



# The right to strike in the public sector

## Norway

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This factsheet reflects the situation in October 2018 and was elaborated by Andrea Iossa (independent expert) and reviewed by EPSU/ETUI; comments were received from the Norwegian (EPSU) affiliate LO-Norway and integrated

## 1. Legal basis

### International level

Norway has ratified:

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

**International Covenant on Civil and Political Rights**

(ICCPR, Article 22) (incorporated into national law with the Human Rights Act (No. 30 of 1999))

**International Covenant on Economic, Social and Cultural Rights (ICESCR, Article 8)**

with reservations regarding Article 8(d) on the right to strike<sup>2</sup> (incorporated into national law with the Human Rights Act (No. 30 of 1999)).

#### ILO instruments<sup>3</sup>

**Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise**

ratified on 4 July 1949;

**Convention No. 98 concerning the Right to Organise and to Bargain Collectively**

ratified on 17 February 1955;

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

ratified on 19 March 1980

**Convention No. 154 concerning the Promotion of Collective Bargaining**

ratified on 22 June 1982

### European level

Norway has ratified:

**The (Revised) European Social Charter**

on 7 May 2001, including Article 6(4);

**The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints**

(ratified on 20 March 1997);

**The European Convention on Human Rights**

(including Article 11 on the right to freedom of assembly and association) on 15 January 1952, and it has incorporated it into national law (Human Rights Act (No. 30 of 1999))

## National level

### The Constitution of Norway

The Constitution of Norway makes no reference to the right to strike. However, the Norwegian Supreme Court found in the Holship case (HR-2016-2554-P) that the right to freedom of association according to Section § 101 in the Constitution is framed after article 11 in the ECHR. Section § 101 therefore protects the right to strike to the same extent as article 11 ECHR does.

### Applicable law(s)

- Rules on the exercise of the right to strike and other forms of collective action are included in the Act on Labour Disputes (LDA) (No. 9 of 2012).
- Rules on the exercise of the right to strike and other forms of collective action in the public sector are included in the Act on Public Service Labour Disputes (PSLDA) (No. 2 of 1958) (Chapter V).
- The Labour Court has jurisdiction to assess the lawfulness of strikes and collective action in relation to a breach of the peace obligation and disregard for procedural requirements.<sup>4</sup>
- As a **general rule**, the entry into force of a collective agreement entails a peace obligation between the parties. Basic Agreements (periodically re-negotiated, usually every four years) exist between the major trade union confederations and the employers' associations in several sectors, including the public sector. The Basic Agreements contain rules on the peace obligation, mediation and other procedural requirements that must be met before calling for strike/collective action.

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

Any trade union or employee association is entitled to call for strike action. This entitlement derives from the broad definition of 'trade union' provided in the Labour Disputes Act, according to which any federation of employees acting for the purpose of safeguarding the employees' interests vis-à-vis their employer is to be considered as a trade union (*fagforening*).<sup>5</sup> Limitations to this general rule can be introduced in exceptional cases by collective agreements.

### 3. Definition of strike

The **Labour Disputes Act** and the **Public Service Labour Disputes Act** make an explicit distinction between 'disputes over rights' and 'disputes over interests'.<sup>6</sup> Strikes and other forms of collective action are not allowed in the case of 'disputes over rights', i.e. regarding violations and/or the interpretation of collective agreements in force.

Chapter 1 Section 1(f) of the Labour Disputes Act defines the strike as a 'full or partial stoppage of work implemented by employees acting jointly or in concert in order to force resolution of a dispute between a trade union and an employer or employers' association'. The provision goes on to state that 'Any action to block a company's premises in order to prevent the labour force from working is also considered to be part of a strike.' The definition is open-ended and includes forms of collective action other than strikes, such as 'overtime bans' and 'work-to-rule' and 'go-slow' action.<sup>7</sup>

Chapter 1 Section 1(g) of the Labour Disputes Act defines the lockout as a 'full or partial stoppage of work implemented by an employer in order to force resolution of a dispute between an employer or employers' association and a trade union, regardless of whether other employees are hired to replace those locked out'. The provision goes on to specify that 'Preventing the locked out employees from acquiring other work is also considered to be part of a lockout.'<sup>8</sup>

**Sympathy strikes** are permitted in support of a primary strike that is not unlawful. The Public Service Labour Disputes Act makes the participation of public employees in sympathy action dependent on the collective agreement for the public sector.<sup>9</sup> That agreement provides that public employees' participation in sympathy action must be agreed in negotiations between the trade union(s) concerned and the competent ministry. Such agreement is found in the Basic Agreement between the Norwegian State and the trade union confederations Section 50.

