



# The right to strike in the public sector

## Poland

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This factsheet reflects the situation in October 2018 and was elaborated by Diana Balanescu (independent expert), reviewed by EPSU/ETUI; no comments were received from the Polish EPSU affiliates.

## 1. Legal basis

### International level

Poland has ratified:

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

**International Covenant on Economic, Social and Cultural Rights**  
(ICESCR, Article 8)  
**International Covenant on Civil and Political Rights**  
(ICCPR, Article 22)

#### ILO instruments<sup>2</sup>

**Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise**  
(ratification on 25 May 1957);  
**Convention No. 98 concerning the Right to Organise and to Bargain Collectively**  
(ratification on 25 February 1957);  
**Convention No. 151 concerning Labour Relations (Public Service)**  
(ratification on 26 July 1982).

Poland did not ratify

Convention No. 154 concerning the Promotion of Collective Bargaining

### European level

Poland has ratified, in particular:

**Article 11 (the right to freedom of assembly and association) of the European Convention on Human Rights**  
(ratification and entry into force on 19 January 1993)<sup>3</sup>

Poland has ratified the **European Social Charter of 1961** but has not accepted Article 6(4) (the right to collective action) (ratification on 25 June 1997 and entry into force on 25 July 1997);<sup>4</sup>

Poland has signed but not yet ratified the Revised European Social Charter of 1996 (signature on 25 October 2005).<sup>5</sup>

Poland has also not ratified

the Collective Complaints Procedure Protocol.

## National level

### The Constitution of Poland

Article 59(3) of the Constitution of 2 April 1997, states that: *'Trade unions shall have the right to organise workers' strikes or other forms of protest subject to limitations specified by statute. For protection of the public interest, statutes may limit or forbid the conduct of strikes by specified categories of employees or in specific fields.'*<sup>6</sup>

The Polish Constitution guarantees the right to strike in its Chapter II on 'The Freedoms, Rights and Obligations of Persons and Citizens' – 'Political Freedoms and Rights'. It has been widely recognised by academics that the right to strike is a basic human right (or freedom).<sup>7</sup>

Two main consequences have been identified in this respect.

First, the right to strike is difficult to restrict. According to Article 31(3) of the Constitution, *'Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.'*

Second, in accordance with the *in dubio pro libertate* principle, any doubts that may arise when interpreting the provisions on strikes must be decided in favour of, not against, the constitutionally protected right to strike.<sup>8</sup>

### Applicable laws

- **In general** : Article 17(1) of the Collective Labour Dispute Resolution Act (CLDRA) of 23 May 1991 states that: *'A strike is a collective work stoppage by employees for the purpose of settling a dispute concerning interests referred to in Article 1'* and defines such a dispute as concerning *'conditions of work, wages or social benefits as well as union rights and freedoms of employees or other groups of workers entitled to trade union membership.'*<sup>9</sup> A strike may be called only as a last resort (*ultima ratio*)<sup>10</sup> and only with the aim of concluding a collective agreement.<sup>11</sup>
- **Specific regulations for the public sector** : Article 19(1) to (3) of the CLDRA prohibits the right to strike for persons employed in state authorities, government and self-government administration, courts and public prosecutors' offices, as well as in certain professions or workplaces as listed in section 4 below.
- Farmers have a right to protest in accordance with specific rules set by farmers' trade unions.<sup>12</sup>
- **Collective agreements and trade union rules of procedure** do not constitute a legal instrument which guarantees or regulates the right to strike. However, a decision to call for collective action could, by law, be made conditional on the approval of a trade union's national board (higher body).<sup>13</sup>

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

Under Polish law, a strike may be called only by a trade union.<sup>14</sup> Even if there is no trade union in the enterprise or if the union is completely inactive, workers still do not have the 'right to organise a strike' themselves or by forming an ad hoc strike committee.<sup>15</sup> Some critics claim that the monopoly of trade unions to organise strikes is somewhat 'academic' given that a total of only 10 workers is required to establish a trade union.<sup>16</sup> However, others have emphasised that approximately 40% of the national workforce work for micro-enterprises (with 1-9 employees) and therefore have no direct access to union representation, as the threshold for a basic organisational unit of trade unions (company-level union) is determined by the Trade Unions Act at 10 eligible employees. As a consequence, these workers have no right to industrial action.<sup>17</sup>

