



Labour rights in public services and ILO Convention 151

Joint EPSU, EUROMIL and EuroCOP conference on trade union rights
16 November 2021

Carlos R. Carrión-Crespo
Sectoral Policies Department

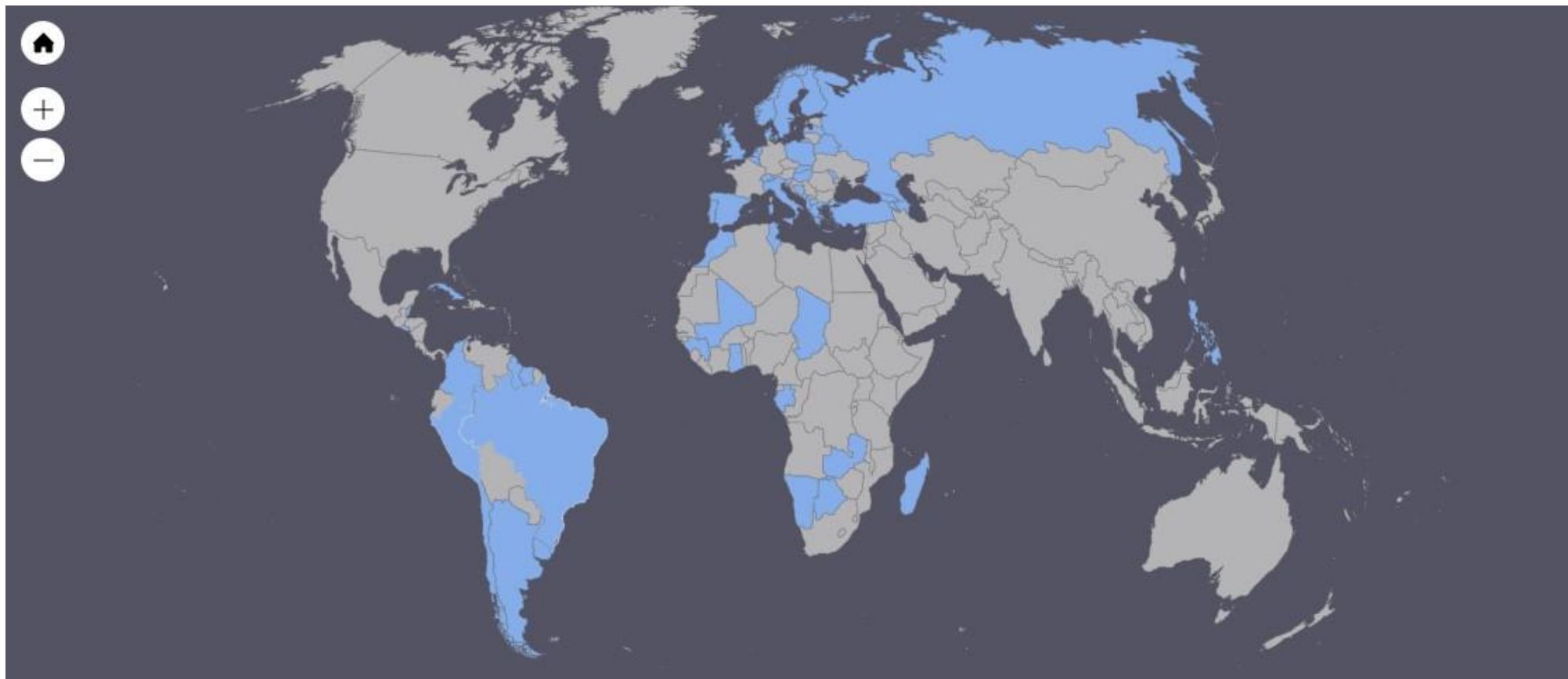
▶ C151

- Adopted on 27 June 1978
- Entered into force on 25 February 1981
- Currently ratified by 57 countries.

PURPOSE

- Expansion of public-service activities
- need for sound labor relations between public authorities and public employees' organizations
- To complement Convention No. 98

Ratifications include Hungary, Moldova, Russia and Slovakia



In process: Bulgaria, South Africa, Ukraine.

► Guarantees

C151 has five types of guarantees:

- **Protection of the right to organize,**
- **facilities to be afforded to public employees' organizations,**
- **procedures for determining terms and conditions of employment,**
- **settlement of disputes arising in connection with the determination of terms and conditions of employment.**
- **civil and political rights**

► Article 1: Scope, Exclusions and Exemptions

Applies to all persons employed in the public service.

Art. 1(2): it is possible to exclude “high-level employees whose functions are normally considered as policy-making or managerial” or “employees whose duties are of a highly confidential nature”.

The ILO supervisory bodies have restricted which officials may be excluded.

No distinction between permanent and temporary or contract staff

► Exclusions

Art. 1(3): the Government may determine, through national laws or regulations, the extent to which C151 applies to the armed forces and the police, like in C98.

Being white-collar employees does not automatically mean they are engaged in the administration of the State

It is allowed to bar civil servants in senior positions to hold trade union office.

