

EPSU-EuroCOP-EUROMIL Trade Union Rights project – next steps

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The two-year project on trade union rights has allowed to debate the current state of trade union rights across the public services, to monitor the transposition into domestic law of the Transparent and Predictable Working Conditions Directive (TPWCD), and to address a report on key challenges facing public service unions to the European Committee of Social Rights of the Council of Europe. It has also discussed the potential of the EU sectoral social dialogue, currently under review, to protect or introduce trade union rights, possible litigation routes via the Council of Europe and/or the ILO in case of violations of trade union rights, and how trade unions can gain broader public support for their campaigns.

The project has also financed a comprehensive report by the Ghent University on the state of play with trade union rights covering 32 countries (27 EU Member States and Albania, Montenegro, North Macedonia, Serbia and Turkey, candidate countries).

The research shows the diversities between, and even within, the surveyed countries and blatant gaps between law and practice; countries signatories to the ILO Conventions 151 and 154 and/or to the European Social Charter are not exempt from restrictions but the latter do provide an additional layer of protection and redress.

With the exception of Scandinavia, Belgium and the Netherlands, trade union rights, which are interdependent – no right to collective bargaining without the right to organise, no real right to bargain without the right to collective action – are mostly not available to workers in uniform. This anachronism also applies to most public servants in Turkey and senior public servants in Albania and Poland.

In many countries, the right to collective bargaining and its correlated right to strike are also curtailed for civilian workers, on the grounds of public security or continuity of services. The few positive examples where all workers benefit from trade union rights are countries with a stronger focus on democracy, social, and gender justice, as well as an industrial relations system, where the union federations can affiliate with union confederations.

The bans or limits on those rights pose a threat to all our unions and professional associations. They set dangerous precedents that can be used to restrict rights where they already exist or deny rights where they might be claimed.

At the EU level, there are great inconsistencies regarding the application of EU social directives in the public sector. The TPWCD (2019), which triggered the project, is the most radical example where categories of civil servants, public emergency services, armed and police forces, can be excluded from new rights afforded to other workers.

The project has deepened the cooperation between the three federations and their determination to protect and extend the fundamental rights to organise, negotiate and take collective action across the public services and ensure that all workers are covered. To maintain the momentum, the below next steps are framed in relation to the main themes discussed during the project. Good coordination between the different union organisations at the national, EU, and global levels is crucial to achieve positive advances.

National level

No circumstances, be it an economic crisis, a pandemic, a terrorist attack, or even a war as Europe is experiencing again, can justify bans of trade union rights, which are fundamental human rights. Organised labour, which is part of the EU social model, has always led to social and democratic progress.

If police services in the Nordic countries can organise, negotiate, and take (restricted) collective action, then why does not the same apply in Ireland, Malta or anywhere else? And if military personnel in the Nordic countries, the Netherlands, Belgium and even Hungary, among others - can organise, negotiate and take (restricted) collective action, why not in other countries?

Trade union rights are also curtailed for civilian workers, for instance in Hungary or Turkey, large groups of civil servants cannot join a union, while in Romania, the right to collective bargaining does not include remuneration and hence prison officers have been denied the right to strike since the 2008 economic crisis. Most recently, in Finland, nurses' right to strike has been under attack, which indicates that trade union rights can never be taken for granted.

Affiliates are invited to:

- disseminate the project research report to their members, politicians and the media. It will be available in 4 languages (tbc DE, ES, FR, IT) and its executive summary in 15.
- defend their contested fundamental right by informing their relevant European federations and explore the possibility of pursuing cases through the ILO and the Council of Europe's European Social Charter, which provides for trade union rights – see below.
- Consider the added value of pressing their governments to ratify ILO Conventions 151 and 154 and relevant articles of the Revised European Social Charter (see below)
- The federations will keep a country-targeted approach in relation to actions at the Council of Europe or ILO, in the short run: Hungary, Romania, Malta, Ireland, Portugal and Spain.

EU level

By definition, an EU minimum approach means a universal approach, with no exclusions of any worker. The three federations as well as the ETUC defend the application of EU social directives for all workers, in line with the EU Charter of Fundamental Rights and the European Pillar of Social Rights.

The current inconsistencies, exclusions, or restrictions for the armed and police forces from the Working Time or the Occupational Health and Safety Directives, the exclusion of public administrations from the directives on information and consultation rights on restructuring and collective redundancies (see below sectoral social dialogue) need to be solved. On the positive, the recently adopted Directive on National Minimum Wages applies to the public sector and so does the draft Directive on Gender Pay Transparency (still being discussed in the Council and Parliament).

On the TPWCD, final information on its transposition is awaited, specifically on which EU government has used the unprecedented potential exemptions (introduced at the last minute in the Council), for civil servants, emergency services, including fire-fighters, armed and police forces from the rights provided in Chapter III (e.g. paid training and predictability of working time). At the time of writing, affiliates have reported that the Italian government has excluded the military (Carabinieri), the police, prison officers and fire-fighters who are covered by public law and thus not by collective agreements; Estonia has introduced an exclusion for all civil servants, which is likely to be challengeable.