Where more than one union is operating within an enterprise, each trade union (even the smallest one) may raise a dispute and call a strike regardless of the opinion and legal positions of the other unions.<sup>18</sup>

### 3. Definition of strike

The CLDRA provides for the following types of collective action:<sup>19</sup>

- **Regular strike**, as defined by Article 17(1) of the CLDRA;
- **Sympathy strike** : according to Article 22 of the CLDRA, in order to defend the rights and interests of workers who do not enjoy the right to strike, trade unions in other workplaces may initiate a solidarity strike not exceeding one half of a working day;
- **Warning strike** : according to Article 12 of the CLDRA, if the mediation process does not appear to be leading to a resolution of a collective dispute within the legal time frame (14-day period from notification of the strike demands), the trade union that has initiated the collective dispute has a right to call a one-time warning strike lasting no longer than two hours;<sup>20</sup>
- The CLDRA provides that **other forms of protest action** can be resorted to if the legal proceedings envisaged by the CLDRA produce no result, despite having been duly performed.<sup>21</sup> Although these 'other forms of protest action' are not explicitly named, they do have to meet the following conditions: they must not endanger human lives or health, they must not cause an interruption of work and they must not violate the law.<sup>22</sup> Employees who do not enjoy the right to strike are also entitled to resort to these 'other forms of protest action'.<sup>23</sup>

**Other types of strike/collective action are problematic** because of a lack of statutory regulation. The following has been observed by some academics:

- **Go slows and work-to-rule** : the prevailing view in the legal literature is that these kinds of action do not represent a form of strike but rather 'other forms of protest action'.<sup>24</sup> Some have argued that go-slow action should be regarded as illegal because, according to the Labour Code, an employee is obliged to 'perform work conscientiously and carefully'.<sup>25</sup> It therefore follows that a go-slow protest must be unlawful because it does not respect the legal order. Similarly, it has been alleged that work-to-rule action contradicts the employee's duty by exposing the employer to damages.<sup>26</sup>
- **Rotating strike** : the CLDRA does not explicitly exclude the possibility to stage a rotating work stoppage. However, there have been no cases of dispute resolution involving rotating strikes, and academics have failed to reach a definitive conclusion on the admissibility of this kind of industrial action in Poland.<sup>27</sup> Some have argued that, since a rotating strike is a strike (within the meaning of Article 17 of the CLDRA) and not any other form of industrial action (within the meaning of Article 25(1) of the CLDRA), there can be no convincing arguments against the right to organise a rotating strike.<sup>28</sup>

- Occupation of an enterprise's premises (commonly known as a **sit-down strike**): the legal literature identifies two situations: the first is where employees are present at the employer's premises without his consent, while the second is where striking employees prevent other workers from working.<sup>29</sup> It has been claimed that the second situation is illegal because it not only contradicts Article 21(1) of the CLDRA<sup>30</sup> but also violates the substance of an employer's right of ownership and the freedom to work of non-strikers. Moreover, occupying premises without the owners' consent is interpreted as an unlawful strike.<sup>31</sup>
- **Blockades and picketing** are not expressly regulated by the CLDRA. However, if blockades and picketing meet the requirements set out in Article 25 of the CLDRA (other forms of industrial action), then they are permitted.<sup>32</sup>
- **Strikes of a purely political nature** are not regarded as strikes but as a form of public manifestation and fall outside the scope of the CLDRA.<sup>33</sup> However, in practice, it is difficult to conceive of a 'purely political strike', as often trade unions' demands are at once political, economic and occupational in nature, and a great deal depends on the specific circumstances of a given case.<sup>34</sup>

