



The right to strike in the public services

Portugal



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This factsheet reflects the situation in June 2021. It was elaborated by Coralie Guedes (independent expert), updated by Diana Balanescu (independent expert) and reviewed by EPSU/ETUI. It was also sent for comments to the Portuguese EPSU affiliates.

1. Legal basis

International level

Portugal has ratified:

UN instruments¹

International Covenant on Economic, Social and Cultural Rights

(ICESCR, Article 8)

International Covenant on Civil and Political Rights

(ICCPR, Article 22)

ILO instruments²

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

(ratification on 14 October 1977)

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

(ratification on 01 July 1964)

Convention No. 151 concerning Labour Relations (Public Service)

(ratification on 9 January 1981)

Portugal has not ratified:

Convention No. 154 concerning the Promotion of Collective Bargaining

European level

Portugal has ratified:

The Revised European Social Charter³

(ratification on 30 May 2002); with the declaration that the obligation under Article 6 does not prejudice, with respect to paragraph 4, the prohibition of lockouts, as specified in paragraph 4 of Article 57 of the Constitution

The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints⁴

(ratification on 20 March 1998)

Article 11 (the right to freedom of assembly and association) of the European Convention on Human Rights⁵; with the reservation that Article 11 of the Convention will be applied subject to Article 60 of the Constitution of the Portuguese Republic, which prohibits lockouts.

(ratification and entry into force on 09 November 1978)

National level

The legal provisions governing the public service in Portugal are not set out systematically in a single, coherent text but in several pieces of legislation at different levels: laws, statutory orders, regulations and circulars.

Civil servants are administrative officials who are appointed to permanent posts and paid from the budget of the public authority they serve. After appointment and official designation, they are in a unilateral, statutory position. The term ‘civil servant’ also extends to military personnel, firefighters, judges and prosecutors, and staff of local and regional authorities.

The Portuguese civil service is organised as a career system, divided into a number of different administrations. But there are also special corps, such as the **diplomatic corps** and the **armed forces**, the **security services**, and the **teaching and medical professions**.

The law lays down the conditions for the provision of services necessary for security and the maintenance of equipment and installations, as well as for **minimum services**.

The Constitution of Portugal

The basic right to strike is guaranteed by the 1976 Constitution (Article 57⁶) and is regulated by detailed legislation. The Constitution establishes that workers are themselves competent to define the scope of the interests to be defended by means of strike action, and that this scope may not be restricted by the law. In parallel with establishing the right to strike, the Constitution prohibits the use of lockouts.⁷

The **right to strike** was formally recognised by Decree-Law No. 392/74 of 27 August 1974. Law No. 65/77 lays down regulations on strike action and the rights and obligations associated with it, with particular regard to the provision of essential services. This Law was subsequently amended in 1992. A law adopted on 27 April 2003 has tightened the conditions applicable to the provision of a minimum level of service.

The law does not provide for the possibility of seeking an injunction to restrain strike action. Nevertheless, the action must remain within the limits set by law.

2. Who has the right to call a strike?

The right to strike is a fundamental right of workers regardless of the sector of activity – be it public or private – of the legal nature of the employing entity and the contractual relationship with that entity, and of trade union membership.

3. Definition of strike

A strike is defined as a concerted abstention from work by employees for the purpose of exerting pressure in order to obtain decisions favourable to the collective interests of the striking employees.

The types of collective action allowed include:

- **picketing** (non-violent)
- **boycott**
- **go-slow**

A **solidarity strike** is considered legal by both legal scholars and the courts. This is due to the extremely broad terms in which the right to strike is enshrined in the Portuguese Constitution. Therefore, it is not possible to prevent employees from asserting this right with the only condition that the primary action should itself be lawful and legitimate.

On the other hand, and although not specifically regulated in law, political strikes and wild-cat strikes are prohibited.

Other forms of industrial action, such as sit-ins and other disruptive actions, were relevant during the revolutionary period (1974–1975) and its aftermath, but they do not occur any longer. An exception may be when workers at a factory that is closing try to stop the withdrawal of equipment and material from the establishment in order to avoid their sale before the company has paid its debt to the dismissed workforce.⁸

4. Who may participate in a strike?

The rules of the '*Lei da Greve*' are applicable to **all** Portuguese workers **except military or para-military personnel, civilians working in military establishments** and in the **civil service**.

