The right to strike in the public sector

Montenegro

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This factsheet reflects the situation in June 2019. It was elaborated by Diana Balanescu (independent expert), updated by Stefan Clauwaert (ETUC/ETUI), reviewed by EPSU/ETUI; and sent to EPSU affiliates for comment.
1. Legal basis

International level

Montenegro has ratified:

UN instruments\(^1\)

- International Covenant on Economic, Social and Cultural Rights (ICESR, Article 8)
- International Covenant on Civil and Political Rights (ICCPR, Article 22) on 23.10.2006 (through succession)

ILO instruments\(^2\)

- Convention No. 87 on Freedom of Association and Protection of the Right to Organise (03.06.2006)
- Convention No. 98 on the Right to Organise and to Collective Bargaining (03.06.2006)

European level

Montenegro has ratified:

- Article 6§4 (right to collective action) of the Revised European Social Charter of 1996 (ratification: 03.03.2010, entry into force: 01.05.2010)\(^3\)
- Article 11 (right to organise) of the European Convention on Human Rights (ratification: 03.03.2004, entry into force: 06.06.2006)\(^4\)

National level

The Constitution\(^5\) of Montenegro

Article 66 guarantees the right to strike with some restrictions as follows: “Employees shall have the right to strike. The right to strike may be restricted to employees in the army, police, state organs and the public service for the purpose of the protection of public interest, in accordance with the law.”\(^6\)
Applicable laws

- **In general**: the Law on Strike provides that “Strike shall mean a disruption of work organised by employees for the purpose of protecting their professional, economic and social interests arising from work. The work disruption is an organised and continuous refusal of employees to carry out their tasks.”

- **Specific laws for certain sectors**: Article 18 of the Law on Strike provides that “In order to protect the public interest, the employees of the Army of Montenegro, police, state bodies and public service can organise a strike in a way that will not endanger national security, safety of persons and property, the general interest of the citizens, as well as the functioning of the authorities, in accordance with the law.” (for a detailed analysis see Section 4 below)

- The case law is not very rich. As indicated above, the right to strike is explicitly recognised by the Constitution and ordinary statutory law.
2. Who has the right to call a strike?

According to the Law on Strike, the decision to call a strike within the employer shall be taken by a competent body of the authorised trade union or more than half of employees of the employer or its division. The decision to call a strike within a branch, or the decision to call a general strike, shall be made by a competent body of the authorised trade union organised at a branch level, or a state level.

The strike committee consists of persons who organise, implement and ensure the legitimacy of the strike.
3. Definition of strike

The Law on Strike establishes the following types of strikes:

- The strike is defined as a **disruption of work** organised by employees for the purpose of protecting their professional, economic and social interests related to their work (general definition of strike);\(^{12}\)

- The **Warning Strike** which is defined as a temporary disruption of work, but it cannot last longer than one hour;\(^{13}\)

- The **Rotating Strike**, which shall be organised in a way that only part of the staff interrupt their work during a certain period so that another group of employees works in their place;\(^{14}\)

- The **Selective Strike**, which shall be organised in certain organisational units or business units of the employer;\(^{15}\)

- The **Solidarity Strike**, which shall be organised in support of employees or unions that have already been on strike for the same employer, in the same branch, group, subgroup or activity or at the state level, and cannot last longer than one day.\(^{16}\)

According to the level at which it is organised, a strike may be\(^{17}:\)

- Strike at the employer (**company level**);

- **Branch strike**, which is organised in a particular sector, group, subgroup, or activity;

- **General strike**, which is organised for the territory of the state.

Regarding the location and manner of conducting the strike, the Law on Strike provides that the strike is manifested as a peaceful gathering of employees at the workplace or within the business premises of the employer.\(^{18}\) A strike may be manifested by the staff by not performing the work.\(^{19}\)
4. Who can participate in a strike?

As mentioned above, Article 66 of the Constitution guarantees the right to strike with some restrictions for employees in the army, police, state organs and the public service.