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

- **All employees** may take part in a strike regardless of their trade union membership or any potential legal benefits to be gained from engaging in industrial action. This means that persons belonging to a trade union other than the union which is party to the strike are entitled to participate in the strike.<sup>35</sup>
- Article 6 of the CLDRA has extended the scope of persons who are entitled to participate in a strike to members of agricultural production cooperatives, persons who perform work on the basis of an agency contract if they are not employers and persons who perform home-based work.<sup>36</sup>
- Approximately 40% of the national workforce works for micro-enterprises (1-9 persons) and therefore has no direct access to union representation, as the threshold for a basic organisational unit of trade unions (company-level union) is determined by the Trade Unions Act at 10 eligible employees. As a consequence, these workers have no right to industrial action.

#### Limitations to the right to strike

The general rules on the right to strike include the following:<sup>37</sup>

- The CLDRA<sup>38</sup> lays down the rule of ‘rationality/proportionality’, stating that: ‘When taking the decision to call a strike, the party representing employee interests shall ensure that demands are commensurate with the losses that the strike entails.’ The actual meaning of this rule is rather vague and is subject to legal uncertainty; its precise meaning will have to be adjudicated by the courts.<sup>39</sup>
- The *ultima ratio* rule refers to the obligatory use of two procedures prior to strike action: negotiation and mediation.<sup>40</sup>
- Under the subject matter rule, a collective dispute, and consequently a strike, may concern only those interests referred to in Article 1 of the CLDRA (see section on applicable laws above).<sup>41</sup>
- According to the ‘rule of identical demands’, so named by the Supreme Court, every single demand must be notified to the employer in advance of any strike action, after which no further demands may be made; it is, however, acceptable to raise alternative claims or demands which are smaller than those originally notified.<sup>42</sup>

#### Public sector

The right to strike is denied to the following categories of workers:<sup>43</sup>

- Article 19(3) of the CLDRA provides that: ‘Persons employed in state authorities, government and self-government administration, courts and public prosecutors’ offices shall not have the right to strike.’<sup>44</sup>

- The provisions of Article 19(3) have been criticised as being in contradiction with international standards, especially ILO Conventions No. 87 and No. 151.<sup>45</sup> It has further been claimed that this prohibition of strikes appears excessive and void of legal or reasonable grounds, especially in case of manual workers or auxiliary staff (i.e. workers who do not exercise authority in the name of the State); and that Polish law does not provide any compensatory guarantees for workers listed in Article 19(3) of the CLDRA.<sup>46</sup>
- Article 19(2) of the CLDRA provides that: ‘Strikes shall be prohibited at the Agency of Internal Security, the Intelligence Agency, in units of the Police, Armed Forces of the Republic of Poland, Prison Service, Frontier Guard, Custom Service as well as units of the fire brigades.’
- Article 19(1) of the CLDRA provides that: ‘Any work stoppage because of the strike that affects positions, equipment and installations where the interruption of work constitutes a hazard to human lives or health or to the security of the State shall be prohibited.’

Polish law provides only a very general definition of ‘**essential services**’, and the CLDRA itself fails to list such services.<sup>47</sup> Some argue that this may lead to legal uncertainty, while others highlight the possibility of referring to relevant opinions of the Freedom of Association Committee of the Governing Body of the ILO.<sup>48</sup> Under Article 59(4) of the Constitution, ‘The scope of freedom of association in trade unions and in employers’ organisations may only be subject to such statutory limitations as are permissible in accordance with international agreements to which the Republic of Poland is a party.’<sup>49</sup>

The **ILO** has appropriately defined ‘**essential services**’ in the strict sense of the term as those services ‘the interruption of which would endanger the life, personal safety or health of the whole or part of the population’.<sup>50</sup>

