The right to strike in the public services

Belgium

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Right to strike in the public services: Belgium

Contents

This factsheet reflects the situation in March 2021. It was elaborated by Coralie Guedes (independent expert), updated by Diana Balanescu (independent expert) and reviewed by EPSU/ETUI; comments received from the Belgian (EPSU) affiliate, BBTK-SETCA, and from Prof. F. Dorssemont (UCL, Belgium) were also integrated.

1. Legal basis

International level

Belgium has ratified:

UN instruments[1]

International Covenant on Economic, Social and Cultural Rights (ICESCR, Article 8)
International Covenant on Civil and Political Rights (ICCPR, Article 22)

ILO instruments[2]

Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise
(ratification on 23 October 1951)
Convention No. 98 concerning the Right to Organise and to Bargain Collectively
(ratification on 10 December 1953)
Convention No. 151 concerning Labour Relations (Public Service)
(ratification on 21 May 1991)
Convention No. 154 concerning the Promotion of Collective Bargaining
(ratification on 29 March 1988)

European level

Belgium has ratified:

Article 6 (4) (the right to collective action) of the Revised European Social Charter (ESC)[3] with no reservations
(ratification on 2 March 2004; entry into force on 1 May 2004)
Additional Protocol to the European Social Charter Providing for a System of Collective Complaints[4]
(ratification on 23 June 2003; entry into force on 1 August 2003)

Article 11 (the right to freedom of assembly and association) of the European Convention on Human Rights[5]
(ratification and entry into force on 14 June 1955);

National level

General

The right to strike in Belgium is **not enshrined in the Constitution** nor regulated by law. It forms part of positive law by virtue of article 6§4 of the European Social Charter (ESC) and has been mainly developed through case law. In 1981, the Belgian Supreme Court ruled that,

in the event of a strike, an employee has the right not to perform the work as stipulated in the employment contract. Therefore, participation in a strike is not in itself an unlawful act. A worker who goes on strike is exercising his or her freedom of association, and this action is therefore considered to be a justified suspension of the labour contract.

The Belgian Supreme Court has founded the recognition of the strike intended as a collective and voluntary stoppage of work on the 'Loi sur les Prestations d'intérêt public en temps de paix (1948)', since at that time the ratification of the ESC was not yet completed. It fully recognised the right to strike, irrespective of whether it was recognised by a trade union or whether it was "spontaneous".

The right to strike is accepted as a fundamental right, as the consequences are set out in the relevant legislation.

In the public sector

The **civil service** in Belgium is a career system, with guaranteed tenure but public servants are increasingly employed under a normal employment contract.

Employees in the public sector are divided into two categories: **public servants** employed on the principle of statutory public employment (this is the rule), and **contractual employees** under private law whose relationship with the public employer is governed by an employment contract.

Article 1 of the 1937 Decree defines a public servant as 'any person who is permanently employed' in the administration. Under Belgian public law, the principle of statutory public employment is the rule, while contractual employment is the exception. This principle is demonstrated by both the Royal Decree on the regulations governing public servants and case law. The distinction between an employee subject to private law and a public servant governed by public law depends on the nature of the document creating the employment relationship: a contract or a unilateral administrative order.

Several judicial practices **restrict the exercise of the right to strike**, as they rule on the strike itself and its unlawful consequences, and may prohibit a strike. It is the general courts and not the labour court who judge in that respect.

2. Who has the right to call a strike?

The right to strike is recognised as an individual right, which means that employees may take part in a strike that is not approved by a trade union.

3. Definition of strike

There is no precise definition of a strike in Belgian law. A strike means a temporary, concerted and usually collective work stoppage. This definition is based upon the aforementioned 'Loi sur les Prestations d'intérêt public en temps de paix', which does not refer to "strike", but just refers to this definition.

The definition of a strike implies obligatory elements:

- **stoppage of work** (work which the strikers were obliged to perform by civil law or due to their employment contract)

- the aim must be to **put pressure** on the employer or on a third party. A strike does not necessarily have to be directed solely at the employer. The grievance giving rise to the action can extend to an entire industry or even to national economic and industrial planning.

