



The right to strike in the public sector

Belgium

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This factsheet reflects the situation in October 2018 and was elaborated by Coralie Guedes (independent expert) and reviewed by EPSU/ETUI; comments were received from the Belgian (EPSU) affiliate, BBTK-SETCA, and were integrated. Idem comments received from Prof. F. Dorssemont (UCL, Belgium) were also integrated.

1. Legal basis

International level

Belgium has ratified:

UN instruments¹

International Covenant on Economic, Social and Cultural Rights

(ICESCR, Article 8)

International Covenant on Civil and Political Rights

(ICCPR, Article 22)

ILO instruments²

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:

The Revised European Social Charter of 1996

including article 6§4 without reservations

The Collective Complaints Procedure Protocol

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 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 is 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 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 is to be noted that every more public servants are 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**
- **political strike**: directed against the Government of Belgium or of another country and either wholly unconnected with any employment-related matters or connected with employment-related matters
- **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**
- **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.

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.

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 (rare in an EU country), with restrictions considered in conformity with the (R)ESC. 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.³

Members of the **armed forces** are not allowed to strike.⁴

The joint committee (representatives of employers and trade unions) is responsible for deciding what supplies and services must be maintained in the event of a strike or lockout and how these needs should be met. 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. There are nevertheless exceptions: minimum service requirements for the police services and the **RTBF** (public broadcasting services) are set in decrees issued by the Belgian Government.

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. 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.

As trade unions do not have a legal personality, there is, in principle, no remedy against them in the event of an **unlawful strike**. However, the individual employee who participates in an unlawful strike is guilty of an offence which may justify dismissal, and he/she may be liable for damages caused by the strike action.

As there is no such thing as an unlawful strike according to Belgian doctrine the only instance where a worker taking part in a strike can be sanctioned is in the event a crime is committed during a strike action.

7. Case law of international/European bodies on standing violations

ICCPR

In 2016, the Human Rights Committee (CCPR) in its Belgium was asked to provide in its sixth periodic report on the implementation of the International Covenant on Civil and Political Rights, information on the measures taken to ensure that strikes by prison staff do not have a harmful impact on detention conditions. The country report has not been published yet.⁵

ICESCR

In 2007, Belgium was asked by the Committee on Economic, Social and Cultural Rights (CESCR) to comment on how the Government intends to eliminate restrictions on the right to strike arising from judicial decisions and ensure the protection of workers against dismissal as a consequence of their participation in a strike. In its response, the Government referred to the gentlemen's agreement quoted above regarding the first aspect of the request. Concerning the second aspect, the Government stated that, if employers were to be prevented as a matter of principle from dismissing workers during strikes, irrespective of the acts that the workers committed, striking workers would be afforded greater protection than other workers, which could not be justified.⁶

In its concluding observations on the third periodic report of Belgium on the implementation of the International Covenant on Economic, Social and Cultural Rights, as adopted at its 54th and 55th meetings held on 20 and 21 November 2007, the CECSR expressed the following⁷:

17. The Committee notes with concern the significant obstructions to the exercise of the right to strike, arising from the practice of employers to start legal proceedings in order to obtain a ban on certain strike-related activities, as well as from the possibility that workers may be dismissed as a result of their participation in a strike.

31. The Committee urges the State party to ensure the correct implementation by employers of its legislation on the right to strike, so as to guarantee its consistency in law and practice with the provisions of article 8 of the Covenant.

In 2013, in its Concluding Observations on the fourth periodic report on the implementation of the ICESCR, the CECSR, adopted at its 68th meeting, held on 29 November 2013, noted the following:

13. The Committee is concerned at the fact that the right to strike is not explicitly guaranteed in law. It is further concerned that the procedures and conditions for exercise of the right to strike and the numerous legal proceedings instituted by employers may obstruct that right (art. 8).

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.

ILO

Direct Request (CEACR) - adopted 2016, published 106th ILC session (2017); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)⁸

The Committee notes the joint observations of the Federation of Enterprises in Belgium (FEB) and the International Organisation of Employers (IOE), received on 1 September 2016, which relate to the issues dealt with by the Committee in this comment and also to the observations of a general nature of the IOE, received on the same day.

