The right to strike in the public sector

France

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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 French (EPSU) affiliate, CFDT (Hospital sector), and were integrated.
1. **Legal basis**

**International level**

France 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 3 March 1958); |
| Convention No. 98 concerning the Right to Organise and to Bargain Collectively (ratification on 3 March 1958); |

France did **not** ratify

| Convention No. 151 concerning Labour Relations (Public Service) |
| Convention No. 154 concerning the Promotion of Collective Bargaining |

**European level**

France has ratified:

| The Revised European Social Charter of 1996 (signature on 11 February 1998); (including article 6§4) without reservations; |

**National level**

**General**

The right to strike is guaranteed by the French Constitution. The general exercise of the right to strike in the private sector has been mainly shaped by case law.
In the public sector

The French public service, in the broad sense, encompasses all persons who are permanently employed by the State, local authorities and most public institutions.

In France, the public service has three major branches:
(i) the state or central public service,
(ii) the territorial public service and;
(iii) the public service in the hospital sector. These branches are established on the basis of a general statute common to them all which sets out their rights and obligations. Each branch is governed by specific national provisions. The unity of the three public service branches is guaranteed by the Law of 13 July 1983, which constitutes Title 1 of the General Statute for Public Servants. This title lays down the rights and obligations of public servants and applies to all three branches of the public service.

Article 4 of Title 1 of the General Statute for Public Servants provides that ‘a public servant is in a statutory and regulatory position vis-à-vis the administration’. A public servant is thus subject to the rights and obligations provided for in this statute and supplementary regulations.

The concept of public servant covers all persons employed by the State to serve the general interest. It encompasses established civil servants who enjoy significant guarantees, and non-established employees such as contractual staff.

Public-servant status is granted to persons appointed to a permanent post and established within a grade. A further condition essential to public-servant status is the public nature of the person appointing and employing the public servant. Appointment is by means of a unilateral administrative order. Public servants are in a unilateral relationship and not a contractual one, unlike employees in the private sector. Under no circumstances can they negotiate their terms and conditions of employment or avail themselves of acquired rights. But the principle of participation granted to public servants and recognised by the General Statute does something to ameliorate the apparent rigidity of the system.

In addition to the General Statute for Public Servants, there are specific statutes. The purpose of these is to establish the specific rules or regulations that apply in particular to each corps of the public service.

Public servants are divided into corps. These encompass public servants who, on the basis of their qualifications, may occupy similar posts.

The specific statutes of the corps have two purposes:
(i) they define the posts that corps members may occupy and the arrangements for access to the corps and;
(ii) they establish the minimum career path guaranteed to corps members. The career system is so called because of this minimum career path guaranteed to all public servants.

The right to strike in the public sector is recognised by Law No. 83-634 of 13 July 1983. The exercise of the right to strike is regulated by Articles L2512-1 to L2512-5 of the Labour Code.
As early as 1950, the French Council of State recognised that administrative authorities cannot regulate the right to strike but can organise ‘minimum services’ on a case-by-case basis as a result of the application of the principle of continuity of public services (see, for example, the Circular of 22 April 1983 which limits the right to strike in the hospital sector).

This administrative power falls under the jurisdiction of administrative courts and of the Constitutional Court. A minimum level of service cannot be equivalent to a normal level of service.\(^3\)

The legislator has also regulated certain sectors of activity: public broadcasting (1979), protection and control of nuclear materials (1980), and air traffic control (1984).

Law No. 2007-1224 of 21 August 2007 defines the notion of essential services in the transport sector for non-tourist regular public transport services (except for air transport), and established a minimum service obligation accordingly.

Law No. 2008-790 of 23 July 2008 establishes an obligation to accommodate pupils in the absence of teachers in preschools and elementary schools.
2. Who has the right to call a strike?

Only representative trade unions may give prior notice to call a strike. Once this formality has been completed, any public-sector worker may go on strike, regardless of his/her membership of a trade union.
3. Definition of strike

There is no legal definition of strike/collective action. Authors generally offer the following definition: a concerted and collective work stoppage for the purpose of pursuing occupational or professional claims.