Type of collective action

In Belgium, both primary and secondary strikes are permissible. The following collective actions are possible:

- **strike:** about wages and working conditions in the enterprise, the sector or the private sector as a whole;
- **solidarity strike;**
- **picketing:** legal as long as peaceful and there is no physical prevention from e.g. entering the workplace;
- **spontaneous strike:** if the peace obligation is not observed (not necessarily illegal);
- **work-in/occupation**: employees take over the premises or a part thereof; this can mean the partial or total continuation of production (illegal);
- **whole workforce;**
- **part of the workforce;**
- **continuous strike; and**
- **interrupted strike.**

Work-to-rule or **go-slow actions** are illegal, as only complete refusal to work is permitted. Also, purely political strikes are not permitted. There are no legislative restrictions, but the Belgian courts have ruled political strikes unlawful.[6]

Belgian workers also have a wide range of possibilities to carry out international secondary strikes, given that secondary actions are generally lawful in Belgium. Therefore, there are few constraints on trade unions supporting workers outside Belgium.

The unlawfulness of the primary action does not affect the lawfulness of the secondary action.

The concept of **lock-out** does not receive particular attention in the doctrine and case law because the phenomenon is rather rare in Belgium. A lockout is in fact a temporary closure of a company, not for economic or specific reasons to the company, but as an action aimed at strengthening employer's claims or position in a collective dispute.[7]

4. Who may participate in a strike?

Apart from the armed forces, civil servants in general, including members of the police force, are entitled to engage in strike action.

Minimum service provisions are, in practice, laid down by the trade unions and the authorities to maintain basic services in key sectors. The requisition of workers for essential tasks, described as 'peace-time public-interest services', is possible: joint committees determine and delimit the measures, activities or services to be implemented for undertakings in their specific areas when collective or individual work stoppages occur in order to cover vital necessities, carry out urgent tasks on machinery or materials or to perform certain tasks in situations of **force majeure** or unforeseen necessity.

The question of minimum services in the public sector is always topical, as the debate arises from time to time as to whether minimum services should be established in sectors other than hospital and security services. The trade unions are opposed to this idea, as they fear restrictions on the right to strike (see also section 8 below).

Police officers are entitled to strike, with restrictions considered in conformity with the European Social Charter. A strike must be announced in advance by an accredited trade union; the reason for the strike must be discussed in advance with the competent authority in the police service negotiating committee with a view to reaching a peaceful settlement. Police officers on strike or wishing to strike can be obliged by the authorities to carry on or resume working during the period concerned in order to carry out necessary tasks in order to ensure respect for the law and the maintenance of public order and security at all times.[8]

Members of the **armed forces** are not allowed to strike.[9]

Essential services are not defined by law but are established by joint committees in the event of a strike or lockout under section 1 of the Act Concerning Public Interest Services in Peacetime (Act of 19 August 1948). These Committees must be composed of an equal number of employer and union representatives, as well as a Chairperson and a Vice-Chairperson named by the King, under the Act on Collective Agreements and Joint Committees of 1968. In 1999, the Belgian courts ruled explicitly that the right to strike must be balanced against other legitimate rights and interests in society at large. The Belgian social partners have adopted the practice of establishing minimum services in essential services in the private and public sectors by mutual agreement. In the public radio and police, these are established by decrees issues by the Government, while in the postal services they are established by the union, under the names "vital needs" or "urgent works"[10] and in the prison services by Law of 23 March 2019 on the organisation of prison services and the prison staff regulations (see Sections 7 and 8 below).

The 'essential services' in the strict sense of the term have been defined by the ILO as those services 'the interruption of which would endanger the life, personal safety or health of the whole or part of the population'.[11]

5. Procedural requirements

If a collective agreement contains a **peace obligation**, this has to be respected; even so, it is legally enforceable only to some extent, in the sense that trade unions cannot be held liable for damages. This is because trade unions do not have legal personality and cannot therefore be sentenced in court for non-compliance with this obligation. The peace clause relies on trust.