According to the Law on Strike, employees are free to decide on their participation in the strike. An employee should not be prevented, or exposed to threats or coercion to participate or not participate in a strike.\(^\text{20}\)

An employer can neither prevent the employees from organising and participating in a strike, nor use threats and coercion for ending a strike.\(^\text{21}\) A pecuniary fine in the amount ranging from 2,500 Euro to 10,000 Euro shall be imposed on the employer with the status of a legal entity if it prevents employees from organising and participating in a strike, or applies threats and coercive measures to terminate a strike.\(^\text{22}\)

Limitations of the right to strike

According to the Constitution, Article 66 “The right to strike may be restricted to employees in the army, police, state organs and the public service for the purpose of the protection of public interest, in accordance with the law.”\(^\text{23}\)

The Law on Strike, in Articles 18-21, provides some restrictions on the right to strike in specific activities. The Law\(^\text{24}\) provides that the right to strike of employees of the army, police, state bodies and public service may be restricted in order to protect the public interest.\(^\text{25}\)

Essential services/activities

- **Specific conditions for organising a strike**\(^\text{26}\)

  Under the Law on Strike, in order to protect the public interest, the employees of the Army of Montenegro, police, state bodies and public service can organise a strike in a way that will not endanger national security, safety of persons and property, the general interest of the citizens, as well as the functioning of the authorities, in accordance with the law.\(^\text{27}\)

  The assessment of whether the organisation of the strike of employed persons by the Army of Montenegro, police, state bodies and public service endangers national security, security of persons and property, the general interest of citizens and functioning of government authorities shall be made by the state authority responsible for national security, within 24 hours from the announcement of the strike.\(^\text{28}\)

  If the state authority in charge of national security assesses that the strike will endanger national security, security of persons and property, the general interest of the citizens and the functioning of government authorities, the strike cannot be organised in those activities. Based on that assessment, the body for the needs of which the assessment has been made shall pass the relevant document.\(^\text{29}\)
Definition/list of activities of public interest

The Law on Strike provides a list of activities of public interest as follows:

a) Activities of public interest are defined as those stipulated by law and those the interruption of which due to the nature of work could endanger the life, health or general interest of citizens, i.e.:

1. production and distribution of basic food products (flour, milk, oil, sugar and food for children);
2. the production, transmission, distribution and supply of electricity;
3. passenger transport (road, rail and air transport);
4. the postal services (universal postal service);
5. public electronic communications, in accordance with the law;
6. informative programs of public broadcasting service;
7. public utilities/activities (water production and supply, garbage collection, production, distribution and supply of heat, funeral services and other);
8. production, distribution and supply of oil, coal and gas;
9. fire protection;
10. health and veterinary care;
11. pre-school and primary education;
12. social and child protection;
13. the fulfillment of the obligations under the ratified international treaties.

b) The provision of services in the field of secondary and high education represents also an activity of public interest as defined above if the strike, because of length of its duration or its scope, could reach such proportions that it jeopardises the implementation of the education program for the current school year.

c) The employers with special technological processes (chemical industry, ferrous and non-ferrous metallurgy) where the work disruption, due to its nature, could result in a damage of working assets, or cause an immediate jeopardy to life and health of employees and create unfavorable conditions for the working and living environment, shall be provided with the technological minimum of work. The employers referred to above shall be determined by the state authority in charge of the economic activities.

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.”
• Minimum work process/service and procedural requirements for its establishment

The Law on Strike provides that the employees who perform the activities referred to above at points a), b) and c)\textsuperscript{36} may commence the strike, if the minimum work process is previously enabled so as to provide the security of people and property or is an indispensable prerequisite for citizens' lives and work, or it protects the national security as well as the operating of the government authorities.\textsuperscript{37}

The employees working in the field of secondary and high education\textsuperscript{38} are obliged to adhere to the minimum working process, if the strike, because of its length and extent could take on such proportions so as to jeopardise the implementation of education program for the current school year.\textsuperscript{39}

With regard to the procedural aspects, under the Law on Strike\textsuperscript{40}, the Act on minimum work process for the all the above mentioned activities shall be determined by mutual agreement reached between the competent government authority, the representative association of employers and the representative trade union, within 90 days from the date of entry into force of this law [the Law on Strike]. If the minimum work process is not determined within the above mentioned period, the competent government authority shall be required to notify the Agency thereof without delay.