## 5. Procedural requirements

- **Strike action** should be regarded as a last resort and may not be declared without having previously exhausted all possibilities for settlement of the dispute in accordance with the statutory rules which, *inter alia*, specify the requirements for negotiations. Should these negotiations fail, mediation must be pursued before the trade union may call a strike.<sup>51</sup>
- A strike in an establishment may be called by a union only after the approval of the majority of voting employees, provided that at least 50% of the workers employed at the establishment took part in the strike ballot.<sup>52</sup> A multi-establishment strike is declared by the trade union indicated in the statute, after approval by the majority of voting employees in each establishment in which the strike is to take place, provided that, in each of these establishments, at least 50% of employees participated in the voting.<sup>53</sup>
- The **procedure** for holding a strike ballot is essentially considered an internal matter for the trade unions. The law requires only that the ballot does not preclude employees from expressing their free will. Given that the lawfulness of a strike is conditional on a free declaration of intent by employees, the court may find that this rule was violated and that, as a result, this constitutes a reason for qualifying a strike as unlawful.<sup>54</sup>
- **Notice** of a strike must be given at least five days in advance.<sup>55</sup>
- All possibilities under the **conciliation and mediation procedures**, lasting at least 14 days from the date on which the employer is given notice of strike action, must be exhausted ('cooling-off period') before a lawful strike may be called.<sup>56</sup> Where a labour dispute arises, employers are obliged to launch immediate negotiations with their employees. A strike may be called if the negotiations are ineffective or have not been launched within 14 days following receipt of notice of the dispute. It is possible to call a strike if, on conclusion of the mediation process, no agreement has been reached.<sup>57</sup> A strike may also be called without observing these rules if the illegal acts of the employer have prevented negotiation or mediation, or if the employer has terminated the employment contract with the trade union representative responsible for leading the dispute.<sup>58</sup>
- Article 4(2) of the CLDRA provides for a *peace obligation*, namely: '*If the dispute concerns the content of a collective agreement or other agreement to which the trade union organisation is a party, and the purpose of the dispute is to amend the agreement, such a dispute may not be entered and conducted prior to the date of notice of termination of the agreement.*' In practice, if a trade union wishes to organise strike action in a dispute over a collective agreement or other agreement, it should first terminate this agreement, wait until the day of expiry of the agreement, initiate a trade dispute and then exhaust all possibilities for settlement of the dispute in accordance with the rules laid down in Articles 7-14 of the CLDRA.<sup>59</sup>

## 6. Legal consequences of participating in a strike

### Participation in a lawful strike

- Participation in a strike organised in compliance with the applicable legislation does not constitute a breach of the employee's duties.<sup>60</sup>
- Employees who participate in a lawful strike retain their right to social benefits, as well as other rights arising from the employment relationship, with the exception of the right to remuneration. The length of the work stoppage is not deducted from the length of employment in the establishment.<sup>61</sup>
- Employees not participating in a strike who are prevented from working because of the strike are entitled to remuneration for the time spent not working resulting from their personal remuneration grade setting out an hourly or monthly rate.<sup>62</sup>
- Trade unions have a right to set up a strike fund. How the fund should be managed and used is an internal matter for the union. Strike funds are not subject to execution.<sup>63</sup>
- Under Polish legislation, employers do not have the right to impose a **lockout** (even a defensive lockout is not permitted).<sup>64</sup> According to the Labour Code, a lockout is regarded as a work stoppage brought about by the employer, and employees are entitled to continue receiving their wages during the stoppage.<sup>65</sup> There have been no reported cases of a lockout in practice.<sup>66</sup>

### Participation in an unlawful strike

- Only a court may declare a strike illegal/unlawful.<sup>67</sup> There is no procedure such as 'no-strike injunction' or interim interlocutory injunction under Polish collective labour law.<sup>68</sup>
- Participation in an illegal strike can be regarded as a grave **violation of an employee's duties**, and this can lead to the termination of an employment contract without notice. Only those employees who are at fault can be summarily dismissed. A fine can be imposed for 'unjustified absence', and taking part in an illegal strike could be considered as such an absence. The fine for each day of unjustified absence may not be higher than one day's remuneration of the employee, and in total the fines may not exceed one tenth of the remuneration due to be paid to the employee.<sup>69</sup>
- The organiser of a strike is liable, in accordance with the rules determined in the Civil Code, for all damages resulting from a strike or other protest action organised contrary to the provisions of the CLDRA.<sup>70</sup> The term 'organiser of a strike' refers first and foremost to trade unions because only trade unions may be party to a dispute.<sup>71</sup>

