



The right to strike in the public services

Iceland



The right to strike in the public services: Iceland

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This factsheet reflects the situation in April 2021. It was elaborated by Evdokia Maria Liakopoulou (independent expert), updated by Stefan Clauwaert (ETUC) and Diana Balanescu (independent expert), and reviewed by EPSU/ETUI; it was sent to EPSU's Icelandic affiliates for comments.

1. Legal basis

International level

Iceland has ratified:

UN instruments¹

International Covenant on Economic, Social and Cultural Rights

(ICESCR, Article 8) (ratification on 22 August 1979)

International Covenant on Civil and Political Rights

(ICCPR, Article 22) (ratification on 22 August 1979)

ILO instruments²

Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise

(ratification on 19 August 1950)

Convention No. 98 concerning the Right to Organise and to Bargain Collectively

(ratification on 15 July 1952)

Iceland has not ratified

Convention No. 151 concerning Labour Relations (Public Service)

Convention No. 154 concerning the Promotion of Collective Bargaining

European level

Council of Europe instruments

Article 11 (the right to freedom of assembly and association) of the European Convention on Human Rights

(ratification on 29 June 1953)³;

European Social Charter

(ratification on 15 January 1976) (in a declaration contained in the instrument of ratification, deposited on 15 January 1976, Iceland considered itself bound inter alia by Articles 5 (the right to organise) and 6 (the right to bargain collectively));⁴

Iceland signed but did not ratify the European Social Charter (Revised) (signature on 4 November 1998).⁵

Iceland has not yet signed or ratified the Additional Protocol providing for a system of collective complaints.⁶

National level

The Icelandic Constitution

The right to strike is protected under the relevant provisions of the freedom of association and assembly, in particular:

- Article 74(1): 'Associations may be formed without prior permission for any lawful purpose, including political associations and trade unions. An association may not be dissolved by administrative decision. The activities of an association found to be in furtherance of unlawful objectives may, however, be enjoined, in which case legal action shall be brought without undue delay for a judgment dissolving the association.'
- Article 74(2): 'No one may be obliged to be a member of any association. Membership of an association may, however, be made obligatory by law if this is necessary in order to enable an association to discharge its functions in the public interest or on account of the rights of others.'
- Article 74(3): 'People are free to assemble unarmed. Public gatherings may be attended by police. Public gatherings in the open may be banned if it is feared that riots may ensue.'
- Article 75: 'Everyone is free to pursue the occupation of his choosing. This right may, however, be restricted by law, if such restriction is required with regard to the public interest.'

Applicable laws

- Act on **Trade Unions and Industrial Disputes**, No. 80/1938, in particular Articles 14 and 19 providing for the right to call a strike and a definition of a strike, Article 15 related to the strike ballot and Articles 20 to 37 related to the conciliation procedure.
- As regards the **public sector**, the Civil Servants' Collective Agreements Act (No. 94/1986) contains provisions regarding a definition of the term 'work stoppage' (Article 14) and regarding groups of employees deprived of the right to strike (Article 19).
- **Collective agreements:** restrictions can be imposed on the right to strike.

2. Who has the right to call a strike?

Only trade unions have the right to declare a strike, while only employers' confederations and individual employers may declare a lockout.⁷ When an employers' union or a trade union intends to begin a work stoppage, the decision to call a strike must be taken by secret ballot with the participation of at least 20% of those on the voting and/or membership list, and the proposal must receive the support of the majority of votes cast.

A strike proposal must clearly state the aim that the strike is intended to achieve and when it is due to begin. A secret postal ballot may also be used to call a strike, and, in this event, the result is considered valid irrespective of the participation rate. If only a specific group of union members or employees at a specified workplace are to take part in the strike, the decision to strike may be taken solely on the basis of the votes of those who are to be involved in the action. In such a case, 20% of workers with voting rights must take part in the ballot, and the majority must support the proposal for a work stoppage.⁸

Similar provisions exist for the **public sector**. Trade unions and associations in the public sector have the right to declare a strike. In order for a call to strike to be approved, at least half of the trade union's members employed by the party against whom the strike is directed must participate in the vote, and a majority of them must approve the proposal to call a strike.⁹

According to a recent judgment by the Labour Court, two or more trade unions, party to the same dispute, cannot jointly vote on a proposal to call a strike.¹⁰

3. Definition of strike

According to the Act on Trade Unions and Industrial Disputes (No. 80/1938), employees and employers are permitted to declare strikes and lockouts for the purpose of the advancement of their demands in industrial disputes and for the protection of their rights under Act No. 80/1938, subject only to the conditions and limitations which are laid down in law.¹¹

The Act uses the general term ‘work stoppage’ which refers to lockouts by employers and strikes in which workers discontinue their normal work to some extent or entirely in order to achieve a specific common goal. The term also applies to other comparable actions taken by employers or workers which may be regarded as the equivalent of work stoppages.¹² Therefore, two cumulative conditions must have been met for an action to constitute a strike: workers must have ceased their regular work, either entirely or in part; and this work stoppage must be in pursuit of a specific common aim.

