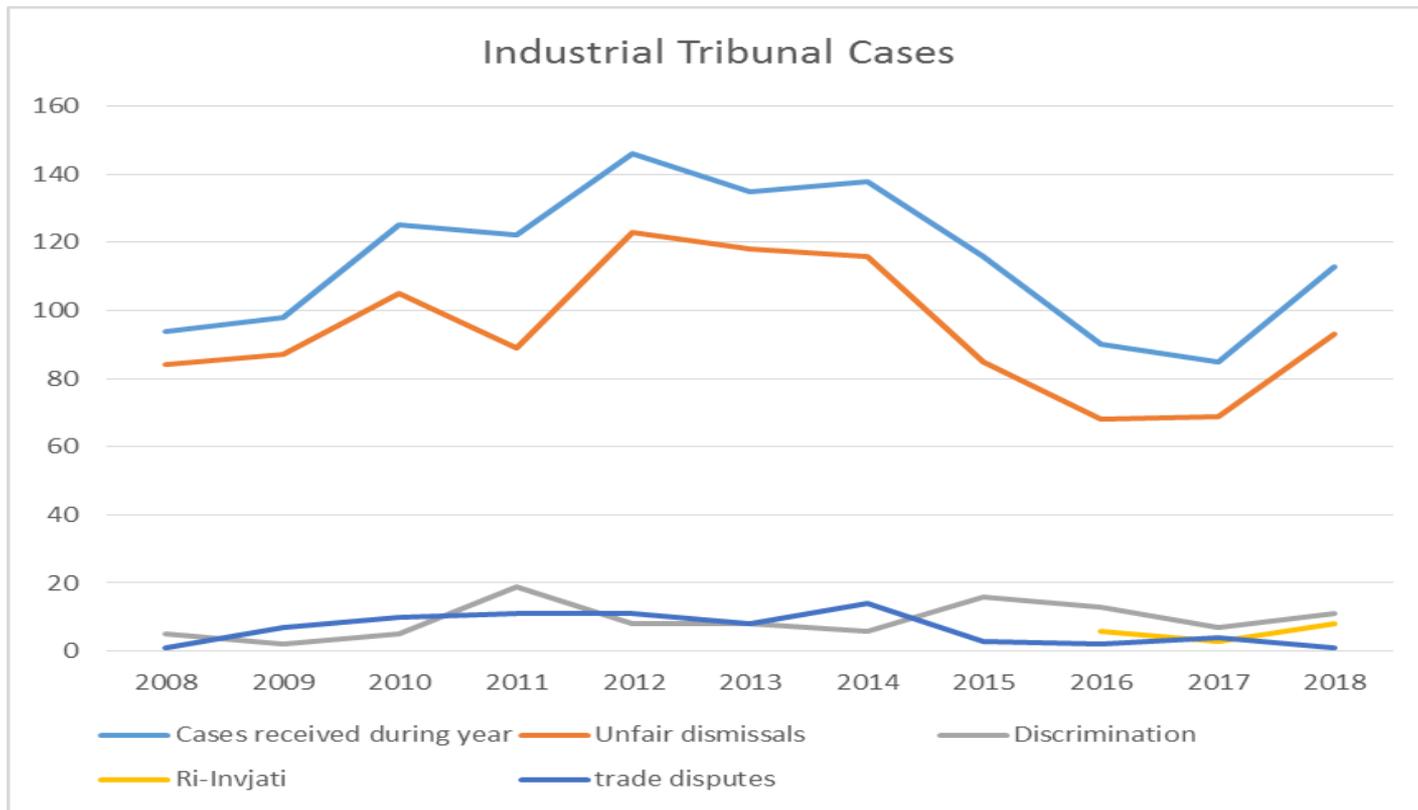


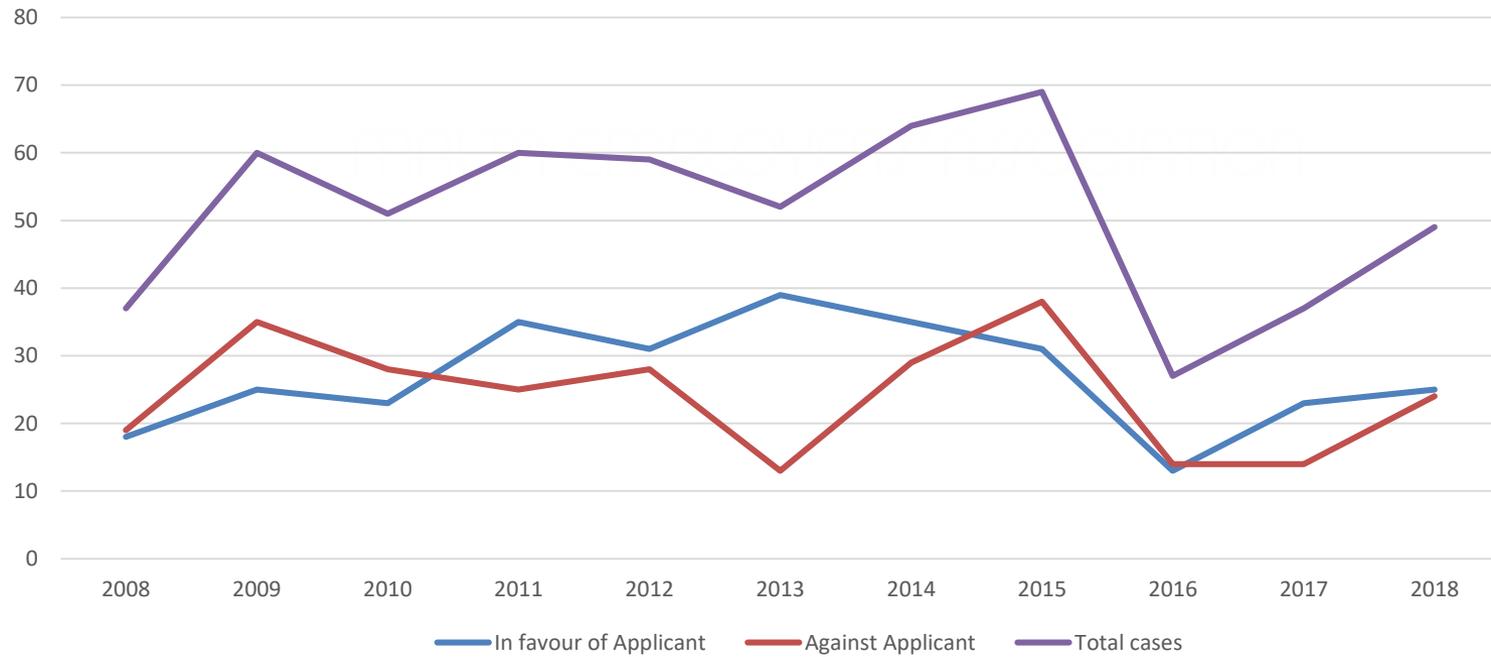
MEA'S PROPOSALS FOR THE REFORM OF