- Any person who directs a strike or other protest action contrary to the provisions of the CLDRA is liable to a fine or a restriction of liberty.<sup>72</sup>
- **Liability for damages** caused to an employer or third party by an employee who does not responsible for directing the strike action and is not the organiser of the strike is regulated by the protective provisions of the Labour Code which are applicable regardless of whether a strike is legal or illegal.<sup>73</sup> However, 'if an employee has intentionally caused damage, he/she is obliged to compensate for it in full.'<sup>74</sup>
- A trade union that organises an illegal strike cannot be deprived of its rights. However, if the court holds that the trade union authority pursues activities which are in contradiction with the law (including an illegal strike), the court will set a period of at least 14 days for the authority to comply with the law.<sup>75</sup> If this period expires with no effect, the court may set a new date for elections to the trade union authority under the pain of suspending the activities of that authority. Finally, if all the above-mentioned measures prove to be ineffective, the registry court, upon a motion of the Ministry of Justice, will issue a decision removing the trade union from the register.

## 7. Case law of international/European bodies on standing violations

### International Labour Organization (ILO)

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

CFA, Case No. 3111, the *Independent and Self-Governing Trade Union (NSZZ) 'Solidarność' v the Government of Poland*, Report No. 378, June 2016<sup>76</sup>

In a communication dated 14 January 2015, the complainant organisation NSZZ '*Solidarność*' denounced a lack of proper implementation by the Polish Government of ILO Conventions Nos 87 and 151 into Polish legislation (Act on Trade Unions of 23 May 1991, and the Act on Collective Labour Disputes (CLDRA) of 23 May 1991). The complainant alleged that the Government:

- (i) violates Convention No. 87 by limiting parties on the employers' side of a collective dispute and of the strike to the employer within the meaning of the Labour Code, and Convention No. 151 through the lack of provisions that would recognise 'public authorities' as a party of the dispute for civil servants;
- (ii) violates Convention No. 87 through the lack of legal regulations allowing trade unions to organise strikes on socio-economic issues and general strikes and;
- (iii) violates Convention No. 151 through depriving some of the employees in the state governing bodies and local government, courts and prosecutors' offices of the right to strike.

In its Definitive Report No. 378 of June 2016, the CFA invited the Governing Body to approve the following recommendations:

- (a) concerning the definition of the party to a collective labour dispute, the Committee requested the Government to take the necessary steps to ensure that the party to a collective labour dispute on the employer side can be clearly identified and has the authority to make concessions and take decisions concerning wages as well as terms and conditions of employment;
- (b) as regards general strikes or strikes on socio-economic issues, the Committee requested the Government to take the necessary measures in order to ensure that workers' organisations are able to express, if necessary, through protest actions, more broadly, their views as regards economic and social matters affecting their members' interests;
- (c) with respect to the restrictions on the right to strike in Article 19 of the CLDRA, the Committee invited the Government to consider establishing a procedure:
  - (i) for determining which public servants enumerated in Article 19(3) of the CLDRA and in Article 2 of the Civil Service Act are exercising authority in the name of the State and for whom the right to strike could therefore be restricted;
  - (ii) for determining the cases where an interruption of work would be deemed a hazard under Article 19(1) of the CLDRA and where the right to strike would thus be prohibited or restricted and;
  - (iii) for defining minimum services where appropriate;

(d) the Committee referred the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.

*CFA, Case No. 2972, the National Commission of NSZZ 'Solidarność' and the All-Polish Alliance of Trade Unions (OPZZ) v the Government of Poland, Report No. 368, June 2013<sup>77</sup>*

In a communication dated 10 July 2012, the complainant organisations denounced a civil court decision made in closed session without the presence of the parties, which declared illegal the strike action conducted at LOT Aircraft Maintenance Services (LOT AMS) and led to the dismissal of 10 trade union activists.