Comparable rules for the public sector are laid down in the **Civil Servants’ Collective Agreements Act** (No. 94/1986). The Act states that a strike is considered a partial or complete stoppage of work by employees in order to achieve a specific common goal. The same applies to other comparable measures taken by workers that may be equated with strikes.¹³

In **Icelandic law**, strikes are not regarded as a means of forcing the government to do or not to do something (where action, or lack of action, is involved) in cases where the government does not act in its capacity as employer. A strike is actually used as a bargaining tool by trade unions to renew an existing collective agreement or negotiate a new one.¹⁴

Restrictions

First, it is not permissible to commence a work stoppage in disputes over issues that fall within the exclusive competence of the Labour Court.¹⁵ The Labour Court is competent to deal with disputes relating to alleged violations of the Trade Unions and Industrial Disputes Act or losses sustained due to an unlawful work stoppage. It is also competent to examine disputes relating to infringements of ‘work agreements’ or concerning the interpretation or validity of such agreements.

Furthermore, the Labour Court may deal with disputes between employers and workers referred to the Court as a result of an agreement concluded by the parties.¹⁶ Second, a work stoppage is deemed unlawful if its purpose is to force the authorities to take actions which they are not duty bound to undertake or not to take actions which they are legally required to undertake, provided that these are not actions to which the authorities are a party in their capacity as employer.¹⁷ Furthermore:

- **Solidarity strikes** in support of another trade union are permissible only if the primary work stoppage is lawful. The same conditions apply to international disputes as to purely national ones.¹⁸
- **Boycotts and bans:** Such instances are possible but should not be confused with actual work stoppages aiming at the securing of demands in industrial disputes.¹⁹

4. Who may participate in a strike?

General principle: Under the Trade Unions and Industrial Disputes Act (No. 80/1938), trade unions, employers' organisations and individual employers are permitted to engage in strikes and lockouts in order to advance the acceptance of their demands in industrial disputes and to protect their rights under the Act.²⁰ Workers who are not members of a trade union party to a collective agreement could stop work in accordance with their individual contracts of employment, but such a stoppage is not considered a strike within the meaning of Act No. 80/1938.²¹

Public sector:

- **Categories of persons:** Iceland's government sector is organised on two levels – central and local. The Government Employees Act (No. 70/1996) divides government staff into two groups: civil servants and all other employees. The term 'civil servant' applies mainly to higher-echelon employees. Under the Civil Servants' Collective Agreements Act (No. 94/1986), civil servants have the right to strike. However, this right is not unconditional.

Restrictions: As provided for in Article 19 of Act No. 94/1986, three groups of employees are denied the right to strike:²²

- The first group consists of appointed civil servants and other public servants whose employment terms are subject to the Senior Civil Servants' Salary Board (the independent public authority responsible for determining the salaries and benefits of state officials).
- The second group entails an exhaustive list of public employees: they are employees of Parliament and its institutions as well as employees at the Office of the President of Iceland and employees of the Government Office, including employees of the Foreign Service, all employees of the Supreme and District Courts and, lastly, employees in the Office of Public Prosecutions and the State Attorney's Office.
- Under the scope of the third group fall employees who work with security and basic health services, managers, clerks, engineers, office managers and the staff payroll division of local city and municipal authorities, and, lastly, heads of major business and local service organisations and employees whose work is compatible with the aforementioned authorities and organisations. Following consultation with the relevant trade unions, the Minister of Finance and Economic Affairs and local authorities publish, before 1 February each year, a register which defines the positions of the above-mentioned employees. Typically, these registers specify, for instance, the managerial positions and the number of positions to be filled within the health care system.

These restrictions can be challenged by trade unions before the Labour Court in order to have the inclusion of certain positions on the published lists invalidated.

- **Types of action:** Civil servants are entitled to take strike action in order to advance the acceptance of their demands in a dispute regarding a collective agreement; in so doing, they are not limited to situations where a strike is called with the aim of reaching a collective agreement.²³

Exceptions: Lockouts are prohibited for the Government, local authorities and employers in the public sector.²⁴

‘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’.²⁵

5. Procedural requirements

Advance notice

Formal announcement of a work stoppage must be sent to the Special Mediation and Conciliation Officer and to the opposing party, giving seven days' notice in the private sector and 15 days' notice in the public sector. The proposal to call a work stoppage must clearly state the persons it is primarily intended to involve and when it is intended to take place.²⁶

Dispute resolution

The dispute resolution procedure applies to both the private and public sectors.

