

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:

Portugal, Spain, France, Greece, Cyprus, Italy, Malta

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 shall deal with Cyprus, Greece and Malta.

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

RESEARCH NATIONAL LEVEL - SPAIN

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

- **Section 28.2 Spanish Constitution (SC)** recognizes strikes as a **fundamental right**. According to this section “the right of workers to strike in defense of their interests is recognized. The law governing the exercise of this right shall establish the safeguards necessary to ensure the **maintenance of essential public services**”.
- The section 28.1 (SC) also establishes that: “*Everyone has the right to freely join a trade union. The law may limit the exercise of this right or make an exception to it in the case of the Armed Forces or Institutes or other bodies subject to military discipline, and shall regulate the special conditions of its exercise by civil servants*”.
- These special conditions are regulated by the paragraph c) art. 15 Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of the Public Employee, regulates the right to the exercise of the strike with the guarantee of the maintenance of the essential services of the community
- In the absence of any clear regulation of this issue (the basic regulation in this point is the Royal Decree Law (RDL) 17/1977 (RDLRT) and the STC 11/1981), the courts have to solve the disputes by basing their judgments on previous judicial decisions (case law). If the parts don't adopt an agreement to guarantee these public services, specially in transports, medical services. it's a competence of the public authority (the Ministry of Employment or the corresponding regional or local authority) to adopt the measures aimed at guaranteeing these services. The administrative decision may be challenged before the contentious-administrative courts, which, in turn, may take a long time before resolving the dispute.

RESEARCH AT NATIONAL LEVEL - SPAIN

- In extreme circumstances, the government Authority can introduce measures of intervention, such as mobilisation of their staff and replacement by police contingents or troops, or can decide that the strike will end by a compulsory arbitration (Article 10 DLRT).
- In the case of public service companies, it's important to note that certain categories of civil servants (policemen and arm force) are considered bound by a special relationship of trust. Therefore, they are excluded from the right to strike. Civil servants are entitled to strike and union membership with the exception of the Armed Forces, Civil Guard and Judges, Magistrates and Prosecutors, (although professional associations are allowed) and limited for the National Security Forces and Corps, which affects them for independent collective bargaining.

RESEARCH AT NATIONAL LEVEL - PORTUGAL

The fundamental right to **strike** is written in the 1976 **Constitution** (Article 573).

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

RESEARCH AT NATIONAL LEVEL – PORTUGAL

- The transposition of the Transparent and Predictable Working Conditions Directive in public services has not been transposed yet.
- No Portuguese analysis of the specific issue has been made yet.

RESEARCH AT NATIONAL LEVEL - FRANCE

- The right to strike has constitutional power (article 7 of the Preamble of the French Constitution)
- The French public sector has three major branches with regard to employment in the public sector (State, local entities and hospitals)
- The right to strike in the public sector is granted by Law No. 83-634 of 13 July 1983.
- The exercise of the right to strike is governed by the articles L2512-1 to L2512-5 of the Labour Code

RESEARCH AT NATIONAL LEVEL – FRANCE

- The right to strike in the public sector is limited given the role of the principle of continuity of public services
- This principle may lead to minimal services
- In some regulations the principle of continuity explicitly is mentioned. It concerns: The legislator has also regulated certain sectors of activity: public broadcasting (1979), protection and control of nuclear materials (1980), and air traffic control (1984); non-tourist regular public transport services (except for air transport - 2007), and accommodation of pupils in preschools and elementary schools (2008).

RESEARCH AT NATIONAL LEVEL - FRANCE

- **Right to strike forbidden for:**
- Members of the **national police** (including members of the ‘Compagnies Républicaines de Sécurité’), **judicial officers**, members of the **military**, members of the **external services of the prison administration** and employees of the **national communications network of the Ministry of the Interior**.
- Based on case law: staff in a authority position of authority who, due to their high responsibilities and place in the hierarchy, are considered to be part of the government.

RESEARCH AT NATIONAL LEVEL – FRANCE

- The transposition of the Transparent and Predictable Working Conditions Directive in public services has not been transposed yet.
- No French analysis of the specific issue has been made yet.

RESEARCH AT NATIONAL LEVEL - GREECE

- Right to strike is mentioned in the Greek Constitution:
- Article 23(2) stipulates: “*Strike constitutes a right to be exercised by lawfully established trade unions in order to protect and promote the financial and the general labour interests of working people*”. *Strikes of any nature whatsoever are prohibited in the case of **judicial functionaries and those serving in the security corps**. The right to strike shall be subject to the specific limitations of the law regulating this right in the case of **public servants and employees of local government agencies and of public law legal persons as well as in the case of the employees of all types of enterprises of a public nature or of public benefit, the operation of which is of vital importance in serving the basic needs of the society as a whole**. These limitations may not be carried to the point of abolishing the right to strike or hindering the lawful exercise thereof.*”

RESEARCH AT NATIONAL LEVEL - GREECE

Strikes are prohibited for members of the **judiciary** and persons serving in the **security corps**, including **military staff** and **civil servants of the armed forces** and the **Hellenic Coast Guard**.