Within 15 days from the receipt of the notification, the Director of the Agency shall form the Arbitral Council. The Arbitral Council shall be composed of one representative of the disputing parties and one member from among the experts - experts in the field for which the minimum work process is being determined. Disputing parties shall appoint their representatives for the members of the Arbitral Council, and a member from among the experts shall be appointed by the competent government authority in the area for which the minimum of work shall be determined. The decision on the establishment of the Arbitral Council shall be issued by the Director of the Agency, at the proposal of the Management Board of the Agency. The manner of operations performance and decision making of the Arbitral Council shall be stipulated by an act of the Agency. The Arbitral Council shall decide on the minimum work process, within 30 days of the day of its formation.\textsuperscript{41}

The employees who are required to work during the strike in order to ensure minimum work process shall be determined by the management body of the employer, upon the proposal of the strike committee.\textsuperscript{42} The strike committee has the right to propose the rotation of employees who are required to work during a strike, during certain time intervals.\textsuperscript{43} In the event that the strike committee does not submit a proposal in this sense within 24 hours before the start of the strike, the management body of the employer has the right to appoint the employees who are required to work for the provision of minimum work process.\textsuperscript{44}
In case of dispute in activities of public interest, the disputing parties shall, within 24 hours of announcing the strike, submit a joint proposal for the peaceful resolution of a labour dispute before the Agency. If the disputing parties fail to do so, the competent government authority which received a notice of decision to go on strike is obliged to inform the Agency within 48 hours of receipt of such decision. In the latter case, the Agency's Director shall initiate the procedure ex officio and determine a mediator from the Directory of mediators and arbitrators.

**Conciliation proceeding** shall be conducted in accordance with the law governing the peaceful resolution of labour disputes.
5. Procedural requirements

- **Balloting mechanisms:** the decision to call a strike within the employer shall be taken by a competent body of the authorised trade union or more than half of employees of the employer or its division. A pecuniary fine in the amount ranging from 500 Euro to 10,000 Euro shall be imposed on the trade union if the decision is not taken according to the above mentioned requirements.

- **Notification:** The strike committee shall be obliged to announce a strike by submitting a decision to call the strike to the employer, no later than five days prior to the date set for commencing the strike, or 24 hours prior to the commencement of the warning strike, unless another deadline is determined by this Law. The decision to call a strike in a branch or general strike shall be submitted to a competent representative association of employers, the founder, and competent state body in the field, not later than ten days preceding the date of strike. The decision to call a strike in the activities of public interest (referred to in Articles 18, 19 and 20 of the Law on Strike) shall be submitted to the employer, founder, competent government authority, or the relevant local authority, not later than ten days before the date set for the start of the strike.

- The decision to call a strike shall include: the type of strike, the demands of the workers in strike, the time of commencing the strike, the location of the strike and the manner to run the strike, the composition of the strike committee which represents the interests of employees and on their behalf runs the strike, and a list of employees who are on strike; A pecuniary fine in the amount ranging from 500 Euro to 10,000 Euro shall be imposed on the trade union if the decision to call a strike does not include the above mentioned elements.

- An employee who, during the strike, decides either to quit the strike or join the strike, she/he must notify the strike committee in writing. The strike committee shall within 24 h submit eventual changes to the list of employees who are on strike.

- The strike committee and the employer shall, from the date of announcement of a strike and during the strike, try to peacefully resolve the dispute or to initiate the procedure for the amicable settlement of the dispute, in accordance with the separate law.