Article 3 of the Convention.

Right of trade union organizations to formulate their programmes.

In its previous comments⁹, the Committee had noted the observations made by trade union organizations denouncing systematic recourse by employers to the judicial authorities to ban industrial action by trade unions, and particularly to prevent trade unions from setting up strike pickets.

The Committee had requested the Government to ensure full compliance by all of the actors and institutions concerned with the “gentlemen’s agreement” concluded in 2002 by the social partners on the peaceful settlement of labour disputes and the 2012 resolution of the Committee of Ministers of the Council of Europe¹⁰ considering that certain aspects relating to the right to strike needed to be improved. In this regard, the Committee notes the various elements provided by the FEB and the IOE, on the one hand, and by the Government, on the other. The Committee observes that the Council of Europe’s resolution has been circulated and that, according to both the Government and the employers’ organizations, it is taken into account in judicial decisions. The Committee also notes the Government’s indications concerning the discussions held between the social partners to revise the “gentlemen’s agreement”, although they have not yet produced an agreement. Lastly, the Committee notes the positions expressed by the IOE and the FEB, on the one hand, and the Government, on the other, in relation to a ruling by the Court of Cassation of 8 December 2014 recalling that the submission of a unilateral application to a court in the context of a collective dispute is only receivable in exceptional circumstances.

In its previous comments, the Committee also requested the Government to provide information on the findings of the investigations carried out into the arrests at the Euro-demonstration on 29 September 2010 organized in Brussels by European trade unions. The Committee notes the Government’s response on this issue and, in particular, the evaluation by the Standing Police Monitoring Committee.

In its previous comments, the Committee requested the Government to provide comments in reply to the observations of trade unions alleging the abusive application by municipal authorities of administrative penalties for “disturbances”, which would have the effect of jeopardizing the various types of action carried out by trade unions in public spaces. In this respect, the Committee notes the Government’s indications that:

- (i) the Act of 24 June 2013 on communal administrative sanctions allows communal authorities to issue administrative penalties or sanctions for infringements of their regulations or ordinances;
- (ii) although the communal authorities are autonomous in this respect, they are of course bound to respect the hierarchy of legal norms;
- (iii) the Constitutional Court, having received an application for unconstitutionality from various trade union organizations, set aside the appeal in a ruling of 23 April 2015; and (iv) the Court recalled in this ruling that freedom of movement may give rise to restrictions where they are provided for by law and necessary for life in a democratic society. **The Committee notes this information and trusts that the Act of 24 June 2013 will be applied in full conformity with the Convention.**

Council of Europe

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

The CPT is the main monitoring body to the Council of Europe European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.¹¹ 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 on the 2005, 2009, 2012 and 2013.

In July 2017, the CPT issued again a strong public statement to the Belgian government. Although the CPT had noted that in October 2014 the introduction of a guaranteed minimum service in prisons had been included in the Government Coalition Agreement, this was still not regulated and in practice the situation had even worsened. The CPT considers 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 *“calls 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.”*^{12 13}

The full report of the CPT visit to Belgium in March-April 2017, which triggered this public statement, was only published in March 2018 and again refers to this public statement.¹⁴ 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.¹⁵

Following this, the Government submitted a draft law to the Federal Parliament on 31 October 2018 dealing both with the organisation of penitentiary service and the statute of the staff working in such services. Articles 15-20 of the draft law deal specifically with guaranteed services to be delivered during strike actions. Whether this new proposal will stand the test with the Council of Europe standards is to be seen.

In particular because the proposal makes a distinction between strikes of up to two days and strikes of more than two days. Only in the latter situation, the governor of the province where the prison is located (or for Brussels/Brabant, the minister-president of the Brussels regional government) needs to intervene and take measures when not enough volunteers are available to ensure the guaranteed minimum service. Furthermore, only in case of longer strikes contact with the family via a visit and/or phone must be ensured at least once a week.¹⁶

European Social Charter

Collective complaints under article 6§4 European Social Charter

On 22 June 2009, the ETUC, the CGSLB, the CSC and the FGTB lodged a complaint with the ECSR regarding that matter. This complaint has been declared admissible. The Government provided information, but as the situation remains unchanged, the Committee will assess the implementation of the restrictions on the right to strike on the basis of the information on the follow-up given to decisions that will be submitted in October 2017.