Types of collective action:
- go slow or work-to-rule (unlawful)
- repeated or staggered work stoppage, of short duration
- sit-in or occupation (unlawful)
- rotating strike
- solidarity strike (most probably unlawful, except when taking place within the same enterprise or group)
- political (unlawful)
- picketing (unlawful)
- lockout (unlawful)

The object to which the strike is applied must be lawful. The problem of abuse has been raised in two main instances, namely, strikes conducted for political reasons and solidarity strikes. As the purpose of political strikes is not to improve wages or working conditions, courts have ruled that they no longer possess the character of an act in support of professional or occupational demands but are intended as a criticism of government policy. This is considered an abuse of the right to strike and a major offence by strikers. However, strikes are justified against the State in its capacity as employer.

Solidarity strikes for political reasons automatically constitute a case of abuse.
4. Who may participate in a strike?

The right to strike is an individual and not a trade union right.

Members of the national police (including members of the ‘Compagnies Républicaines de Sécurité’), judicial officers, members of the military, members of the external services of the prison administration and employees of the national communications network of the Ministry of the Interior do not benefit from the right to strike.

According to the case law of the Conseil d’Etat, staff in a position of authority who, because of their major responsibilities and their place in the hierarchy, are considered to be part of the government apparatus do not benefit from the right to strike.
5. Procedural requirements

One (or more) representative unions at national level have the obligation to give written prior notice at least five days before the beginning of the intended strike action. This notice must contain the following information: the place, date and time of the beginning of the strike action, its duration and the reasons for calling the strike.

During the period of prior notice, the parties have the obligation to enter into negotiations.

In preschools and elementary schools, prior notice can be sent only after a period of negotiations between the State and teachers’ trade union representatives.

In the transport sector (according to Law No. 2007-1224 of 21 August 2007 – see above), prior negotiation is also compulsory. The particulars of the procedure are to be laid down in a branch collective agreement (or decree). Where necessary, trade unions may submit a request for negotiation eight days before giving the prior notice described above. This agreement must indicate how the continuity of service will be ensured.

Non-strikers can be redeployed if so provided in this agreement, which may also be concluded at sectoral level. Individual workers wishing to go on strike must inform the employer of their intention 48 hours before the strike begins, or will otherwise be liable to sanctions (not laid down in the law). Furthermore, the employer may, after one week of strike action, impose a secret ballot asking whether the strike should continue or not.
6. Legal consequences of participating in a strike

Participation in strike action incurs a loss of wages. The portion of the wages not received by the strikers is not subject to pension and social contributions. Trade unions can operate compensation funds using resources provided by members (e.g. Caisse Nationale d’Action Syndicale).

As the right to strike constitutes a fundamental right, its exercise cannot incur sanctions, except in the case of serious misconduct committed during strike action.

Employees at whatever hierarchical level whose presence at their workplace is necessary to ensure the uninterrupted operation of public services within the limits defined above and who may be requisitioned in the event of a concerted work stoppage, given the duty of the administrative authority to ensure the uninterrupted operation of public services, are prohibited from striking; the main criterion governing the possibility of requisition is thus the post filled rather than the person’s grade. The decision is made on a case-by-case basis.

The abuse of the right to strike can be subject to sanctions.
7. Case law of international/European bodies on standing violations

ILO

Complaints before the Committee of Freedom of Association (CFA)

 Case No 2841 (France) - Complaint date: 17 February 2011 - General Confederation of Labour (CGT)

The complainant organization alleges that staff in the oil sector were requisitioned on prefectural orders during industrial action in October 2010. The complainant organization recalls that in France in October 2010, there was a remarkable national protest against pension reform. Workers from every sector exercised their right to strike and extraordinarily large demonstrations were organized (several million people took to the streets), with massive public support.

