



# The right to strike in the public sector

# Luxembourg

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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 Luxembourg EPSU affiliates.

## 1. Legal basis

### International level

Luxembourg ratified:

#### UN instruments<sup>1</sup>

**International Covenant on Economic, Social and Cultural Rights**

(ICESCR, Article 8)

**International Covenant on Civil and Political Rights**

(ICCPR, Article 22)

#### ILO instruments<sup>2</sup>

**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);

**Convention No. 151 concerning Labour Relations (Public Service)**

(ratification on 21 March 2001).

Luxembourg did not ratify

Convention No. 154 concerning the Promotion of Collective Bargaining

### European level

Luxembourg has ratified :

**The European Social Charter of 1961**

but has not accepted Article 6(4) (the right to collective action)

(ratification on 10 October 1991)

Luxembourg has signed but not yet ratified the Revised European Social Charter of 1996

(signature on 11 February 1998)

Luxembourg has also not ratified

the Collective Complaints Procedure Protocol.

## National level

### The Constitution of Luxembourg

Article 11(4) of the Constitution states that 'The law guarantees the syndical freedom and organises the right to strike'. Participation in a professional, legitimate and lawful strike is a worker's right implicitly enshrined in Article 11 of the Constitution.<sup>3</sup>

The right to strike as recognised by the Constitution has been extended to the public sector by the Law of 16 April 1979.

Legislation regulating the right to strike in the **public sector** applies to the personnel of the State and of public establishments placed under the control of the State. In this context, 'personnel' means civil servants (including trainees), employees and workers. The term 'civil servant' designates a person to whom this title is expressly attributed by law, and who is in a unilateral and statutory relationship with his or her employer. An employee of the State holds an employment contract concluded with the State and carries out his or her work in public administration and services. A worker is a person holding a contract with the State but not covered by any of the previous categories.

A **strike is generally defined as concerted and collective action** resulting in a cessation of work (in general for a fixed period of time and preceded by a period of notice) for the purpose of demanding that the employer fulfil his statutory obligations and responsibilities regarding pay, statutory rules, pensions and, more generally, working conditions and the organisation of public administration and services.

## **2. Who has the right to call a strike?**

The right to strike is considered a fundamental right of workers (in the private sector). In practice, efforts are initially made to resolve a dispute through a process of conciliation and mediation; should these prove unsuccessful, a strike may be called by the trade union(s) representing the workers.

### 3. Definition of strike

**Rolling and staggered strikes** are explicitly forbidden. Strike action which is not taken in pursuit of the protection of professional, economic or social interests is also forbidden.

There is no legal regulation of international disputes. However, given the unlawful nature of secondary action, most international action is likely to be regarded as *prima facie* unlawful.

#### **4. Who may participate in a strike/collective action?**

Certain categories of public servant may not exercise the right to strike:

- Members of the Government of the Grand Duchy appointed in application of Article 76 of the Constitution,
- Envoys extraordinary, ministers plenipotentiary, legation counsellors and other diplomatic officers exercising their duties abroad as head of mission permanently on or an interim basis,
- Magistrates of the judicial order,
- Heads of administration and their deputies,
- Personnel of the judicial and penitentiary administrations,
- Members of the police and armed forces,
- Medical and paramedical services personnel during their on-call time,
- Security officers.

The Government may authorise ministers to requisition all or some employees of a department who are indispensable in the provision of essential services.

## 5. Procedural requirements

Luxembourg law provides that, prior to any strike action, the parties to a collective dispute must submit to a **compulsory conciliation procedure** within the National Conciliation Service (CNC). A joint committee, chaired by a magistrate of the judiciary, is established. It is composed of five members of the public authority and five members of the representative trade union(s). If the conciliation procedure fails, the dispute is submitted to the President of the Superior Court of Justice who serves as a mediator.

Should the mediation procedure also fail, any strike action is subject to written notice to be given by the trade union organisations involved in both the conciliation and mediation procedures. Notice must be given to the President of the Government at least 10 days in advance of the strike action. It must state the reasons for, the venue of, the date and time of the beginning of and the expected duration of the planned strike action. The notice must be given within six months of the end of the failed conciliation and mediation procedures.

## **6. Legal consequences of participating in a strike**

Any striking personnel or representatives of the trade unions involved who fail to abide by the rules regulating the exercise of the right to strike (namely in regard to the conciliation procedure, the period of notice of strike action, the prohibition of staggered and rolling strikes or strikes involving acts of violence against people or property, or restricting the right to work, as well as requisition orders) risk being fined anywhere from EUR 251 to EUR 5,000. Section 1 of the Criminal Code is applicable (general rules).

Without prejudice to possible criminal sanctions, ordinary disciplinary procedures and sanctions are applicable.

For the duration of any strike action, workers on strike are not entitled to remuneration. 1/30<sup>th</sup> of pay is deducted from the final monthly salary for every day of strike action. For that purpose, part of a day is regarded as a full day.

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

No relevant recent case law to referred to in relation to the ICECSR nor the ILO Conventions. As Luxembourg did not accept article 6§4 nor ratify the collective complaints procedure protocol also nothing to report from that side.

## 8. Recent developments

No such recent developments were reported.

Some concern was raised in 1996, when the constitutional reform proposed by the government had worried the Chamber of Employees (CSL), the body responsible for defending the interests of employees at national level.

The text presented by the government sought to incorporate in the Constitution the possibility of declaring a state of emergency 'in the case of an international crisis', 'real threats to the vital interests or basic needs of all or part of the population', or 'imminent peril caused by serious attacks on public order'. Given the vague wording used, the Chamber, in an opinion of 9 June 2016, asked if 'a demonstration, a solidarity strike or a general strike by the trade unions [...] will be sufficient cause' for the government to declare a state of emergency.

The CSL called for the revision of the Constitution to enshrine the following: 'in no case, [...] must the exercise of public freedoms or of a fundamental right – such as national or cross-border trade union action [...] be [...] used as a pretext for the government to declare a state of emergency'.<sup>4</sup>

## 9. Bibliography

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<http://data.legilux.public.lu/file/eli-etat-leg-recueil-constitution-20161020-fr-pdf.pdf>  
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## Notes

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<sup>1</sup> Status of ratification by Luxembourg of UN instruments, available at:

<https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>.

<sup>2</sup> For an overview of all ILO Conventions ratified by Luxembourg, see

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102757](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102757) .

<sup>3</sup> Decision of the Luxembourg Cour de Cassation of 24 July 1952, Pas. 15, p. 355.

<sup>4</sup> ETUI Reform Watch, Luxembourg - <https://www.etui.org/ReformsWatch/Luxembourg/Strikes-in-Luxembourg-summary> .