The right to strike in the public sector

Romania

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This factsheet reflects the situation in June 2019. It was elaborated by Diana Balanescu (independent expert), updated by Stefan Clauwaert (ETUC/ETUI), reviewed by EPSU/ETUI and sent for comment to EPSU’s Romanian affiliates.
1. Legal basis

International level

Romania has ratified:

**UN instruments**¹

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

**ILO instruments**²

- **Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise**
  (28 May 1957)
- **Convention No. 98 on the Right to Organise and to Bargain Collectively**
  (26 November 1958)
- **Convention No. 154 concerning the Promotion of Collective Bargaining**
  (15 December 1992)

Romania did not ratify

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

European level

Romania has ratified, in particular:

**Article 6(4) (the right to collective action) of the Revised European Social Charter of 1996**
with no reservations (ratification on 7 May 1999, entry into force on 1 July 1999)³

Romania has not accepted the **Additional Protocol to the European Social Charter Providing for a System of Collective Complaints**⁴

**Article 11 (the right to freedom of assembly and association) of the European Convention on Human Rights**
(ratification and entry into force on 20 June 1994)⁵
National level

The Constitution of Romania
Article 43 of the Constitution of Romania, under Title II ‘Fundamental rights, freedoms and duties’, states that: ‘(1) The employees have the right to strike in the defence of their professional, economic and social interests. (2) The law shall regulate the conditions and limits governing the exercise of this right, as well as the guarantees necessary to ensure the essential services for the society.’

Applicable laws

  o Under Article 181 of the SDA, a strike is defined as ‘any form of collective and voluntary cessation of work within an undertaking’. Strikes may be declared only to protect the professional, economic and social interests of employees, and they may not target political goals.

• Specific regulations for the public sector – Articles 202 to 207 of the SDA set out restrictions on the exercise of the right to strike for certain categories of employees or workplaces as detailed under section 4 below. Other relevant pieces of legislation include: 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.’)
2. Who has the right to call a strike?

According to Article 183 of the SDA, the right to call a strike belongs to the representative trade unions involved in the collective labour dispute, and it requires the written approval of at least half of the respective trade unions’ members.\textsuperscript{12} For undertakings that do not have representative trade unions, the decision to call a strike is to be taken by the employees’ representatives, with the written approval of at least one quarter of the employees of the respective undertaking.\textsuperscript{13} The latter rule is not applicable in the case of sympathy strikes.\textsuperscript{14}

It has been noted\textsuperscript{15} that, according to national law, the right to strike is an individual right held by workers.\textsuperscript{16} However, it may only be exercised collectively, since a strike consists in the ‘collective cessation of work’,\textsuperscript{17} and one worker only cannot call a strike.\textsuperscript{18}
3. Definition of a strike

A strike may be called provided that: all possibilities under the mandatory procedures for the settlement of disputes have been previously exhausted, a warning strike has taken place and the organisers have informed the employer of the date of the strike at least two working days prior to the beginning of the strike.

The SDA regulates two other types of collective action (in addition to ‘regular’ strike action):

- A sympathy or solidarity strike is a means of supporting the demands of employees from other undertakings belonging to the same group of undertakings or to the same sector. It may not last longer than one working day, and the employer must be informed in writing two working days before the work stoppage begins. The initiative to call a solidarity strike may be taken only by the representative trade unions which are affiliated to the same federation or confederation of the trade union organising the initial (supported) strike, and it requires the written approval of at least half of the members of the respective trade unions.

- A warning (or token) strike may last no longer than two hours and must take place at least two working days before the ‘main’ strike. The main strike may be initiated only if a warning strike has taken place. It is considered that several characteristics follow from Article 185 of the SDA:

(i) a warning strike has two forms: one that implies a collective and voluntary stoppage of work, but only for a duration of no more than two hours, and one that is carried out without a stoppage of work;
(ii) in both cases, a regular strike may be called only after at least two working days following the warning strike;
(iii) in the hypothesis where the warning strike involves a stoppage of work (even one that lasts no more than two hours), all of the legal conditions laid down for regular strike action must be fulfilled;
(iv) even where a warning strike takes place without a collective and voluntary stoppage of work, the strike action must be notified to the employer.