- Cases concerning violations of a collective agreement or disagreements relating to the interpretation of a collective agreement can be resolved by referring the matter to the Labour Court, to a special conciliation committee as provided for under the collective agreement concerned or to the ordinary courts.²⁷
- For disputes over interests, the social partners have the option of referring their collective bargaining disputes to a State Mediation and **Conciliation Officer** under Act No. 80/1938. The officer's function is to act as a mediator in industrial disputes between the partners, in cases where this assistance is requested by the partners themselves. It is therefore made a condition for the calling of a work stoppage to be considered lawful that negotiations or attempts at negotiations on the demands presented must have proved unsuccessful, despite the efforts of the State Mediation and Conciliation Officer.²⁸
- In the first instance, the State Mediation and Conciliation Officer plays the role of intermediary. When entering negotiating periods, employers, or their organisations, and trade unions draw up a schedule for the conduct of negotiations on the renewal of collective agreements. At any time after the issue of a negotiation schedule, the contracting parties may request the mediation or assistance of a conciliation and mediation officer.²⁹
- If negotiations between the contracting parties break down, or there is little hope of reaching a settlement, both or either of the parties may refer the dispute to a conciliation and mediation officer, who then calls the contracting parties, or their representatives, to a meeting as soon as possible in order to continue attempts at conciliation.³⁰
- If notification of a work stoppage is received, the conciliation and mediation officer is obliged to work towards conciliation between the parties to the dispute and to direct their negotiations.³¹
- The State Mediation and Conciliation Officer may also submit a compromise proposal aimed at resolving the dispute. Such a proposal can be made only once all avenues of mediation have been exhausted, and it is for the officer to decide when it would be appropriate to make it.

The compromise proposal is then put to the vote in a ballot involving all parties with the right to vote on whether to approve or reject it.³²

Approval by means of a ballot

A strike is permitted only if the decision to call a strike has been taken by secret ballot with the participation of at least 20% in the private sector or 50% in the public sector of those with the right to vote, and if the proposal receives the support of the majority of the votes cast.³³

Postponement

As regards the private sector, the competent representatives of the contracting parties may, at any time, cancel a work stoppage. The same parties may postpone a work stoppage that has been called, once or more often, by up to 28 days, without the approval of the opposite contracting party, providing that that party is given at least three days' notice of the postponement. It is furthermore possible, at any time, to postpone a work stoppage that has been called, and a work stoppage that is in progress, with the approval of both parties. As regards the public sector, the Civil Servants' Collective Agreements Act (No. 94/198) is silent in this regard.³⁴

Emergency measures to suspend or end a strike

The Government may use legislative intervention to suspend a strike/lockout for a certain period and to give the negotiating bodies more time to reach an agreement. In cases where all possibilities of negotiation have been exhausted without resulting in a satisfactory solution and the work stoppage is substantially harming the country's economy and its citizens, legislation can be enacted to terminate collective action by introducing compulsory arbitration into the collective bargaining process. In many cases, the Icelandic Parliament has adopted legislation providing for the establishment of an arbitration committee, the members of which are appointed by the Supreme Court, in order to establish the terms and conditions of employment.³⁵

Peace obligation

Once a collective agreement has been signed, the negotiating parties waive their right to take collective action inasmuch as the conditions established in the collective agreement are fully respected. Thus, during the period of validity of a collective agreement, there is an obligation to preserve peaceful relations.³⁶

The obligation to keep the peace is linked to the collective agreement in question; if no collective agreement has been concluded between the parties, or if the one that was made has expired, then the parties involved are no longer under any obligation to keep the peace. Moreover, it is a premise for the obligation to keep the peace that a provision has been made to this effect in the relevant collective agreement.³⁷

The obligation to keep the peace covers work stoppages that are aimed at forcing through amendments to existing collective agreements. Thus, work stoppages that have other aims are not in violation of the obligation to keep the peace. In this connection mention may be made of work stoppages that are aimed at bringing about a collective agreement between parties that have not yet made any such agreement, sympathy strikes and work stoppages to enforce judgments of the Labour Court; work stoppages of the last two types listed here

are permitted during the term of a collective agreement.³⁸

Minimum services

The Civil Servants' Collective Agreements Act (No. 94/1986) sets out the procedure for preparing the list of posts for which a minimum service must be maintained.³⁹

6. Legal consequences of participating in a strike

Participation in a lawful strike

Suspension of employment relationship: The legal relationship between an employer and an employee is severed during a strike, and, for the duration of the strike, the two parties are no longer bound by the terms of their contract of employment.⁴⁰

