



The right to strike in the public services

Luxembourg



The right to strike in the public services: Luxembourg

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This factsheet reflects the situation in June 2021. It was elaborated by Coralie Guedes (independent expert), updated by Diana Balanescu (independent expert) and reviewed by EPSU/ETUI; it was also sent for comments to the Luxembourg EPSU affiliates.

1. Legal basis

International level

Luxembourg has ratified:

UN instruments¹

International Covenant on Economic, Social and Cultural Rights

(ICESCR, Article 8)

International Covenant on Civil and Political Rights

(ICCPR, Article 22)

ILO instruments²

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 has not ratified

Convention No. 154 concerning the Promotion of Collective Bargaining

European level

Luxembourg has ratified:

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

(ratification and entry into force on 3 September 1953)³

The European Social Charter of 1961⁴

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 1996⁵
(signature on 11 February 1998)

Luxembourg has neither signed nor ratified the Collective Complaints Procedure Protocol.⁶

National level

The Constitution of Luxembourg

Article 11(4) of the Constitution states that: “The law guarantees trade union 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 (as interpreted by the Supreme Court decision of 24 July 1952).⁷

The right to strike as recognised by the Constitution has been extended to the public sector by the Law of 16 April 1979⁸, although some categories of public servants may not exercise the right to strike (see section 4 below).

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.

Apart from strikes, which are extremely rare in Luxembourg, other industrial disputes consist mainly of **demonstrations**.⁹

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

Certain categories of public servant may **not** exercise the right to strike¹⁰:

- 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;
- Directors of educational institutions and their deputies;
- Personnel of the judicial and penitentiary administrations;
- Members of the police and armed forces;
- The professional firefighters and rescue corps;¹¹
- Medical and paramedical services personnel during their on-call time;
- Security officers and staff responsible for security in the services.

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 Office (ONC).¹² 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 meditation 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. Such notice is not required in the private sector.¹³

The right to strike is forbidden during the validity of a collective agreement (**peace obligation**).¹⁴

6. Legal consequences of participating in a strike

An employee's participation in a lawful strike does not constitute grounds for dismissal.¹⁵

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. 1/30th 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

International Labour Organization (ILO)

The Committee of Freedom of Association (CFA)

Case No. 3261, Confederation of Christian Trade Unions of Luxembourg (LCGB) v Luxembourg, Report No. 391, October 2019¹⁶

By its complaint registered on 21 March 2017, the complainant organization alleged that the refusal of the National Conciliation Service (ONC) to grant a request for failure to reach an agreement constitutes an infringement of the right to strike.

The Committee noted that, according to the complainant, the refusal of the ONC to grant its request for failure to reach an agreement constitutes an infringement of the right to strike and that, in this case, the refusal to record failure to reach an agreement was the result of the employer's intent to delay the work of the Joint Committee, and thus the date from which the parties to the dispute, or one of the parties thereto, was able to declare failure to reach an agreement.

The Committee noted that the Government acknowledged the difficulty of establishing the date of the first ONC meeting, but that according to the Government both the employer and the unions themselves bear responsibility in this regard. The Government also suggested that the LCGB and the OGB-L were divided on this matter. The Committee also noted the Government's indication that the LCGB did not meet the requirement of obtaining at least 50 per cent of votes at the most recent elections to the staff delegation of the enterprises or establishments that fall within the scope of the collective agreement and that the LCGB was therefore not entitled to declare failure to reach an agreement.

The Committee noted that the judgments provided by the Government did not address the substance and did not lead to the conclusion that there had been any administrative wrongdoing on the part of the ONC with regard to the failure to reach an agreement. In this respect, the Committee observed according to these judgments that the ONC does not establish but merely "records" failure to reach an agreement. The Committee considered, in view of the information before it, that it did not have sufficient evidence to call into question the conclusions of the administrative court and to consider that the delay caused and the action of the ONC constituted a procedural irregularity and infringed the principles of freedom of association.

Furthermore, the Committee took note of a statement published by the LCGB on 6 August 2019 stating that the LCGB, the OGB-L and the management of the company had signed two new collective agreements, the first covering the period from 1 December 2018 to 31 December 2019 and the second covering the period from 1 January 2020 to 31 December 2022. Under these circumstances, the Committee considered that this case did not call for further examination.

Case No. 3408, Luxembourg Association of Banking and Insurance Employees (ALEBA) v Luxembourg, Complaint submitted on 20 April 2021¹⁷

The allegations are confidential in this case to date¹⁸.

