

## The right to strike in the public sector in Europe



The right to strike is fundamental for trade unions in underpinning their ability to organise, collectively bargain and represent their members. However, this right has often been restricted for public service workers and in recent years has come under attack.

EPSU is very grateful to the [European Trade Union Institute](#) for coordinating the production of [factsheets on 35 countries](#), setting out the legal provisions on the right to strike, identifying in particular specific rules affecting the public services. This provides a wealth of information to trade unionists who can now compare and contrast the legislative requirements in their country with many other countries across Europe.

As the 35 country factsheets show, there are often considerable limitations on the right to strike in public services. Many groups of public sector workers are restricted or even banned from taking strike action. Procedural rules and requirements to provide minimum levels of essential services can also further limit their rights.

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## **Recent challenges to the right to strike**

There have been a number of worrying developments in recent years where governments and international institutions have attempted to undermine the right to strike. These include:

- In July 2018, members of the **UK** public and commercial services PCS union delivered the highest “yes” vote and turnout in the union’s history. However, the vote was invalid because of restrictions on public sector strike action introduced by the centre-right Conservative government in 2016. Eighty-six per cent of almost 60,000 PCS members voted in favour of action to demand a pay rise, but although representing 42% of the workforce, their number fell short of the required 50% turnout threshold;
- In June 2018, the CSC/ACV and CGSP unions representing prison workers in **Belgium** went on strike in protest at government proposals for new laws to limit their right to take industrial action. The unions highlighted the deteriorating conditions and overcrowding in prisons and the importance of the right to strike in demanding urgent action;
- Also in June 2018, a **German** constitutional court ruling confirmed that civil servants do not have the right to strike. The judgement was based on the

argument that civil servants have a special relationship of trust with the state. The ver.di public services union said unilateral cuts to civil servants' pay and conditions had undermined this relationship. The German unions contested the ruling and also called for stronger representation and negotiation rights for civil servants;

- In January 2018, the **Greek** ADEDY public services and GSEE private sector confederations organised a day of protest against austerity measures being voted on in Parliament as part of the package agreed with European lenders. These included restrictions on the right to strike as well as further public sector job cuts and cuts to pensions and tax allowances;
- Over recent years, hundreds of workers from the **Spanish** UGT and CCOO confederations have faced the threat of legal action, including long prison sentences and fines, for taking part in strikes. The authorities have used an obscure and previously unused law from the Franco era to attack the right to strike. In June 2017, for example, two members of the Spanish UGT union were facing up to seven years in prison for taking part in the general strike of 2012; and
- In January 2017, **Italian** forestry workers took to the streets to demand a delay in their forced transfer to the Carabinieri police force, effectively militarising them and denying them the right to strike.

## **Defending the right to strike - the international institutions**

In some cases, highlighted in the factsheets, these restrictions have been challenged at international level through bodies set up by the United Nations, International Labour Organisation and Council of Europe.

### **International institutions and the right to strike**

The right to strike is an intrinsic part of the fundamental right of freedom of association and is recognised by numerous international and European human and social rights instruments, to which all EU member states have signed up to.

At the international level, and next to the International Covenant on Economic, Social and Cultural Rights (ICESCR) of the United Nations (UN),

it is in particular the International Labour Organisation (ILO) that insists its member states recognise and guarantee this right. The two bodies set up to oversee ILO standards, the Committee on Freedom of Association (CFA) and the Committee of Experts on the Application of Conventions and Recommendations (CEACR), have repeatedly recognised the right to strike as a fundamental right of workers and their organisations.

At the European level, the right to strike is also recognised by the Charter of Fundamental Rights of the European Union (EU) and it is similarly recognised and protected by the Council of Europe European Convention of Human Rights (ECHR, Article 11) and the European Social Charter (ESC, article 6§4). There is important case law developed by their respective (quasi-) judicial bodies being the European Court of Human Rights (ECtHR) and the European Committee of Social Rights (ECSR). Furthermore, within the EU sphere, the right to strike is recognised by the Charter of Fundamental Rights of the European Union (CFREU) and the recently proclaimed European Pillar of Social Rights (EPSR, Principle 8).

### **The right to strike - the view from the United Nations**

The UN Special Rapporteur on freedom of peaceful assembly and association, Mr. Maina Kiai, highlighted the importance of the right to strike in a speech to the 329th session of the Governing Body of the ILO in 2017:

“The right to strike is also an intrinsic corollary of the fundamental right of freedom of association. It is crucial for millions of women and men around the world to assert collectively their rights in the workplace, including the right to just and favourable conditions of work, and to work in dignity and without fear of intimidation and persecution.

“Moreover, protest action in relation to government social and economic policy, and against negative corporate practices, forms part of the basic civil liberties whose respect is essential for the meaningful exercise of trade union rights. This right enables them to engage with companies and governments on a more equal footing, and Member States have a positive

obligation to protect this right, and a negative obligation not to interfere with its exercise.