Under Romanian law, strikes with political aims are illegal. According to some, however, a purely political strike is possible only in theory. Strike action that has both occupational and political objectives is encountered in practice.

Romanian legislation does not include provisions for other categories of strike/collective action such as go-slow strikes, sit-in strikes, work-to-rule strikes, possession/retention of the employer’s goods or hunger strikes. In practice, some types of strike have been encountered which are not regulated by law such as Japanese strikes and work-to-rule strikes. A few isolated cases of wildcat strikes have also been reported, involving a stoppage of work for brief periods of time (a few hours a day).
4. Who may participate in a strike?

Article 43 of the Constitution guarantees employees the right to strike. The conditions and limits governing the exercise of this right, as well as the guarantees necessary to ensure the provision of essential services, are laid down by law.

- **Public sector** – the SDA includes specific provisions on the right to strike of the following categories of employees:

  o civil servants may call a strike in accordance with the procedure prescribed by the SDA;

  o the right to strike is prohibited for:
    - 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;

  o there are restrictions on the right to strike for personnel on all modes of transportation (air, sea and land) who may not call a strike from the moment of their departure, while they are on duty and until they return;

  o staff of establishments providing health care and social assistance, telecommunications, public radio and television broadcasting services, railway services, public transport, sanitation services, and gas, electricity, heating and water supplies are permitted to strike provided that a minimum level of service is ensured corresponding to at least one third of normal activity/services;

  o employees involved in the operation of the national energy system, of undertakings operating in the nuclear energy sector and of establishments operating around the clock may go on strike provided that at least one third of the activity is ensured so as not to endanger the lives and health of the people and to ensure the safe operation of the installations concerned.

Romanian legislation does not define which services or sectors of the economy are considered to be ‘essential services’. Article 43 of the Constitution employs the term ‘provision of essential services’. For services such as health care and social welfare, telecommunications, railways and public transport, public radio and television broadcasting, sanitation, as well as gas, electricity, heating and water supplies and nuclear energy, a minimum level of service of at least one third of normal activity is required by law.
It would appear that, under Romanian legislation, these services are considered to be ‘essential’ for the community. For the above-mentioned services, the minimum level of service is established by law.\textsuperscript{40}

‘Essential services’ in the strict sense of the term have been defined by the ILO as those services ‘whose interruption would endanger the life, personal safety or health of the whole or part of the population’.\textsuperscript{41}
5. Procedural requirements

- The decision to call a strike must be taken in relation to an ongoing collective dispute that has arisen following an employer’s refusal to negotiate a collective agreement or to accept workers’ claims, as well as in a situation where the parties fail to reach agreement concerning the conclusion of a collective agreement within a set period of time.\(^2\)

- A strike may be called only if all possibilities under the mandatory procedures for the settlement of disputes have been exhausted.\(^3\) The compulsory conciliation procedure must have failed\(^4\) before a decision on strike action is taken, although it may be followed by the optional procedures of mediation and arbitration, but only if both parties agree.\(^5\) The SDA stipulates that a strike may not be initiated while the mediation and arbitration procedures are taking place, or, where a strike has already been initiated, it may be suspended for the duration of such procedures.\(^6\)

- The decision to call a strike is taken by the representative trade unions involved in the collective dispute, with the written consent of at least half of the respective trade unions’ members.\(^7\) For employees of undertakings that do not have representative trade unions, the decision to call a strike is taken by the employees’ representatives, with the written approval of at least one quarter of the employees of the undertaking or of a branch or department thereof, as the case may be.\(^8\)

- A strike must be notified to the employer at least two working days prior to the beginning of the strike.\(^9\)

- Participation in a strike is voluntary. No one may be forced to participate or prevented from participating in a strike. Employees who are on strike must refrain from any action which may prevent non-striking employees from performing their work.\(^10\)

- During the strike, its organisers may continue negotiating with the employer with a view to settling the collective dispute. During the negotiations, the organisers of the strike and the employer may agree to suspend the strike temporarily. If they reach an agreement, the collective dispute is settled, and the strike ends. If the negotiations fail, the organisers may resume the strike action without having to observe the preliminary procedural requirements.\(^11\)