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

There are no recent comments of the CEACR on the implementation on the ILO Conventions No. 87 and 98 relevant for the right to strike.

UN Committee on Economic, Social and Cultural Rights (CESCR)

In its Fourth periodic report submitted by Luxembourg on 24 January 2020¹⁹, the following information was submitted with regard to the implementation of Article 8 of the ICESCR:

“Article 8

[...] 69. Freedom of association and the right to strike are guaranteed by article 11 of the Constitution. [...]

72. With regard to the right to strike, a High Court decree has stated that article 11 of the Constitution enshrines the right of workers to participate in a legitimate and lawful strike. The exercise by workers of the right to strike and the exercise by an employer of the right of lockout must, however, be preceded by proper negotiations through the National Conciliation Office, whose procedure was established by a Grand-Ducal Decree of 6 October 1945. If a strike is called or a lockout is declared before all conciliation procedures have been exhausted, as documented in an official report of non-conciliation, it is considered illegal.”

The CESCR requested the following information (see List of Issues in connection to the fourth periodic report of Luxembourg of 5 November 2020)²⁰

“Trade union rights (Article 8)

15. Please provide detailed information on the guarantees in place to ensure the effective exercise of the right to strike, in accordance with article 8 of the Covenant, for both private and public sector employees. Please indicate the measures taken to promote collective bargaining in the public and the private sectors. Please also provide information on the measures in place to ensure that migrant workers, including frontier workers, can enjoy their trade union rights.”

The UN CESCR has not yet adopted Concluding observations on the above mentioned aspects in the context of the fourth reporting cycle.²¹

European Committee on Social Rights (ECSR)

Since Luxembourg has not yet accepted Article 6§4 (the right to collective action) of the 1961 European Social Charter, there is nothing to report with regard to this instrument.

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Notes

- 1 Status of ratification by Luxembourg of UN instruments, available at: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en> (accessed on 12 June 2021).
- 2 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 (accessed on 12 June 2021).
- 3 Status of ECHR ratifications: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=ywvbQS9g (accessed 12 June 2021).
- 4 Status of ratification of the 1961 European Social Charter: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035/signatures?p_auth=F3KSQtYr (accessed on 12 June 2021).
- 5 Status of signatures and ratifications of the European Social Charter (revised) available at: <https://www.coe.int/en/web/european-social-charter/signatures-ratifications> (accessed 12 June 2021).
- 6 See ESC, Country profile: Luxembourg at: <https://www.coe.int/en/web/european-social-charter/luxembourg> (accessed on 12 June 2021).
- 7 Decision of the Luxembourg Cour de Cassation of 24 July 1952, Pas. 15, p. 355.
- 8 See Law of 16 April 1979 regulating strikes in State services and public establishments under the direct control of the State, available (in French), as amended in 2015 and 2018, at: <http://legilux.public.lu/eli/etat/leg/loi/1979/04/16/n2/jo>.
- 9 Eurofound, 'Living and working in Luxembourg', Industrial action and disputes, 15 March 2021 (<https://www.eurofound.europa.eu/country/luxembourg>).
- 10 Article 1er (2) of Law of 16 April 1979 regulating strikes in State services and public establishments under the direct control of the State, available (in French), as amended in 2015 and 2018, at: <http://legilux.public.lu/eli/etat/leg/loi/1979/04/16/n2/jo>.
- 11 Introduced by Law of 27 March 2018 on the organisation of civil security and the creation of a Grand-Ducal Fire and Rescue Corps which amended Article 1 (2) of the Law of 16 April 1979
- 12 See Article L. 163-2 of the Labour Code
- 13 <http://www.ogbl.lu/ce-qu'il-faut-savoir/droit-de-greve/>
- 14 Eurofound, 'Living and working in Luxembourg', Industrial action and disputes, 15 March 2021 (<https://www.eurofound.europa.eu/country/luxembourg>); see also Article L. 162-11 of the Labour Code
- 15 Eurofound, 'Living and working in Luxembourg', Industrial action and disputes, 15 March 2021 (<https://www.eurofound.europa.eu/country/luxembourg>); see also Article L. 124-11(4) of the Labour Code
- 16 See the full text of the Report at: https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:4017613.
- 17 <https://www.ilo.org/dyn/normlex/en/f?p=1000:50001::NO::>.
- 18 12 June 2021.
- 19 See the full text of the report at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fLUX%2f4&Lang=en.
- 20 See the full text at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=LUX&Lang=EN.
- 21 As of 12 June 2021; more details on the fourth reporting cycle at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=LUX&Lang=EN.