THE INDUSTRIAL TRIBUNAL

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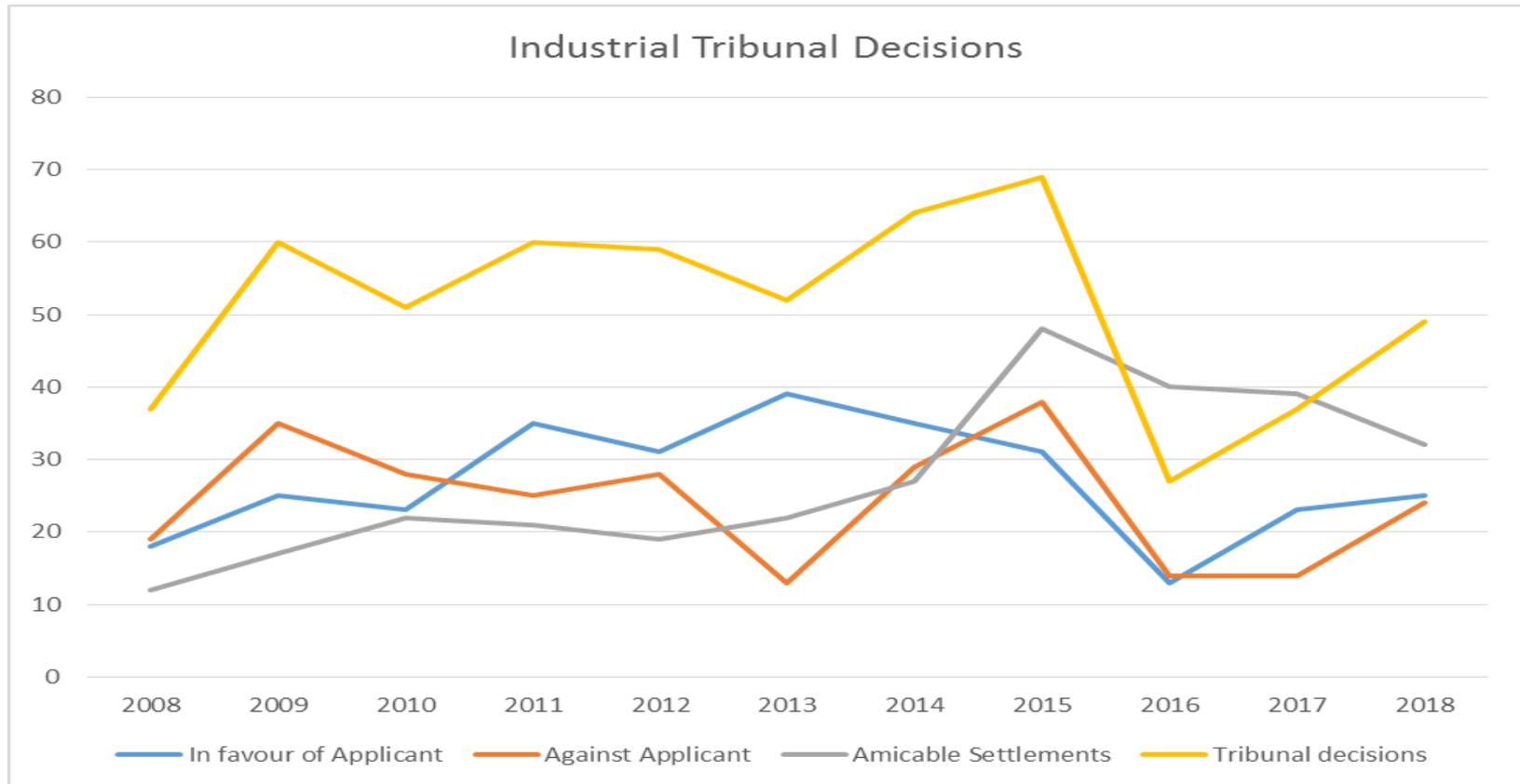