In order to organise a strike, trade unions must observe a **notice requirement**, often laid down in the collective bargaining agreement, beginning by sending a registered letter to the chair of the joint committee, where the strike concerns a sector as a whole, or to the employer for a strike within a company. **A period of notice** must be observed before actually proceeding with the strike or lock-out (for example one week or 14 days). Both the method and the notification period are generally defined by the collective agreement or in the internal regulations of the joint committee.

Failure to comply with this procedure in the event of a strike generally leads to a withdrawal of support from trade union organisations.

The law stipulates that, in the exercise of the right to strike, capital and equipment must be safeguarded. **Essential public services** must be **maintained**, and any necessary emergency tasks carried out.

6. Legal consequences of participating in a strike

Court decisions have held that a strike only suspends the employment contract. Therefore, participation in a strike is **not a breach of the contract**.

Striking workers are not entitled to remuneration, but strike benefits may be paid by the trade union. Indeed, in the public sector, the right to strike is recognised by law through provisions under which participation in a strike may not have any effect other than the loss of wages.

Sanctions for unlawful strikes

Article 4 of the Law on Collective Agreements and Joint Committees provides for trade unions to be sued. The Courts will usually determine the sanctions to be awarded for breach of an injunction against strike action (normally a fine) and employees may be lawfully dismissed for taking part in an illegal strike.[12]

7. Case law of international/European bodies

United Nations

Human Rights Committee (CCPR)

Concluding observations on the sixth period report of Belgium[13]

In 2019, in its concluding observations on the sixth period report of Belgium on the implementation of ICCPR, the CCPR noted with concern the repercussions of strikes by prison staff on inmates in recent years. However, it also noted the State party's adoption of Act No. 2019011569 of 23 March 2019 on the organization of the prison service and the status of prison staff so as to ensure minimum staffing levels at prisons (§33). It recommended that the State party should ensure implementation of Act No. 2019011569 of 23 March 2019 on the organization of the prison service and the status of prison staff, so as to ensure the minimum staffing levels at prisons, including during strikes (§34 c).

Committee on Economic, Social and Cultural Rights (CESCR)

Concluding observations on the fifth periodic report of Belgium[14]

In 2020, in its Concluding observations on the fifth periodic report of Belgium on the implementation of the ICESCR, the CESCR noted the following:

> 28. (…) The Committee is concerned at the lack of legal recognition for the right to strike (arts. 6 and 8).
>
> 29. (…) The Committee recommends that the State party guarantee the exercise of the right to strike in law and in practice, in full compliance with the Covenant. The Committee draws the State party's attention to its general comment No. 18 (2005) on the right to work and refers it to its joint statement with the Human Rights Committee on freedom of association, including the right to form and join trade unions (E/C.12/66/5-CCPR/C/127/4), adopted in 2019.

International Labour Organisation

Observations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)

Direct Request (CEACR) - adopted 2020, published 109th ILC session (2021); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)[15]

The Committee noted the observations of the General Labour Federation of Belgium (FGTB), the Confederation of Christian Trade Unions (CSC) and the General Confederation of Liberal Trade Unions of Belgium (CGSLB), dated 1 October and 10 November 2020, which addressed the issues examined within the framework of the present Convention. The workers' organizations also reiterated their concern regarding convictions and criminal proceedings brought against trade unionists for malicious obstruction of traffic (section 406 of the

Criminal Code), which undermine the right to strike and to take collective action. *The Committee requested the Government to provide its comments on the application of this provision and to provide information on the outcome of the criminal proceedings brought.*

Article 3 of the Convention. Right of trade union organizations to formulate their programmes. Individual declaration of participation in a strike.

In its previous comments, the Committee had noted the observations of the FGTB, CSC and CGSLB regarding the **Act of 29 November 2017 on the continuity of rail transport service** in the event of a strike, which required each member of staff in an operational occupational category considered to be essential to declare his or her intention to participate in a strike by a determined deadline (**72 hours' notice**, in line with the General Regulations on Trade Union Relations). The Committee also noted the above-mentioned allegations of the trade union organizations concerning the **Act of 23 March 2019 on the organization of prison services and the prison staff regulations**, which referred to the same matter.

