



The right to strike in the public sector Kosovo

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The Right to strike (in the public sector) in Kosovo

Kosovo is not a member state of the United Nations and its status is based on United Nations Security Council Resolution 1244/1999.

1) Legal basis/sources

a) International level (relevant for the right to strike):

Kosovo has **not** ratified:

- UN instruments: International Covenant on Economic, Social and Cultural Rights (ICESR, Article 8) and International Covenant on Civil and Political Rights (ICCPR, Article 22).

Kosovo has **not** ratified:

- ILO instruments¹: Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and to Collective Bargaining.

b) European level:

Kosovo is not a member of the Council of Europe and so has **not** ratified:

- European Social Charter (Article 6§4 - right to collective action);
- European Convention on Human Rights (Article 11 – freedom of assembly and association).

c) National level:

- Constitution of the Republic of Kosovo², Article 44 guarantees freedom of association as follows: “1. *The freedom of association is guaranteed. The freedom of association includes the right of everyone to establish an organisation without obtaining any permission, to be or not to be a member of any organisation and to participate in the activities of an organisation. 2. The freedom to establish trade unions and to organise with the aim to protect interests is guaranteed. This right may be limited by law for specific categories of employees. (...)*”
- Applicable laws
 - In general: Law on Labour No. 03/L-212³, Article 89 provides that: “1. *For the protection of the rights of employees, the organisations of employees (trade unions) are entitled to organise strikes. 2. The rights, duties and responsibilities related to the organisation and participation in strikes shall be regulated by a special law.*”
 - Law on Strikes No. 03/L-200⁴. The purpose of this law is to guarantee freedom and rights relating to the organisation of and participation in strikes by workers in Kosovo, in line with international standards.⁵ Article 4 of the Law on Strikes defines the terms “strike” and “strikers” as follows: “1.1. *Strike - organised interruption of work by employees with the*

*aim of realisation of the rights and economic, social and professional interests arising from work relationship;*⁶ 1.2. *Strikers - workers who express their dissatisfaction regarding rights, working conditions, economic, social and professional interests through strikes*".⁷

- Law for Organising Trade Union in Kosovo No. 04/L-011⁸

Article 27 of this Law provides that 1. *In order to fulfil the trade union's requirements, forms of union pressure are allowed, as well as protests and employees' strikes in accordance with international conventions, applicable laws and trade union statute.* 2. *The right to strike is an elementary right of the employees and trade union bodies which is guaranteed in Kosovo by the Law on Strikes. (...)* 4. *It is forbidden to use violence and to take punitive measures by the employer towards the employees who have participated in a protest or in a legal trade union strike.*⁹

- Specific laws for certain sectors:

Law on the Civil Service of the Republic of Kosovo, No. 03/L-149¹⁰

Article 48 of this Law provides that: 1. *Civil Servants shall have the right to go on strike in accordance with the law.* 2. *The conditions for limiting the right to go on strike for specific services in the Civil Service shall be established in a regulation issued by the Government of Kosovo.*"

Article 3 of the Law on Strikes provides that the employees in the Kosovo Security Force, Kosovo Police, Fire Services, Emergency Health Services and other bodies of particular interest for the Republic of Kosovo have no right to organise a strike, unless otherwise provided by special law.¹¹

Article 17 of the Law on Strikes establishes that special conditions must be fulfilled (such as to ensure the minimum level of service/production) when strikes are organised in services of vital importance¹² (as further detailed in Section 4 below).

2) Who has the right to call a strike?

- According to the Law on Strikes, the decision to call a strike within an organisation, in a part of the organisation or at the employer shall be taken by the competent body of the trade union or more than half of the employees.¹³
- The decision to call a strike at the level of a federation or activity is taken by the competent body of the trade union of this federation or activity. The decision to call a general strike of workers is taken by the competent body according to the trade union statute.¹⁴
- The strikers' council is defined as a temporary body selected by the employees to represent their interests and to lead the strike on their behalf.¹⁵

3) Definition of strike action

- The Law on Strikes defines a strike as an organised interruption of work by the employees with the aim of realisation of the rights and economic, social and professional interests arising from the work relationship.¹⁶
- A **warning strike** cannot last longer than 1 (one) hour a day.¹⁷
- A strike and a warning strike may be organised at the following levels¹⁸:
 - employer (enterprise level);
 - in particular branches or activities;
 - general strike at the country level.

A fine ranging from EUR 500 to EUR 5000 shall be imposed on the employer, the legal person or responsible person of the legal person, if the employer prevents workers from taking part in a strike organised at any of the levels mentioned above.¹⁹

- Regarding the manner of conducting the strike, the Law on Strikes establishes that a strike can be organised through²⁰:
 - the interruption of work in the workplace;
 - assembly of employees at the workplace;
 - absence of employees from work, and
 - assembly of employees outside work premises and in other areas.
- The Law on Strikes establishes the general conditions for organising a strike.²¹ A strike shall be lawful provided that the following conditions are fulfilled:²²
 - the strike is organised by a trade union that is a legal person and is registered with the Ministry of Labour and Social Welfare;
 - the strike is organised by half of employees within a work organisation;
 - the strike has the aim of realising the requirements arising from the work relationship, according to the Law and employment contract;
 - if the trade union and the employer's organisation have tried to reach an agreement regarding their requests;
 - the strike does not contravene the legislation in force.
- Finally, a strike shall be organised in accordance with the Law on Strikes and other acts that are in accordance with the Law on Strikes.²³

4) Who can participate in a strike?