- In cooperation with the ETUC, the federations will continue monitoring the situation and support national affiliates to challenge the exclusion and get it reversed.
- To this effect, it is underlined that blanket exemptions of all civil servants are not allowed (“only” certain categories). Further, if governments opt for exemptions of certain groups of workers, these must be based on objective grounds, definition of which is partly defined in the Directive – restricted to the specific nature of the duty or of the employment conditions - and EU case law; objective grounds must also be in line with the EU Charter of Fundamental Rights and the European Pillar of Social Rights. These grounds should be, at the very least, negotiated with the trade unions concerned. Further details on “objective grounds” are available in the report of the [Commission’s expert group on the transposition of the directive](#). The federations will explore whether a joint EU definition could be worth developing.
- The three federations will continue closely monitoring legislative proposals to prevent that such exemptions happen again.
- The federations will ensure compliance with the Copenhagen criteria for EU membership, which include trade union rights as part of human rights.

EU sectoral social dialogue

The EU social dialogue, at cross-sectoral or sectoral level, allows to negotiate EU legally binding social minimum standards, if social partners wish it so and if the Commission agrees to transpose the agreement into a directive for the Council to adopt, in line with TFEU Article 155.2.

EPSU mounted a court case against the European Commission’s unprecedented refusal to implement via a directive a social partners’ agreement on information and consultation rights on restructuring in governments. The agreement sought to plug the gap of the abovementioned workers’ consultation rights. The judgment of September 2021 confirms the absence of rules and the Commission’s full latitude over future social partners’ agreements.

On a political level, however, the court case has triggered a debate on the shortcomings of the social dialogue, and the Commission is currently reviewing the rules. After two decades of standstill, the cross sector social partners will shortly negotiate a new telework agreement (and on the right to disconnect), which will be legally binding. In central governments, social partners have just adopted an agreement on digitalisation, which they want to become a directive, and the gas sector is exploring the possibility to negotiate a directive. These may contribute to a renewed EU social dialogue.

- The three federations will assess the outcome of the review of the social dialogue, which will consist of a Communication on EU social dialogue and Council Recommendation on national social dialogue scheduled for early 2023. The position of EPSU and EuroCOP, amongst other European Trade Union Federations, is that there is no social dialogue without collective bargaining, and that the Commission’s discretion needs to be limited (see [here](#)).
- The federations will further explore whether and how linkages could be made between the armed and police forces and the sectoral social dialogue committees for central/federal governments and local and regional governments.

Council of Europe and ILO

Litigation routes are possible and indeed recommended via the Council of Europe and ILO. EUROMIL and EuroCOP have particularly been active in this area, with some success for the Irish and Italian soldiers, and more mitigated results for the Irish police officers. More details as to how this can be done are available in the project research report and presentations at the regional seminars as well as in the EPSU/ETUI report better defending and protecting trade union rights, 2008, [here](#).

The different levels for action should be, ideally, used in combination wherever possible, as each level/mechanism has its own advantages/disadvantages in relation to the time needed to complete the procedures (longer at the ILO than at the Council of Europe), and the status of the “sanctions” (from political to legal or semi-legal). A collective complaint procedure with the Council of Europe’s Social Rights Committee takes, on average, eighteen months, whereas similar procedures before the ILO are lengthier; reporting procedures are on average very slow before actual sanctions are issued.

The Council of Europe’s European Committee of Social Rights

The report submitted last June by the three federations, for the first time, to the Council of Europe’s European Committee of Social Rights (ECSR) covers some of the main challenges that public service trade unions are facing in asserting their rights to organise, negotiate and take collective action ([see here](#)). It was welcomed by the ECSR and this/it is the first time that a horizontal- rather than country-based report has been provided to the committee.

Of the 32 countries covered, Turkey is the only country, which has yet to ratify articles 5 (the right to organise) and 6 (the rights to bargain collectively and to collective action and strike) of the Revised European Social Charter (RESC). However, Austria, Luxembourg and Poland have made a general exemption from the right to collective action, while Netherlands and Serbia have excluded the military.

The Additional Protocol to the European Social Charter which provides for a system of collective complaints is yet to be ratified by the following 17 countries, which makes challenges more difficult: Albania, Austria, Denmark, Estonia, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Montenegro, North Macedonia, Poland, Romania, Serbia, Spain and Turkey.

- Affiliates will be kept posted on the response of the ECSR to the federations’ report
- The federations will develop the relationship with the ECSR and improve the way it addresses trade union rights issues in the public services

ILO

The fundamental rights to organise and negotiate are set out in ILO Conventions 87 (freedom of association and right to organize) and 98 (the right to organize and to collective bargaining), which have been ratified by all countries covered by this project. The Conventions 151 and 154 on labour relations and collective bargaining in public services provide additional rights that can assist public service unions. According to the ILO’s Committee of Experts, it is only legitimate to exclude (small groups of) senior officials responsible for administering the state from the rights to organise, negotiate and collective action. For soldiers and police officers, it is left to the discretion of governments, but this cannot be taken as justification for their exclusion from exercising these rights.

Many countries have not ratified ILO Conventions 151 &/or 154: Austria, Bulgaria, Croatia, Estonia, France, Germany, Ireland, Lithuania, Luxembourg, Malta, Montenegro, Poland, Serbia, and Turkey.

- ✓ While not all the countries that have ratified Conventions 151 and 154 provide military and police forces with all trade union rights, there is a better chance that they will eventually do if those Conventions are ratified. The federations will hold targeted country meetings to discuss further the possibilities for ratifications of the ILO Conventions 151 and 154.