The Committee had noted that the procedure regarding the individual declaration of intent to strike was established in comparable terms, on the one hand, in the context of rail transport, which the Committee considers not to be an essential service in the strict sense of the term but rather a service of critical importance for which the establishment of a minimum service can be justified, and, on the other, in the context of prison services, which the Committee considers to be essential services in the strict sense of the term. The Committee considered that if the declaration of intent to strike could be justified in order to ensure that a minimum level of activity in the services in question is maintained, it is important to ensure that the implementation of such procedures, which could be used to weaken the collective action of workers and their organizations, does not result in any kind of interference in the actions carried out by the trade union organizations or in any form of pressure on potential strikers.

The Committee noted the Government's indication that the appeal for annulment filed against the Act of 29 November 2017 was generally rejected by the Constitutional Court in its ruling of 14 May 2020. The Committee noted that, according to the Court, since a minimum of eight working days' notice of a strike is required, staff members required to submit prior declaration have sufficient time to take a decision on their participation in the strike, 72 hours ahead of it. The Court considered that "the minimum strike notice period of eight working days and the obligation of prior declaration incumbent on certain agents do not therefore entail disproportionate interference with the rights of the workers concerned and, in particular, do not impede social dialogue and collective consultation and do not affect the freedom of association and the right to collective bargaining in their substance".

Taking due note of these elements communicated by the Government, the Committee requested it to continue providing information on the application in practice of the relevant provisions of the above-mentioned Acts, including possible interference with the ability of workers or worker organisations to participate in activities protected under the Convention.

Minimum service in prisons

The Committee noted the allegations by the trade union organizations concerning the **Act of 23 March 2019 establishing a minimum service** and the possibility of using a system of requisitioning staff in the case of a strike that lasts longer than two days. They indicated in particular that any disagreement concerning the negotiation of a minimum service should be resolved through an independent body, such as the judicial authorities, and not by the ministry concerned, but that under section 19 of the Act, if the competent advisory committee does not submit an operational plan in the three months following the entry into force of the Act, either because it has not taken a decision or because no agreement has been reached in the committee, the minister shall determine the services to be provided and the measures to be taken.

The Committee noted the information provided by the Government in reply to these allegations. The Government indicated that the Act of 23 March 2019 uses the various recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and that the Council of State had concluded that the restriction of the right to strike was proportional and fitting in view of the essential services that must be guaranteed to detainees. The Council also emphasized that the trade unions were involved throughout the setting up of this minimum service. With particular regard to section 19 of the Act, the Government stated that the trade union organizations failed to indicate that, when the minister determines the services to be provided and the measures to be taken, he does so after consulting the competent advisory committee. In the Government's view, then, another opportunity for dialogue is provided for at the level of the High Advisory Committee. If no opinion in favour is issued by this Committee, the minister may then decide to amend the operational plan or continue without amendments, in accordance with the rules set out in the trade union statute This would require a new round of dialogue and consultations with the bodies and committees set up for this purpose. However, the Government recognized that no provision had been made so far for an independent body to intervene at this stage of dialogue.

While noting the consultation procedures established by law to ensure the maintenance of a minimum service, as referred to by the Government, the Committee nevertheless wished to recall that it considers that any **disagreement on minimum services** should be resolved not by the government authorities but by a **joint or independent body** which has the confidence of the parties, responsible for examining quickly and without formalities the difficulties raised, and empowered to issue enforceable decisions (see the 2012 General Survey on the fundamental Conventions, paragraph 138). *In view of the above, the Committee requests the Government to continue its efforts to establish an independent body for determining the minimum services to be provided in prison services in the event that the parties do not reach an agreement.*

Picketing. The Committee noted the Government's indication that, further to the information provided by the Government on current jurisprudence, in December 2018 the European Committee of Social Rights considered that the situation of Belgium is currently in compliance with the European Social Charter and decided to end its examination of the follow-up to the decision (see below Findings 2019 of the European Committee of Social Rights).