► Police: excluded from C151?

Art. 1(3): the Government may determine, through national laws or regulations, the extent to which C151 applies to the armed forces and the police, like in C98.

ILO Constitution: *In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.*

CEACR: *Once freedom of association is granted to members of police, Convention No. 98 is extended to them.*

Reasoning

General Survey, 2008:

These exceptions are justified on the basis of the responsibility of these two categories of workers for the external and internal security of the State.

In the view of the Committee, these exceptions must however be construed in a restrictive manner.

► 45 European countries recognize FOA for police

Albania	France	Lithuania	Romania
Andorra (not a member)	Germany	Luxembourg	Russia
Austria	Gibraltar	Malta	Serbia
Belgium	Greece	Moldova	Slovakia
Bosnia and Herzegovina	Guernsey	Monaco	Slovenia
Bulgaria	Hungary	Montenegro	Spain
Croatia	Iceland	Netherlands	Sweden
Cyprus	Ireland	North Macedonia	Switzerland
Czech Republic	Isle of Man	Norway	Ukraine
Denmark	Italy	Poland	United Kingdom
Estonia	Kosovo	Portugal	
Finland	Latvia		

► Sample of authorizing statutes

Albania- Section 83(2)(2) of the Law on Police, No. 108/2014, states that "Any police officer, except the Director of the State Police, has the right to be a member of one of the unions." Section 83(2)(4) adds that "Relations between unions and the Director of State Police regulated in a collective agreement."

Gibraltar (UK territory)- Art. 49 of the Police Act 2006 (as amended) establish the Police Federation "to represent members of the Force in all matters affecting their welfare and efficiency except for (a) questions of promotion affecting individuals; and (b) questions of discipline." Art. 7(1) of Police Federation Regulations of 21 June 2018 allow it to "at any time submit representations to the Commissioner, the Authority or the Government".

Greece- Act No. 2265/1994: "the exercise of trade union rights of police officers may not exceed the limits determined by the peculiarities, the mission and especially the national, social and cross-party character of the Greek Police." . . . "Every police officer is entitled to be a member only of the primary trade union organization of the prefecture or of the administrative district where he serves." (Article 5).

► Countries that don't recognize FOA for police officers

Armenia

Belarus

Kazakhstan

Tajikistan

Turkey

- Unknown: Georgia, Liechtenstein, Kyrgystan, San Marino, Tajikistan

► Texts prohibiting affiliation

Belarus- Art. 32 of the Law on Internal affairs bodies states that "The procedure and conditions for service in the internal affairs bodies, including the list of special ranks of employees of the internal affairs bodies and the procedure for their assignment, are regulated by the Regulations on the passage of service in the internal affairs bodies, approved by the President of the Republic of Belarus. Employees of the internal affairs bodies cannot be members of political parties and other public associations pursuing political goals."

Tajikistan- Act No. 41 of 2004: "The procedure, terms and conditions of service in the police are regulated by the Regulations on service by the regular and senior staff of the internal affairs bodies of the Republic of Tajikistan, approved by the Government of the Republic of Tajikistan."

Turkey- Law No. 4688 on Public Servants' Unions and Collective Bargaining Law, which states that "those in the security services class" cannot join and establish a union.

► ***Articles 4 and 5: Protection of the Right to Organize***

Guarantees provided to public employees and their organizations:

- **Adequate protection against acts of anti-union discrimination in respect of public employees' employment (Article 4(1)) and**
- **Adequate protection against any acts of interference by a public authority in their establishment, functioning or administration (Article 5 (2)).**

Protection of the Right to Organize

These are null and void:

- **Agreements, provisions or acts that subject employment or conditions of work to being or becoming a member of a trade union or to renouncing membership, even during recruitment.**
- **Requirement of prior governmental authorization to affiliate to organizations outside the country.**

Laws or regulations should provide rapid and effective remedies and sufficiently dissuasive sanctions, which includes concrete penal provisions for cases of interference

► Recommendation 159

As many ILO instruments, C151 is accompanied by a non-binding, but highly useful Recommendation.

Recommendation No. 159 provides guidance about recognition of public employees' organizations for bargaining purposes,

If a preferential or exclusive agent system is preferred, objective and pre-established criteria on its representative character.

Article 6: Facilities to be Afforded to Public Employees' Organizations

Representatives of recognized public employees' organisations should have access to facilities that enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.

These shall not impair the efficient operation of the administration or service concerned.

R 159: the Workers' Representatives Recommendation, 1971 (No. 135) provides guidance on the nature and scope of the facilities.

Facilities to be Afforded to Public Employees' Organizations

Government should examine with the social partners how to promote the facilities to be granted to workers' representatives.

Examples:

- Transport/ communication
- Time off for union duties
- Access to management
- Right of assembly and to attend meetings
- Ability to collect trade union dues regularly on the premises
- Authorization to post union notices
- Capacity to denounce violations to competent authorities.

