use of ADR?

The effects of the global recession in Malta have initially mostly affected the manufacturing sector with a number of companies resorting to a four day week working schedule. Such agreements were possible after conciliation meetings between the respective employers and trade union officials with the director of the DIER approving such agreements as required by law. Statistics illustrated above referring to the number of conciliation meetings, kept a stable level, while those referring to the number of claims issued by the Inspectorate and Enforcement sections registered a surge in 2008.

(B) Actors and processes

6. How does the aggrieved worker get access to ADR?

With regards to cases dealt with by the Customer Care/Inspectorate Unit at the DIER, the employee can freely submit his/her complaint in person, by phone calls or by e-mail.

Conciliation meetings involving the director of the DIER are held on request by the parties involved.

The worker is not required to try to resolve the matter using the internal company grievance and disputes procedures first. However, in the presence of a collective agreement, this is usually recommended. The above services are free of charge.

7. Where do independent experts in conciliation, mediation and arbitration come from?

The Conciliation Panel is composed of not less than five persons, appointed by the Minister following consultation with the Malta Council for Economic and Social Development ([MCESD](#)) for a period of two years.

Where a trade dispute exists or is apprehended, the parties to the dispute may agree to refer the dispute to (i) The Director of Industrial and Employment Relations; (ii) a conciliator who may be chosen either by the same parties to the dispute in agreement between them or, if there is no such agreement, by the Director from amongst the Conciliation panel. Experts are chosen as Conciliators on the basis of their knowledge, experience and integrity and do not require to be trained. Usually the Director of Industrial and Employment Relations is requested by the parties to intervene as Conciliator.

Chairpersons for the Industrial Tribunal are appointed by the Prime Minister after consultation with the Malta Council for Economic and Social Development. Not more than 15 chairpersons are appointed for a period that does not exceed three year and at least three of them are advocates of at least seven years experience.

Expenses for the above services are incurred by the government.

8. Is there any formal link between ADR and a labour court or a tribunal?

One of the main scopes of ADR in Malta is to prevent as far as possible that cases of dispute reach the arbitration stage and thus it does not require a prior application at the Industrial Tribunal or at the law courts.

In theory, an independent expert providing ADR can be called to give evidence in a labour tribunal. However, in the case of the industrial tribunal, a party may object to such testimony and then it will be up to the Chairperson's decision whether to accept such involvement.

In cases involving DIER Inspectorate and Enforcement sections' officials, these are normally required to provide their testimony in court.

9. Is the worker using ADR usually accompanied by someone at the hearing?

In the majority of cases requiring the intervention of the DIER Inspectorate/Customer Care and Enforcement sections, the worker gets the support of the official dealing with the case. In some cases however, lawyers and trade union officials accompany the worker through the whole process, in particular if the case is referred to the court or/and the Industrial Tribunal.

(C) Views of governments and social partners

10. What are the attitudes of the government and social partners (employers/employers' associations and trade unions) to the use of ADR techniques?

The active involvement of the government and the social partners in the existing mechanisms strongly suggest their encouragement for ADR. The government is increasing the expertise and capacity of the DIER. In the last two years, it has trained DIER employees, improved the department's IT resources and established a research unit within DIER. On their part, trade unions are very vocal against the abuse of non unionised workers, such as self-employed, part-timers and other workers (such as illegal immigrants) in precarious jobs. However, trade unions appear to be more strongly involved in the negotiation of collective disputes or national issues.

(D) Commentary by national centre

11. Please provide a short commentary on the significance of ADR in your country and debates about its impact (or potential impact) on employment relations.

The effects of the application of ADR in Malta are very positive, in particular at enterprise level, as indicated in the statistics illustrated above. The work of the DIER officers has been noteworthy. The application of ADR by the Enforcement and Inspectorate Sections is of great importance, especially for non unionized workers and those who are involved in atypical employment. The further improvement of the human resource capacity of DIER would augment the impact of the ADR system in Malta.

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