



# **The right to strike in the public services**

## **Montenegro**



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## **Notes**

This factsheet reflects the situation in December 2020. It was elaborated and updated by Diana Balanescu (independent expert), reviewed by EPSU/ETUI and sent to EPSU affiliates for comment.

## 1. Legal basis

### International level

Montenegro has ratified:

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

**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<sup>2</sup>

**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)

**Convention No. 151 on Labour Relations (Public Service)** (ratification on 9.04.2019)

### 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)<sup>3</sup>

Montenegro has not yet ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.<sup>4</sup>

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

(ratification: 03.03.2004, entry into force: 06.06.2006)<sup>5</sup>

### National level

#### The Constitution<sup>6</sup> 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 bodies and the public service for the purpose of the protection of public interest, in accordance with the law.”*<sup>7</sup>

## Applicable laws

- **In general:** the Law on Strike<sup>8</sup> 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.”<sup>9</sup>
- **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.<sup>10</sup> 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.<sup>11</sup>

The **strike committee** consists of persons who organise, implement and ensure the legitimacy of the strike.<sup>12</sup>

### 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);<sup>13</sup>
- The **Warning Strike** which is defined as a temporary disruption of work, but it cannot last longer than one hour;<sup>14</sup>
- 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;<sup>15</sup>
- The **Selective Strike**, which shall be organised in certain organisational units or business units of the employer;<sup>16</sup>
- 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.<sup>17</sup>

According to the level at which it is organised, a strike may be<sup>18</sup>:

- 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.<sup>19</sup> A strike may be manifested by the staff by not performing the work.<sup>20</sup>

#### 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.<sup>21</sup>

An employer can neither prevent the employees from organising and participating in a strike, nor use threats and coercion for ending a strike.<sup>22</sup> A 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.<sup>23</sup>

##### 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 bodies and the public service for the purpose of the protection of public interest, in accordance with the law."*<sup>24</sup>

The Law on Strike, in Articles 18-21, provides **some restrictions** on the right to strike in specific activities. The Law<sup>25</sup> 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.<sup>26</sup>

##### Essential services/activities

- ***Specific conditions for organising a strike***<sup>27</sup>

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.<sup>28</sup>

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.<sup>29</sup>

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.<sup>30</sup>

- **Definition/list of activities of public interest**

The Law on Strike<sup>31</sup> 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.:<sup>32</sup>
  - 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 fulfilment 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<sup>33</sup> 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.<sup>34</sup>
- 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 unfavourable 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.<sup>35</sup>

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.”<sup>36</sup>



- ***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)<sup>37</sup> 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.<sup>38</sup>

The employees working in the field of **secondary and high education**<sup>39</sup> are obliged to adhere to the minimum work 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.<sup>40</sup>

With regard to the procedural aspects, under the Law on Strike<sup>41</sup>, 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 each party involved in the dispute (appointed by the parties themselves respectively) and one expert (nominated by the competent public administrative body) from the experts in the field for which the minimum work process is being 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 constitution.<sup>42</sup>

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.<sup>43</sup> The strike committee has the right to propose the rotation of employees who are required to work during a strike, during certain time intervals.<sup>44</sup> 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.<sup>45</sup>

In case of **dispute** in activities of public interest,<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup>

**Conciliation proceeding** shall be conducted in accordance with the law governing the peaceful resolution of labour disputes.<sup>50</sup>

## 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.<sup>51</sup> A 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.<sup>52</sup>
- **Exhaustion of conciliation/mediation procedures prior to strike:** in sectors where there is an obligation to provide minimum services during a strike, the parties to the dispute must agree to settle the dispute before the Agency for the Peaceful Resolution of Labour Disputes. Otherwise, the competent authority which was notified of the strike must inform the Agency. The Director, *ex officio*, appoints the mediator from the register of mediators (see Section 4 above).<sup>53</sup>
- **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 Law on Strike].<sup>54</sup> The decision to call a strike in a branch or general strike shall be submitted to the competent representative association of employers, head of the organisation and competent state body in the field, not later than ten days preceding the date of strike.<sup>55</sup> 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, head of the organisation, competent government authority, or the relevant local authority, not later than ten days before the date set for the start of the strike.<sup>56</sup>
- 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;<sup>57</sup> A 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.<sup>58</sup>
- 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.<sup>59</sup>
- 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.<sup>60</sup>

- 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.<sup>61</sup>
- **Minimum work process** must be ensured in case of activities of public interest (see Section 4 above);<sup>62</sup>
- An employee should not be prevented, exposed to threats or coercion to participate or not participate in a strike.<sup>63</sup>
- **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.<sup>64</sup>