- Romanian legislation provides for a peace obligation.\(^12\) According to Article 164 of the SDA, during the period of validity of a collective agreement, employees are not permitted to initiate a collective dispute.
6. Legal consequences of participating in a strike

Participation in a lawful strike

- Participation in a strike as well as its organisation does not constitute a breach of the employee’s work duties and does not imply any sanctions. On the contrary, these provisions do not apply if the court finds the strike to be unlawful.\(^{53}\)

- The individual labour contract of an employee who participates in a strike is suspended *de jure* for the entire duration of the strike. Consequently, during a strike, participating workers’ employment rights, including salary rights, are suspended, and only health insurance rights are maintained.\(^{54}\)

- During a strike, the employer has the right to continue work operations with non-striking employees, while the strike organisers are bound to ensure the protection of goods and the continuous operation of machines and equipment in respect of services whose interruption could endanger the life or health of the population.\(^{55}\)

- The employer may not employ other employees to replace those who are on strike.\(^{56}\)

- Workers not participating in a strike may continue their work where possible and, this being the case, are entitled to receive their wages. If they are unable to perform their work, they are entitled to remuneration corresponding to at least 75% of their basic pay due to the temporary interruption of the employer’s activity.\(^{57}\)

- According to Romanian law, trade unions may establish their own funds to assist their members.\(^{58}\)

- Romanian legislation does not provide for the right of the employer to declare a *lockout*. Romanian case law and doctrine\(^{59}\) have held that the employer may resort to a lockout in grave situations which cannot be resolved other than by resorting to such action, and namely in circumstances where:

  (i) it is necessary to ensure the maintenance of order and security, which are endangered by a strike that, if it were to continue, might trigger the legal liability of the employer;

  (ii) the employer, due to the strike, is unable to ensure the proper functioning of the undertaking. It has also been postulated that a lockout would be justified as a means of counteracting an illegal strike.\(^{60}\)

Participation in an unlawful strike

- An employer who considers a strike to be illegal may request a court injunction to stop the strike. The competent court to hear the case is the court (tribunal) that has jurisdiction over the area where the undertaking is located. Within two working days of receiving the application, the court will summon the parties and hold a hearing to decide the case. The court may either reject the employer’s application or admit the claim and consequently order that the workers end the strike. The decision handed down by the court is subject to appeal.\(^{61}\)
• When a strike has been found to be unlawful, the court may rule that the organisers of the strike and the employees participating in the strike are obliged to pay damages to the employer.\(^{62}\)

• The SDA provides for the following forms of liability:

  (i) civil liability of the participants in the strike and its organisers in order to cover any damage caused to the employer during an unlawful strike;

  (ii) contraventional (administrative) liability in the form of a fine of LEI 5,000 to 10,000 (approximately EUR 1,080 to 2,160) imposed on anyone who prevents an employer from continuing operations with non-striking employees,\(^{63}\)

  (iii) criminal liability potentially leading to a prison sentence of between 6 months and 2 years or a fine for anyone who uses threats or violence to force an employee or a group of employees to participate in or to work during a strike or to prevent an employee or a group of employees from participating in or working during a strike\(^{64}\) or criminal liability\(^{65}\) potentially resulting in a prison sentence of between 1 month and 1 year or a fine where a strike is called by the organisers without their having observed the conditions laid down by Article 191(1) of the SDA (which states that no one may be forced to participate or prevented from participating in a strike), as well as the restrictions imposed by Articles 202 to 205 of the SDA (which prohibit the right to strike for members of certain professions such as judges, prosecutors and military personnel and impose a minimum level of service of at least one third of normal activity in the case of strikes in essential services).\(^{66}\)

• In the case of an unlawful strike, the cessation of work by employees is considered to be a wrongful act and a breach of work duties. The employer may initiate disciplinary proceedings, which in turn may lead to the dismissal of the workers involved.\(^{67}\)
7. Case law of international/European bodies

International Labour Organization (ILO)

Committee of Freedom of Association (CFA)


In its complaint dated 31 July 2015, the complainant organisation alleged that, at Chimica Automotive SA (one of the enterprises from the industrial platform Chimica SA), one day before the beginning of a legally announced strike on 23 September 2015, two union leaders had their work contracts suspended and were no longer allowed access to the premises. They recalled that, in accordance with Articles 193 and 197 of the Social Dialogue Act, the organisers of a strike must continue negotiations with the management and have the obligation to protect the assets of the company, being liable for any damage caused by the participants during the strike. However, these obligations became impossible to meet under the circumstances.