In its Report No. 368 of June 2013, the CFA recalled that no one should be penalised for carrying out, or attempting to carry out, a legitimate strike. When trade unionists or union leaders are dismissed for having exercised the right to strike, it could only conclude that they have been punished for their trade union activities and have been discriminated against (see Digest of decisions and principles of the Freedom of Association Committee, fifth (revised) edition, 2006, paragraphs 660 and 662).

The Committee urged the Government to review immediately the situation of the dismissed workers and, should it be found that their dismissal was indeed due to their organisation of the industrial action, to take the appropriate measures for their reinstatement in their posts without delay pending the final determination by the courts. The Committee requested the Government to keep it informed of the steps taken in this regard.

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

- Through its Observations<sup>78</sup> on the application of ILO Convention No. 87, the **Committee of Experts on the Application of Conventions and Recommendations (CEACR)** noted that Article 78(3) of the Act on Civil Service forbids civil servants to participate in strikes or actions of protest interfering with the normal functioning of the office.

The CEACR wished to generally recall that restrictions to the right to strike in the public sector should be limited to public servants exercising authority in the name of the State. The Committee trusted that the Government will consider establishing a procedure for determining exactly which public servants enumerated in Article 19(3) of the Collective Labour Disputes Act and in Article 2 of the Act on the Civil Service are exercising authority in the name of the State and for whom the right to strike could therefore be restricted under Article 78(3) of the Act on the Civil Service and Article 19(3) of the Collective Labour Disputes Act.

In this regard, the Committee suggested that a tripartite body could be established with the responsibility of identifying the relevant public servants, and that any disagreement could be settled by an independent body. The Committee also requested the Government to supply a copy of the judgment of the Constitutional Tribunal as soon as it is handed down.<sup>79</sup>

## **8. Recent developments**

In November 2018, the Polish Ministry of Labour and Social policy presented a draft legislation on collective dispute resolution to the social partners for consultation. Next to including independent workers in the scope of what can be determined as a collective action, the draft law also intends to set a maximum nine-month time limit on how long a collective dispute can last. The latter is mainly to avoid long-running disputes be used as grounds for starting ad hoc strike action.

The text also provides for a possibility, for both employers and trade unions, to turn to the courts right from the outset to determine if a collection action is legal and under which circumstances, the court needs to take a decision within seven days and during the deliberations by the court the dispute has to be suspended. If the court considers the action to be unlawful, those organising it are liable to paying a fine.<sup>80</sup>