**Political strikes** are permitted and fall outside the scope of peace obligation clauses. The case law of the Labour Court has specified that a political strike must be of brief duration, and notice of such action must be given to the employer (no other specific procedures apply).

The right to exercise a **boycott**, another relevant form of collective action in labour disputes, is governed by a specific law: the Act on Boycotts No. 1 of 1947. According to this Act, a boycott is an invitation, agreement or similar measure aiming at hampering the financial relationship that exists between an individual or a business and others.

The Act regulates the situations in which a boycott may be called. A boycott is often used as a tool in support of a strike or blockade. In addition, to fulfil the legal definition of a boycott, the aim must encompass the intention to harm, punish or put pressure on this person or business – the so-called "double intention-requirement". It should also be noted that there are separate material requirements for a boycott to be considered lawful, such as proportionality between ends and means.

#### 4. Who may participate in a strike?

Participation in a strike and collective action is not dependent on union membership.

##### Public sector

- There are no laws prohibiting specific categories of **public employees** from exercising the right to strike. The Basic Agreement for the Civil Service (*Hovedavtalen i staten*) states that the chief executive and head of the personnel function of state institutions or agencies (including universities) and public-owned companies are not permitted to strike. It is also commonly provided that senior government officials (*embedsmenn*) may not go on strike, nor may members of the armed forces or employees of the Storting, the Norwegian Parliament.
- There are no restrictions on the forms of collective action that may be lawfully undertaken by public employees.
- There are no statutory or legal definitions of ‘**essential services**’ or ‘**essential sectors**’. However, the Government can request Parliament to issue a special act to stop or prohibit a strike by referring the dispute to the National Wage Board (*Rikslønnsnemnda*) for compulsory arbitration, if it is deemed that the action seriously threatens or may seriously threaten a vital (but also economic) interest of society.<sup>10</sup>
- There are no statutory provisions or legal requirements regarding the establishment of ‘**minimum services**’ in the event of a strike. Collective agreements may lay down such rules.

## 5. Procedural requirements

- The party that intends to **commence strike action** must give written notice to the other party at least 14 days in advance, unless otherwise provided by a collective agreement.<sup>11</sup> The written notice must also be sent to the National Mediator (*Riksmekleren*) or a district mediator and include information about the strike or collective action, such as the companies concerned and the number of employees covered by the notice.<sup>12</sup> No ballot is required to call a strike.
- The **mediator** may, within two days of receiving the notice, temporarily prohibit the party from implementing a strike or collective action that may harm the public interest.<sup>13</sup> Consequently, the mediator calls on the parties to the dispute to engage in compulsory mediation, and he/she can make (non-compulsory) proposals to end the dispute. Either party is entitled to request termination of the ban – and thus the mediation process – 10 days after it was issued.<sup>14</sup> The mediator may not prolong the ban. If no agreement is reached, the strike or collective action can be implemented according to the terms laid down in the notice.
- According to the Public Service Labour Disputes Act, the parties have a legal obligation to **negotiate** before resorting to collective action. If negotiations fail, the mediator must immediately be informed thereof, and compulsory mediation will commence within 14 days of the date of the notice. The mediator may also oblige the party to submit the mediation proposal to a ballot.<sup>15</sup> On expiry of the 14-day period, either party is entitled to request termination of the mediation process within a period of one week.<sup>16</sup> Therefore, the ‘cooling-off’ period for meditation in the public sector lasts for 21 days in total.
- Any dispute concerning public employees who are not permitted to go on strike is referred to the National Wage Board.<sup>17</sup>
- The **peace obligation** applies to collective agreements in force, but disputes over matters not regulated by a collective agreement do not fall within the scope of the peace obligation.