Wages and benefits: There is no legal obligation for the employer to remunerate striking employees. There is also the possibility of a reduction in wages which is proportional to the time during which no work was performed, i.e. the duration of the strike.⁴¹ In addition, workers on strike are not entitled to unemployment benefits but may receive payments from the special strike fund set up by most trade unions in order to assist their members in the event of a strike.⁴²

Regarding the acquisition of entitlements, the general view has been that this is not affected by strikes; time spent on strike is regarded as working time when entitlements are calculated such as entitlement to notice of termination or to sick leave. Even if the Annual Leave Act does not specifically address the effect that strikes have on the right to annual leave, the view has been taken that strikes do not interfere with workers' right to take annual leave in the light of the general principle that workers are at all times entitled to take annual leave under the Annual Leave Act. On the other hand, a strike will influence the payment of pay during leave, since the payment of wages during annual leave is in fact determined as a proportion of the wages earned during the year on which the leave entitlement is based. If part of the year has been without wage payments, then the payment during annual leave will be correspondingly reduced.⁴³

Disciplinary sanctions and dismissal: The employer must refrain from influencing the behaviour of workers engaged in industrial disputes by means of measures such as dismissal or simply the threat of contract termination.⁴⁴

Participation in an unlawful strike

Proceedings before the Labour Court can be instigated by the complainants for violation of the Trade Unions and Industrial Disputes Act and losses sustained due to an illegal work stoppage.⁴⁵

Damages: Parties violating the Trade Unions and Industrial Disputes Act can be held liable for payment of damages, fines and costs in accordance with customary rules.⁴⁶

7. Case law of international/European bodies

International Labour Organisation

Committee of Freedom of Association (CFA)

There are no recent decisions of the CFA relevant to the right to strike.

In a previous case, the CFA decided as follows:

Cases regarding the enactment of emergency measures to end a strike: Case No. 2170 – Report No. 330, *the Icelandic Federation of Labour (ASÍ) and the Merchant Navy and Fishing Vessel Officers Guild (FFSI) supported by the International Transport Workers' Federation (ITF) and the International Confederation of Free Trade Unions (ICFTU) v the Government of Iceland*⁴⁷

The complainant organisations alleged violation of the freedom of association deriving from the passing by the Althing (Iceland's Parliament) of Act No. 34/2001 of 16 May 2001 on fishermen's wages and terms, banning a strike and a lockout declared by some occupational organisations of the fishing industry and establishing an arbitration panel to determine the wages and terms of the members of those organisations.

After the negotiations between the **Icelandic Seamen's Federation (SSI)**, affiliated to the Icelandic Federation of Labour (ASÍ), and the federation grouping the vessel owners' organisations, the **Federation of Icelandic Fishing Vessel Owners (LIU)**, reached an impasse over the determination of the price of fish, a national strike was called and a general lockout imposed. The strike had been decided by the constituent unions of the FFSI, SSI and VSFI, while the lockout was decided by the members of the LIU. The Althing adopted Act No. 8/2001 whereby both the strike and the lockout were postponed by two weeks. Since, at the end of the suspension of the strike, the collective bargaining remained fruitless, the strike resumed. Act No. 34/2001, adopted on 16 May 2001, prohibited the strike with immediate effect. The prohibition was to last during the whole period of validity of any decision taken by the arbitration panel to be established under the Act. The Committee noted that the arbitration panel eventually determined the fishermen's wages by extending the application of a collective agreement reached by some professional organisations of the sector until the end of 2003.

The complainants pointed out that this was the fourth intervention of the Government, in the previous seven years, in a legitimate strike decided by the fishermen. These interventions had led the social partners to be less willing to negotiate in good faith. Furthermore, the complainants alleged that the Act contained measures which were not adapted to what the circumstances required. Thus, they indicated that the body established was not a court of arbitration but an administrative committee, which was at liberty to decide, in an arbitrary manner, on the duration of the restrictions imposed by the law on free negotiations.

The Government stressed that it had always placed great importance on collective bargaining for the determination of wages and terms. Furthermore, in order to enhance the

chances of successful negotiations, it had established an arrangement whereby the parties, if they so wished, could refer the matter to the Mediation and Conciliation Officer.

However, in the case at hand, it derived from the declarations of the remaining parties to the dispute as well of the Mediation and Conciliation Officer, that there was no chance that the issue would be settled through mediation. Furthermore, the Officer's view was that there was no basis on which he could make a compromise proposal. These considerations explain why the Government waited for a long period of time before intervening in the strike.