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## Notes

- <sup>1</sup> Status of ratification by Poland of UN instruments: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en> (accessed 6 November 2017).
- <sup>2</sup> Status of ratification by Poland of ILO conventions: [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102809](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102809) (accessed 6 November 2017); see also ETUI Report 105, p. 72.
- <sup>3</sup> Status of ECHR ratifications: [http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p\\_auth=ywvbQS9g](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=ywvbQS9g) (accessed 6 November 2017).
- <sup>4</sup> Status of ratification of the 1961 European Social Charter: [http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035/signatures?p\\_auth=F3KSQtYr](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035/signatures?p_auth=F3KSQtYr) (accessed 6 November 2017); see ETUI Report 105, p. 69, it was commented that ‘the adoption of Article 6(4) of the Charter by Poland is obstructed by the fact that only trade unions have the right to call a strike and only with the aim of concluding collective agreements, and by the fact that all categories of civil servants are denied the right to strike’; see also Clauwaert, S. and Warneck, W. (eds) (2009), *Better defending and promoting trade union rights in the public sector, Part II: Country reports*, Report 108, Brussels: ETUI, pp. 132-133.
- <sup>5</sup> Status of signatures and ratifications of the European Social Charter (revised) available at: <https://www.coe.int/en/web/turin-european-social-charter/signatures-ratifications> (accessed 6 November 2017).
- <sup>6</sup> ETUI Report 103, p. 56.
- <sup>7</sup> Waas, B. (ed.), ‘The Right to Strike. A Comparative View’, 2014, p. 428.
- <sup>8</sup> *Idem*, p. 428.
- <sup>9</sup> Eurofound, EurWork, ‘Living and working in Poland, Country profile’, 18 October 2017, available at: <https://www.eurofound.europa.eu/country/poland>; and Waas, B., p. 427.
- <sup>10</sup> ETUI Report 103, p. 56.
- <sup>11</sup> ETUI Report 105, p. 69.
- <sup>12</sup> Eurofound, EurWork, ‘Living and working in Poland, Country profile’, 18 October 2017, available at: <https://www.eurofound.europa.eu/country/poland>; Article 25.2 of the CLDRA.
- <sup>13</sup> Waas, B., p. 429.
- <sup>14</sup> See Article 59(3) of the Constitution: ‘Trade unions shall have the right to organise workers’ strikes or other forms of protest [...]’ and Article 2(1) of the CLDRA: ‘In trade disputes, the rights and collective interests of employees shall be represented by trade unions.’
- <sup>15</sup> Waas, B., p. 430.
- <sup>16</sup> *Idem*, pp. 430-431.
- <sup>17</sup> ETUI, Reforms Watch, Strikes in Poland: background summary, available at: <https://www.etui.org/fr/Reforms-Watch/Poland/Strikes-in-Poland-background-summary> (last updated in October 2016).
- <sup>18</sup> Waas, B., p. 431.
- <sup>19</sup> ETUI Report 103, p. 9, see table: ‘Types of collective action’, and p. 56.
- <sup>20</sup> Eurofound, EurWork, ‘Living and working in Poland, Country profile’, 18 October 2017, available at: <https://www.eurofound.europa.eu/country/poland>.
- <sup>21</sup> *Idem*.
- <sup>22</sup> Article 25(1) of the CLDRA.
- <sup>23</sup> Eurofound, EurWork, ‘Living and working in Poland, Country profile’, 18 October 2017, available at: <https://www.eurofound.europa.eu/country/poland>; Article 25(1) of the CLDRA.
- <sup>24</sup> Waas, B., p. 441.
- <sup>25</sup> Article 100(1) of the Labour Code, in Waas, B., p. 441.
- <sup>26</sup> Waas, B., p. 441.
- <sup>27</sup> Waas, B., p. 441.
- <sup>28</sup> Waas, B., p. 442.
- <sup>29</sup> Waas, B., p. 442.
- <sup>30</sup> Article 21(1) of the CLDRA only partially regulates a sit-down strike: ‘During the strike, the manager of the establishment shall not be hampered in the performance of duties and exercising of rights in relation to employees who do not take part in the strike as well as, to the extent that is necessary, to ensure the protection of the property of the establishment and the continued operation of the structures, equipment and installations, the interruption of which could constitute a threat to human life or health or to the resumption of the normal activity of the establishment.’ In Waas, B., p. 442.
- <sup>31</sup> Waas, B., p. 442.
- <sup>32</sup> Waas, B., p. 442.
- <sup>33</sup> ITUC Global Rights Index, Poland, Right to Strike, available at: <https://survey.ituc-csi.org/Poland.html#tabs-2>.
- <sup>34</sup> Waas, B., p. 434.
- <sup>35</sup> Waas, B., p. 432.
- <sup>36</sup> Waas, B., p. 432; see ILO CFA Case No. 2888, Complaint of 28 July 2012 submitted by the National Commission of the NSZZ ‘Solidarność’ against the Government of Poland, Report No. 363, March 2012, available at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002>.
- <sup>37</sup> Waas, B., pp. 438-439.