Article 7: Procedures for Determining Terms and Conditions of Employment

Art. 7 urges member States to “promote the full development and utilization of machinery for negotiation of terms and conditions of employment . . . or of such other methods as will allow representatives of public employees to participate in the determination of these matters.”

“Negotiation” under C 151 is “any form of discussion, formal or informal, that was designed to reach agreement.”

Procedures for Determining Terms and Conditions of Employment

Negotiating procedures should be created through laws or regulations recognizing the right to collective bargaining.

The State must ensure that the machinery is applied properly.

Not only individual employees but also public employees' organizations should be able to participate in the determination of their terms and conditions of employment through negotiation or other methods in equally balanced bodies.

Procedures for Determining Terms and Conditions of Employment

Minority organizations should be able to take part in determining conditions of employment, or at least make representations on behalf of their members and represent them in the event of individual grievances.

The parties need to negotiate in good faith and make every effort to reach an agreement.

Genuine and constructive negotiations are necessary to establish and maintain a relationship of confidence between the parties.

► Challenges: case of Hungary

One union complains that "Legislation that came into force on 1 January 2012 made a distinction between the fundamental rights of trade unions in different spheres. As a result, trade unions in Hungary are currently subject to two sets of rules: one for trade unions (operating in the civil sphere) under the Labor Code, and another for trade unions for soldiers and law enforcement workers. . . .

"The arena for direct dialogue with the government, the Law Enforcement Reconciliation Forum, has been abolished, despite continued intentions to work with trade unions. . . . named the sectoral advocacy council as the main arena for conciliation in the field of home affairs."

"[I]t held its inaugural meeting in August 2013, i.e. more than a year and a half after the entry into force of the relevant law. Despite the above, the Home Affairs Reconciliation Council has been kept alive as a venue for dialogue with the Ministry of the Interior.

► Challenges: case of Russia

Article 31 of the Federal Law No 3-FZ on Police (2012) provides for the Right of Police Officers to Form Trade Unions (Associations) in order to represent and protect their social and labour rights and interests. The procedure of creation and the terms of reference of police officers' trade unions (associations) shall be established by the legislation.

However, the All-Russian Trade Union of Workers of State Institutions and Public Services of the Russian Federation states that this Article has been insufficiently regulated. The collective agreement of the Ministry (exp. 31.12.2020) covers "federal state civil servants, workers and civilian personnel of the internal troops of the system of the Ministry of Internal Affairs of the Russian Federation," but not police.

Article 8: Settling Interest Disputes

The settlement of disputes arising *in connection with the determination of terms and conditions of employment* shall be sought through:

- **negotiation between the parties or**
- **independent and impartial machinery, such as mediation, conciliation and arbitration.**
- **Voluntary approach (choice) essential**

► Convention No. 154

Article 5 (e): bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

Article 6: The provisions . . . do not preclude . . . collective bargaining . . . within the framework of conciliation and/or arbitration machinery or institutions, . . . [if] the parties to the collective bargaining process voluntarily participate.

► Recommendation No. 92

R. on Voluntary Conciliation and Arbitration

- **Article 3(1):** Procedure should be free of charge and expeditious; time limits fixed in advance and kept to a minimum.
- **Article 5:** All agreements reached during or through conciliation should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner.

Article 9: Civil and Political Rights

Public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions.

This principle had been stated in the Resolution Concerning Trade Union Rights adopted by the ILC in 1970. The rights conferred upon workers' and employers' organizations must follow:

- the Universal Declaration of Human Rights
- the International Covenants on Civil and Political Rights

The absence of these civil liberties removes all meaning from the concept of trade union rights.

► **Civil liberties essential to exercise union rights:**

Freedom and security of person

Freedom from arbitrary arrest and detention

Freedom of opinion and expression

Freedom to hold opinions without interference and

**Freedom to seek, receive and impart information and ideas
through any media and regardless of frontiers,**

Freedom of assembly,

Right to fair trial by independent / impartial tribunal

Protection of the property of worker organizations

► Colonial heritage

- Most current or previous British colonies establish police associations by law– e.g. Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, Botswana, Dominica, Grenada, Guyana, Hong Kong, Jamaica, Kiribati, Lesotho, Nauru, St. Kitts and Nevis, St. Lucia, Seychelles, Solomon Islands, Somalia, St. Vincent and the Grenadines, Vanuatu.
- Australia, New Zealand, South Africa and the USA recognize independent police unions, mostly at the local level. A 2013 Kenyan court order allowed police officers to join unions.
- All Dutch former colonies recognize independent police unions.
- None of the former Spanish and Portuguese colonies, except Brazil, have laws allowing police unions.
- French former colonies: only Haiti (by court order) and Madagascar recognize police unions.

► Trends

- Eastern Europe tends to establish negotiating bodies that deal with police issues
- UK, France, Germany address the issues in sectoral bodies for public servants, with incidental consultations regarding police officers.
- Southern European countries (Cyprus, Greece, Italy, Spain) treat police unions similarly to civil servant organizations, with some limitations.

ILO Publications on C151