Council of Europe

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The question of establishing a service guaranteeing the basic rights of persons held in prison establishments ("guaranteed minimum service") in particular in situations of strike actions by prison staff was already raised in the CPT's reports of 2005, 2009, 2012 and 2013.

In July 2017, in a public statement, the CPT considered the lack of concrete progress over many years in establishing a viable system of guaranteed minimum service to uphold prisoner's rights in all circumstances, but in particular in the context of industrial action by prison staff, as *"serious failure to co-operate with the Committee"* and called upon *"the Belgian authorities and all stakeholders, in particular the social partners, to assume their responsibilities once and for all and find quickly an appropriate solution to this exceptionally serious problem which should not arise in a Council of Europe member state."*[16] [17]

In its report published in March 2018 (concerning the visit to Belgium in March-April 2017), the CPT referred again to the above-mentioned public statement.[18] Belgium was asked to report on any progress on a regular basis to the CPT and in a first reply from June 2018 the Belgian government informed the CPT that the concertation with the social partners was in a final phase and a political agreement had been reached.[19]

Following this, the **Law of 23 March 2019 on the organization of prison services and the prison staff regulations**[20] was adopted. Articles 15-20 of this Law lay down the procedure and the services to be maintained in the event of a strike.

Compliance with a ten-day **notice period** between the announcement and the start of the strike, unless the strike notice is submitted at inter-professional level, is required (Article 15 (5) of the Law of 23 March 2019).

According to the above-mentioned Law, the head of the establishment constitutes a list of staff members who have confirmed their intention not to participate in the strike. For this purpose, the members of the personnel shall inform the head of the establishment, at the latest **seventy-two hours** before the start of the first day of the strike, of their final intention to participate or not on the day of strike. In the event of a strike lasting more than one day, the staff members shall inform the head of the establishment at the latest seventy-two hours before the first day of the strike of their definitive intention to participate or not in the strike and this for each of the days of strike during which their presence is planned. They can change their declaration no later than forty-eight hours before each strike day, except the first day, if they wish to work on that strike day and no later than seventy-two hours before each strike day at the latest, with the exception of the first day, if they wish to strike during that day of strike (Article 16 (1) of the Law of 23 March 2019).

Under Article 19 of the Law of 23 March 2019, the King determines the model of the plan which establishes **the services to be performed** and the measures to be taken by the prisons' staff in order to ensure the essential services, as provided for in Article 17(2) of the

Law. The preparation of this plan is, for each prison, the subject of consultation within the Advisory Committee. If the competent advisory committee does not present such an operational plan within three months after the entry into force of this section, either because it has not taken a decision, or because no agreement has been reached within the Committee, the Minister determines the services and measures, after consultation with the competent advisory committee.

In a Direct Request[21], the ILO CEACR examined the compliance of the above mentioned legal provisions with the requirements of the ILO Convention 87 and requested the Government to continue its efforts to establish an independent body for determining the minimum services to be provided in prison services in the event that the parties do not reach an agreement (see above).

European Social Charter

Collective complaints under article 6§4 European Social Charter

Collective Complaint No. 59/2009 by the European Trade Union Confederation (ETUC), Centrale générale des syndicats libéraux de Belgique (CGSLB), Confédération des syndicats chrétiens de Belgique (CSC) and Fédération générale du travail de Belgique (FGTB) v. Belgium[22]

The complainant organisations alleged that the situation in Belgium was not in conformity with the rights laid down in Article 6§4 (right to strike) of the Revised Charter. They claimed that judicial intervention in social conflicts in Belgium, in particular concerning restrictions imposed on the action of picketing, violate this provision.