Moreover, 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. The concentration of power in one sector – whether in the hands of government or business – inevitably leads to the erosion of democracy, and an increase in inequalities and marginalization with all their attendant consequences. The right to strike is a check on this concentration of power.”

For more information: [OHCHR](#)

## **The right to strike - evidence from 35 countries**

An overview of the 35 country briefings provides many examples of how public service workers prohibited from striking in one country have the right to strike in another. Governments may claim there are compelling reasons for excluding these groups, but the evidence points to these being political choices that are often difficult to justify.

## **Which workers are denied the right to strike?**

Although it is common for members of the armed forces, the security services, the judiciary, and police and prison officers to be excluded from the right to strike, union organisations have successfully challenged outright bans even in these areas. For example, the European Committee of Social Rights (ECSR) of the Council of Europe confirmed that an absolute prohibition on police forces’ right to strike in **Ireland** goes beyond the conditions established by the European Social Charter (ESC). In *European Confederation of Police (EuroCOP) v Ireland*, Complaint No. 83/2012, the ECSR confirmed that the complete ban on the right to strike in police forces violated Article 6(4) of the Charter. An absolute prohibition on the right to strike can be considered in conformity with the Article only if there are compelling reasons justifying it.

It is rare for police officers to be entitled to strike in the EU, but officers in **Belgium** have the right to strike, albeit with some restrictions. The trade union must give notice and must discuss the strike in advance with the competent authority with a

view to reaching a peaceful settlement. Officers must continue to work where necessary to ensure respect for the law and maintenance of public order and security.

The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has ruled that the right to strike may be restricted or prohibited for civil servants who exercise authority in the name of the state. However, the report includes many examples of where a far wider group of public sector workers are prohibited from taking strike action.

For example, in the **Czech** and **Slovak** Republics, workers in whole sectors of the civil service, public utilities, "crucial enterprises" and essential services are excluded from the right to strike. They include those in health and social care, where a strike could endanger people's lives or health; employees operating nuclear power stations or equipment; fire and rescue workers; air traffic controllers; and telecommunications workers, where a strike could endanger life or health or damage property.

In **Denmark**, certain categories of civil servants are considered bound by a special relationship of trust and are banned from striking. Since 2012, deputy police prosecutors, public prosecutors and state prosecutors have not been considered to be civil servants and therefore now have the right to strike. However, latest figures show the number of Danish civil servants denied the right to strike stood at 44,000. The CEACR said teachers should not fall into this category and urged the Danish government to ensure these workers can exercise the right to strike without risk of sanction.

**Germany** maintains a general ban on the right to strike for civil servants as a result of long-standing legal concepts that include regarding civil servants as having a special duty of loyalty. As a result, large numbers of public service workers are barred from taking strike action, including teachers and social workers. The CEACR has repeatedly criticised the ban, but in June 2018 the German Constitutional Court ruled the ban on strike action for civil servants is constitutional and compatible with the ECHR. The German unions dispute this ruling and have in the meantime submitted cases to the European Court of Human Rights (ECtHR) in Strasbourg

In **Poland** there are specific regulations for the public sector prohibiting the right to strike for those employed in state authorities, government and self-government

administration, courts and public prosecutors' offices. This includes manual and auxiliary workers who do not exercise authority in the name of the state.

In **Estonia** a civil servant who is an official, that is a person in a public-law service and trust relationship with the state or local government, is not allowed to strike. Although the ban does not apply to employees in public administration generally, it does apply to rescue workers and employees in the Ministry of Defence, Defence Resources Agency and the Defence League. Estonian trade unions say the ban on strikes in the public service is too broad and seriously limits the ability of employees in the civil service to defend their rights.

In **Turkey**, a law completely barring public servants from striking was passed in 2001.

As set out in the country reports, these same groups of workers do have the right to strike in other European states.

### **Restrictions related to essential and minimum services**

The ILO defines essential services as those “whose interruption would endanger the life, personal safety or health of the whole or part of the population”. However, a far wider interpretation of “essential services” restricts the right to strike in a number of countries.

For example, in **Albania**, civil servants working essential services of state activity, including transport, public television, water, gas, electricity, prison administration, administration of the justice system, national defence services, emergency medical services, services for food supply and air traffic control do not have the right to strike. The CEACR says these are not essential services in the strict sense of the term, while the ESCR says the denial of the right to strike to civil servants as a whole cannot be deemed to be in conformity with the ESC.

The CEACR has said teachers and public education services may not be considered to be essential services in the strict sense of the term. Replacing striking employees in primary and secondary education in the **Republic of North Macedonia** was therefore a serious impediment to legitimately exercising the right to strike.