Industrial Tribunal Decisions



TRIBUNAL DECISIONS 2008-2018

	In favour of Applicant	Against Applicant
2008	18	19
2009	25	35
2010	23	28
2011	35	25
2012	31	28
2013	39	13
Total	171	148
	53.60%	46.30%
2014	35	29
2015	31	38
2016	13	14
2017	23	14
2018	25	24
Total	127	119
	51.60%	48.30%



Time line of events

- In August 2014 the MEA presented its proposed amendments to the EIRA which include, among other things, a reform of the Industrial Tribunal.
- The MEA is the catalyst of much needed and long overdue amendments to the EIRA which are currently being discussed at the Employment Relations Board.
- The GWU filed two cases vs AG (19/2008, 20/2008) contesting the composition and constitutionality of the IT (re: Josephine Attard Sultana vs Tony Zarb et pending before the IT).
- In February 2016 Tribunal stopped operating after the Court of Appeal (Constitutional Judicature) confirmed that the composition of the Industrial Tribunal is unconstitutional.
- As a stop-gap measure, minor changes to the EIRA were effected so that Tribunal could start functioning again on the 28th June 2016.

MEAL's main proposals include:

- Renaming – Employment and Industrial Tribunal
- A one-stop shop for both employers/ex-employers and employees/ex-employees
- Changing the structure of the Tribunal where the Chairperson has to be a lawyer and who would be assisted by two representatives - one from Unions and another from employers – in all cases.
- Adopt UK scenario where cases start and finish within a short span of time
- Decisions to be given within 3 months from date of hearing of the final submissions
- Introduce a capping on awards granted by the Industrial Tribunal (currently there are no thresholds)
- The setting up of an Employment and Industrial Appeals Tribunal
- Allowing for all decisions taken by an Industrial tribunal to be subject to an appeal (currently an appeal can be made on a point of law). Appeal from Tribunal decisions should be allowed also in Trade Dispute cases
- Tribunal to have its own premises

The MEA is proposing that the Industrial Tribunal be renamed as “The Employment and Industrial Tribunal” since this Tribunal does not only deal with trade disputes and interpretation of collective agreements but also with cases concerning:

- ✓ conditions of employment
- ✓ discrimination, harassment, victimization
- ✓ alleged unfair dismissal cases.

The name itself will give a more comprehensive meaning to the concept of having a one-stop shop within the competence and jurisdiction of the Tribunal.

THE CURRENT SYSTEM

On a preliminary basis, the situation, as it stands at present, may be summed up as follows:

Issues of a penal nature are currently dealt with by the Court of Magistrates in its Criminal Judicature, whereas issues of a civil nature (albeit industrial) are dealt with either by the Industrial Tribunal (which has exclusive jurisdiction over certain issues) or by the ordinary Civil Courts of Malta in cases where Tribunal does not have exclusivity or if it is the employer/ex-employer who is suing the employee/ex-employee.

JURISDICTION & COMPETENCE OF THE EMPLOYMENT AND INDUSTRIAL TRIBUNAL

The optimal scenario would involve one Tribunal having jurisdiction on all issues arising from both employment and industrial relations.

The MEA acknowledges the practical and, above all, legal implications of this proposal which necessitate further changes in other laws.