Committee of Ministers Resolution CM/ResChS(2012)3 - (Adopted by the Committee of Ministers on 4 April 2012, at the 1139th meeting of the Ministers' Deputies)[23]. In this Resolution, the Committee of Ministers noted:
"(…) Having regard to the report transmitted by the **European Committee of Social Rights,** in which it **concluded**, inter alia, by 8 votes against 4:

(i) <u>that the right to collective action is recognised under Belgian law</u>.
The mere fact that Belgian statutory law does not recognise the right to strike does not in itself constitute a violation of the Charter as long as such a right is guaranteed in law and in fact through an established and undisputed case law of the highest domestic courts.

The fact that the Belgian Court of Cassation does not explicitly refer to Article 6§4 of the revised Charter when establishing the right to strike, does not amount to a violation of the revised Charter. Nevertheless, when the task of implementing the State's obligations resulting from the Charter, in the absence of statutory law, rests on the case law of domestic courts, the latter need be reasonably precise and exclude contradictions.

Article 6§4 of the revised Charter encompasses not only the right to withholding of work, but also other relevant means, inter alia, the right to picketing. Both these components deserve consequently a comparable degree of protection.

Picketing activities will usually be accepted as lawful as long as they remain peaceful in nature. The right to collective action as guaranteed in Article 6§4 appears to be recognised. The fact that picketing activities are legally based, although not included in the judge-made "right to strike", does not appear in itself incompatible with the Charter, as long as the same level of protection is effectively guaranteed to all aspects included within the scope of Article 6§4.

(ii) that there is a restriction on the exercise of the right to strike.

The exercise of the right to strike necessitates striking a balance between the rights and freedoms, on one side, and the responsibilities, on the other, of the natural and legal persons involved in the dispute.

If the picketing procedure operates in such a way as to infringe the rights of non-strikers, through for example the use intimidation or violence, the prohibition of such activity cannot be deemed to constitute a restriction on the right to strike as recognised in Article 6§4.

On the other hand, where picketing activity does not violate the right of other workers to choose whether or not to take part in the strike action, the restriction of such activity will amount to a restriction on the right to strike itself, as it is legitimate for striking workers to attempt to involve all their fellow workers in their action.

The obstacles to the functioning of strike pickets posed by the operation in practice of the "unilateral application procedure" under Belgian law should be understood as constituting a restriction on the exercise of the right to strike as laid down in Article 6§4 of the Charter.

(iii) that there is no justification for this restriction.

Pursuant to Article G, a restriction on the exercise of a right recognised by the Charter can be seen as compatible with the Charter if it fulfils the following conditions:

- it must be prescribed by law;
- it must pursue one of the aims set out in Article G[24];
- it must be proportionate to the aims pursued.

a) *restrictions are not prescribed by law*

In providing that restrictions on the enjoyment of Charter rights must be "prescribed by law", Article G does not require that such restrictions must necessarily be imposed solely through provisions of statutory law. The case law of domestic courts may also comply with this requirement provided that it is sufficiently stable and foreseeable to provide sufficient legal certainty for the parties concerned.

The decisions of the domestic courts adopted under the emergency relief procedure, as brought to the Committee's attention by the parties to the complaint, do not meet these conditions. In particular, inconsistencies of approach appear to exist as between similar cases, and the case law lacks sufficient precision and consistency so as to enable parties wishing to engage in picketing activity to foresee whether their actions will be subject to legal restraint.

In addition, the expression "prescribed by law" includes within its scope the requirement that fair procedures exist. The complete exclusion of unions in practice from the so-called "unilateral application" procedure poses the risk that their legitimate interests are not taken into consideration. Unions may only intervene in the procedure after an initial binding decision has been taken and the collective action has been stopped. As a result of the unilateral nature of this procedure, the judge "may" summon other affected parties, but if he elects not to do so, the decision can be taken without such parties making submissions at the initial hearing or in its immediate aftermath. As a result, unions may be obliged to initiate collective action again, or else must go through a time-consuming appeal procedure. Consequently, the exclusion of unions from the emergency relief procedure may lead to a situation where the intervention by the courts runs the risk of producing unfair or arbitrary results. For this reason, such restrictions to the right to strike cannot be considered as being prescribed by law.

b) *restrictions do not pursue one of the aims set out in Article G*

Furthermore, any restriction on the right to strike may not go beyond what is necessary to pursue one of the aims set out in Article G. The application of such procedure as described above may intend to pursue the aim of protecting the right of co-workers and/or of undertakings, but in its practical operation goes beyond what is necessary to protect those rights by reason of the potential lack of procedural fairness.