When a strike is declared in any of the following public service sectors, the organisers are obliged by law to provide a minimum level of service:

- postal service and telecommunications
- medical services
- public health, including funerals
- power supply, mines and fuel
- water supply
- firefighting
- public transport of cattle, public perishable foods and essential goods.

Minimum services are normally agreed between employers and unions and can be stipulated or changed by collective agreements. An arbitration board determines minimum services, if they fail to agree.

Where a situation is considered to be sufficiently grave, the Government is empowered to guarantee the provision of minimum services during a strike by means of a procedure called **civil requisition**.

The Government can issue a ministerial order to bring any of a wide range of activities into temporary, **obligatory public service**, such as: food production and distribution, public transport, pharmaceutical production, ship construction and repair, banking and national defence production.

According to Portuguese jurisprudence (Supreme Administrative Court), the Government can only resort to civil requisition after the strike has begun and once it is found that indeed the minimum services are not being provided. The mere threat by trade unions of not providing the minimum services or a presumption founded in any other factors are not enough ground to issue the ministerial order.

On the other hand, civil requisition can be ordered only when one knows the true extent of the effects of the strike and that knowledge results in the finding that minimum services are not being provided and, therefore, when it is possible to identify the means required to achieve them.

5. Procedural requirements

The **peace obligation** resulting from collective agreements applies in Portugal.

Provisions in individual employment contracts to limit the right to strike are, on the contrary, unlawful.

If the action is taken without a trade union, strikers may be represented by an elected **strike committee**. In that case, the decision to strike must be taken by secret ballot at a meeting called by at least 20% of the workers involved, or at least 200 workers. The decision is held to be valid only if the meeting was attended by a quorum of 51% and the action approved by a majority vote of the assembly.

Strike notice must be given five working days in advance, except in public utility services where it is 10 working days. Worker representatives must evaluate the impact of the strike, and designate the workers who will perform minimum service duties 48 hours before the beginning of the strike action.

The employer is prohibited from employing new workers during a strike or from replacing workers on strike.

6. Legal consequences of participating in a strike

A strike suspends the rights and duties of the contract of employment.

Taking part in a strike in violation of the rules applicable to the exercise of the right to strike is considered as 'unjustified absence'. Accordingly, it can lead to punitive salary deduction, suspension of seniority rights for the duration of the strike, and disciplinary sanctions (including dismissal).

7. Case law of international/European bodies

ILO – Committee of Experts on the Application of Conventions and Recommendations (CEACR)

Direct Request – adopted 2018, published 108th ILC session (2019) on Convention n° 87

Requisition of striking workers

The Committee had previously noted that in grave situations, when minimum services indispensable for the satisfaction of vital social needs are not complied with, the Government may issue a ministerial order to requisition striking workers. The Committee had requested the Government to provide information on the application in practice of this possibility. The Committee took note of the Government's indication that this possibility was used in respect of a strike in 2014 in the aviation sector. Furthermore, the Committee noted the observation of the Confederation of Portuguese Industry (CIP) that civil requisition, under article 1 of Decree-Law No. 637/74, has an exceptional character and is an instrument of last resort and that, since 1970, it has only been enacted three times, in 1977, 1997 and 2014.⁹

Council of Europe

Collective complaints procedure

Pending collective complaint: 199/2021 European Organisation of Military Associations and Trade Unions (EUROMIL) v. Portugal¹⁰

This complaint was registered on 12 May 2021. It relates to Articles 5 (the right to organise) and 6 (the right to bargain collectively) of the revised European Social Charter. EUROMIL alleges that Portuguese professional military associations do not have trade union rights and are therefore banned from collectively representing their members and making collective binding agreements with the employer, in violation of Articles 5 and 6 of the Charter.

In particular, EUROMIL alleges that Portugal is violating Article 6§4 (**the right to strike**) of the European Social Charter because it prohibits professional military associations as workers' organisations from exercising the right to strike.

ECSR Conclusions

Conclusions 2014¹¹

Portuguese legislation was found not to be in conformity with Article 6(4) on the grounds that the right to call a strike is primarily reserved for trade unions, and the establishment of a trade union is subject to an excessive time frame (Conclusions 2010).

The Committee recalled that workers who are not affiliated to an existing trade union where the majority of the workers in the enterprise are affiliated may exercise the right to strike

only if they establish a trade union for that purpose. However, it could take up to 30 days to establish a trade union, and the Committee considers that this time frame is excessive.