- The strike shall be organised in a way that does not endanger the property and assets of the employer as well as the safety and health of people.

- The assurance of minimum work process in case of activities of public interest (see Section 4 above);
• An employee should not be prevented, exposed to threats or coercion to participate or not participate in the strike.\textsuperscript{60}

• **Picket duty**: employees who are on strike may, by a decision of the representative trade union's competent body or majority of employees, establish strikers' picket duty in front of the entrance of the area of employer's business premises, with the purpose of informing the employees and the public about the dispute and justification of strikers' requests.\textsuperscript{61}
A decision on establishing strikers' picket duty shall be submitted to the employer within the deadline for submitting the decision to call the strike, as an integral part of the latter decision or as a separate act during the strike, and shall contain the number and names of employees who are members of the strikers' picket duty.\textsuperscript{62} Strikers' picket duty cannot use physical coercion, set barricades or block entrance for employees who want to work, threat or insult employees, and prevent the employer from carrying out its activity.\textsuperscript{63}

• A strike committee and employees who are on strike cannot prevent employees, who do not participate in the strike, from working.\textsuperscript{64}

• A strike committee and employees who are on strike cannot prevent the employer from making use of the assets for performing the activity.\textsuperscript{65}

• The strike committee and employees who are on strike cannot use the working assets of the employer during the strike. Using the working assets of the employer does not imply the use of means of communication (bulletin board, business phone, personal computer, internet access and e-mail).\textsuperscript{66}

• A strike lasts until the disputing parties **reach an agreement**, and it may be terminated pursuant to the decision made by the competent body which took the decision to call the strike. For each new strike, participants in the strike shall be obliged to submit a new decision to call the strike.\textsuperscript{67}
6. Legal consequences of participating in a strike

Participation in lawful strike

- According to the Law on Strike, the organisation of a strike or participation in a strike under the conditions set forth by this Law shall not represent a violation of work duty, cannot be a ground for initiation of the procedure for determining disciplinary and material liability of an employee, for removing the employee from work and cannot have as a consequence the termination of the employment relationship;\textsuperscript{68}

- A **pecuniary fine** in the amount ranging from 2.500 Euro to 10.000 Euro shall be imposed on the employer with the status of a legal entity if: it initiates the procedure for determining disciplinary and material liability of the employee, removes an employee from work or terminates the employment contract of the employee due to organisation or participation in a strike organised in accordance with the law (Article 27 (1) of the Law on Strike);\textsuperscript{69}

- An employee who participates in a strike shall not be entitled to wage. An employee who is obliged to work during a strike, for the purpose of ensuring minimum work process (under Article 22 of the Law on Strike) shall be entitled to a wage proportional to the time spent at work. The employees referred to above shall be entitled to social insurance, in accordance with regulations on social insurance;\textsuperscript{70}

- During a strike organised in accordance with the law, an employer cannot employ new persons who would replace the workers on strike, unless the following are jeopardised: ensuring the minimum work process that provides for security of property and persons, as well as fulfillment of obligations arising from the international treaties.\textsuperscript{71} A **pecuniary fine** in the amount ranging from 2.500 Euro to 10.000 Euro shall be imposed on the employer with the status of a legal entity if: during the strike organised under the conditions set forth by the law, the employer employs new persons who would replace workers on strike, unless otherwise envisaged by this law (Article 28 (1) of the Law on Strike);\textsuperscript{72}