The CFA has ruled that, for example, beer production in **Lithuania** and postal services, education and childcare in **Serbia** are not essential services in the strict

sense of the term.

There are also examples of excessive requirements to provide minimum levels of service during a strike. In **Romania**, for example, staff in establishments providing health care and social assistance, telecommunications, public radio and television broadcasting services, railway services, public transport, sanitation services, and gas, electricity, heating and water supplies are permitted to strike. However, there must be a minimum level of service corresponding to at least a third of normal activity or services.

In **Slovenia** the requirement to provide minimum services during a strike applies to all public officials. This treats all civil service workers as a uniform category and limits the extent to which they can exercise the right to strike.

In **Hungary**, the number of strikes has declined drastically since strike legislation was amended in December 2010. In “activities of fundamental public concern” – these include public transport, telecommunications, the supply of electricity, water, gas and other utility services – the right to strike “must be exercised in a way that will not impede the performance of the services at a minimum level of sufficiency”. The legislation has had a major impact on workers in these sectors, who were previously among the few who were allowed to strike. Since December 2010, there has been only one strike in these sectors. Before the law was amended, there were three or four strikes a year.

In **Latvia**, in the public transport sector, continuity of services had to be ensured in the network of routes to educational establishments, health care establishments and to state and local government offices during opening hours. In the healthcare sector, only the continuity of emergency care was required, whereas scheduled operations and other ordinary day-to-day activities were postponed.

There are also examples of minimum service levels being unilaterally determined by the government or employers, without the involvement of unions. For example, the **Estonian** government has unilaterally determined a list of minimum services. The CEACR said that **Turkish** unions should be involved in determining minimum service in event of industrial action, rather than granting this authority unilaterally to the employer. In **Serbia** the employer has the power to unilaterally determine minimum services after consulting the union.



## **Government and judicial action to prevent or suspend strike action**

The CFA has made clear that governments should not resort to mobilisation or requisition measures except for the purposes of maintaining essential services in circumstances of the utmost gravity. They should impose restrictions on a legitimate strike only as an exceptional measure.

However, over the past 32 years successive **Greek** governments have resorted to civil mobilisation measures that, under threat of penalties, have forced striking workers back to work. This has included curtailing industrial action in the maritime sector.

The **Danish** parliament has the power to step in during a collective labour dispute and enact a special Act to end the dispute if national interest is at risk. In **Turkey**, the Council of Ministers can suspend a strike for a period of 60 days if it is prejudicial to health or national security. Following the attempted coup on 15 July 2016 and the declaration of a state of emergency the government has adopted more than thirty emergency decrees, including extending the criteria for allowing the suspension of strike action.

In **Iceland**, the government can suspend a strike and introduce compulsory arbitration where negotiations have been exhausted without a satisfactory solution and the strike is substantially harming the country's economy and its citizens. The CFA said the mere existence of a deadlock in a collective bargaining process was not, in itself, a sufficient ground to justify the government intervening to impose arbitration. Similarly, the ESCR said legislation adopted to terminate a strike to avoid substantial disruption of air traffic and the tourist industry went beyond the limits of the Charter. Strikes are frequent in Iceland and between 1985 and 2010 the Icelandic parliament passed 12 laws banning strikes in a number of sectors.

The **Norwegian** government has terminated several strikes and imposed compulsory mediation in disputes involving care workers in nursing homes, air ambulance pilots, workers providing laundry and dry-cleaning services to hospitals, and oil and gas workers

Where sufficiently serious, the **Portuguese** government has the power to use civil requisition to ensure minimum levels of service, as it did recently in a case of strike action by the nurses' union. They can issue a ministerial order to bring a wide range

of activities into temporary, obligatory public service. These include food production and distribution, public transport, pharmaceutical production, ship construction and repair, banking and national defence production. The government argues these are exceptional measures that are rarely used.

In **Belgium**, both the CEACR and the ECSR have noted and criticised the systematic recourse by employers to the judicial authorities to ban industrial action by trade unions and prevent them from setting up picket lines. The ECSR has also said Italian law is not in conformity with the ESC with regard to the government power to issue injunctions or orders restricting strikes in essential public services.

In **Lithuania** the court can apply temporary protection measures until the legality of a strike is ruled upon, which can delay a strike for up to two and a half years. The **Polish** government has drafted legislation that would put a maximum nine-month time limit on collective disputes.

### **Procedural barriers to exercising the right to strike**

Procedural rules for calling and carrying out strikes impose further restrictions, with public service workers particularly affected. In the **Republic of North Macedonia**, for example, the legal procedure for initiating a strike in the public sector is long and complicated. Unions must deliver a warning letter at least seven days before they intend to call a strike, then the parties must propose a resolution to the dispute and inform workers and the public of the proposal. Only if no agreement is reached within 15 days may the union call a strike, submitting the decision to the director of a public enterprise at least seven days before the strike begins.