The complainant added that, in response to its request for intervention, the Hunedoara Labour Inspectorate did not consider the above actions as abuse and did not impose any penalty on the enterprise. The strike had to be cancelled.

Concerning the suspension of two union leaders before a strike at one of the enterprises from the industrial platform, the Committee observed that the Government did not contest the allegations and argued that, according to Article 195(1) of the Social Dialogue Act, the individual labour contract of the employee is suspended by law for the whole duration of participation in the strike. The Committee noted, however, that the employment relationship of the trade union leaders was already suspended one day before the strike. Noting that the Labour Inspectorate had not established any irregularities, the Committee recalled that no one should be penalised for carrying out or attempting to carry out a legitimate strike, and that it had previously emphasised that respect for the principles of freedom of association requires that workers should not be dismissed or refused re-employment on account of their having participated in a strike or other industrial action. It is irrelevant for these purposes whether the dismissal occurs during or after the strike.

Logically, it should also be irrelevant that the dismissal takes place in advance of a strike, if the purpose of the dismissal is to impede or to penalise the exercise of the right to strike (see *Digest of decisions and principles of the Freedom of Association Committee*, fifth edition, 2006, paragraphs 660 and 663).

Noting that, moreover, the suspension prior to the strike was accompanied by a denial of access to the undertaking which made it impossible for the trade union leaders to pursue their legitimate trade union activities, the Committee considered that this measure amounted to a sanction of trade union activity and an act of anti-union discrimination, and requested the Government to take measures to ensure adequate compensation for the workers concerned and ensure full respect of the above principles in the future.
In their complaint dated 30 July 2006, the ITF and its affiliate, the USLM, representing 5,200 metro workers, alleged that, while the right to strike is recognised in Romania, unreasonable restrictions are placed on this right. In the event of a strike, employees in the transport sector must provide a minimum service of one third of the normal activity. Strikes may be held only if all means of conciliation have failed.

The employer must be given 48 hours’ warning. Strikes may be held only to defend the economic interests of the workers and must not be used for political reasons. Strikes are illegal if a collective agreement is in existence, even if the dispute concerns an emerging problem not covered by the existing agreement and the employer refuses to negotiate the new issue with the union. If the strike is declared illegal, the trade union leader can be fired, even if the strike is ended immediately after being declared illegal.

The Committee recalled that determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers’ and workers’ organisations. This not only allows a careful exchange of viewpoints on what, in a given situation, can be considered to be the minimum services that are strictly necessary, but also contributes to guaranteeing that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organisations that a strike has come to nothing because of over-generous and unilaterally fixed minimum services (see Digest, op. cit., paragraph 612).

In view of the fact that no legislative amendments seem to have been adopted in this respect, the Committee requested the Government to amend its legislation so as to ensure that the minimum services to be maintained in the transport sector are negotiated by the social partners concerned rather than set by the legislation and that, in the absence of agreement between the parties, minimum services are determined by an independent body.

With regard to the complainants’ allegation that strikes are illegal if a collective agreement is in existence, even if the dispute concerns an emerging problem not covered by the existing agreement and the employer refuses to negotiate the new issue with the union, the Committee recalled that, if strikes are prohibited while a collective agreement is in force, this restriction must be compensated for by the right to have recourse to impartial and rapid mechanisms, within which individual or collective complaints about the interpretation or application of collective agreements can be examined; this type of mechanism not only allows the inevitable difficulties which may occur regarding the interpretation or application of collective agreements to be resolved while the agreements are in force, but also has the advantage of preparing the ground for future rounds of negotiations, given that it allows problems which have arisen during the period of validity of the collective agreement in question to be identified (see Digest, op. cit., paragraph 533).

Although strikes of a purely political nature do not fall within the scope of the principles of freedom of association, the Committee considered that the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organisations should be able to express in a broader context, if
necessary, their dissatisfaction as regards economic and social matters affecting their members’ interests (see Digest, op. cit., paragraphs 528 and 531).