Therefore, the Committee considers that Belgian law does not provide guarantees for employees participating in a lawful strike within the meaning of Article 6§4 of the revised Charter.

Conclusion

The restrictions on the right to strike constitute a violation of Article 6§4 of the revised Charter, on the ground that they do not fall within the scope of Article G as they are neither prescribed by law nor do they pursue one of the aims set out in Article G.

Follow-up to collective complaint (Findings 2018)[25]

In the information registered on 30 October 2017[26], the Government stated that the Committee's decision had had an impact on national case law and that it had been incorporated by certain judges into their interpretation of the right to strike.

Firstly, it is important to note that the Belgian courts take into account the European Social Charter. For example, the decision of the Brussels Court explicitly referred to the decision of the European Committee of Social Rights when interpreting the right to strike.

Secondly, the measures requested by certain employers in the event of a strike – and allowed by the courts in certain cases – aim to restrict this right for security reasons. Therefore, courts do not prohibit strikes per se or participation in strikes or picketing. It is

actually more specific actions that are prohibited with a view to ensuring safety, such as occupying railways. Consequently, these restrictions do not constitute a limitation on the right to collective action. Similarly, the Mons Court of Appeal prohibited persons from occupying railways or signal boxes, this time on the ground that the fact that there had been several similar strikes recently showed that there was a probable risk of repetition, although it was stressed that there was a need for "exceptional urgency" for a unilateral application to be allowed. This tendency by judges not to restrict collective action is also illustrated by a decision by the President of the Court of First Instance of Antwerp, in which it was held that the commercial and financial damage suffered by an employer did not justify any restriction on collective action.

Thirdly, the importance attached to adversarial argument is shown by the approach of Malines Court which, in the context of unilateral applications, explicitly confirmed that priority should always be given to adversarial judicial decisions. In this case, the court insisted on this point, asserting that "in our legal system, there is no place for legal proceedings against unknown persons" and that "it is up to the employer to prove that everything was done to enable an adversarial dialogue". The importance of an adversarial debate was also explicitly confirmed by the Antwerp Court of Appeal in 2012. According to this Court, a unilateral application was not necessary because at least some of the strikers were known. This interpretation was adopted subsequently in 2014 by the Court of Cassation, the highest court in the country, whose task it is to ensure that legal rules are interpreted and applied consistently by all the country's courts.

These arguments were also supported by the Federation of Belgian Enterprises (FEB) in its report registered on 2 May 2018.

Assessment of the follow-up

The Committee considered that the examples of case law given by the authorities show, on the one hand, that the Belgian case law on strikes is stable, consistent and predictable and, on the other hand, that the proceedings for unilateral applications guarantee procedural fairness.

The Committee held that **the situation had been brought into conformity with the Charter** and decided to terminate the follow-up to the decision.

ECSR Conclusions

There are no recent Conclusions of ECSR on Article 6§4 in respect of Belgium.[27]

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- http://www.ejustice.just.fgov.be
- http://www.assemblee-nationale.fr/12/pdf/europe/rap-info/i1274.pdf
- https://emploi.belgique.be/fr/themes/concertation-sociale/conflits-collectifs/greve-et-lock-out .