The complainant organization alleges that, in this context, the Government’s attitude was irresponsible on several counts: it completely refused to negotiate with the trade union organizations; it tried to debilitate the industrial action and abused its power to requisition striking workers. According to the CGT, several prefectural authorities implemented multiple requisitions in the oil sector, which was one of those most involved in the industrial action. They issued back-to-work orders for several days before withdrawing them just before the judicial authorities ruled on their legality, in order to avoid any convictions. In the complainant’s opinion, the requisitions had two objectives: maintaining economic activity by minimizing the impact of the strikes, and putting a stop to the national protests.

Employees of different oil companies therefore suffered a clear violation of their right to strike. Requisitioning constitutes a very effective obstacle to exercising the right to strike, in that striking workers who are requisitioned and refuse to return to work are committing a criminal offence and are liable to six months’ imprisonment and a €10,000 fine. In fact, according to the complainant, in October 2010, some 160 workers were requisitioned and received notifications from the prefect detailing the criminal sanctions to which they would be liable if they refused to return to work.

The Committee requests the Government to ensure that, in the future, in cases where a non-essential service is paralysed, but there is justification for taking measures to ensure a minimum operational service, the workers’ and employers’ organizations concerned are involved in the decision-making process, and that measures are not implemented unilaterally.

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

 Observation – adopted 2008, published 98th ILC session (2009), concerning Convention No. 87:

The Committee notes the Government’s report and the detailed information supplied in response to the observations made by the General Confederation of Labour – Force Ouvrière (CGT–FO) concerning the Act on social dialogue and continuity of the public service in scheduled land passenger transport of 21 August 2007 (Act No. 2007-1224).
In the event of any dispute in the land passenger transport sector and in the absence of an agreement on the determination of the minimum service to be maintained in the event of a strike, the Government must ensure the principle is observed whereby the workers’ organisations concerned shall be able to participate, alongside the employers and the public authorities, in the definition of this minimum service, and that, in the event of disagreement, the possibility is guaranteed for the parties to have recourse to a joint or independent body, according to existing or specially established mechanisms.\(^6\)

**Council of Europe**

**Collective Complaints under article 6(4) ESC**

- In its decision on the merits on *Collective Complaint n° 16/2003 Confédération française de l’Encadrement CFE-CGC v. France*, the ECSR consider that Act n° 2003-47 of 17 January 2003 on the reduction of working hours did not constitute a violation of amongst others Article 6(4) of the Revised European Social Charter. The CFE-CGC alleged that the provisions on the annual working days system “constituted a real, though indirect, discrimination as regards the right to strike”. It considered that since the working time of managerial staff is calculated in days and half-days only, a strike lasting for one hour would entail a reduction in remuneration equivalent to half of one day’s pay for managerial staff in the annual working days system. This was due to the impossibility of calculating working time, and any work stoppage, in hours. It inferred that this situation represents a limitation on the right of managerial staff to strike, and discrimination against them in relation to other employees. It added that by extending the annual working days system, the Act of 17 January 2003 makes the situation worse.\(^7\)

- On 23 January 2018, the ECSR decided positively on the admissibility of *Collective Complaint 155/2017 Confédération générale du travail (CGT) v. France*, in which the CGT alleges that the so-called rule of indivisible thirtieth (which means that any absence from work during a part day leads to a salary deduction of an amount equal to a thirtieth part of a monthly salary) provided by law 87-588 of 30 July 1987, which applies to strikes less than one day in the public service entails an unjustified violation of the right to strike of public officials in breach of Article 6§4 of the Charter.\(^8\)

**ECSR Conclusions**

The negotiation of the right to strike and the guarantees accompanying it, the measures imposed by law in order to secure the continuity of the functioning of public services and the strictly necessary administrative measures that the administrative judge may allow the administration to take in order to ensure a minimum service in essential public services have generally been considered as in conformity with the Charter.