- An employer cannot provide the employees who are not on strike with higher wages or other more favourable work conditions on the basis of their non-participation in the strike.\textsuperscript{73} A pecuniary fine in the amount ranging from 2.500 Euro to 10.000 Euro shall be imposed on the employer with the status of a legal entity if, during the strike, the employer provides higher wages or other more favourable work conditions for employees who do not participate in the strike (Article 28 (3) of the Law on Strike);\textsuperscript{74}
• **Lock-out**: the employer may exclude from the process of working the employees who do not participate in a strike if at least 30 days have passed from the initiation of the strike. The number of employees excluded from the work process cannot exceed one third of the number of employees participating in the strike. The lock-out shall last no longer than the strike. Employees locked out are not entitled to salary and the employer is obliged to pay contributions to social insurance as if they were at work, in accordance with the regulations on social insurance. The lock-out cannot be organised in activities of public interest (referred to in Articles 18, 19 and 20 of the Law on Strike). A pecuniary fine in the amount ranging from 2.500 Euro to 10.000 Euro shall be imposed on the employer with the status of a legal entity if the employer excludes from the process of work the employees who do not participate in the strike contrary to the above mentioned requirements.

**Participation in unlawful strike**

• According to the Law on Strike, employees who organise or participate in a strike, which is not organised pursuant to this Law, shall not enjoy the protection determined in Article 27 (1) of the Law on Strike (see above);

• Under the Law on Strike, a member of the strike committee who organised the strike contrary to the provisions of this Law may have the employment contract terminated by the employer pursuant to a final decision of the competent court stating that the strike is unlawful;

• A strike committee member or an employee on strike who organises and runs a strike in a manner that jeopardises safety of persons and property or peoples' health, or prevents the employees who are not on strike from working, i.e. makes the continuation of work impossible upon termination of strike, or prevents the employer from using the assets and disposing of the assets that are used by the employer for performing the activity, shall violate the work duty and thus the measure of termination of employment may be imposed on;

• The employee in the activities referred to in Articles 18, 19, 20 and 21 of the Law on Strike (e.g. activities of public interest, secondary and higher education and chemical industry, ferrous and non-ferrous metallurgy) who refuses to execute the employer's order issued for the purpose of ensuring the minimum work process, shall commit a violation of work duty and thus the measure of termination of employment may be imposed on;

• The procedure for determining the *illegality of a strike* or unlawful exclusion from work may be initiated by the employer or an association of employers, representative trade union or a strike committee. The claim on determination of illegality of a strike or unlawful exclusion from work shall be decided upon by the competent court, within five days from the date of the submission.
7. Case law of international/European bodies

**International Labour Organisation**

**The Committee on Freedom of Association (CFA)**

**CFA, Case No. 2525, Confederation of Trade Unions of Montenegro (CTUM) supported by the International Trade Union Confederation (ITUC), Report No. 346, June 2007**

In its communications dated 23 October and 22 November 2006, the CTUM alleged violations of the right to strike of workers of the Podgorica Aluminium Factory (KAP). The Committee noted that according to the complainant, the KAP trade union, faced with the employer’s refusal to negotiate in good faith on the issue of the redundancy system, declared a strike, which lasted from 19 June to 13 August 2006.

During the strike, the trade union was obliged to provide **minimum services** as determined by the employer and equivalent to a 20 per cent production increase. [...] Finally, the complainant considered that the provisions on minimum services of the Law on Strike were not in conformity with the principles of freedom of association.

The Committee noted that the complaint related to the strike conducted from 19 June to 13 August 2006. In this respect, the complainant raised three sets of issues, namely: whether the minimum services imposed by the employer, the hiring of security guards to intimidate strikers and the penalty sought by the employer against the members of the strike committee are in conformity with the freedom of association principles.

With regard to the question of minimum services, the Committee understood from the text of section 10 and 10a, as set out in the Government’s reply, that the minimum services, where negotiation had failed, were to be determined by the employer.

The Committee further noted that in this case, the KAP management required a 20 per cent production increase to be ensured during the strike. In the circumstances of this case, the Committee considered that the production of aluminium cannot be viewed as an essential public utility for which a minimum service can be imposed.