Consequently, the Government claimed that there was an urgent necessity to limit the enormous damage that a longer work stoppage would cause to the Icelandic economy. In this respect, the Government indicated that the life of people in small settlements, who base their subsistence on the fishing industry, was greatly affected by the strike and lockout, that the workers in fish factories started to be unemployed, and that there were signs of the negative influence of the strike on the marketing of Icelandic fish products abroad.

In respect of the measures contained in the Act, the Government pointed out that the parties were given a certain period in which to reach an agreement and that the Supreme Court was to appoint three persons to sit in a court of arbitration only if no agreement had been reached. The Government contended that the appointment of a court of arbitration was a measure proportionate to what the circumstances required, and that the aim of the law was to provide the parties to the dispute with a reasonable and fair solution.

While fully recognising that a work stoppage in the Icelandic fishing industry could have important consequences on the economy, the Committee was of the view that such a stoppage did not endanger the life, personal safety or health of the whole or part of the population.

Furthermore, for the Committee, the mere existence of a deadlock in a collective bargaining process was not, in itself, a sufficient ground to justify an intervention from the public authorities to impose arbitration on the parties to the labour dispute. Public authorities' intervention in collective disputes must be consistent with the principle of free and voluntary negotiations. This implies that the bodies appointed for the settlement of disputes between the parties to collective bargaining should be independent, and recourse to these bodies should be on a voluntary basis.

The Committee made this conclusion with concern, since the arbitration body was to decide on the duration of the applicability of the collective agreement reached by the VSFI and the LIU to members in particular of FFSI and SSI. Therefore, it considered that the arbitration process provided for under Act No. 34/2001 infringed the principle of free and voluntary collective bargaining.

In addition, the Committee had already noted that, over the past few years, the Government had, on several occasions, had recourse to measures of intervention in collective bargaining. These interventions manifestly showed the existence of difficulties in the industrial relations system. Therefore, it deplored that numerous similar cases infringing the provisions of Conventions Nos. 87 and 98 had occurred in the past, and requested the Government to

change the national machinery and procedures concerning collective bargaining so as to avoid repetitive legislative interventions in the collective bargaining process in the future.

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

- In a previous *Direct Request* on the application of Convention No. 87, the Committee noted that the Government indicated that in the context of the renewal of the collective agreement concerning non-officer seamen on the *Herjólfur* ferry, members of the Icelandic Seamen's Union started strike action on 5 March 2014, which reduced the number of ferry crossings made. The Government indicated that it had enacted Act No. 24/2014 on 1 April 2014, suspending strike until 15 September 2014 and stipulating that, during that period, the most recently agreed collective agreements were to remain in force unless the parties agreed to other terms. The Committee further noted the observations from the Icelandic Federation of Labour (ASI) that it regarded the Government's interference in collective bargaining by seamen on the *Herjólfur* ferry as a blatant and unequivocal violation of the Convention, directed against the activities of independent trade unions and their right to pursue their demands by means of lawful strike action.

The Committee recalled that essential services, in which the right to strike may be restricted or even prohibited, are only those the interruption of which would endanger the life, personal safety or health of whole or part of the population. This concept is not absolute in its nature in so far as a non-essential service may become essential if the strike exceeds a certain duration or extent, or as a function of the special characteristics of a country.

The Committee further recalled that when the right to strike is restricted or prohibited in certain enterprises or services considered essential, the workers should be afforded adequate protection, for example, impartial conciliation and arbitration procedures which have the confidence of the parties, so as to compensate for the restrictions imposed on their freedom of action.

In this context, the Committee requested the Government to ensure full respect of these principles in the future and requested it to provide information as to developments in relation to the industrial action taken by the seamen on the *Herjólfur* ferry.⁴⁸

- *Replies received to the issues raised in a direct request which do not give rise to further comments (CEACR) - adopted 2017, published 107th ILC session (2018)*
The Committee noted the information provided by the Government, which answered the points raised in its previous direct request (see above), and had no further matters to raise in this regard.⁴⁹

Council of Europe

Collective Complaints under Article 6(4) of the Charter

Iceland has not accepted the collective complaints procedure.

European Committee of Social Rights Conclusions⁵⁰

In its most recent Conclusions XXI-3 (2018)⁵¹, found and concluded the following:

Collective action: definition and permitted objectives

The Committee previously noted that social partners have taken the view that it is not lawful to call strikes while the collective agreements between them are still valid. The Committee asked if strikes not aimed at concluding a collective agreement are prohibited in Iceland (Conclusions XX-3, 2014).

According to the report, while collective agreements are in force, there is an obligation to keep the peace, i.e., the parties who are bound by a collective agreement may not, during the term of the agreement, strike over matters covered by the agreement. However strikes that have other aims are not in violation of this obligation.