- The Law on Strikes defines “strikers” as workers who express their dissatisfaction regarding rights, working conditions, economic, social and professional interests through strikes.²⁴
- According to the Law on Strikes, the participation in a strike is voluntary.²⁵ An employee cannot be forced to participate in a strike against her/his will.²⁶
- The participation in strikes is allowed if it is foreseen by law, collective agreement and trade union statute.²⁷ The worker cannot be prevented from exercising her/his right to strike in any way.²⁸
- The reasons for workers to go on strike may concern the following:
 - failure to implement the legal provisions protecting workers’ interests;
 - non-fulfilment of workers’ legal requirements, that are based on protection of workers’ social interests;
 - non-payment of salaries;
 - lack of safety at work;
 - failure to implement the provisions of the General Collective Agreement and the employment contract signed between the employer and the employee;
 - other reasons which are based on the applicable laws of Kosovo or International Labour Conventions.²⁹
- **Limitations of the right to strike**

The Law on Strikes provides some restrictions on the right to strike in specific activities. Article 3 of the Law on Strikes “Organisation of strikes in state institutions” provides that the employees of the Kosovo Security Force, Kosovo Police, Fire Services, Emergency Health Services and other bodies of particular interest for the Republic of Kosovo **have no right to organise a strike**, unless otherwise provided by special law.³⁰

According to the Law on Strikes, a strike cannot be held or must be suspended in case of exceptional circumstances for as long as these circumstances prevail. The Law defines “exceptional circumstances” as being: natural disasters, war, epidemics and cases when the freedom of elections is endangered.³¹ A fine ranging from EUR 500 to EUR 1000 shall be imposed on the trade union or on the strikers’ council, and between EUR 50 to EUR 300 on the employee, if the requirements regarding the exceptional circumstances described above (as set forth by Article 15 of the Law on Strikes) are not observed.³²

- **Essential services/activities**

- *Minimum service and procedural requirements for its establishment*

According to the Law on Strikes, during the strike, the strikers’ council must cooperate with the leadership body of the enterprise, respectively with the employer, in order to ensure **the minimum level of service/production**, when this is necessary for the life and safety of citizens or is an indispensable prerequisite for citizens’ lives and work.³³

The minimum level of service is established by taking into consideration the conditions of activity, potential risks to the life and health of people and other important circumstances for the realisation of people's needs, employers and other subjects.³⁴

When defining the minimum level of service, the employer is obliged to take into consideration the opinion of the competent trade union body.³⁵

An internal sub-legal act of the employer, which should be in accordance with the Law and the collective agreement, shall define duties and obligations which must be carried out while striking.³⁶

In case the above mentioned requirements are not respected, a fine ranging from EUR 500 to EUR 5000 shall be imposed on the employer³⁷ and a fine ranging from EUR 500 to EUR 1000 shall be imposed on the trade union or on the strikers' council³⁸, and between EUR 50 to EUR 300 on the employee³⁹.

- *Definition and list of **services of vital importance***

According to the Law on Strikes, services of vital importance are defined as those services the interruption of which could pose risks to the life and health of people or could cause large-scale damage.⁴⁰

Strikes in activities of special public interest and in activities the interruption of which could pose risks to the life or health of people or cause large scale damage may be organised if the special requirements defined by the Law on Strikes are met. A special requirement consists in the obligation to provide the minimum level of service or production in order to ensure the life and health of people or to prevent causing large-scale damage.⁴¹

The Law on Strikes⁴² provides a list of services of vital importance as follows:

- ✓ national security;
- ✓ emergency medical and hospital services;
- ✓ water supply;
- ✓ electricity supply;
- ✓ air traffic control;
- ✓ fire protection;
- ✓ prison services;
- ✓ veterinary protection in case of epidemics;
- ✓ hygiene and sanitary services.

It is of relevance that the “*essential services in the strict sense of the term*” have been defined by the ILO as those services “the interruption of which would endanger the life, personal safety or health of the whole or part of the population”.⁴³