Committee of Ministers Resolution CM/ResChS(2012)3 - 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) against Belgium (Adopted by the Committee of Ministers on 4 April 2012, at the 1139th meeting of the Ministers' Deputies)¹⁷. 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) that the right to collective action is recognised under Belgian law.

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 domestic highest 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;
- 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.

ECSR Conclusions

In the last Conclusions under the normal reporting system on article 6§4 against Belgium (Conclusions 2014, the ECSR noted the following:

The Committee already examined the situation with regard to collective action in its previous conclusions (on the meaning of collective action, permitted objectives, who is entitled to call for collective action), and found it in conformity with the Charter with the exception of two aspects. This led the Committee to ask questions in its last conclusion (Conclusions 2010). The Committee will therefore take only the further information provided in reply to these questions into consideration.

Specific restrictions to the right to strike and procedural requirements

With regard to restrictions on the right to strike, since its last conclusion the Committee issued its decision on the merits of Collective Complaint No. 59/2009, 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) against Belgium on 13 September 2011.

The Committee first found that the right to collective action was sufficiently recognised in Belgian law.

The Committee then examined the so-called “unilateral application procedure” whereby employers may ask the courts to order the end of picketing activity. It held that in practice this procedure constituted a restriction on the exercise of the right to strike, since the prohibition of picketing did not apply only to cases where the picketing activities were undertaken in such a way as to infringe the rights of non-strikers, for example through the use of intimidation or violence.

Finally, the Committee found that the exclusion of the trade unions from the emergency relief procedure could lead to a situation where the intervention of the courts ran the risk of producing unfair or arbitrary results and that, consequently, such restrictions to the right to strike could not be considered to be prescribed by law. The Committee also felt that in its practical operation the so-called “unilateral application procedure” went beyond what was necessary to protect the right of co-workers and/or of undertakings by reason of the potential lack of procedural fairness.

The Committee therefore concluded that the restrictions on the right to strike constituted a violation of Article 6§4 of the Charter because they do not comply with the conditions established by Article G of the Charter given that they are neither prescribed by law nor proportionate to the aims set out in Article G of the Charter.

The report states that, since this decision, the Minister of Employment, on 10 May 2012, forwarded the Committee's decision and the Committee of Ministers' resolution to the National Labour Council so that workers and management could study it at the same time as the assessment of the "gentleman's agreement" with regard to strikes, already requested by the Minister in 2008. In 2002, workers' organisations drew up a gentleman's agreement in consultation with employers' organisations in which the workers' organisations called on their members not to have recourse to violence during industrial disputes and to observe the periods of notification of strikes, while the employers' organisations called on their members to avoid legal proceedings in the context of industrial disputes. The Minister of Justice also asked the Board of Prosecutors General, to ensure that the Committee's decision and the Committee of Ministers' resolution were disseminated among members of the judiciary.

However, the Committee received a letter dated 21 November 2013, sent by the trade unions which had lodged the complaint, claiming that the Minister of Justice had not yet informed the judicial authorities of the Committee's decision. The Committee therefore invites the Belgian authorities, namely the Minister of Justice, to draw the judicial authorities' attention to this decision as quickly as possible.

The Committee asks that the next report provide detailed information on the restrictions to the right to strike based on judicial decisions so that it can verify that the situation has been brought into conformity with the Charter. Pending this information, the Committee concludes that the situation is not in conformity with the Charter on the ground that the restrictions on the right to strike do not comply with the conditions established by Article G of the Charter given that they are neither prescribed by law nor proportionate to the aims set out in Article G of the Charter.

Consequences of a strike

In its previous conclusion, the Committee asked for confirmation that courts of first instance regularly apply the case-law, according to which:

Striking workers are not in breach of their employment contract, taking part in a strike is not an unlawful act and cannot justify an employee's dismissal;

Employers wishing to dismiss a striking worker have to demonstrate very serious grounds such as the destruction of tools or equipment;

Any dismissal may be challenged before the courts.

