The right to strike in the public sector

Italy

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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; no comments were received from the Italian EPSU affiliates.
1. Legal basis

International level

Italy has ratified:

UN instruments

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

ILO instruments

Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise
ratified on 13 May 1958;
Convention No. 98 concerning the Right to Organise and to Bargain Collectively
ratified on 13 May 1958;
Convention No. 151 concerning Labour Relations (Public Service)
ratified on 28 Feb 1985

Italy did not ratify

Convention No. 154, Collective Bargaining Convention, 1981

European level

Italy has ratified:

The Revised European Social Charter
on 05/07/1999
The Collective Complaints Procedure Protocol
on 03/11/1997

National level

The Constitution of Italy
Article 40 of the Italian Constitution guarantees that ‘the right to strike shall be exercised in compliance with the law’. It recognises the right of the workers alone (there being no right of lockout) to withdraw their labour in order to promote their own interests.
Since no law has so far been passed on the subject and, therefore, in the absence of detailed legislation, the right to strike is interpreted by case law.

To be legitimate, a strike must:

- protect the direct and legitimate common interests of the participants;
- aim at the conclusion of a collective agreement;
- not violate the rights and interests of others, such as private property rights or the right to work;
- be decided upon freely and voluntarily by the employees as a group, acting on their own behalf or through a trade union;
- not aim at the overthrow of the Italian Constitution or the abolition of a democratic form of government.

The right to strike is defined as one of the means granted to workers to remove obstacles which hinder their effective equality and their full participation in the economic, social and political life of the country (Article 3(2) of the Constitution).

In 1993, Italy carried out a thoroughgoing reform of its public service. Legislative Decree No. 29 of February 1993 approved a change of the status of virtually all public servants, putting them on a contract under private law governed by the Civil Code.

The main aspects of the reform are:

- most public servants becoming subject to private law (with the exception of directors-general, prefects, diplomats, and so on);
- the granting of competence to ordinary judges in disputes concerning public servants;
- enlargement of the scope of collective bargaining to include all matters not covered by law or regulations; the public partner in collective bargaining shall in future be an agency.

Within the staff of the administration, however, some categories of personnel have not been brought under private law in order to preserve their autonomy (judges and prosecutors, university professors, military personnel and police officers, diplomats and prefectoral corps). These categories are defined as non-contractual public employees, as opposed to contractual/‘privatised’ employees.

But the public law regulations continue to apply in matters of recruitment, incompatibility and accumulation of posts.

The Italian public service system is thus now considered to be a system of employment and no longer a career system.
2. **Who has the right to call a strike?**

In so far as the right to strike is considered an individual right of the worker (to be exercised collectively), both primary and secondary strikes can be called by any group of workers, as well as by trade union or company works councils.
3. Definition of a strike

Four types of strike action are permitted under Italian law:

- articulated (strategic combination of collective abstentions from work interspersed with periods of working)
- picketing (non violent)
- political
- solidarity

In 1986, the Supreme Court made a landmark ruling stating that the only completely lawful form of stoppage in Italy is the all-out strike in which all employees abstain from working for a fixed or indefinite period of time. This means that workers must work fully or not at all.

The two main types of illegal work stoppages, in theory, are political and solidarity strikes.

The Constitutional Court has, however, recognised the principle of political strikes. Yet it has also recognised that these can be prohibited if their aim is to subvert the democratic system established by the Constitution.

Article 505 of the Penal Code makes solidarity strikes a criminal offence. In relation to this form of strike, the Constitutional Court (Decision No. 123 of 1962) recognised the provision as legitimate, while nevertheless acknowledging that such strikes should not be subject to penal sanction when a genuine community of interest exists.

A solidarity strike may be considered fair if called to protest against the dismissal of one or more employees of a company or in a particular industry.

**Solidarity strikes** in support of workers abroad are legitimate provided there is some community of interest between the Italian workers and the others involved, and that the Italian action is in other respects lawful (judgment of the Supreme Court of 3 October 1979).
4. **Who may participate in a strike?**

The right to strike is generally denied to the police and to military personnel, in order not to imperil national safety, or the physical welfare and property of citizens (Article 52 of the Constitution).

All other employees in the public sector, as well as civil servants, have the right to strike.

Decree No. 185 of 1964 strictly limits the right to strike of employees working in nuclear plants. Act No. 242 of 1980 and Act No. 121 of 1981 similarly limit the right to strike of air controllers and bans strikes by policemen.

The Act of 11 April 2000 requires a balance between the right to strike and the continuity of public services. An explanatory memorandum states that ‘the purpose of the Act is not to deprive anyone of the right to strike but to guarantee the operation of a minimum service in essential public services’.

In Italy, there are **no particular restrictions** on the trade union rights of public servants. The right to strike is prohibited only for military personnel and the state police.