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- <sup>38</sup> Article 17(3) of the CLDRA.
- <sup>39</sup> Waas, B., p. 438.
- <sup>40</sup> ETUI Report 103, p. 56.
- <sup>41</sup> Waas, B., p. 438.
- <sup>42</sup> Waas, B., p. 439.
- <sup>43</sup> ETUI Report 103, p. 57, and ETUI Report 108, pp. 132-133.
- <sup>44</sup> ETUI Report 103, p. 57.
- <sup>45</sup> Waas, B., p. 439.
- <sup>46</sup> *Idem*.
- <sup>47</sup> Waas, B., p. 440.
- <sup>48</sup> *Idem*.
- <sup>49</sup> *Idem*.
- <sup>50</sup> Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, fifth (revised) edition, 2006, Chapter 10, paragraphs 581-627 – the Committee of Freedom of Association (CFA) lists the following as ‘*essential services in the strict sense of the term*’ where the right to strike may be subject to restrictions or even prohibitions: hospital and ambulance services, electricity services, water supply services, telephone services, the police and armed forces, firefighting services, public or private prison services, the provision of food to pupils of school age and the cleaning of schools, and air traffic control. The Committee also states that restrictions on the right to strike in the above-mentioned services should be accompanied by compensatory guarantees. See also ETUI Report 105, pp. 79-81.
- <sup>51</sup> Articles 7-14 of the CLDRA regarding the rules applicable to negotiation and mediation.
- <sup>52</sup> ETUI Report 103, p. 56.
- <sup>53</sup> ETUI Report 103, p. 56; and Waas, B., p. 434.
- <sup>54</sup> Waas, B., p. 434.
- <sup>55</sup> ETUI Report 103, p. 57; Article 20(3) of the CLDRA.
- <sup>56</sup> ITUC Global Rights Index, Poland, Right to Strike, available at: <https://survey.ituc-csi.org/Poland.html#tabs-2>.
- <sup>57</sup> ETUI Report 103, p. 56.
- <sup>58</sup> ETUI Report 103, p. 56; Article 17(2) of the CLDRA.
- <sup>59</sup> Waas, B., p. 435.
- <sup>60</sup> Article 23(1) of the CLDRA; see ETUI Report 103, p. 57.
- <sup>61</sup> Article 23(2) of the CLDRA; ETUI Report 103, p. 57; and Waas, B., p. 447.
- <sup>62</sup> Article 81(1) of the Labour Code, in Waas, B., p. 443.
- <sup>63</sup> Waas, B., p. 447; Article 24 of the CLDRA.
- <sup>64</sup> ETUI Report 108, p. 133; and Waas, B., p. 448.
- <sup>65</sup> ETUI Report 108, p. 133.
- <sup>66</sup> ETUI Report 108, p. 133; and Waas, B., p. 449.
- <sup>67</sup> Waas, B., p. 443.
- <sup>68</sup> However, the employer can use a kind of surrogate institution under the Civil Code; in one such case, the court ruled that the planned blockade was not in accordance with Article 25(1) of the CLDRA, deemed it to be illegal and issued a ‘*quia timet injunctio*’, Article 439 of Civil Code in Waas, B., p. 445.
- <sup>69</sup> Waas, B., p. 444.
- <sup>70</sup> Article 26(3) of the CLDRA.
- <sup>71</sup> Waas, B., p. 445.
- <sup>72</sup> Article 26(2) of the CLDRA; ETUI Report 103, p. 57.
- <sup>73</sup> Article 5 of the Labour Code, in Waas, B., p. 444.
- <sup>74</sup> Article 122 of the Labour Code, in Waas, B., p. 444.
- <sup>75</sup> Waas, B., pp. 445-446.
- <sup>76</sup> See Definitive Report – Report No. 378, June 2016, Case No. 3111 (Poland), available at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002>.
- <sup>77</sup> See Report 368, June 2013, Case No. 2972 (Poland), available at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:50002>.
- <sup>78</sup> See all Observations and Direct Requests by CEACR on the application of ILO Convention No. 87 addressed to Poland, available at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:20010>.
- <sup>79</sup> Observation (CEACR) – adopted 2015, published 105th ILC session (2016), available at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:13100>.
- <sup>80</sup> Planet Labour, Poland : Draft legislation on collective dispute resolution, News update, 20 November 2018.