## 6. Legal consequences of participating in a strike

### Participation in a lawful strike

- For the duration of a strike or collective action, the employment contract is formally terminated, but, in practice, it is merely suspended. Workers are exempted from contractual obligations and may cease working, but they are entitled to return to work after the strike has ended.<sup>18</sup> In order to be considered lawful, however, participation in a strike or collective action is dependent on the notice of collective work stoppage (*plassoppsigelse*) to terminate an individual's employment contract for the purpose of implementing a strike or lockout.<sup>19</sup> This is usually communicated to the employer when the strike notice is given by the trade union.
- Workers on strike are not entitled to receive pay.
- Compensation for loss of wages is provided by means of financial support from trade unions.
- There are no legal provisions prohibiting the use of **strikebreakers** to replace workers who are on strike in the public sector, but such a practice would be considered a gross violation of industrial relations standards. As a general rule, the employer may not ask non-striking employees to perform the tasks of striking workers, and those employees are also entitled to refuse to cooperate. However, there is an obligation to perform any work tasks necessary to prevent immediate danger to life or health or material losses.

### Participation in an unlawful strike:

- As a general rule, employers who have been subject to an unlawful strike or collective action are entitled to receive compensation for damages only with respect to the economic loss caused by that action.
- Individual liability applies in the case of unlawful collective action.<sup>20</sup> However, the individual liability of workers taking part in an unlawful strike or collective action applies only if the action has not been called by a trade union (i.e. wildcat strikes). In such cases, the amount of damages to be paid is reasonably set by the Labour Court. Participation in an unlawful strike constitutes a breach of the employment contract, which in serious circumstances may give rise to a right of summary dismissal for the employer.<sup>21</sup>
- The trade union responsible for organising an unlawful strike or collective action is in breach of the collective agreement and is liable for economic damages.<sup>22</sup> The organisation's liability can also derive from refusing to comply with the obligation to end the action. The Labour Court sets the amount of the compensation in accordance with the criteria laid down in the Labour Disputes Act, such as the magnitude of the damage, the financial capacity of the liable party and the circumstances of the injured party.<sup>23</sup>
- Section 15-17 of the Working Environment Act (No. 62 of 2005) excludes the suspension of the employment contract for participating in a strike from the scope of the rules on dismissal. Accordingly, participation in a lawful strike can never be a ground for dismissal.



## 7. Case law of international/European bodies

### International Labour Organisation<sup>24</sup>

- Decisions of the Committee on Freedom of Association (CFA):

#### **Case No. 3147 (Report No. 378, June 2016)**

This case concerns the compulsory mediation imposed by the Norwegian Government in a dispute concerning the laundry and dry-cleaning sector. The intervention was based on the risk that a strike would affect services provided to certain **health institutions** (hospitals, etc.). The dispute began in 2014, during the negotiations for a new collective agreement between the trade union Industri Energi (IE), affiliated with the LO confederation, and the employers' organisation, the Federation of Norwegian Industries (NHO). After the failure of the collective bargaining and voluntary mediation processes, the Government terminated the ensuing strike by adopting a procedure for compulsory mediation, thereby referring the dispute to the National Wage Board, which laid down the terms of a new collective agreement.

In this respect, the CFA recalls that restrictions on the exercise of a legitimate strike can be imposed only as an exceptional measure and, in the lights of the previous complaints about the use of compulsory mediation, encourages the Government to discuss with the social partners 'possible ways of ensuring that basic services are maintained in the event of a strike, the consequences of which might endanger the life or health of the population'.<sup>25</sup>

#### **Case No. 3038 (Report No. 372, June 2014)**

This case concerns the compulsory mediation imposed in 2012 by the Government in order to terminate a strike in the oil and gas sector. The dispute began in 2012 and arose during the negotiations for several new collective agreements on the working conditions on oil and gas platforms in the North Sea between Industri Energi (IE), affiliated with the LO, and the Confederation of Organised Workers in the Energy Sector (SAFE), affiliated with the Confederation of Vocational Unions (YS), of the one part, and the Norwegian Oil and Gas Association (OLF) of the other part. As a result of the failure of the collective bargaining process and of the ensuing voluntary mediation, the trade unions called for strike action. In response, the employers' association gave notice of a general lockout in the sector.