The MEA is proposing that Article 75 (1) reads as follows:

75. (1) Notwithstanding any other law, the **Employment and Industrial Tribunal** shall have the exclusive jurisdiction to consider and decide -

- (a) all cases of alleged unfair dismissals; and
- (b) all cases of discrimination, harassment including sexual harassment as well as victimization within the work environment;
- (c) all cases dealing with civil debts and the deduction of wages;**
- (d) all cases dealing with monies owed to the employer/ex-employer by the employee/ex-employee and vice-versa.**

for all purposes other than proceedings in respect of an offence against any enactment and the remedy of a worker so dismissed or otherwise alleging a breach of his right under Title I of this Act shall be by way of reference of the complaint to the **Employment and Industrial Tribunal** and not otherwise:

THE MEA PROPOSES AN AMENDMENT, CONSTITUTING A POSSIBLE MAJOR REFORM IN THE SET-UP/CONSTITUTION OF THE TRIBUNAL

The Tribunal will in all instances be chaired by a Chairperson who has to be a **qualified lawyer with seven years experience** along with two lay members, not being lawyers.

The said identified members shall provide the Chair with the technical assistance and practical work environment experience which may be required in dealing with whatever cases arise.

The role of these two members shall be consultative.

MEA'S PROPOSAL

If a member/s dissent/s from the decision, these have to verbalize their reservations for consideration by the competent appeals body if an appeal is launched.

Both parties to the dispute retain the right to appeal from a decision of the Employment and Industrial Tribunal. The MEA is proposing that this is done before an **Employment and Industrial Appeals Tribunal** rather than the current Court of Appeal in its Inferior Jurisdiction.

Either party shall have the right to file an appeal within 20 days from the date of the decision

Whilst emphasising that the Tribunal should also have competence to hear and decide cases instituted by the employer/ex-employer against the employee or ex employee and vice-versa the MEA agrees that the Tribunal should not have the competence to deal with cases involving public officers.

As part of the Tribunal Reform the MEA is proposing that the UK model should be adopted in that IT cases should start and finish in a short period of time.

Any award, decision or advice is to be given by the Tribunal within three months from the date of the final submissions.

MEAL PROPOSAL

78(1) The Tribunal shall decide any issue referred to it within a reasonable time from the date of the referral. Any decision or award is to be given by the Tribunal **within three months** from the date of the final submissions.

AWARDS & COMPENSATION

The MEA proposes that Chairpersons should be bound by upper thresholds of compensation.

The MEA is proposing that the maximum amount awarded should not exceed **eighteen months** salary.

The Employment and Industrial Appeal's Tribunal should have jurisdiction to revise the amount of compensation awarded provided that it does not exceed the capped 18 months salary.

The MEA further believes also that Adjudicators of the Employment and Industrial Tribunal should not be permitted to represent either plaintiffs or defendants in other cases before the Employment and Industrial Tribunal as happened in the past.

There is a clear conflict of interest when individuals on the one hand act as adjudicators and on the other hand act as official representatives of one of the parties in labour related cases.

Adjudicators should be well compensated for the work conducted. Their work-load and the complexity of cases brought before the Tribunal has today increased considerably.

To this effect, the MEA encourages the Director General (DIER) to invest heavily in all the infrastructure required, such as computers, library, databases, access to foreign jurisdiction decisions, particularly the CJEU, training etc.

The MEA is proposing that the Chairpersons and Members of the Employment and Industrial Tribunal should benefit from familiarization training on the workings of the Tribunal, the provisions of the EIRA as well as the general environment of Employment and Industrial Relations.

The MEA is proposing that appeals are filed before the proposed **Employment & Industrial Appeals Tribunal** and not before the Court of Appeal in its Inferior Jurisdiction.

This Tribunal should be composed of a presiding judge (an Employment & Industrial Tribunal Appeals Judge) who has the obligation to meet dissenting panel members who sat on the Tribunal in First Instance with the possibility of making reference to any reservations they might have had.

PREMISES

Moreover the MEA is proposing that the Industrial Tribunal is no longer seated in the Superior Courts but should have its own premises in Valletta.

THE HUMAN RIGHTS & EQUALITY COMMISSION ACT 2018 & THE EQUALITY ACT 2018



The proposed Bills deal with discrimination and equality in all spheres of life, including employment relationships. The Bills stipulate that with the exception of the Maltese Constitution, wherever there is a conflict with any other law, these Acts shall prevail.

The proposed Acts are impinging on the fact that the Industrial Tribunal has exclusive jurisdiction in most employment-related instances.

The MEA's position is that whatever is employment-related (including equality and discrimination at the workplace) should remain to be dealt with by the Employment and Industrial Tribunal and no other body as proposed by these Bills..

THANK YOU FOR YOUR KIND ATTENTION

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