Procedures required in the lead up to a strike in Lithuania are also complicated and time-consuming.

In the **Netherlands**, procedural rules and a proportionality test are both important limitations on industrial action and there is concern that Dutch judges have considerable leverage over exercising the right to strike.

The CEACR has expressed concern about the strictness of the **UK Trade Union Act 2016** which introduced more stringent balloting requirements for industrial action. For a strike to be lawful, the union must secure a simple majority of voters in favour of industrial action. There must be a participation quorum of 50%, and in “important public services” there is an additional requirement for 40% of the workforce to have

voted in favour of strike action. There is also a requirement for a postal ballot, supervised by a scrutineer and including specified information.

In **Greece**, changes to the law following its entry into the financial assistance mechanism have affected the right to strike. Under pressure from the European Central Bank, European Union and the International Monetary Fund, the Greek government adopted a law requiring a quorum of 50% of union members at a general assembly where a vote for strike action is on the agenda. Previously the quorum was 30%.

In **Italy**, the ECSR said the requirement to notify employers of the duration of strikes affecting essential public services prior to strike action is excessive. It has also questioned the obligation for workers in **French** pre-schools, elementary schools, and the public transport sector, to engage in conciliation and social dialogue before giving notice of a strike.

In **Turkey** strikes can only be initiated after negotiations have been exhausted and a number of countries specify that strikes must be a last resort. In **Serbia**, for example, strikes can be called only after a mandatory conciliation procedure. In **Poland** strike action must not be declared without having previously exhausted all possibility of settlement through negotiation, and if negotiations fail, through mediation. In **Estonia**, strikes that are not preceded by negotiation and conciliation proceedings are declared unlawful. In **Luxembourg** the law provides that prior to any strike action, the parties to a collective dispute must submit to a compulsory conciliation and mediation procedure. In **Latvia** there is a requirement to resolve a dispute through conciliation, mediation and arbitration before moving to strike action.

Peace obligations are a feature of industrial relations in **Scandinavian** and other countries including **Italy**, **Portugal**, the **Netherlands**, **Romania** and the **Slovak Republic**. In **Austria** strikes are very rare and conflicts of interest are usually resolved through collective bargaining. Most employees are covered by collective bargaining agreements and almost all collective agreements contain a no strike clause. Violating this obligation to maintain industrial peace could mean unions would be liable for breach of contract.

The CFA has ruled that if strikes are prohibited while a collective agreement is in force, this restriction should be compensated for with a right to recourse to

impartial and rapid mechanisms to examine individual or collective complaints. The ECSR has ruled that the situation in **Finland** is not in conformity with Article 6(4) of the Charter on the grounds that civil servants cannot call a strike in relation to issues not covered by a collective agreement.

### **Other recent developments and current problems**

The report shows that attacks on the right to strike are not restricted to public service workers. For example, the *Laval* case restricted the right of workers posted to **Sweden** by companies established in another country. In C-341/05, *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet*, EU:C:2007:809, the European Court of Justice (CJEU) ruled that industrial action organised by the Swedish construction union against a Latvian-based company was unlawful and ordered the union to pay punitive damages. In 2010, the Swedish government amended the law to comply with the ruling. However, in June 2017 the social democratic government repealed this so-called *Lex Laval* amendment. This restored the ability of trade unions to take collective action against posting companies, although they cannot demand terms and conditions more favourable than the minimum conditions set by sector-level collective agreements.

The criminalisation of the right to strike is a serious concern in **Spain**. Its criminal code provides for prison sentences and heavy fines for coercing other people to begin or continue a strike. Courts have handed down long prison sentences to trade unionists taking part in picketing over recent years, with almost 300 workers arrested and prosecuted for taking strike action.

In **France**, striking workers who are requisitioned and refuse to work are committing a criminal offence and are liable to six months' imprisonment and a 10,000€ fine. In 2010, during a general strike, the government requisitioned 160 striking oil workers and issued them with back-to-work orders and threatened them with criminal sanctions.

In **Serbia**, trade unionists can be imprisoned for up to three years for organising or leading a strike contrary to laws and regulations and thereby endangering life, health or property. The CEACR has ruled that no penal sanction should be imposed for carrying out a peaceful strike.

## Conclusion

This report shows how governments and employers across Europe are attempting to restrict public service workers' rights and basic freedoms by curtailing their fundamental right to strike. Many groups of public sector workers are restricted or even banned from taking strike action, while procedural rules and requirements to provide minimum levels of essential services further limit their rights. In some cases, workers taking strike action have been criminalised and even imprisoned for taking part in peaceful industrial action.

There are few rights workers have won without a struggle. 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". Given the chance, many employers will roll-back these hard-fought advances.

It is crucial that European public service workers and their unions resist these attacks and defend the right to strike. 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".

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