With regard to the complainants’ allegation concerning the legislative restriction that strikes may be held only to defend the economic interests of the workers and must not be used for political reasons, the Committee recalled that, while purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticising a government’s economic and social policies (see Digest, op. cit., paragraph 529).

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

Direct Request (CEACR) – adopted 2015, published 105th ILC session (2016)\(^70\)

In its previous comments, the Committee had drawn the Government’s attention to the need to amend:

i) Article 29(3) of Law No. 188/1999 on the status of civil servants, which provides that high-level civil servants or civil servants with budgetary responsibilities are suspended if they choose to exercise activities in the management of a trade union;

ii) Article 205 of Law No. 62/2011 on social dialogue (Social Dialogue Act) which establishes minimum services by law; and

iii) Article 30(2) of Law No. 188/1999 which stipulates that public servants on strike do not benefit from wages or any other wage-related rights, so that the matter is left for resolution between the parties.

The Committee also requested the Government to provide detailed information on the practical application of Articles 198 to 200 of the Social Dialogue Act (under which the management may request the court to pronounce itself on the cessation of a strike, and the court must, within two days, issue an urgent ruling as to whether the strike is illegal).

The Committee noted that the Government provided no information regarding the previously raised issue of minimum services set by law (Article 205 of the Social Dialogue Act). The Committee requested the Government to indicate the measures taken or envisaged to amend Article 205 of the Social Dialogue Act to allow for minimum services in the relevant sectors to be negotiated by the social partners concerned, and, in the absence of agreement, to be determined by an independent body.

Concerning the practical application of Articles 198 to 200 of the Social Dialogue Act, the Committee noted the Government’s indication that no cases were recorded relating to the application of these provisions, and that the registered collective disputes have been resolved by way of dialogue or conciliation. The Committee requested the Government to continue to provide any information on the practical application of Articles 198 to 200 of the Social Dialogue Act under which the management may request the court to pronounce itself on the cessation of a strike, and the court must, within two days, issue an urgent ruling on its legality.

With respect to the issue of wage payments to public servants on strike, the Committee noted that the Government indicated that the suspension of wage payments to public servants on strike does not hinder their payment from the trade union fund. The Committee considered that the concern raised relates to the payment of wages by the public employer, and that, in imposing the suspension of such payment for all strikes, the provision restricts the freedom of the public
employer and the unions concerned to agree otherwise. The Committee thus once again highlighted the need to amend Article 30(2) of Law No. 188/1999 so that the suspension of wages of public servants on strike can be the subject of negotiation between the parties concerned.

**European Social Charter**

**Conclusions on Article 6(4) of the European Committee of Social Rights (ECSR)**

In its Conclusions 2014 on Article 6(4), the ECSR concluded that the situation in Romania was not in conformity with Article 6(4) of the Charter on the ground that only representative trade unions may take collective action.\(^7^1\) In this connection, the Committee noted that, according to Article 183 of the Social Dialogue Act, the right to call a strike belongs to the representative trade unions involved in the conflict, and it requires the written approval of at least half of the respective trade unions’ members. The Committee recalled that it had previously held that limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6(4) of the Charter (Conclusions XV-1 (2000) France).\(^7^2\)

The Committee further noted that the Social Dialogue Act provides for restrictions of the right to strike for some categories of personnel from the defence, public order and national security sector. According to the provisions of Article 202 of the Social Dialogue Act, the following categories are prohibited from exercising the right to strike: prosecutors, 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 or 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.

The Committee recalled that the right to strike of certain categories of public officials may be restricted. Under Article G of the European Social Charter, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc. (Conclusions I (1969) Statement of Interpretation on Article 6(4)). The Committee observed that the restrictions imposed on the categories listed above do not go beyond the margin of appreciation enjoyed by the State.\(^7^3\)

The Committee also noted that Article 202 of the Social Dialogue Act provides that the restriction on the right to strike also refers to other categories of personnel with respect to whom the exercise of the right to strike is forbidden by law. The Committee asked whether, to whom and in what circumstances the latter provision is being applied in practice.\(^7^4\)

As regards the restrictions applicable within key sectors, such as telecommunications, nuclear and national energy systems, firefighting services, and gas, energy and water supply, the Committee noted that the right to strike is permitted provided that at least one third of the activity is ensured, in order to guarantee some minimum services and in order to protect the life and health of the people (Articles 205 and 206 of the Social Dialogue Act).\(^7^5\)

In its 2018 Conclusions, the ECSR examined the situation with respect to the right to collective action (definition, permitted objectives, entitlement to call a collective action, restrictions and procedural requirements and consequences of a strike had been covered in its previous
conclusions. It therefore only considered recent developments and additional information in this conclusion.