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.<sup>65</sup> 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.<sup>66</sup>

- The strike committee and employees who are on strike cannot prevent employees, who do not participate in the strike, from working.<sup>67</sup>
- The strike committee and employees who are on strike cannot prevent the employer from making use of the assets for performing the activity.<sup>68</sup>
- 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).<sup>69</sup>
- **No peace obligation** exists. The legislation does not provide for such obligation.
- 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.<sup>70</sup>
- **Fines** between 500 and 1,000 euros are imposed on employees, strike committee members, picket duty members, trade union members or representatives if they do not provide strike notice; if the decision to strike does not contain the elements required by law (e.g. demands of the strikers, venue and manner of strike, composition of the strike

committee, list of striking employees); if the decision to strike was not made by the competent trade union representative or more than half of employees at the enterprise; the strike is not in the form of a peaceful gathering of employees in the work area or within the business premises of the employer or by the absence of staff at work; if there is physical coercion or physical barriers preventing other from working; if there is no cooperation to ensure the minimum level of work required; if the labour inspectorate or the administrative inspector are prevented from performing supervision and inspection.<sup>71</sup>

## 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;<sup>72</sup>
- A **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);<sup>73</sup>
- 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;<sup>74</sup>
- During a strike organised in accordance with the law, an employer cannot employ new persons who would replace the workers on strike, unless the minimum work process that provides for security of property and persons, as well as fulfilment of obligations arising from the international treaties are jeopardised.<sup>75</sup> A **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);<sup>76</sup>
- 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.<sup>77</sup> A 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);<sup>78</sup>
- **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.<sup>79</sup> 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 wage 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).<sup>80</sup> A 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.<sup>81</sup>

### 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 case of lawful strikes (under Article 27 (1) of the Law on Strike - see above);<sup>82</sup>
- 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;<sup>83</sup>
- 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;<sup>84</sup>
- 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;<sup>85</sup>
- 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.<sup>86</sup> 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.<sup>87</sup>

## **7. Case law of international/European bodies**

### **International Labour Organisation**

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

CFA, Case No. 3357, Union of Free Trade Unions of Montenegro (UFTUM), Report 392, October 2020<sup>88</sup>

In its communication dated 18 January 2019, the complainant organization denounces violations of trade union rights by the Government with respect to the Trade Union of Defense and the Army of Montenegro (SOVCG), including acts of anti-union discrimination against its President and members, as well as denial of certain rights to the union and its members.

The Committee notes that Montenegro has ratified Conventions Nos 87, 98 and 151. With respect to the application of these instruments to the armed forces, the Conventions contain a provision which stipulates that: “The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations” (Article 9(1) of Convention No. 87; Article 5(1) of Convention No. 98; and Article 1(3) of Convention No. 151). The Committee has considered that it is clear that the International Labour Conference intended to leave it to each State to decide on the extent to which it was desirable to grant members of the armed forces and of the police the rights covered by Convention No. 87. It also held that the same considerations apply to Conventions Nos 98, 151 and 154 [see Compilation of decisions of the Committee on Freedom of Association, sixth edition, 2018, para. 1253].

Nevertheless, the Committee notes with interest that Montenegro has recognized the right to organize to the armed forces in accordance with freedom of association principles and that this right is guaranteed by article 53 of the Constitution, section 15 of the Law on Civil Servants and State Employees and section 67 of the Law on the Army of Montenegro. The Committee also observes that several workers’ organizations have been established and are currently active in the armed forces and that an Agreement on Cooperation had been signed in 2015 between the SOVCG and the Ministry of Defence to regulate certain mutual rights, obligations and responsibilities. The Committee understands from the information provided that despite the pending dispute and the divergent opinions between the parties in this regard, there appear to be established avenues for social dialogue between the political and military authorities, on the one hand, and the representatives of trade unions in the armed forces, on the other hand.

In light of the above, and within the framework of the existing national legislation, regulations and practice in Montenegro (Article 9(1) of Convention No. 87; Article 5(1) of Convention No. 98; and Article 1(3) of Convention No. 151), the Committee invites the Government to encourage and promote social dialogue between the parties with a view to ensuring full and



effective protection of the freedom of association rights of military personnel, as guaranteed by national laws and regulations.

### **The Committee of Experts on the Application of Conventions and Recommendations (CEACR)<sup>89</sup>**

Direct Request (CEACR) - adopted 2017, published 107th ILC session (2018)<sup>90</sup>

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.