Nevertheless, the ECSR has often raised questions concerning the way in which the relevant laws are applied in the public service and on the adequacy of the restrictions which may be imposed on the grounds of public interest (within the meaning of Article 31 of the Charter).
Entitlement to call a collective action

The Committee previously considered that limiting the right to call a strike in the public sector to the most representative trade unions constitutes a restriction on the right to strike which is not in conformity with Article 6§4 of the Charter (see Conclusions XV-1 (2001), 2002, 2004, 2006 and 2010).

The report states that since the revision of the legislation on labour, although there has been no change in the scope of the rule, the term "most representative trade unions" has been replaced with "representative trade unions". Article L. 2512-2 of the Labour Code provides that notice of a strike shall be given by a "representative trade union at national level, within the occupational category concerned or the relevant undertaking, agency or department." It is stipulated that notice may also be given by a trade-union branch established by a representative trade union. Representativeness is to be assessed in the light of non-cumulative criteria laid down in Article L. 2121-1 of the Code, namely a union's membership, independence, membership fees, experience and age, to which the administrative courts have added its activities and its level of support, with particular consideration being paid to this last criterion.

To justify this restriction, the report put forward the following points:

- **Public officials’ right to strike** must be reconciled with other principles of the same order, such as the principle of continuity of the public service, so as to ensure that it is not misused or used in a manner inconsistent with service needs, to reconcile the right to strike and the continuity of the public service, a strike notice cannot be served by just anyone.

- Article 6§4 of the Charter refers to the holders of this right – workers – but says nothing as to which body is able to call a strike. The States parties are therefore free to confer this right on a given collective group. The requirement to serve notice of a strike in no way constitutes a "restriction of the right to strike", since that is a personal right. A restriction would consist in forbidding certain officials the right to participate in a concerted work stoppage, which is not the case here.

- Officials may legally stop work in response to a call issued by a union of which they are not members.

- Insofar as a strike entails the existence of work-related demands and, in accordance with the last paragraph of Article L. 2512-2 of the Code, the parties concerned must bargain over these demands, it is desirable that these parties should have as much legitimacy as possible to negotiate on behalf of the largest possible number of officials concerned by the issues at stake in the strike.

The Committee takes note of these points. In reply to them, it considers that:

- Article L. 2512-2 of the Labour Code does not solely concern the staff of **essential services** in the strict sense, that is to say sectors necessary in a democratic society to guarantee respect for the rights and freedoms of others or the **protection of the public interest, national security, public health or morals** (sectors for which restrictions to the right to strike could be permitted in the light of Article G of the Charter).
This article indeed concerns both officials of central government, the regions, the départements or municipalities and other staff of undertakings, agencies or public or private establishments responsible for running a public service.

- The reference to "workers" in Article 6§4 of the Charter concerns the holders of the right to collective action and the Article says nothing about the nature of a group entitled to call a strike. It follows that this Article does not require States to authorise all groups of workers to decide on strike action, but offers States the possibility of making a choice as to the groups entitled to call a strike and hence of restricting this right to trade unions. However, such a restrictive choice is consistent with Article 6§4 of the Charter only if the establishment of a trade union is not subject to formalities such as to hamper the sometimes speedy decision-making necessary when calling a strike.

In view of the conditions required to form a "representative trade union at national level, within the occupational category concerned or the relevant undertaking, agency or department" the Committee considers that giving organisations that are meeting these conditions a monopoly on calling a strike constitutes a restriction of the right to strike which is not in conformity with Article 6§4.

- The restriction of the right to call a collective action, imposed on officials and trade union organisations who do not meet the criteria of representativeness laid down by law, still exists even if officials may lawfully cease work in response to a call issued by a union of which they are not members.

- The principle of recognition of workers’ right to take collective action in cases of conflicts of interests, including the right to strike, established by Article 6§4 of the Charter, should under no circumstances be subordinate to the State’s interest in fostering relations with trade union organisations which, in the event of a dispute, can legitimately negotiate on behalf of the largest possible number of officials concerned.

The Committee recalls that both in the public and private sectors limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4 (cf. Conclusions XV-1 (2000), France).