Notes

1 Status of ratification by Belgium of UN instruments, available at: https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=_en.
2 For an overview of all ILO Conventions ratified by Belgium, see https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102560 .
3 Status of ratifications of the Revised European Social Charter: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures?p_auth=jPYjkVEL (accessed on 17 March 2021).
4 Status of ratifications of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p_auth=F3KSQtYr (accessed on 17 March 2021).
5 Status of ECHR ratifications: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=jPYjkVEL (accessed on 17 March 2021).
[6] IRLEX, Country profile: Belgium, 2019: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:BEL,,2019:NO
7 'Strikes and lock-out' (in French) at 'Service Public federal, Emploi, Travail et Concertation Sociale': https://emploi.belgique.be/fr/themes/concertation-sociale/conflits-collectifs/greve-et-lock-out.
8 Article 126 of the Law of 7 December 1998 establishing the organisation of an integrated police service.
9 Article 175 of the Law of 28 February 2007 on the status of military personnel serving in the armed forces.
10 ILO, Timo Knäbe and Carlos R. Carrión-Crespo, pp. 13 and 43
11 Compilation of decisions of the Committee on Freedom of Association (ILO CFA), 6th edition, 2018, Chapter 10, paras. 836 - 841 – ILO CFA has defined and listed as "*essential services in the strict sense of the term*" where the right to strike may be subject to restrictions or even prohibitions, the following: the hospital sector, electricity services, water supply services, the telephone service, the police and armed forces, the fire-fighting services, public or private prison services, the provision of food to pupils of school age and the cleaning of schools, air traffic control. The ILO CFA has stressed that compensatory guarantees should be provided to workers in the event of prohibition of strikes in essential services, see paras. 853 - 863; See also Clauwaert, S. and Warneck, W. (2008) *Better defending and promoting trade union rights in the public sector. Part I: Summary of available tools and action points*, Report 105, Brussels: ETUI, pp. 79-81.
[12] IRLEX, Country profile: Belgium, 2019; see Article 4 of Law on Collective Agreements and Joint Committees, available (in French) at: Loi du 5 décembre 1968 sur les conventions collectives et les commissions paritaires (dans sa teneur modifiées au 26 juillet 2018). (Art. 4)
13 Concluding observations on the sixth periodic report of Belgium, 6 December 2019, CCPR/C/BEL/CO/6, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBEL%2fCO%2f6&Lang=en .
14 Concluding observations on the fifth period report of Belgium, 26 March 2020, E/C.12/BEL/CO/5, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBEL%2fCO%2f5&Lang=en.
15 ILO CEACR, Direct Request (CEACR) - adopted 2020, published 109th ILC session (2021), Convention 87, available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4058032,102560,Belgium,2020.
16 CPT Public statement concerning Belgium adopted at the 93rd plenary meeting (July 2017) of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) pursuant to Article 10, paragraph 2, of the Convention establishing the Committee The public statement can be found in Dutch, French and English at https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-issues-public-statement-on-belgium.
17 See on this also Demertzis (2018).
18 This report is available in French only at https://rm.coe.int/16807913b1.
19 This reply is available in French only at https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-response-of-the-belgian-authorities.
20 Law of 23 March 2019 (Loi concernant l'organisation des services pénitentiaires et le statut du personnel pénitentiaire) available (in French) at : https://www.etaamb.be/fr/loi-du-23-mars-2019_n2019011569.html.
21 ILO CEACR, Direct Request (CEACR) - adopted 2020, published 109th ILC session (2021), Convention 87, available at:

https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4058032,102560,Belgium,2020.

22 See decision on the merits of this complaint of 13 September 2011, available at: http://hudoc.esc.coe.int/eng/?i=cc-59-2009-dmerits-en.

23 Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805caaf1 .

24 European Social Charter, Article G: "1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specifed in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals. 2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed."

25 See Findings 2018 of the ECSR, in respect of Belgium, at: https://rm.coe.int/findings-2018-on-collective-complaints/168091f0c7.

26 The 12th National Report on the implementation of the ESC submitted by Belgium (on follow-up to collective complaints), 30 October 2017, available at: https://rm.coe.int/12e-rapport-simplifie-de-la-belgique-sur-le-suivi-des-rc-en-2017/168078243f .

27 In the last monitoring cycle (2018) when Article 6.4 (right to collective action) of ESC was examined, Belgium submitted a simplified report on the follow-up to collective complaints (see Findings 2018 in respect of Belgium).