Minimum-service arrangements have to be set out in collective agreements. The Guarantee Committee is an independent body which assesses the appropriateness of the minimum services set out in collective agreements and, if necessary, orders further measures. The **powers of the Guarantee Committee** have been strengthened by the new act (Act No. 83/2000). It can now also penalise the conduct of trade unions, employers and self-employed workers in connection with collective action.
5. **Procedural requirements**

**Peace obligations** resulting from collective agreements, as well as conciliation procedures, have to be respected.

**Advance notice** of 10 days has to be respected for each strike in essential services (Act No. 146 of 1990). According to the same Act, minimum services to be performed by workers in a series of sectors, regarded as of general interest, have to be established through collective agreements.
6. Legal consequences of participating in a strike

If the strike remains within the **limits** laid down by **law** or by the **courts**, participation does not, in principle, constitute a breach of contract, but it does suspend the individual employment contract. Therefore, the employer cannot dismiss strikers during the period of a strike.

**Strikers** cannot be replaced by other workers recruited from outside. Employers may not offer financial inducements to employees not taking part in the strike. Even the temporary recruiting of strike-breakers from outside might be considered an illegal anti-union activity under Article 28 of the Workers’ Statute.
7. Case law of international/European bodies

ICESCR

- In its general observations to the fifth periodic report on Italy², the CECSR stated that:

  1. The Committee regrets the absence of a law on trade union rights in the State party and the lack of information on the right to strike (art. 8).
  2. The Committee recommends that the State party adopt a legal framework governing trade union rights and the right to strike in line with article 8 of the Covenant and that it provide information in its next periodic report on the actual enjoyment of those rights.

European Social Charter:

- Conclusions of the European Committee of Social Rights (ECSR):

Italian law has been found to be not in conformity with Article 6(4), as it has not been established that the power of the Government to issue injunctions or orders restricting strikes in essential public services falls within the limits of Article G of the Charter.

With regard to procedural requirements, the Committee has concluded that the situation in Italy is not in conformity with Article 6(4) of the Charter because the requirement to notify employers of the duration of strikes affecting essential public services prior to strike action is excessive.

In its Conclusions published in 2016, the Committee acknowledges the information submitted by Italy in response to its 2014 Conclusions. Italy’s report states that Italian law seeks to strike a balance between the rights of employees to strike and the rights of others who may be affected by the strike in essential services. A commission, central government or competent territorial prefects may issue a decree adopting the necessary measures to guarantee the rights protected by the Constitution. The report provides a list of the services in which the right to strike may be restricted. The Committee notes that public transport services, post and telecommunications, and waste disposal are, inter alia, included on that list, and, in reference to its case law, it asks whether strikes may be prohibited completely in these sectors or whether decrees simply require that certain minimum services be maintained.

So that the Committee can assess whether the restrictions imposed are in conformity with Article G of the Charter, it asks that the next report provide details of the decrees issued during the reference period prohibiting or restricting strikes.
• **ECSR decisions under the collective complaints procedure**

The ECSR has declared admissible:\(^3\):

• Complaint No. 140/2016 Confederazione Generale Italiana del Lavoro (CGIL) v. Italy regarding, *inter alia*, Article 6(4) of the Charter. The complainant trade union, CGIL, alleges that, in Italy, members of the Guardia di Finanza are prohibited from exercising the right to strike in violation of the aforementioned provisions.

• Complaint No. 152/2017 Unione sindacale di base –settore pubblico impiego (USB) v. Italy. It relates to Articles 1 (the right to work), 4 (the right to a fair remuneration), 6§4 (the right to bargain collectively – collective action), 10 (the right to vocational training) and E ((non-discrimination) of the Revised European Social Charter. The complainant organisation complains about the situation of precarious workers employed by the Ministry of Justice in Italy, especially the violation of their right to career, in violation of the above mentioned provisions of the Charter.

• Complaint No. 153/2017 Unione sindacale di base –settore pubblico impiego (USB) v. Italy. It relates to Articles 1 (the right to work), 4 (the right to a fair remuneration), 5 (the right to organise), 6§4 (the right to bargain collectively – collective action), 24 (the right to protection in case of dismissal) and E ((non-discrimination) of the Revised European Social Charter. USB complains about the situation of precarious workers in the public sector service in Sicily, employed under fixed-term contracts for vacant posts, in violation of the above mentioned provisions of the Charter.

• Complaint No. 159/2018 Associazione Professionale e Sindacale (ANIEF) v. Italy It relates to Articles 1§§1 and 2 (right to work), 4§§1 and 4 (right to a fair remuneration), 5 (the right to organise), 6§4 (right to collective bargaining), 24 (right to protection in the event of dismissal) and E (non-discrimination) of the Revised European Social Charter. The complainant organisation alleges that, as a result of a change in the case-law of the Council of State end 2017, people with a primary school teaching certificate (diploma magistrale) obtained before 2001/2002 are henceforth excluded from the reserve lists from which teachers in primary school and preschool are recruited.

• Complaint No. 170/2018 Unione sindacale di base (USB) v. Italy. It relates to Articles 1 (the right to work), 4 (the right to a fair remuneration), 5 (the right to organise), 6§4 (the right to bargain collectively – collective action), 12 (the right to social security), 24 (the right to protection in case of dismissal) and E (non-discrimination) of the Revised European Social Charter. Unione sindacale di base (USB) complains about the abuse of 'socially useful workers' contracts by municipalities and public bodies in Sicily and Campania contributing to make the situation of these public sector employees more precarious in violation of the aforementioned provisions of the Charter.
8. Recent developments

No recent developments took place.
9. Bibliography

Notes