

DEFENDING AND STRENGTHENING TRADE UNION RIGHTS IN PUBLIC SERVICES

RESEARCH TEAM

- First step: creation of a team (collaboration between UGent, University of Amsterdam and University Carlos III Madrid)
- Experienced researchers with regard EU-projects and comparative research
- Background of legal analysis in the different countries aiming to get a certain conceptualization

RESEARCH NATIONAL LEVEL

- Focus shall be on the limitations with regard to officials (working term including military staff, police staff and civil servants) in different European countries:

Bulgaria, Romania, Hungary, Czech Republic, Slovakia

Division of tasks between the researcher has been made although the aim obviously is to provide information as one research group. The UvA shall write the report on France and Portugal while UCIIM shall take care of the report on Spain and Italy. The UGhent has dealt with these group of countries.

For this presentation: the EPSU-ETUI country reports are of major importance (thank you for all the good work).

RESEARCH NATIONAL LEVEL - BULGARIA

Right to strike for public service workers – public servants, military officers and police officers

- **Article 50 of the Bulgarian Constitution:**
- *Workers and employees shall have the right to strike in defence of their collective economic and social interests. This right shall be exercised in accordance with conditions and procedures established by law*
- The Settlement of Collective Labour Disputes Act (Articles 14 and 16(6)), the Railway Transport Act No. 11/2000 (Article 51), the Civil Service Act No. 67/1999 (Article 47) and the Defence and Armed Forces of the Republic of Bulgaria Act No. 112/1995 (Article 274(2)) provide for restrictions on the right to strike for certain professions

RESEARCH AT NATIONAL LEVEL - BULGARIA

- Civil servants may strike, enlarging the right only to go on a symbolic strike (article 47)
- Staff of the Ministry of Defence (civilians and army officers) are all denied the right to strike
- Police officers their right to strike is limited: a written agreement is needed at least three days before the start of the strike. The agreement must provide that, during the strike itself, the workers and the employer will ensure conditions for carrying out activities whose non-performance or interruption may endanger or cause irreparable damage to:
 - (a) the lives and health of people in need of urgent/emergency medical care or hospital admittance;
 - (b) the production, distribution, transmission and supply of gas, electricity and heating, adequate public utilities and public transport services, radio and television broadcasts and telephone services;
 - (c) public or private property or the environment;
 - (d) public order.
- Should the parties fail to reach such an agreement, they may each request the assistance of the National Institute for Conciliation and Arbitration to resolve the matter by a sole arbitrator or an arbitration committee

RESEARCH AT NATIONAL LEVEL - BULGARIA

Collective bargaining agreements are rather exceptional: the state unilaterally pay and most working conditions.

However, collective bargaining agreements are concluded mainly in the public sector with regard to working time, possibility for leaves and health issues.

Collective bargaining remains a difficult topic in Bulgaria in general and the public sector seems to be a sector where more agreements are concluded

RESEARCH AT NATIONAL LEVEL – ROMANIA

- Law No. 62/2011 on social dialogue (the Social Dialogue Act – ‘SDA’, Chapter V, Articles 181-207) and the Labour Code (Articles 233-236 of Law No. 53/2003 as amended several times).
- Under Article 181 of the SDA, a strike is defined as
‘any form of collective and voluntary cessation of work within an undertaking’.

RESEARCH AT NATIONAL LEVEL - ROMANIA

Law No. 188/1999 on the status of civil servants (Article 30: '*(1) Civil servants shall have the right to strike under the conditions laid down by law. (2) Civil servants on strike shall not be entitled to salary or any other salary-related rights during the strike.*');

Law No. 80/1995 on the status of military personnel (Article 28(c): '*Active military personnel may not call or participate in a strike*');

Law No. 384/2006 on the status of soldiers and enlisted service personnel (Article 25: '*Soldiers and enlisted service personnel are prohibited from or restricted in exercising certain rights and freedoms in accordance with the conditions laid down by law in relation to active military personnel.*')

RESEARCH AT NATIONAL LEVEL – ROMANIA

- The right to call a strike is limited to trade unions which is different from Bulgaria (individual right)

The right to strike is prohibited for

- prosecutors and judges;
- military personnel and staff with special status within the Ministry of National Defence, the Ministry of Administration and the Interior, the Ministry of Justice and of all institutions and structures subordinated to or coordinated by these ministries, including staff within the National Administration of Prisons, of the Romanian Intelligence Service, of the Foreign Intelligence Service and of the Special Communications Service, as well as personnel employed by foreign armed forces stationed on Romanian territory; and
- other categories of personnel for whom the right to strike is forbidden by law

RESEARCH AT NATIONAL LEVEL - ROMANIA

- **Collective bargaining is under pressure:**
- Sectoral collective bargaining is replaced by a mere information process .
- Based on current situation: significant problems for unions with even legal prosecutions for union leaders and for strikers

RESEARCH AT NATIONAL LEVEL – HUNGARY

- The **Constitution** of Hungary (Basic Law of Hungary of 25 April 2011) – Article XVII(2) guarantees the right to bargain collectively and the right to strike: *‘Employees, employers and their organisations shall have the right, as provided for by an Act, to negotiate with each other and conclude collective agreements, and to take collective action to defend their interests, including the right of workers to discontinue work.’*
- Under the Constitution, *only* workers have the right to engage in a ‘work stoppage.’