Specific restrictions to the right to strike and procedural requirements

The Committee recalled that it takes into consideration situations in which legislation was enacted during the reference period to terminate collective action through compulsory arbitration under Article 6§4 of the 1961 Charter.

During the reference period, Parliament intervened in disputes on several occasions. On 12 April 2014, the Parliament passed a law ending strike action by the Icelandic Seamen's Union on the ferry Herjólfur VE, which had begun on 5 March the same year. The strike meant that work on the ferry came to an end between 5.00 p.m. and 08.00 a.m. the following day, and no work at all was allowed at the weekend. Then, from and including 21 March 2014, the strike also included the whole day on Fridays, with the result that the ferry sailed only four days a week between Vestmannaeyjar (a group of islands off the south coast of Iceland), and the mainland. The bill which was passed as law ending the strike action emphasised the special position of the islands with respect to transportations with the mainland as being evident and unequivocal. Transport of goods between the mainland and the islands is effected mainly by sea, as a consequence of which the strike had a negative impact on business operations in the islands, in addition to the impact on the people of the islands who depended on the ferry to access essential services of many types on the mainland.

The Committee considered that although the justification for terminating the strike was the protection of the rights and freedom of others (and the economy), it had not been demonstrated that the conditions of Article 31 of the 1961 Charter have been fulfilled namely it was necessary in a democratic society. In order to be satisfied that the conditions of Article 31 of the 1961 Charter had been fulfilled the Committee would have needed further information on the essential services denied to the inhabitants, lack of hospital care, other modes of transport etc. Therefore the Committee concluded that the situation is not in conformity with Article 6§4 of the 1961 Charter, on the ground that during the reference period the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the 1961 Charter.

On 15 May 2014, Parliament passed a law ending strike action by pilots working for the airline Icelandair. The strike involved an open-ended ban on working overtime and a temporary strike which, together, were supposed to span the period 9 May to 3 June 2014. The industrial action by the pilots' association was to cover the 300 pilots at Icelandair and would affect about 600 flights to and from the country, disrupting the travel plans of about 100,000 passengers during the 9 days that the temporary strike was supposed to last. In the bill which was passed as a law banning the action, reference was made to the economic interests at risk, i.e. the income that would be lost by the tourist and seafood-exporting industries.

The Committee noted that in the case at hand, even though a work stoppage in the aviation sector may have had important consequences on the economy and this being the primary consideration on which state intervention to terminate the strike was based, it had not been established that such intervention falls within the limits of Article 31 of the 1961 Charter, namely that it was necessary for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. It considered that the situation was not in conformity with Article 6§4 of the 1961 Charter, on the ground that during the reference period the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the 1961 Charter.

Likewise it considered that the termination of the strike by air traffic controllers in June 2016 did not fall within the limits of Article 31 of the 1961 Charter.

On 13 June 2015 the Parliament passed legislation against industrial action by the Alliance of University Graduates (BHM) and the Icelandic Nurses' Association. In the bill which was passed as the Act on the Wages and Terms of Certain Unions within BHM and the Icelandic Nurses' Association, it was stated that it was necessary to respond to the widespread disruption that the strike entailed, particularly in the health services.

The Committee considered that although the justification for terminating the strike was the protection of the rights and freedom of others (and the economy), it had not been demonstrated that the conditions of Article 31 of the 1961 Charter had been fulfilled namely it was necessary in a democratic society. It considered that the situation was not in conformity with Article 6§4 of the 1961 Charter, on the ground that during the reference period the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the 1961 Charter.

The Committee referred to its general question regarding the right of members of the police to strike.

Consequences of a strike

During a strike, the main obligations of an employment contract are suspended, but the contractual relationship remains in force. Thus, wage payments are suspended, as are the corresponding obligations of the worker to carry out work. A strike is a collective action which affects the trade union first and foremost; it does not interfere with the contractual relationship between individual workers and their employer.

Conclusion

The Committee concluded that the situation in Iceland was not in conformity with Article 6§4 of the 1961 Charter on the ground that that during the reference period the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the 1961 Charter.

European Court of Human Rights (ECtHR)

Association of Academics v. Iceland , Application No. 2451/16, decision of 15 May 2018⁵²

The applicant is an association of trade unions of university graduates in Iceland. Before the ECtHR, it represented its 18 member unions, many in the public health care sector.

In December 2014 collective bargaining commenced between individual member unions and the Icelandic State, with the member unions authorising the applicant association to represent them in collective bargaining with the Icelandic State. In February 2015 the existing collective agreement between the member unions and the Icelandic State formally lapsed, subsequently, 17 of the 18 member unions voted to take collective action in the form of temporary and long-term strikes. The strike actions lasted between 11 and 67 days.