The Committee requested the Government to amend the Law on Strike, in consultation with the social partners, so as to bring it into conformity with the principles of freedom of association and to keep it informed in this respect. [...]
The Committee of Experts on the Application of Conventions and Recommendations (CEACR)\textsuperscript{85}

Direct Request (CEACR) - adopted 2017, published 107th ILC session (2018)\textsuperscript{86}

The Committee noted that Section 18 of the Law on Strikes of 2015 provides that police, employees of state bodies and the public service can organise a strike in a way that will not endanger national security, safety of persons and property and the general interest of citizens, as well as the functioning of government authorities. In such occupations, minimum services, as determined by tripartite partners must be ensured (Sections 22 and 23).

Section 18 also provides that the assessment as to whether the organisation of the strike endangers the general interest of citizens and functioning of government authorities shall be given by the state authority responsible for national security, within 24 hours of the announcement of the strike.

In this respect, Section 19 lists certain activities of public interest the interruption of which could endanger, among others, the general interest of citizens. The Committee noted that the listed services appear to be either essential services in the strict sense of the term or services of fundamental importance. Concerning the assessment by the state authority responsible for national security referred to in Section 18, the Committee recalled that the responsibility for declaring a strike illegal should not lie with the Government authorities, but with an independent body that has the confidence of the parties involved.

The Committee therefore requested the Government to take the necessary measures to amend the Law on Strikes in consultation with the social partners so as to ensure that responsibility for declaring a strike illegal rests with an independent body that has the confidence of the parties involved.

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

- Concluding observations on the initial report of Montenegro\textsuperscript{87}

The Committee expressed concern at reports of discriminatory acts against trade union representatives. It was also concerned at restrictions on the right to strike for public sector employees who do not provide “essential services”, or services which, if interrupted, would endanger the life, personal safety or health of the whole of or a part of the population (Article 8 of ICESCR).

The Committee called upon the State party to ensure that workers in both the private and public sectors enjoy their right to freely form and join trade unions.
While noting the 2013 draft law on strikes, the Committee recommended that the State party ensure that public sector employees who do not provide essential services are entitled to their right to strike in accordance with Article 8 of the Covenant and ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise (1948).

**European Social Charter**

- **Conclusions on Article 6§4 of the European Committee of Social Rights (ECSR)**

**Conclusions 2014**

With regard to specific restrictions on the right to strike, the Committee noted that the Act on strike provides that for the purpose of protecting public interest the employees in the army of Montenegro, police and public administration may not exercise the right to go on strike if that would threaten general interest of citizens, national security, safety of persons and property and operations of public authorities (section 8(a) of the Act on amendments to the Act on strike of 2008).

The Committee asked what the definition is of public administration in this context. More generally, the report indicates that in the activity of public interest or activity whose interruption of work, due to the nature of work, could endanger human life or health or cause large scale damage, the right to strike of employees may be achieved only if special requirements are accomplished by law.

It is specified that activity of public interest is the activity performed by the employer in the following areas: **electrical industry, water management, transport, postal services, broadcasting** (radio and television), **utilities** (production and water supply, carting industry, production, distribution and supply of energy-generating products, etc.), **fire protection, basic food production, health and veterinary care, education, culture, social child care and social protection**.

The Committee recalled that, under Article G of the Charter, restrictions on the right to strike are acceptable only if they are prescribed by law, pursue a legitimate aim and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals (Conclusions X-1 (1987), Norway (under Article 31 of the Charter)).

The Committee considered that a ban on strikes in sectors that are deemed essential to the life of the community are presumed to pursue a legitimate aim if a work stoppage could threaten the public interest, national security and/or public health (Conclusions I (1969), Statement of Interpretation on Article 6§4 and Confederation of Independent Trade Unions in Bulgaria, Confederation of Labour “Podkrepa” and European Trade Union Confederation v. Bulgaria, Complaint No. 32/2005, decision on the merits of 16 October 2006, §24).
The Committee noted that the restrictions imposed by law on the right to strike apply, *inter alia*, to postal services and education. The report did not contain any information which enabled the Committee to conclude that such services or the other “general interest” services referred to in the law may be regarded as “essential services” in the strictest sense of the term, that is to say activities which are necessary in a democratic society in order, in accordance with Article G of the Charter, to protect the rights and freedoms of others or to protect the public interest, national security, public health, or morals.