RESEARCH AT NATIONAL LEVEL - HUNGARY

- Right to strike: exceptions are foreseen in the Hungarian Act on Strikes
- The right to strike is prohibited for **judicial bodies**, the **police** and **armed forces**, and **law enforcement agencies**, as well as for **civilian national security services**.
- Staff members with competence regarding financial issues of the **National Tax and Customs Authority** also may not exercise the right to strike.
- According to the Constitutional Court, the prohibition of strikes in the judiciary is provided for in the Constitution, since a strike by its members could potentially endanger the exercise of basic rights by third parties

RESEARCH AT NATIONAL LEVEL - HUNGARY

As for staff of **state** or **public administration bodies**, the right to strike may be exercised only in accordance with the special regulations outlined in the agreement concluded in 1994 between the Government and the trade unions concerned.

This agreement regulates the right to strike in the public sector and introduces a number of restrictions on the right to strike of civil servants. For example, only those trade unions that participated in the conclusion of the agreement concerned may call a strike. Furthermore, a trade union may call a strike only if it is approved by a majority of the civil servants concerned.

The right to initiate a solidarity strike is also restricted in the civil service.

Hungarian labour lawyers consider that these limitations, which are based on a mere agreement instead of on an Act of Parliament, are unconstitutional

RESEARCH AT NATIONAL LEVEL - HUNGARY

- The reform in the Labour Code 2012 increased the number of unilateral management decisions
- A transfer of collective bargaining topics and potential collective bargaining agreements towards a decentralized level has taken place, including in the public sector
- Limitations to the existing system: sustainability?

RESEARCH AT NATIONAL LEVEL – HUNGARY

- Evoluton whereby more and more civil servants lose their right to strike although legal judgements may decide differently (e.g. 20 July 2021).
- KMC vs. Hungary: the dismissal froms ervice without any motivation which even did not need to be disclosed in a legal procedure before a tribunal or a court.

RESEARCH AT NATIONAL LEVEL – CZECH REPUBLIC

- Article 27(4) of Constitutional Act No. 2/1993 Coll., the Charter of Fundamental Rights and Basic Freedoms, states that: *‘The right to strike is guaranteed under the conditions provided for by law; this right does not appertain to judges, prosecutors, or members of the armed forces or security corps.’*

RESEARCH AT NATIONAL LEVEL – CZECH REP

Article 16(2) of Act No. 2/1991 Coll., the Collective Bargaining Act (CBA), defines a strike as a '*partial or full interruption of work by employees*'. A strike may be called only as a last resort (*ultima ratio*) in a dispute over entering into a collective agreement. Articles 20 of the CBA restricts the right to strike of state conditions under which it can be used.

RESEARCH AT NATIONAL LEVEL – CZECH REP

- According to Article 20(g), (h), (i), (j) and (k) of the CBA, strikes by the following categories of workers are illegal:
- workers in health and social care, where a strike could endanger people's lives or health;
- employees operating nuclear power stations or dealing with fissile materials, or oil or gas pipelines;
- members of the fire brigade and members of rescue squads established at certain workplaces by specific regulations;
- air traffic controllers;
- workers ensuring the operation of telecommunications, where a strike could endanger people's lives or health or cause damage to property;
- employees working in areas affected by natural disasters where emergency measures have been declared by the competent state authorities;
- judges, prosecutors and members of the armed forces and security corps

RESEARCH AT NATIONAL LEVEL – CZECH REP

- Collective bargaining agreements took place in 2015 as a consequence of the Czech Civil Service Act of 2014
- Holiday allowances, sick leave and bonuses concerned the topic of the agreement
- Not for military staff nor for police officers

RESEARCH AT NATIONAL LEVEL – SLOVAKIA

- Article 37(4) of the Constitution: ‘The right to strike is guaranteed. The conditions shall be laid down by law. Judges, prosecutors, members of the armed forces and armed corps, and members and employees of the fire and rescue brigades do not have this right.’

RESEARCH AT NATIONAL LEVEL - SLOVAKIA

- The Collective Bargaining Act (No. 2/1991) furthermore defines as illegal strikes carried out by the following categories of personnel in certain situations:
 - (a) employees of healthcare or social care establishments in situations where a strike could endanger the life or health of citizens;
 - (b) employees operating nuclear power plant equipment, equipment with fissile material or crude oil/gas pipeline facilities
 - © employees responsible for the operation of telecommunications in situations where a strike could endanger the life or health of citizens or cause damage to property;
 - (d) employees working in regions stricken by a natural disaster where emergency measures have been proclaimed by the competent state bodies;
 - (e) civil employees appointed as superiors and civil servants discharging service duties directly related to the protection of life and health, where their participation in a strike could endanger the life or health of the population.

The Act also specifies that a strike is illegal if a state of military alert has been declared by the Government and emergency measures have been introduced.

RESEARCH AT NATIONAL LEVEL - SLOVAKIA

Collective bargaining
weekly working hours

- 37.5 hours worked over single shifts, 36.25 hours in split shifts and a maximum of 35 hours in a three-shift arrangement or non-stop operation (the Labour Code specifies a maximum of 40 hours);
- a minimum five-weeks' paid holidays;
- an increase of wages/salary tariffs for civil servants;
- a discharge benefit for retiring employees that gives one month's more salary than stipulated by the Act on the Civil Service;
- an employers' contribution to employees' supplementary pension scheme (the third pillar) that is the equivalent of 2% (at least) of civil servants' total annual wage bill;
- a contribution by employers to the Social Fund that must be the equivalent of 1% of the total annual pay bill, plus a minimum additional contribution of 0.05%.

The same provisions are agreed in the public service multi-employer agreements, with the exception of provisions dealing with the increase in public servants' salary tariffs. The scope of multi-employer and single-employer collective agreements is interlinked. Negotiable issues in the single-employer agreements are specified in the respective multi-employer agreement. It is possible, therefore, to set higher rates of severance pay and discharge benefit for retired employees in a single-employer agreement than those agreed in the relevant multi-employer agreement. In public service organisations, it is also possible to bargain on any issue of employment and working conditions not specifically banned by law.

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