Entitlement to call a collective action

The Committee found in its previous conclusions (2002, 2004, 2006, 2010, 2014) that the situation was not in conformity with Article 6§4 of the Charter, on the grounds that a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union’s members.

The Committee observes that the situation has not changed. Therefore, the situation remains to be not in conformity with the Charter on this point.

Restrictions to the right to strike and procedural requirements

The Committee previously requested further information on the categories of persons whose right to strike is restricted.

In addition to the categories described in the previous report (judges, prosecutors, military staff with special status in the Ministry of Defence, Intelligence Service etc.), the report states that persons employed in air, road or water transport cannot strike whilst on duty. The Committee asks for clarification of what in fact this means. Meanwhile it reserves its position on this issue. The Committee asks whether members of the prison service have the right to strike.

The Committee refers to its question on the right of members of the police to strike.

As regards the provision of a minimum service during a strike, the Committee asks whether there are sectors where the provision of a minimum service is required and if so whether the social partners are involved in the discussions on the minimum service to be provided on an equal footing.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 6§4 of the Charter on the ground that a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union’s members.76
8. Recent developments

In 2013, the International Labour Organization published a report by a group of independent experts which is highly critical of the impact of industrial relations reforms in Romania, mainly the Social Dialogue Act of 2011. As regards the right to strike, the report refers to the new condition that must be met prior to calling a regular strike: carrying out a token (warning) strike. In addition, the report finds that the new conditions established for acquiring representativeness have also diminished the power of trade unions to effectively commence and carry out collective conflicts, including strike action. The report further mentions that ‘Public sector workers have also been especially badly affected by new laws which affect their wages and a wide range of other entitlements. These reforms have been combined with new rules restricting the scope for collective bargaining to take place about those very entitlements.’

In May 2015, the Romanian Parliament adopted a set of amendments to the Social Dialogue Act. However, in June, the President sent the law back to Parliament for reexamination, claiming that the criteria for representativeness of unions at company level must be reduced. The President referred to the need to reduce the representativeness threshold for trade unions at company level, in order to ensure the right to collective bargaining. The initial draft law had provided for a reduction in the representativeness threshold for the unions at company level from 50%+1 to 30%+1, but this proposal was rejected during the legislative process.
9. Bibliography

Notes


2 Status of ratification by Romania of ILO conventions:


6 The Constitution of Romania was adopted on 21 November 1991 and revised following a referendum held in October 2003; the amended version of the Constitution came into force on 29 October 2003.


8 The text of Law No. 62/2011 concerning social dialogue, as amended up to 14 August 2013, is available in Romanian at: http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88307/100919/F-1055965431/ROM88307%20Ro.pdf.

9 An ‘undertaking’ is defined by Article 1(k) of the SDA as ‘a legal entity that directly employs workers’.

10 Article 190 of the SDA.

11 See 13th National Report on the implementation of the European Social Charter submitted by Romania; see information provided on Article 6(4), available at: https://rm.coe.int/1680488926.

12 Article 183(1) of the SDA.

13 Article 183(2) of the SDA.

14 Article 186(2) of the SDA.


16 See Article 43 of the Constitution.

17 Article 234(1) of the Labour Code and Article 181 of the SDA.


19 The lawfulness of a strike is conditioned by the compulsory procedure of conciliation between parties. Mediation and arbitration procedures are subject to the mutual agreement of the parties involved in the collective dispute. See Articles 167 to 180 of the SDA.

20 Article 182 of the SDA.


22 Article 186(1) of the SDA; and Eurofound, EurWORK, Working life in Romania, country profile, 18 October 2017, available at: https://www.eurofound.europa.eu/fr/country/romania.