Consequently, the Committee asked the Government to state, in relation to every service subject to restrictions with regard to the right to strike, if and to what extent work stoppages may undermine respect for the rights and freedoms of others or threaten the public interest, national security, public health, or morals. In this context, it also asked whether such restrictions are in all cases proportionate to achieve the objective of ensuring, in a democratic society, the respect for the rights and freedoms of others or the public interest, national security, public health, or morals.

The report stated that employees who are engaged in a "**public interest activity**" may begin to strike if they provide the "minimum of work process" that ensures the safety of persons and property or is the indispensable condition for the life and work of citizens or the work of other employer, or the legal entity or entrepreneur who carries out any economic or other activity or service.

The "**minimum of work process**" shall be determined depending on the nature of the activity, the level of threat to human life and health and other circumstances relevant to meeting the needs of citizens, employers and other entities (season, tourist season, school year, etc.).

The Committee noted that the "minimum of work process" and the manner of its provision shall be established by the founder or employer in consultation with the responsible authority of authorised trade union organisations, or more than half of the employees of the employer, in order to reach an agreement.

The Committee asked that the next report specifies what the consequences would be in the event that an agreement between employees (or their representatives) and employers is not reached.

**Conclusions 2018**

In its most recent Conclusions, the ECSR noted that a new Law on Strikes entered into force on 20 March 2015, during the reference period.

**Collective action: definition and permitted objectives**

The abovementioned Act provides that a strike is an interruption of work organised by employees for the purpose of protecting their professional and economic interests when
concluding or amending a collective agreement or within the framework of rights and duties that emanate from agreements.

The Committee asks whether strikes may only be called within the framework of collective bargaining.

**Entitlement to call a collective action**

The Committee recalls that it previously noted that a decision to call a strike within the undertaking shall be made by the responsible authority of an authorised trade union organisation or of more than half of the employees working in the undertaking or its parts. A decision to go on strike in a branch and industry, or a decision to go on general strike shall be made by the responsible authority of authorised trade union organisations.

The Committee seeks clarification as to whether a decision to call a strike at branch or industry level may only be made by a representative trade union.

**Specific restrictions to the right to strike and procedural requirements**

As regards strikes at the level of an undertaking, a strike committee is obliged to announce a strike by giving notice to the employer, no later than five days prior to the day set for commencing the strike.

The Committee asks what is the notice period for branch, industry-wide and general strikes. It also wishes to know whether there are cooling off periods during which conciliation is mandatory.

The Committee recalls that it had previously noted that the right to strike was restricted in a wide number of sectors; inter alia, the armed forces, police, state bodies and public services including secondary and higher education, child care, postal services as well as the chemical industry, ferrous and non-ferrous metallurgy industries. It requested further information on the situation.

The report states that strikes are not banned in the above mentioned sectors but may take place provided a minimum service is guaranteed. The Committee considers that the sectors in which the right to strike may be restricted are overly extensive and it has not been demonstrated that the restrictions satisfy the conditions laid down in Article G of the Charter.

The Committee refers to its general question on the right to strike for members of the police force.

The minimum service to be guaranteed is decided by management/the employer upon a proposal of the strike committee. However where the strike committee fails to make a proposal on the minimum service to be provided management/the employer decides on the service to be provided. The Committee seeks clarification that this is the case. It recalls that employee representatives should involved in the discussions on the minimum service to be provided on an equal footing with employers.