In the case of a state-owned company, an arbitral tribunal formed in accordance with a specific law governing compulsory arbitration defines the minimum services. The Committee considered that it has not been established that compulsory arbitration is necessary for the protection of the rights and freedoms of others or for the protection of the public interest, national security, public health or morals and that it therefore falls within the limits of Article G of the Charter.

The Committee therefore considered that the situation is not in conformity with Article 6(4) of the Charter on the ground that it has not been established that recourse to compulsory arbitration to define minimum services in the case of a state-owned company falls within the limits set by Article G of the Charter.

The Committee concluded that the situation in Portugal **is not in conformity with Article 6§4** of the Charter on the grounds that:

- the right to call a strike is primarily reserved to trade unions, and the establishment of a trade union is subject to an excessive timeframe;
- it has not been established that recourse to compulsory arbitration to define minimum services in the case of a state-owned company falls within the limits set by Article G of the Charter.

Conclusions 2016¹²

The report submitted by Portugal in response to the Committee's 2014 Conclusions stated that minimum services and the means needed to ensure them are defined only by ministerial order or an arbitration tribunal, as applicable, as a last resort. Further, it highlighted that: "in order to ensure that the State is not at one and the same time party to and arbiter in the setting of minimum services, in the absence of an IRCT provision or an agreement with the workers' representatives, the Labour Code gives the competence to define minimum services (...)" to a tribunal, whenever a strike is decided at an enterprise belonging to the State Business Sector. "This guarantees the impartiality and independence of the entity taking the decision."

The Committee took note of the explanation of the situation. It confirmed that, in certain cases, it may be legitimate that a body other than the parties to the dispute defines the level of minimum services to be guaranteed. However, the actual decision of any body deciding on the level of minimum services to be guaranteed must be in conformity with Article G of the Charter. The Committee asked to be kept informed of any such decisions.

Pending receipt of the information requested, the Committee concluded that the situation in Portugal is in conformity with Article 6(4) of the Charter on this point.

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https://www.senat.fr/lc/lc50/lc50_mono.html#toc44
<http://www.assemblee-nationale.fr/12/pdf/europe/rap-info/i1274.pdf>

Notes

- 1 Status of ratification by Portugal of UN instruments:
<https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en> (accessed on 4 June 2021)
- 2 Status of ratification by Portugal of ILO conventions:
https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102815 (accessed on 4 June 2021).
- 3 Status of ratifications of the Revised European Social Charter: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures?p_auth=jPYjkVEL (accessed on 4 June 2021); see also ESC, Country profile: Portugal (<https://www.coe.int/en/web/european-social-charter/portugal>).
- 4 Status of ratifications of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p_auth=F3KSQtYr (accessed on 4 June 2021); Portugal has not yet made a declaration enabling national NGOs to submit complaints.
- 5 Status of ECHR ratifications: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=jPYjkVEL (accessed on 4 June 2021).
- 6 Article 57 'Right to strike and prohibition of lockout' of the Constitution: (1). *The right to strike shall be safeguarded.*
(2). *Workers shall be entitled to decide what interests are to be protected by means of strikes. The sphere of such interests shall not be restricted by law.* (3). *Lockouts shall be prohibited.*
- 7 Eurofound, 'Living and working in Portugal', Industrial action and disputes, 15 March 2021 (<https://www.eurofound.europa.eu/country/portugal>).
- 8 Eurofound, 'Living and working in Portugal', Industrial action and disputes, 15 March 2021 (<https://www.eurofound.europa.eu/country/portugal>).
- 9 Direct Request (CEACR) - adopted 2018, published 108th ILC session (2019), Convention 87, https://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:3960372,102815,Portugal,2018
- 10 See the complaint and all case documents at: <https://www.coe.int/en/web/european-social-charter/-/no-199-2021-european-organisation-of-military-associations-and-trade-unions-euromil-v-portugal>
- 11 ECSR, Conclusions 2014 on Article 6(4), Portugal, see full text at: <http://hudoc.esc.coe.int/eng?i=2014/def/PRT/6/4/EN>.
- 12 ECSR, Conclusions 2016 on Article 6(4), Portugal, see full text at: <http://hudoc.esc.coe.int/eng?i=2016/def/PRT/6/4/EN>.