Direct Request (CEACR) - adopted 2017, published 107th ILC session (2018), Convention 98<sup>91</sup>

Adequate protection against anti-union discrimination. The Committee notes the information provided by the Government, in response to its previous request, that the Law on Strikes of 2015 provides in section 35 for **fines on the employer** (with the status of a legal entity) from €2,500 to €10,000, in cases of dismissal, suspension, disciplinary proceedings and other measures against employees due to the organization or participation in a strike in accordance with the law. A fine of between €500 and €1,000 shall be imposed on a competent person within a legal entity.

## European Social Charter

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

*Conclusions 2018 - Montenegro - Article 6§4<sup>92</sup>*

In its most recent Conclusions, the ECSR noted that the 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 the 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 asked whether strikes may only be called within the framework of collective bargaining.

### **Entitlement to call a collective action**

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

The Committee recalled 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 stated that strikes are not banned in the above mentioned sectors but may take place provided a minimum service is guaranteed. The Committee considered 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 referred 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 be involved in the discussions on the minimum service to be provided on an equal footing with employers.

**Consequences of a strike.** The report stated that normally striking workers do not receive wages during/for the period they are on strike.

### **Conclusion**

The Committee concluded that the situation in Montenegro was 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

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- ILO CEELEX (Central and Eastern European Labour Legislation database), Montenegro, 2019, available at: [https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:MNE,,2019](https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:MNE,,2019).
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- OECD, The Covid-19 crisis in Montenegro, available at: <https://www.oecd.org/south-east-europe/COVID-19-Crisis-in-Montenegro.pdf>.
- COVID-19 Health System Response Monitor, Montenegro, available at: <https://www.covid19healthsystem.org/countries/montenegro>.

## Notes

- 1 Status of ratification by Montenegro of UN Treaties available at: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en> , accessed on 17 December 2020
- 2 Status of ratification by Montenegro of ILO Conventions available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102734](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102734), accessed on 17 December 2020
- 3 Status of ratification by Montenegro of the Revised European Social Charter of 1996 available at : [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures?p\\_auth=ZPrR6Yru](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures?p_auth=ZPrR6Yru) and <https://www.coe.int/en/web/turin-european-social-charter/signatures-ratifications>, accessed on 17 December 2020
- 4 Status of ratification of the Additional Protocol to the European Social Charter providing for a system of collective complaints available at: [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p\\_auth=F3KSQtYr](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p_auth=F3KSQtYr), accessed on 17 December 2020
- 5 Status of ECHR ratifications available at: [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p\\_auth=jPYjkVEL](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=jPYjkVEL), accessed on 17 December 2020
- 6 The Constitution of the Republic of Montenegro was adopted on 19 October 2007, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/78709/95193/F1228236684/MGO78709%20English%202.pdf> (unofficial English translation)
- 7 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 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>
- 9 Article 2 of the Law on Strike; see also 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>
- 10 Article 13 (4) of the Law on Strike
- 11 Article 13 (5) of the Law on Strike
- 12 Article 11 of the Law on Strike
- 13 Article 2 of the Law on Strike
- 14 Article 10 (1) of the Law on Strike
- 15 Article 10 (2) of the Law on Strike
- 16 Article 10 (3) of the Law on Strike
- 17 Article 10 (4) of the Law on Strike
- 18 Article 9 (1) –(3) of the Law on Strike
- 19 Article 15 (1) of the Law on Strike
- 20 Article 15 (2) of the Law on Strike
- 21 Article 3 of the Law on Strike
- 22 Article 28 (2) of the Law on Strike
- 23 Article 35 (4) of the Law on Strike
- 24 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>
- 25 Article 18 (1) of the Law on Strike
- 26 ITUC Survey of violations of trade union rights – Montenegro, available at: <https://survey.ituc-csi.org/Montenegro.html?tab=news&tri=category&lang=en#tabs-2>
- 27 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>
- 28 Article 18 (1) of the Law on Strike; see also ILO CEELEX, Montenegro, 2019, Section 6.4.10 “Categories of workers not allowed to strike”, available

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at :[https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:MNE,,2019](https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:MNE,,2019)

29 Article 18 (2) of the Law on Strike

30 Article 18 (3) and (4) of the Law on Strike

31 Articles 19 - 21 of the Law on Strike

32 Article 19 of the Law on Strike

33 In the sense of Article 19 of the Law on Strike

34 Article 20 of the Law on Strike

35 Article 21 of the Law on Strike

36 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 Clauwaert, S. and Warneck, W. (2008) *Better defending and promoting trade union rights in the public sector. Part I: Summary of available tools and action points*, Report 105, Brussels: ETUI, pp. 79-81.