**Consequences of a strike**

The report states that normally striking workers do not receive a wages during for the period they are on strike.
Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 6§4 of the Charter on the ground that the sectors in which the right to strike may be restricted are overly extensive and it has not been established that the restrictions do not go beyond the limits permitted by Article G of the Charter.
Notes

1 Status of ratification by Montenegro of UN Treaties available at: https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en, consulted on 6 November 2018
4 Status of ECHR ratifications available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=jPYjkVEL, consulted on 6 November 2018
6 See the 7th National Report on the implementation of the European Social Charter submitted by the Government of Montenegro, 26 December 2017, p. 47, available at: https://rm.coe.int/7th-national-report-from-montenegro/1680779f58
7 The Law on Strike was published in the Official Gazette of Montenegro No. 11/2015 of 12 March 2015 and entered into force on 20 March 2015, see the 7th National Report on the implementation of the European Social Charter submitted by the Government of Montenegro, 26 December 2017, p. 47, available at: https://rm.coe.int/7th-national-report-from-montenegro/1680779f58
8 Article 2 of the Law on Strike; see also See the 7th National Report on the implementation of the European Social Charter submitted by the Government of Montenegro, 26 December 2017, pp. 48-49, available at: https://rm.coe.int/7th-national-report-from-montenegro/1680779f58
9 Article 13 (4) of the Law on Strike
10 Article 13 (5) of the Law on Strike
11 Article 11 of the Law on Strike
12 Article 2 of the Law on Strike
13 Article 10 (1) of the Law on Strike
14 Article 10 (2) of the Law on Strike
15 Article 10 (3) of the Law on Strike
16 Article 10 (4) of the Law on Strike
17 Article 9 (1) to (3) of the Law on Strike
18 Article 15 (1) of the Law on Strike
19 Article 15 (2) of the Law on Strike
20 Article 3 of the Law on Strike
21 Article 28 (2) of the Law on Strike
22 Article 35 (4) of the Law on Strike
23 See the 7th National Report on the implementation of the European Social Charter submitted by the Government of Montenegro, 26 December 2017, p. 47, available at: https://rm.coe.int/7th-national-report-from-montenegro/1680779f58
24 Article 18 (1) of the Law on Strike
26 See the 7th National Report on the implementation of the European Social Charter submitted by the Government of Montenegro, 26 December 2017, p. 50, available at: https://rm.coe.int/7th-national-report-from-montenegro/1680779f58
27 Article 18 (1) of the Law on Strike
28 Article 18 (2) of the Law on Strike
29 Article 18 (3) and (4) of the Law on Strike
30 Articles 19 - 21 of the Law on Strike
31 Article 19 of the Law on Strike
In the sense of Article 19 of the Law on Strike
Article 20 of the Law on Strike
Article 21 of the Law on Strike

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

Referred to in Articles 18, 19, 20 and 21 of the Law on Strike

Referred to in Article 20 of the Law on Strike

Articles 22-26 of the Law on Strike

Articles 22 – (3) of the Law on Strike

Referred to in Article 20 of the Law on Strike

Referred to in Article 20 of the Law on Strike

The activities referred to in Articles 18, 19 and 20 of the Law on Strike

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The activities referred to in Articles 18, 19 and 20 of the Law on Strike
79 Article 29 (1) of the Law on Strike
80 Article 29 (2) of the Law on Strike
81 Article 29 (3) of the Law on Strike
82 Article 31 (1) of the Law on Strike
83 Article 31 (2) of the Law on Strike
88 ECSR, Conclusions 2014 on Article 6§4 in respect of Montenegro, available at: https://hudoc.esc.coe.int/eng[/"ESCArticle":["06-04000"],"ESCDcLanguage":["ENG"],"ESCDcType":["Conclusion"],"ESCStateParty":["ALB","MNE"],"ESCDcIdentifier":["2014/def/MNE/6/4/EN"]];
89 ECSR Conclusions 2018 – Montenegro – Article 6§4. available at: https://hudoc.esc.coe.int/eng/[%22ESCArticle%22:[%222018-00-000%22,%222018-04-000%22],%22ESCDcLanguage%22:[%22ENG%22],%22ESCDcType%22:[%22Conclusion%22],%22ESCStateParty%22:[%22MNE%22],%22ESCDcIdentifier%22:[%222018/def/MNE/6/4/EN%22]}.