- In **‘essential services’** and in the **public sector**, the exhaustion of all means of direct negotiations (strike has to be the ultimum remedium) between the disputing parties and the guarantee of a minimum level of service are required.

RESEARCH AT NATIONAL LEVEL - GREECE

- In case of a strike in ‘**essential services**’, the law provides that, prior to any strike action, the trade union organisation calling the strike is obliged to invite the employer to discuss the relevant issues. The invitation must be made in writing and notified to the employer, the Ministry of Labour and the supervising Ministry. A strike may not take place until four full days have elapsed since the relevant bodies have been notified, and no new demands may be introduced once this notification has been made. In addition, the appointment of emergency staff and a guaranteed minimum level of service are required.
- A strike involving **public servants** must be notified in advance to the employer, the Ministry of Labour and the supervising Ministry. A strike may not take place until four full days have elapsed since the relevant bodies have been notified in writing concerning the demands and the reasons for them. In addition, the relevant bodies may request ‘public dialogue’ before or during the strike.

RESEARCH AT NATIONAL LEVEL – GREECE

- Memorandum of Understanding:
- adopt legislation to enable the fast-track judicial procedure used to judge the legality of strikes to be also used for disputes arising from the application of Article 656 of the Civil Code in cases of strikes (delinquency of the employer);
- (b) modernise Law No. 1264/1982 and other relevant legislation by creating a digital registry for trade unions, reviewing the list of justified reasons for terminating the contract of workers under protection as trade union members and rationalising the system of trade union members' leave benefits and;
- (c) analyse and adopt legislation to increase the quorum for first-degree unions to vote on a strike to 50%, which would require the convening of the general assembly of employees for the strike vote, as well as a longer period of notice to be given to the employer.

RESEARCH AT NATIONAL LEVEL – GREECE

- The transposition of the Transparent and Predictable Working Conditions Directive in public services has not been transposed yet.
- No Greek analysis of the specific issue has been made yet.

RESEARCH AT NATIONAL LEVEL - CYPRUS

– Right to strike has constitutional value. Article 27 of the Cyprian provides:

(1): *‘The right to strike is recognised and its exercise may be regulated by law for the purposes only of safeguarding the security of the Republic or the constitutional order or the public order or the public safety or the maintenance of supplies and services essential to the life of the inhabitants or the protection of the rights and liberties guaranteed by this Constitution to any person.’*

(2): *‘The members of the armed forces, of the police and of the gendarmerie shall not have the right to strike. An act of Parliament may extend such prohibition to the members of the public service.’* The last Act of Parliament has not yet been enacted.

RESEARCH AT NATIONAL LEVEL - CYPRUS

- Employees in ‘**essential services**’ may exercise their right to strike subject to two restrictions: (1) the exhaustion of all means of direct negotiations between the parties to the conflict and (2) the guarantee of a minimum level of service.²⁷
- As regards the right to strike for **public servants**, a labour dispute is declared when all processes have been exhausted before the relevant independent body²⁸ and no agreement has been reached.

RESEARCH AT NATIONAL LEVEL - CYPRUS

- The right to strike in ‘**essential services**’ is an issue that has been under discussion for a number of years. One of the main preoccupations is the efficiency of the voluntary instrument regulating it, as well as the repeated strikes in key sectors of the economy, including ports, electricity supply and others, and the potentially contentious issue of the new healthcare system.
- The Cyprus Employers and Industrialists Federation (OEB) has already submitted a request for legislative intervention to restrict the right to strike in a number of service industries that provide ‘essential services’. Specifically, the OEB has drafted a Bill entitled ‘Essential Services Law (regulation of the right to strike) of 2015’.
- The draft law lists the sectors which fall within the scope of ‘essential services’:
 - *the operation of ports, customs, prisons, state and private medical and pharmaceutical services, telecommunications and radio, airports, air transfers and the repair and maintenance of airport equipment, the production and supply of electricity, water supply, hospitals, security forces such as the army, the police and the fire brigade, refuse collection, and the monitoring, processing and supply of solid, liquid and gas fuel.*
- The Council of Ministers also has the right to declare a service not included in this list as ‘essential’ where its interruption may put the life, security or health of the people at risk or imperil the national or public interest.
- The Bill also provides for the prohibition of certain types of strike such as spontaneous strikes, political strikes, solidarity strikes, ‘white’ strikes (including absence from overtime work), rotating strikes and work-to-rule strikes.

