

## International Association of Judges

### 2003 Annual Meeting

#### Fourth Study Commission (Public and Social Law)

#### Report to Questionnaire regarding Working Conditions for Children

#### Malta

##### Question 1:

Malta has provided for legislation as well as protective measures concerning children at work.

Besides provisions of a general nature enshrined in the fundamental human rights provisions of the Constitution, as well as other statutes dealing with industrial law matters, a few particular enactments have dealt with the issue of child labour under various aspects.

Malta has also ratified certain I.L.O. Conventions dealing both specifically or by way of general application to employment of minors. These include the White Lead (Painting) Convention, 1921; Medical Examination of Young Persons (Industry) Convention, 1946; Medical Examination of Young Persons (Non-Industrial Occupations Convention, 1946; Medical Examination of Young Persons (Underground Work) Convention, 1965; Maximum Weight Convention, 1967; Minimum Age Convention, 1973; and the Worst Forms of Child Labour Convention, 1999. The incorporation of these various international instruments has been scattered in *ad hoc* enactments as well as within the established basic Codes.

The Occupational Health and Safety (Promotion) Act of 1994<sup>1</sup>, provided for a basic legal framework of reciprocal rights and duties aimed at securing a safe place of work. Regulations (subsidiary legislation) made by virtue of the powers vested in the enabling Act dealt specifically with protection of young persons at their place of work. In particular, reference can be made to the Work Place (protection of Young Persons) Regulations, 1996<sup>2</sup>, and the Protection of Young Persons at Work

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<sup>1</sup> Act VII of 1994 (Chapter 367 of the Laws of Malta)

<sup>2</sup> Legal Notice 71/96

Places Regulations, 2000<sup>3</sup>, the latter of which adopts the salient norms to be found in EU Directive 94/33EC.

The 1994 has since been repealed by the enactment of the Occupational Health and Safety Authority Act, 2000<sup>4</sup>, which has come into force on January 29<sup>th</sup>, 2002. Nevertheless, by express provision of the latter law, any Regulations which had been promulgated or retained in force under the 1994 statute were kept in force notwithstanding the repeal of that law.

Finally, an updated and more comprehensive new enactment in the form of the Employment and Industrial Relations Act, 2002<sup>5</sup>, now provides also specifically *inter alia* that the provisions of Chapter 424 (*viz.* Act XXVII of 2000) as well as those of any regulations issued thereunder, shall be deemed to be recognised conditions of employment of the employees to whom they apply as if they were duly promulgated national standard orders or regulation orders.

As regards minimum age the relevant legal provisions provide a limit of fifteen (15) years. These tally with the rules providing for compulsory school-leaving age (set at sixteen years) and the Civil Law provisions regulating contractual capacity.

As regards differences in the enjoyment of rights based on factors of age, laws provide for basic rights which workers are entitled to enjoy, irrespective of their age. Previous rules providing for lower rates of wages according to the worker's (minority) age have been removed.

As regards special working conditions applicable to children these legal instruments establish certain criteria related to the work environment and the safeguards against young workers being exposed to harmful or toxic substances at their place of work. Furthermore, both night work as well as overtime are excluded in regard to young workers in all spheres of employment but some service industries ( e.g. tourism-related activities, and cultural, artistic or sports activities). Regulations provide for strict supervision by competent elder persons in the case of young employees exposed to hazardous agents or materials or the handling of particularly risky tools or machinery in their training, apprenticeship or actual employment.

### Question 2:

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<sup>3</sup> Legal Notice 91/00

<sup>4</sup> Act XXVII of 2000 (Chapter 452 of the Laws of Malta)

<sup>5</sup> Act XXII of 2002 (Chapter 452 of the Laws of Malta)

The prescribed sanctions for violation of children's right at work include imprisonment terms and/or fines, according to the gravity of the breach. These sanctions can be applied either by the Magistrates' Courts in their Criminal Jurisdiction or by the Industrial Tribunal (the latter's competence extends only to the imposition of fines and/or the granting of pecuniary compensation), both following due process.

To date, there have been no published cases concerning violations or breaches of children's rights at work.

Question 3:

The area of improvement which seems to call for pressing attention is that of enforcement and compliance. Effective supervision and executive effect must accompany the structures and institutions as laid out on paper. It is felt that such supervision and execution should lay particular emphasis on pre-emptive rather than remedial measures.

In particular, a concerted effort to stem the easy recourse to exploitation of minors through engagement in jobs "under the counter" especially in family-run enterprises or chain retail outlets is advocated. Under the pretext of giving youngsters an opportunity to earn money, the terms and conditions of their engagement leave much to be desired, and basic conditions of employment are generally flaunted.