Owing to the serious consequences that such action would have had for the national economy (heavily dependent on oil and gas production), the Government intervened by initiating a procedure for compulsory mediation. While expressing sensitivity to the arguments put forward by the Government, the CFA observes that, in the case of strikes affecting sectors that, albeit not necessarily essential in the strict sense of the term, are very important for the national economy, it would be desirable that the parties and the Government agree on a minimum service level in the sector rather than resorting to compulsory mediation.

In its final recommendations, the CFA 'firmly expects that, in the future, the Government will make every effort to refrain from having recourse to legislation imposing compulsory arbitration' for industrial action in sectors in which there is 'no clear and imminent threat to the life, personal safety or health of the whole or part of the population'.

Therefore, the CFA 'encourages the Government to examine the possibility of introducing a minimum service in the oil and gas sector in the event of industrial action, the scope or duration of which may result in irreversible damages'.<sup>26</sup>

**Case No. 2943 (Report No. 368, June 2013)**

This case concerns a complaint filed by the Confederation of Unions for Professionals (Unio) about the collective bargaining rights and the right to strike of employees working in the **police service**, including civilian staff. The union claimed that the adoption in 2009 of a regulation concerning police working hours meant that this matter was no longer regulated by collective bargaining. The CFA recognises that Norwegian law allows the parties to enter into special agreements that deviate from statutory provisions, and it also observes that, in Norway, public employees, including police staff, enjoy the right to bargain collectively and the right to strike.<sup>27</sup> Although no violations are found, the CFA observes that problems may arise where there is no clear distinction between the State as legislator and the State as employer. In this regard, the CFA 'invites the Government, within the framework of the existing national legislation, to conduct good-faith collective bargaining negotiations in the police service with a view to reaching agreement regarding working conditions, including working time'.<sup>28</sup>

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

▪ **Direct Request (CEACR) – adopted 2010, published 100th ILC session (2011)**

The Committee notes the comments submitted by the Confederation of Norwegian Enterprise dated 3 September 2010. Articles 3 and 10 of the Convention. In its previous observation, the Committee had recalled that, over the years, it had referred to the need to limit the possibility of imposing compulsory arbitration to the essential services in the strict sense of the term or to public servants exercising authority in the name of the State. The Committee had noted that the Government indicated in its report that governmental intervention in strikes can only take place if the Norwegian Parliament (Stortinget) adopts a law and that this does not happen with regard to any collective labour dispute at the discretion of the public authorities, but rather after a careful evaluation of the impact of a strike on the life, health or personal safety of the population.

The Committee had therefore requested the Government to provide information on any decisions by the Parliament imposing compulsory arbitration. The Committee notes that the Government indicates in its report that compulsory arbitration has been imposed in two conflicts during the period under review: the first intervention was made by Parliament Act No. 111 of 4 December 2009 to end a strike in the health sector concerning air ambulance pilots and the second intervention was made by Parliament Act No. 6 of 26 March 2010 to end a strike related to the establishment of a collective agreement in enterprises within health care, mainly nursing homes; and that both Acts were adopted after mediation procedures were conducted, without any result, and after the health surveillance authorities considered that the announced strikes would endanger the life and health of the population.

▪ **Observation – adopted 2008, published 98<sup>th</sup> ILC session (2009)**

In its Observation, the CEACR comments on the repeated use by the Government of compulsory mediation in labour disputes. Although the Government argued that the procedure for compulsory mediation involves Parliament and that it therefore does not happen at the discretion of the public authorities, the CEACR noted that compulsory mediation has been used in sectors that do not concern essential services in the strict sense of the term, such as the oil and gas sector, and the insurance and financial sector. In this regard, the CEACR ‘invites the Government once again to ensure that compulsory arbitration through legislative intervention is imposed only in cases where the life, personal safety or health of the whole or part of the population is threatened or where the strike concerns public servants exercising authority in the name of the State, and requests the Government to continue to provide information on any decisions by Parliament imposing compulsory arbitration’.<sup>29</sup>

**(Revised) European Social Charter:**

**Collective complaints under article 6(4) ESC**

No collective complaints have been filed with regard to Article 6(4) of the ESC.