RESEARCH AT NATIONAL LEVEL – CYPRUS

- The transposition of the Transparent and Predictable Working Conditions Directive in public services has not been transposed yet.
- No analysis of the specific issue has been made yet.

RESEARCH AT NATIONAL LEVEL - ITALY

- Right to strike has constitutional value
- Article 40 of the Italian Constitution provides that ‘the right to strike shall be exercised in compliance with the law’. It recognises the right of the workers to withdraw their labour in order to promote their own interests.
- The right to strike is generally denied to the **police** and to **military personnel**, in order not to imperil national safety, or the physical welfare and property of citizens (Article 52 of the Constitution).

RESEARCH AT NATIONAL LEVEL - ITALY

- Minimal services are based on the principle of continuity of public services:
- Minimum-service arrangements have to be set out in collective agreements. The Guarantee Committee is an independent body which assesses the appropriateness of the minimum services set out in collective agreements and, if necessary, orders further measures. The *powers of the Guarantee Committee* have been strengthened by the Act No. 83/2000. It can now also penalise the conduct of trade unions, employers and self-employed workers in connection with collective action.

RESEARCH AT NATIONAL LEVEL

- The transposition of the Transparent and Predictable Working Conditions Directive in public services has not been transposed yet.
- No Italian analysis of the specific issue has been made yet.

RESEARCH AT NATIONAL LEVEL - MALTA

Legal basis:

- Employment and Industrial relations Act of 2002 and updated on June 2016.3
- Recognition of Trade Unions Regulations, 20164
- **For public sector:** Trade Union Membership of Disciplined Forces Act, 20145
- **Collective agreements:**
- Collective agreement for Public Service employees of April 2017

RESEARCH AT NATIONAL LEVEL - MALTA

– Armed forces and police officers have no right to strike only to negotiate (art. 67 A of the Act of 2014):

*“A trade union representing members of a disciplined force:
(b) shall be entitled to negotiate conditions of employment and to participate in dispute resolution procedures of a conciliatory, mediatory, arbitral or judicial nature on behalf of the members of the disciplined force which it represents but it shall not be entitled to take any other action in a disciplined force in contemplation or furtherance of a dispute”*

RESEARCH AT NATIONAL LEVEL- MALTA

The Employment and Industrial Relations Act presents a list of essential services and the minimum levels of service in Article 64§6 including the following:

- administrative services,
 - clinical services including doctors, surgeons and nurses,
 - Air Traffic Controllers at the Malta International Airport and in the Airport Fire Fighting Section,
 - members of the Assistance and Rescue Force.
- The Article 64 of the Employment and Industrial Relations Act establishes minimum levels of service in essential services, enforceable through tort law, and a Joint Negotiating Council for essential services (article 72).

RESEARCH AT NATIONAL LEVEL - MALTA

- The transposition of the Transparent and Predictable Working Conditions Directive in public services has not been transposed yet.
- No analysis of the specific issue has been made yet.

RESEARCH AT INTERNATIONAL LEVEL

- **UN instruments (No Direct effect)**
- International Covenant on Economic Social and Cultural Rights (ICESCR, Article 8)
- International Covenant on Civil and Political Rights (ICCPR, Article 22)

Ratified by

Spain, Portugal , France, Greece,
Cyprus, Italy, Malta

RESEARCH AT INTERNATIONAL LEVEL

– ILO instruments

- Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise
- Convention No. 98 concerning the Right to Organise and to Bargain Collectively
- Convention No. 151 concerning Labour Relations (Public Service)
- Convention No. 154 concerning the Promotion of Collective Bargaining

Ratified by

Spain, Portugal (without n° 154),
France (without n° 151 and n° 154),
Greece, Cyprus, Italy (without n°
154) ,Malta (without n°151)

RESEARCH AT INTERNATIONAL LEVEL

- **European level**
- ECvHR (article 11):direct effect
- The Revised European Social Charter on 05/07/1999: article 6 (direct effect for some countries in EU)
- The Collective Complaints Procedure Protocol on 03/11/1997

Ratified by

Spain (not yet the collective complaint procedure and with an interpretation for articles 5 and 6 according to the Spanish Constitution (imitations to the right to strike for public servants, Portugal (with exception for prohibition of lock out), France, Greece (reservation: no lockout), Cyprus, Italy, Malta (without Collective Complaint Procedure)

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