5) Procedural requirements

- *Need to exhaust negotiations:* the strike must not begin before the procedure of negotiations between the employees and the employer has been carried out in order to find a solution for satisfying workers' requirements without organising the strike.⁴⁴
- *Balloting mechanisms:* the decision to call a strike within an organisation, in a part of the organisation or at the employer shall be taken by the competent body of the trade union or more than half of the employees.⁴⁵ The decision to call a strike at the level of a federation or activity is taken by the competent body of trade union of this federation or activity. The decision to call a general strike of workers is taken by the competent body according to the trade union statute.⁴⁶ A fine ranging from EUR 500 to EUR 5000 shall be imposed on the employer, the legal person or responsible person of the legal person, if the employer takes measures to stop the strike organised in accordance with the above mentioned requirements.⁴⁷
- *Notification:* The strikers' council is obliged to notify the employer and the trade union about the strike.⁴⁸ The strikers' council must give notification not later than seven days prior to the day set for its commencement, by delivering the decision on calling the strike to the governing body and to the leadership body of the organisation, respectively to the employer.⁴⁹
- The *decision announcing the strike* shall contain: the reasons for calling the strike, workers' demands, the place where the strike will be held, the date and time of its commencement and the request for solving the dispute in a peaceful way.⁵⁰ A fine in the amount ranging from EUR 500 to EUR 1000 shall be imposed on the trade union or the strikers' council, and between EUR 50 to EUR 300 on the employee, if the requirements regarding the notification of the strike described above (as set forth by Article 8 of the Law on Strikes) are not observed.⁵¹
- An employee cannot be forced to participate in a strike against her/his will.⁵²
- The strikers' council leads the strike and represents the strikers' interests.⁵³ The strikers' council and the representatives of the employer are obliged, from the day of announcing the strike and during the strike, to try to resolve the dispute by mutual agreement.⁵⁴
- The strikers' council and the employees on strike are obliged to organise and carry out the strike in a way that does not jeopardise the safety and health of persons or property and allows the continuation of work after the end of the strike.⁵⁵
- There is an obligation to provide the minimum level of service/production in case of services of vital importance (see Section 4 above);⁵⁶
- A strike may be stopped when: (i) the requests of strikers are satisfied; (ii) an agreement with the employer is reached; (iii) the strikers' council decides to end the strike; or (iv) in case of exceptional circumstances as set forth by Article 15 of the Law on Strikes.⁵⁷

6) Legal consequences of participating in a strike

- Participation in a lawful strike:
 - For the duration of a strike, the assignments that derive from the employment contract shall be suspended.⁵⁸
 - The termination or suspension of an employment contract due to participation in a lawful strike is illegal.⁵⁹ The above mentioned are not applicable if, during the strike, an employee commits an act that contravenes the Law.⁶⁰
 - An employee cannot be discriminated against for having organised or participated in a strike.⁶¹
 - According to the Law on Strikes, disciplinary or material measures cannot be taken against the organisers of a strike, the strike participants and other employees that support the strike, and their employment contracts cannot be terminated.⁶²
 - During a strike organised in accordance with the Law on Strikes, the employer cannot employ new persons who would replace the employees on strike.⁶³ A fine ranging from EUR 500 to EUR 5000 shall be imposed on the employer, legal person or responsible person of the legal person, if they accept new employees that will replace employees on strike.⁶⁴
- Participation in an unlawful strike:
 - When the strike is not lawful, the employer may terminate the employment contract of the strikers.⁶⁵
 - The employer has the right to terminate the employment contract with immediate effect of an employee who does not resume work within three days.⁶⁶
 - Disciplinary proceedings may be initiated against employees for having organised and participated in a strike which contravenes the Law.⁶⁷
 - In disputes on the legality of a strike, the parties may refer the case to the competent court.⁶⁸ The employers and the trade unions may ask the competent court to prohibit a strike which is in contradiction of the Law on Strikes.⁶⁹
 - When the strike is accompanied with illegal actions, the parties will refer the case to the competent court. The court will determine the responsibilities of parties, the actions that they must take, the damage caused and the obligation of a party to pay compensation to the other.⁷⁰
 - In case an employee deliberately destroys the employer's property or third person's property during the strike, the following measures are taken against the employee: (i) disciplinary procedure shall be initiated; and (ii) the employee shall be liable to pay compensation of the damage according to legal procedure.⁷¹

7) Case law of international/European bodies

There is no case law⁷² since Kosovo is not a Member State of international organisations such as the United Nations, International Labour Organisation or the Council of Europe (see also Section 1 above).

8) Recent developments

There have been reports of strikes by workers in the education sector⁷³ (except those in kindergartens) the Specialist Prosecutor's Office and the health sector⁷⁴, among others, but no statistics on strikes or total number of days are available.⁷⁵

According to the EU Commission Report 2020⁷⁶, the 2014 General Collective Agreement expired in 2017 without having been implemented. A new agreement is being negotiated. Amendments to the Law on the Economic Social Council, aiming to improve its capacities, decision-making and overall performance, have not yet been adopted. Public sector trade unions were relatively active over the past year in demanding salary increases and organising social dialogue trainings for local branches. The private sector unions are under pressure, with cases of retaliation⁷⁷ for industrial action, and generally less organised as a result.

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- 31 Article 15 (1) and (2) of the Law on Strikes
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- 38 Article 25 (2.1.) of the Law on Strikes
- 39 Article 25 (3.1.) of the Law on Strikes
- 40 Article 4 (1.4.) of the Law on Strikes
- 41 Article 17 (1) of the Law on Strikes
- 42 Article 17 (2.1.) - (2.9.) of the Law on Strikes
- 43 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 ETUI Report 105, pp. 79-81
- 44 Article 9 (2) of the Law on Strikes
- 45 Article 9 (3) of the Law on Strikes
- 46 Article 9 (4) and (5) of the Law on Strikes
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