23 Article 186(3) of the SDA.

24 Article 186(2) of the SDA; ECSR, Conclusions 2014, Romania, Article 6(4).

25 Article 185 of the SDA.

26 Article 182 of the SDA.


28 Article 190(2) of the SDA; and ETUI Report 103, p. 60.


30 Idem. The authors note that political measures sometimes affect the occupational interests of workers, and that this justifies the allegation of certain political claims pursued through strike action. The major strikes that took place in Romania from 1990 onwards also involved political claims, since the strikers demanded, inter alia, ‘the stoppage of the fraudulent bankruptcy of industry and agriculture’, criticised the ‘economic policy’ of the State and sought the resignation of the Government, the Prime Minister and even the President; see also section 8 below concerning the intention announced by the Government to transfer the payment of social contributions from the employer to the employee that has triggered protests and even a decision to call a general strike in Romania.


32 ECSR, Conclusions 2014, Romania, Article 6(4).
33 Article 207 of the SDA; see also Article 30 of Law No. 188/1999 on the status of civil servants which provides that ‘(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.’

34 Article 202 of the SDA.

35 ECSR, Conclusions 2014, Romania, Article 6(4); for more details, see section 7 below.

36 Articles 203 and 204 of the SDA.

37 Article 205 of the SDA.

38 Article 206 of the SDA.

39 Articles 205 and 206 of the SDA.

40 See ILO CEACR, Direct Request – adopted 2015, published 105th ILC session (2016), detailed in section 7 below in which the ILO CEACR requests the Government to indicate ‘the measures taken or envisaged to amend Section 205 of the Social Dialogue Act to allow for minimum services in the relevant sectors to be negotiated by the social partners concerned, and in the absence of agreement, to be determined by an independent body’.

41 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Geneva, 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 the 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.

42 Article 161 of the SDA.

43 Article 182 of the SDA.


45 ETUI Report 103, p. 60.

46 Article 188 of the SDA, and ECSR, Conclusions 2014, Romania, Article 6(4).

47 Article 183(1) of the SDA.

48 Article 183(2) of the SDA.

49 Article 182 of the SDA; see also ETUI, Reforms Watch, Strikes in Romania, background summary, available at: https://www.etui.org/ReformsWatch/Romania/Strikes-in-Romania-background-summary (last updated in November 2016).

50 Articles 191 and 192 of the SDA.

51 Article 197 of the SDA, and ECSR, Conclusions 2014, Romania, Article 6(4).

52 ETUI Report 103, pp. 10 and 60.


54 Article 195(1) of the SDA.

55 Articles 193(1) and 194(1) of the SDA.

56 Article 194(2) of the SDA.

57 Article 53(1) of the Labour Code.

58 Article 25 of the SDA.


60 Idem.

61 Articles 198 to 201 of the SDA; ECSR, Conclusions 2014, Romania, Article 6(4).

62 Article 201(2) of the SDA.

63 Article 217(1)(e) of the SDA.

64 Article 218(1) of the SDA.

65 Article 218(4) of the SDA.

66 See Article 191(1) of the SDA, Articles 202 to 205 of the SDA and section 4 above.


71 ECSR, Conclusions 2014, Romania, Article 6(4), available at: http://hudoc.esc.coe.int/eng#{"ESCArticle":"["06-04-000"]","ESCDcLanguage":"["ENG"]","ESCDcType":"["Conclusion"]","ESCStateParty":"["ROU"]","ESCDcIdentifier":"["2014/def/ROU/6/4/EN"]"}.
72 Idem; see also ECSR, Conclusions 2002, 2004, 2006 and 2010, Romania, Article 6(4).
73 ECSR, Conclusions 2014, Romania, Article 6(4).
74 Idem.
75 Idem.
76 ECSR Conclusions, Romania, Article 6(4), available at: https://hudoc.esc.coe.int/eng#{"ESCArticle":"["2206-00-000%22,","2206-04-000%22],","ESCDcLanguage":"["ENG"]","ESCDcType":"["Conclusion"]","ESCStateParty":"["ROU"]","ESCDcIdentifier":"["222018/def/ROU/6/4/EN"]"}.