In June 2015, the Icelandic Parliament passed an Act which prohibited strike actions by the 18 unions, further work stoppages or any other measures designed to compel an arrangement to end the labour dispute which differed from the provisions of the Act. The Act also stipulated that, if a collective agreement between the parties was not signed by 1 July 2015, an arbitration tribunal would be appointed to determine the wages and employment terms of the union members, the decision being binding as a collective agreement upon the parties. In August 2015 the tribunal issued its decision, prolonging the validity of the existing collective agreements, with certain amendments to union members' wages and employment terms. The applicant association unsuccessfully challenged the Act before the domestic courts.

The ECtHR declared the application inadmissible (manifestly ill-founded) for the following reasons:

The ECtHR noted that before the domestic courts, it was not disputed between the parties that the restrictions on the member unions' strike actions and the imposition of compulsory arbitration constituted an interference with their right to freedom of association, nor was it disputed that the **interference was prescribed by law**. As to the aim of the interference, the ECtHR saw no reason to disagree with the Supreme Court which concluded that the restrictions pursued the **legitimate aim** of being in the interest of public safety and for the protection of the rights of others (see, *Federation of Offshore Workers' Trade Unions and Others v. Norway*, (dec.), no. 38190/97, ECHR 2002-VI).

As to whether the restrictions on strike action and the imposition of compulsory arbitration can be regarded as "**necessary in a democratic society**" in the circumstances of the present case, the ECtHR considered that the Supreme Court had evaluated the evidence presented in the case and weighed the interests at stake by applying the principles laid down in the

Court's case-law. It had acted within its margin of appreciation and struck a fair balance between the measures imposed and the legitimate aim pursued.