The Committee notes that the report confirms that the courts of first instance regularly apply this case-law. The situation is therefore in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 6§4 of the Charter on the ground that the restrictions on the right to strike do not comply with the conditions established by Article G of the Charter given that they are neither prescribed by law nor proportionate to the aims set out in Article G of the Charter.

8. Recent developments

On 11 May 2016, the Social Affairs Commission of the Federal Parliament organised an audition with several academic experts from different Belgian universities to discuss “the current state of play on the right to strike in Belgium” and which triggered of course suspicion of the will of the Belgian authorities to regulate this right in the near future, in particular as most of the questions related to the right of picketing (in line with the ECSR decision in the Collective Complaint 59/2009, see above), legality of political strikes and of course the establishment of minimum services in public sector activities (like prisons (see section on CPT), public transport (train, tram, metro, bus,...)).¹⁸

As from 7 March 2018, the obligation to guarantee a minimum **continuity of service** in case of **train strikes** is applicable.¹⁹ In sum, individual workers of whom the service is considered as essential would need to inform the train operators SNCB and Infrabel 72 hours in advance of the envisaged strike date whether they will take part in the strike or not. This to allow for those operators to establish together with the workers who indicated that they will not take part in the strike eventually a guaranteed number of trains which will be running.²⁰ This “minimum service plan” needs to be announced to the general public/(potential) travellers the latest 24 hours in advance to the strike date. Workers who declare their strike intention too late or not at all are liable to a disciplinary sanction.²¹

In any case, this opening for guaranteed minimum services in case of train strikes, has also triggered proposals to ensure similar services in relation to case of **strikes in public bus/tram transport** as operated by “De Lijn” (mainly operating in Flanders and parts of Brussels). The Management Agreement between De Lijn and the Flemish Government identified as an objective to be achieved between 2017-2020 to ensure that on strike days “priority lines” are still serviced and operational.²²

Idem for the **metro/bus/tram services in Brussels** (operated by Stib), for which the political liberal group MR deposited a proposal for a Decree in the regional Brussels parliament to ensure a guaranteed minimum services on “structural lines”. Here also the idea is that workers need to announced the latest 48 hours in advance whether they will participate in the strike or not.

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Miscellaneous:

- <http://www.ejustice.just.fgov.be>
- <http://www.assemblee-nationale.fr/12/pdf/europe/rap-info/i1274.pdf>

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 Article 126 of the Law of 7 December 1998 establishing the organisation of an integrated police service.

⁴ Article 175 of the Law of 28 February 2007 on the status of military personnel serving in the armed forces.

⁵ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBEL%2fQPR%2f6&Lang=en.

⁶ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBEL%2fQ%2f3&Lang=en
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBEL%2fQ%2f3%2fAdd.1&Lang=en.

⁷ Available at

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBEL%2fCO%2f3&Lang=en

⁸ 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:3300927,102560,Belgium,2016

⁹ Reference can be made here to a CEACR Direct Request adopted in 2013

(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:3143535,102560,Belgium,2013) and CEACR Observations adopted in 2011

(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:2698631,102560,Belgium,2011).

¹⁰ See below under “European Social Charter”.

¹¹ For more information on this Convention and the CPT, see <https://www.coe.int/en/web/cpt/home>

¹² 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>.

¹³ See on this also Demertzis (2018).

¹⁴ This report is available in French only at <https://rm.coe.int/16807913b1>.

¹⁵ 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>.

¹⁶ Parl. St. Kamer, Doc 543351/001, 31 October 2018; available at www.dekamer.be. See also Daems (2018)

¹⁷ Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805caaf1 .

¹⁸ See Dorssemont (2016)

¹⁹ The concerned law was published in the Belgian Moniteur Belge on 17 January 2018 and came into force ten days later.

²⁰ The initial draft law foresaw a so-called “8-4-1 principle”: the date of the strike had to be announced at least 8 days before it would take place, the latest 4 days before the strike day the workers then had to declare whether or not they would take part in the strike and the latest 1 day before the strike day, the operators had to present an alternative train service plan. This was however altered following criticism of the Conseil d’Etat/Council of State.

²¹ Dorssemont (2017).

²² Brillouet, W. (2016) Voor 2020 moet De Lijn ook bij stakingen rijden, De Gentenaar, 23 November 2016, p. 7.