**ECSR Conclusions**

In its 2014 Conclusions, the European Committee of Social Rights (ECSR) found the situation in Norway not in conformity with Article 6(4) of the ESC concerning the possibility for the Government to request Parliament to issue a special act in order to impose compulsory mediation before the National Wage Board.<sup>30</sup> The case originated from the dispute between *Norsk olje og gass* (formerly OLF) and the workers’ organisations *Industri Energi* (LO), *SAFE* (YS) and *Lederne* (the Norwegian Organisation of Managers and Executives) on the revision of the shelf agreements on the fixed oil installations in the North Sea. After the voluntary mediation period, initiated following the failure of the negotiations, had expired and the unions called for a stoppage of work, the Government decided to resort to the compulsory mediation procedure. The Government grounded its decision on the recognition that an interruption of oil and gas production would be highly detrimental to the national economy.

In its conclusions, the ECSR recalls that the use of compulsory arbitration to terminate a strike is not in conformity with the ESC, except in those cases in which it complies with the requirements of being prescribed by law and of being necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of the public interest, national security, or public health or morals.<sup>31</sup>

## **8. Recent developments**

The Norwegian liberal and right-wing think-tank Civita published in 2014 a memorandum on the right to strike in the public sector.<sup>32</sup> The main proposition in the memo is a call for a statutory requirement of proportionality between the use of the strike weapon in the public sector, and its effects on outsiders to the dispute. This debate has since resurfaced in connection with nearly every strike in the public sector. Therefore it could be said that the right to strike in the public sector is under constant scrutiny, albeit with no actual proposition on the table for a change of the legal framework. Nevertheless, it has a somewhat chilling effect.

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## Notes

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<sup>1</sup> For an overview of UN instruments ratified by Norway see

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

<sup>2</sup> The Government of Norway ratified the ICESCR subject to reservations 'to the effect that the current Norwegian practice of referring labour conflicts to the State Wages Board (a permanent tripartite arbitral commission in matters of wages) by Act of Parliament for the particular conflict shall not be considered incompatible with the right to strike, this right being fully recognised in Norway.'

<sup>3</sup> For an overview of ILO Conventions ratified by Norway, see

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102785](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102785) .

<sup>4</sup> Section 33(2) LDA.

<sup>5</sup> Section 1(c) LDA.

<sup>6</sup> Section 8(1) LDA and Section 20(1) PSLDA.

<sup>7</sup> See also Section 8(1) LDA.

<sup>8</sup> Section 1(g) LDA.

<sup>9</sup> Section 20(5) PSLDA.

<sup>10</sup> Use of this practice has declined in response to national and international criticism; see Fafo report.

<sup>11</sup> Section 15(1) LDA.

<sup>12</sup> Section 16 LDA.

<sup>13</sup> Section 19(1) LDA.

<sup>14</sup> Section 25 LDA.

<sup>15</sup> Sections 17 and 18 PSLDA.

<sup>16</sup> Section 17 PSLDA.

<sup>17</sup> Section 26a PSLDA.

<sup>18</sup> Section 15 para. 5 of the Working Environment Act (No. 62 of 2005) explicitly states that the termination of work in relation to a lawful strike or collective action does not constitute an interruption of the continuity of employment.

<sup>19</sup> Section 1(h) LDA.

<sup>20</sup> Section 9(1) LDA and Section 23 PSLDA.

<sup>21</sup> On the basis of Section 15-14 of the Working Environment Act (No. 62 of 2005).

<sup>22</sup> Section 9(1) LDA.

<sup>23</sup> Section 10 LDA.

<sup>24</sup> This report takes into consideration cases lodged after 2008.

<sup>25</sup> Full text of the Decision is available at:

[http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:3282152](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3282152).

<sup>26</sup> Full text of the Decision is available at:

[http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:3173689](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3173689).

<sup>27</sup> The ban on the right to strike for police officers was repealed in 1995.

<sup>28</sup> Full text of the Decision is available at:

[http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:3128175](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3128175).

<sup>29</sup> Full text of the Observation is available at:

[http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2299113,102785,Norway,2008](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2299113,102785,Norway,2008).

<sup>30</sup> See the full text of the Decision at: <http://hudoc.esc.coe.int/eng?i=2014/def/NOR/6/4/EN>.

<sup>31</sup> Article G of the (R)ESC.

<sup>32</sup> Streikevåpenet i offentlig sektor, Civita notat nr. 10/2014.