**Specific restrictions to the right to strike and procedural requirements**

In its last conclusion the Committee noted that, in the public sector, Decree No. 2008-1246 of 1 December 2008 on the right to strike for primary and kindergarten teachers imposed an obligation on the parties to engage in conciliation proceedings prior to giving notice of a strike. The Committee also noted the adoption of Decree No. 2008-82 of 24 January 2008 relating to the application of Article 2 of Law No. 2007-1224 of 21 August 2007 on social dialogue and continuity of the public service, concerning strikes in the public transport sector.

The legislation inter alia requires parties to negotiate before giving notice of a strike, to organise a guarantee of service so as to "satisfy the essential needs of users" and to inform the public about the proposed strike. In its above-mentioned conclusion, the Committee asked how this is implemented in practice and who decides what level of service is needed. The report does not contain the requested information. The Committee reiterates its question on these points. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 6§4 of the Charter.
Consequences of a strike

The Committee notes that the legislation continues to provide for a deduction of one thirtieth of the monthly wage from the wages of State civil servants and other national public servants for strikes of less than one day, regardless of their duration.

The report states that this deduction from wages for state officials is just one of the grounds on which wages can be withheld for absence from work and is based inter alia on the public accounting regulation regarding the settlement of wages (Section 4 of the Budget Amendment Act No. 61-825 of 29 July 1961, as clarified by Decree No. 62-765 of 6 July 1962 laying down public accounting regulations for the settlement of the wages of State officials and reinstated by Act No. 87-588 of 30 July 1987) pursuant to which a flat rate deduction equal to one thirtieth of the remuneration is applied in the event of absence.

The report points out that this accounting rule is generally applicable and does not constitute a disciplinary penalty. In the event of absence from work, for any reason whatsoever, one thirtieth of the remuneration is withheld from the wages; the event triggering the deduction is accordingly not the strike action but the absence from work.

The Committee wishes to be informed about the consequences of the implementation of the above-mentioned rule in practice. In this respect, it notes that within the framework of the collective complaints’ procedure, the Committee has never received complaints concerning the issue at stake from the entitled organisations.

Pending receipt of the requested information, the Committee reserves its position on this point.\textsuperscript{10}

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 6§4 of the Charter on the ground that only representative trade unions have the right to call strikes in the public sector.
8. Recent developments

No such recent developments were reported.
9. Bibliography


Miscellaneous:
- https://www.service-public.fr/particuliers/vosdroits/F499
- https://www.legifrance.gouv.fr /
- http://cgt.fercsup.net/spip.php?article1725
Notes

3 Reference can for instance be made to the decision of the Constitutional Court of 16 August 2007 in which the Court reaffirmed that it is within the power of the legislator to put the necessary limitations in order to secure the continuity of the public service as the latter has, like the right to strike, a character of a principle of constitutional value.
4 Except for workers who do not benefit from the right to strike (see below).
5 For the case documents and reports, see https://www.ilo.org/dyn/normlex/en/f?p=1000:50001::NO:::
7 For the case documents see https://www.coe.int/en/web/turin-european-social-charter/processed-complaints/-/asset_publisher/S5EFkimH2bYG/content/no-16-2003-confederation-francaise-de-l-encadrement-cfe-cgc-v-france?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fturin-european-social-charter%2Fprocessed-complaints%3Fp_p_id%3D101_INSTANCE_S5EFkimH2bYG_INSTANCE_5GEFkJmH2bYG%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_col_id%3Dcolumn-4%26p_col_count%3D1
9 ECSR Conclusions (2014), France (https://hudoc.esc.coe.int/eng/#%22sort%22:%22ESCPublicationDate%20Descending%22,%22ESCArticle%22:%22ESC6%2004-000%22,%22ESCDcType%22:%22Conclusion%22,%22ESCSort%22:%22ESC%22,%22ESCSort%22:%22StateParty%22,%22ESCStateParty%22:%22FRA%22,%22ESCDcIdentifier%22:%222014%22))
10 To note is that in its Conclusions 2010 (and before), the ECSR has found this not to be in conformity with article 6§4 of the ESC.