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

38 Article 22 (1) of the Law on Strike

39 Referred to in Article 20 of the Law on Strike

40 Article 22 (3) of the Law on Strike

41 Article 23 of the Law on Strike

42 Article 23 of the Law on Strike; see also ILO CEELEX, Montenegro, 2019, Section 6.4.8 “Minimum service during strikes”, available at :

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43 Article 24 (1) of the Law on Strike

44 Article 24 (2) of the Law on Strike

45 Article 24 (3) of the Law on Strike

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

47 Article 26 (1) of the Law on Strike

48 Article 26 (2) of the Law on Strike

49 ILO CEELEX, Montenegro, 2019, Section 6.3.3 ‘Exhaustion of conciliation/mediation procedures prior to strike’, available at

[https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:MNE,,2019](https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:MNE,,2019)

50 Article 26 (3) and (4) of the Law on Strike

51 Article 13 (4) of the Law on Strike

52 Article 36 (2) of the Law on Strike

53 Article 31 (b) of the Law on Peaceful Resolution of Labour Disputes; see also Montenegro Country Profile 2019, ILO CEELEX, Section 6.3.3 “Exhaustion of conciliation/mediation procedures prior to strike”, available at :

[https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:MNE,,2019](https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:MNE,,2019)

54 Article 12 (1) of the Law on Strike

55 Article 12 (2) of the Law on Strike

56 Article 12 (3) of the Law on Strike; see also Montenegro Country Profile 2019, ILO CEELEX, Section 6.3.2 “Strike notice”, available at :

[https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:MNE,,2019](https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:MNE,,2019)

57 Article 13 (1) of the Law on Strike

58 Article 36 (1) of the Law on Strike

59 Article 13 (2) of the Law on Strike

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- 60 Article 4 of the Law on Strike
  - 61 Articles 5 and 6 of the Law on Strike
  - 62 Articles 22-26 of the Law on Strike
  - 63 Article 3 of the Law on Strike
  - 64 Article 16 (1) of the Law on Strike
  - 65 Article 16 (2) and (3) of the Law on Strike
  - 66 Article 16 (4) of the Law on Strike
  - 67 Article 17 (1) of the Law on Strike
  - 68 Article 17 (2) of the Law on Strike
  - 69 Article 17 (3) and (4) of the Law on Strike
  - 70 Article 30 of the Law on Strike
  - 71 Article 37 of the Law on Strike, see Montenegro Country Profile 2019, ILO CEELEX, Section 6.4.9 “Sanctions on illegal strikes”, available at :  
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  - 72 Article 27 (1) of the Law on Strike
  - 73 Article 35 (2) of the Law on Strike
  - 74 Article 27 (2) – (4) of the Law on Strike
  - 75 Article 28 (1) of the Law on Strike
  - 76 Article 35 (3) of the Law on Strike
  - 77 Article 28 (3) of the Law on Strike
  - 78 Article 35 (5) of the Law on Strike
  - 79 Article 14 of the Law on Strike
  - 80 Article 14 of the Law on Strike; see also Montenegro Country Profile 2019, ILO CEELEX, Section 6.5 “Conditions to initiate a lockout”, available at :  
[https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YE AR:MNE,,2019](https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YE AR:MNE,,2019)
  - 81 Article 35(1) of the Law on Strike
  - 82 Article 27 (5) of the Law on Strike
  - 83 Article 29 (1) of the Law on Strike
  - 84 Article 29 (2) of the Law on Strike
  - 85 Article 29 (3) of the Law on Strike
  - 86 Article 31 (1) of the Law on Strike
  - 87 Article 31 (2) of the Law on Strike
  - 88 CFA, Case No. 3357 (Montenegro), Definitive Report No. 392, October 2020, available at:  
[https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:4059241](https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:4059241)
  - 89 See the status of supervision of the application of International Labour Standards for Montenegro, available at:  
[https://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110\\_COUNTRY\\_ID,P11110\\_CONTEXT:102734,SC,](https://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID,P11110_CONTEXT:102734,SC,) consulted on 17 December 2020
  - 90 Direct Request (CEACR) adopted 2017, published 107th ILC session (2018), available at:  
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  - 91 Direct Request (CEACR) adopted 2017, published 107th ILC session (2018), Convention 98, available at:  
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  - 92 ECSR, Conclusions 2018 on Article 6§4 in respect of Montenegro, available at:  
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