8. Bibliography

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Notes

- 1 Status of ratification by Iceland of UN instruments, available at: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en> (accessed on 18 April 2021).
- 2 Status of ratification by Iceland of ILO conventions, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102685 (accessed on 18 April 2021).
- 3 Status of ECHR ratifications: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=jPYjkVEL (accessed on 18 April 2021).
- 4 Status of ratification of the 1961 Charter, available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035/signatures?p_auth=F3KSQtYr (accessed on 18 April 2021); 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, p. 83.
- 5 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 18 April 2021); see also ESC, Country Profile: Iceland (<https://www.coe.int/en/web/european-social-charter/iceland>).
- 6 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 18 April 2021).
- 7 Article 14 of the Act on Trade Unions and Industrial Disputes (No. 80/1938) (https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=46627).
- 8 Article 15 of Act on Trade Unions and Industrial Disputes (No. 80/1938); see also Warneck, W. (2007), Strike rules in the EU27 and beyond: A comparative overview, Report 103, Brussels: ETUI-REHS, p. 38; and Júlíusdóttir L-V., Icelandic Labour Law, Scandinavian Studies in Law (Vol. 43), 2002, p. 362.
- 9 Article 15 of the Civil Servants' Collective Agreements Act (No. 94/1986); see also 27th National Report on the implementation of the European Social Charter submitted by the Government of Iceland (RAP/Cha/ISL/27(2014)), p. 38, available at: <https://rm.coe.int/1680489592>.
- 10 Official website of the Icelandic Confederation of Labour (ASÍ), section on Icelandic Collective Labour Law (summary): Strikes and Lockouts, available at: <http://www.asi.is/vinnurettarvefur/icelandic-labour-law/labour-market-and-trade-unions/strikes>.
- 11 Article 14 of the Act on Trade Unions and Industrial Disputes (No. 80/1938).
- 12 Article 19 of the Act on Trade Unions and Industrial Disputes (No. 80/1938); see also Icelandic Confederation of Labour (ASÍ), Icelandic Labour Law, A summary of basic rights and obligations on the private labour market (sixth edition), May 2013, p. 9.
- 13 Article 14 of the Civil Servants' Collective Agreements Act No. 94/1986; see also 27th National Report on the implementation of the European Social Charter, op. cit., p. 38.
- 14 27th National Report on the implementation of the European Social Charter, op. cit., p. 39; see also ETUI Report 103, p. 38.
- 15 Article 17 of the Act on Trade Unions and Industrial Disputes (No. 80/1938).
- 16 Article 44 of the Act on Trade Unions and Industrial Disputes (No. 80/1938); see also ECSR, Conclusions XIV-1 (1998), available at: <http://hudoc.esc.coe.int/eng?i=XIV-1/def/ISL/6/4/EN>.
- 17 Article 17 of the Act on Trade Unions and Industrial Disputes (No. 80/1938).
- 18 ETUI Report 103, p. 38 p.; see also Article 17 of the Act on Trade Unions and Industrial Disputes (No. 80/1938).
- 19 27th National Report on the implementation of the European Social Charter, op. cit., p. 39.
- 20 Article 14 of the Act on Trade Unions and Industrial Disputes (No. 80/1938).
- 21 ECSR, Conclusions XII-1 (1991).
- 22 Official website of the Icelandic Confederation of Labour (ASÍ), section on Icelandic Collective Labour Law (summary): Strikes and Lockouts.
- 23 Article 14 of the Civil Servants' Collective Agreements Act (No. 94/1986); and ECSR Conclusions XIX-3 (2010), available at: <http://hudoc.esc.coe.int/eng?i=XIX-3/def/ISL/6/4/EN>.
- 24 Official website of the Icelandic Confederation of Labour (ASÍ), op. cit.
- 25 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.
- 26 Website of the Icelandic Confederation of Labour (ASÍ), op. cit.; and 27th National Report on the implementation of the European Social Charter, op. cit., p. 39.
- 27 Icelandic Confederation of Labour (ASÍ), Icelandic Labour Law, A summary of basic rights and obligations on the private labour market (sixth edition), May 2013, p. 9.
- 28 Article 15 of the Act on Trade Unions and Industrial Disputes (No. 80/1938); and 27th National Report on the implementation of the European Social Charter, op. cit., p. 39.
- 29 Articles 22 to 24 of the Act on Trade Unions and Industrial Disputes (No. 80/1938).
- 30 Article 24 of the Act on Trade Unions and Industrial Disputes (No. 80/1938).
- 31 Ibid.
- 32 Articles 27 to 32 of the Act on Trade Unions and Industrial Disputes (No. 80/1938).
- 33 See section 2 above.
- 34 Article 15 of the Act on Trade Unions and Industrial Disputes (No. 80/1938); see also website of the Icelandic Confederation of Labour (ASÍ), op. cit.
- 35 For example, Act No. 8/2001 postponing a strike and a lockout for two weeks in the fishing sector, Act No. 24/2014 suspending a strike by non-officer seamen on the Herjólfur ferry, Act No. 34/2014 suspending a strike by airline pilots at Icelandair, Act of 18 June 2014 suspending strike action by air mechanics at Icelandair, Acts No. 10/1998 and 34/2001 enabling the Supreme Court to appoint a court of arbitration to terminate a strike in the fishing sector, Act of 13 November 2004 enabling the Supreme Court to appoint a court of arbitration to terminate a strike by teachers in junior schools, Act No. 17/2010 to end a strike by aircraft mechanics, and Act of 13 June 2015 ordering striking academics to go back to work.
- 36 ETUI Report 103, p. 38; see also Icelandic Confederation of Labour (ASÍ), Icelandic Labour Law, op. cit., p. 12.
- 37 See 35th National Report on the implementation of the 1961 European Social Charter submitted by the Government of Iceland, Cycle XXI-3 (2018), p. 59.
- 38 Ibid
- 39 Article 19(2) of the Civil Servants' Collective Agreements Act (No. 94/1986); and ECSR Conclusions XIII-3 (1995).
- 40 ECSR, Conclusions XV-1 (2000).
- 41 Ibid.
- 42 ETUI Report 103, p. 39.
- 43 See 35th National Report on the implementation of the 1961 European Social Charter submitted by the Government of Iceland, Cycle XXI-3 (2018), pp. 62-63.
- 44 Article 4 of the Act on Trade Unions and Industrial Disputes (No. 80/1938).
- 45 Article 44 of the Act on Trade Unions and Industrial Disputes (No. 80/1938).
- 46 Article 65 of the Act on Trade Unions and Industrial Disputes (No. 80/1938).
- 47 Case No. 2170 – Report No. 330, March 2003, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2906722.
- 48 CEACR, Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015), implementation of 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:3187487,102685,Iceland,2014.
- 49 CEACR, Replies received to the issues raised in a direct request which do not give rise to further comments (CEACR) - adopted 2017, published 107th ILC session (2018), 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:3333577,102685,Iceland,2017.
- 50 ECSR, Conclusions on Article 6(4) in respect of Iceland, available at : <https://hudoc.esc.coe.int/eng#%7B%22sort%22:%22ESCPublicationDate%20Descending%22,%22ESCArticle%22:%2206-04-000%22,%22ESCDcLanguage%22:%22ENG%22,%22ESCDcType%22:%22Conclusion%22,%22ESCStateParty%22:%22ISL%22%7D>
- 51 ECSR Conclusions XXI-3 (2018), Iceland, Article 6(4), available at: <http://hudoc.esc.coe.int/eng?i=XXI-3/def/ISL/6/4/EN> .

52 Association of Academics v. Iceland , Application No. 2451/16, decision of 15 May 2018, Second Section, available at: <http://hudoc.echr.coe.int/fre?i=001-183375> .