



# The right to strike in the public sector

## Republic of Tajikistan



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Nodira Abdulloeva: January 2021  
Edited by Markhaba Khalmurzaeva

## 1. Legal basis

### 1.1. Universal Treaties ratified by Tajikistan

#### UN instruments<sup>1</sup>:

- **International Covenant on Economic Social and Cultural Rights** (ICESCR, Article 8).  
Ratified on January 4, 1999
- **International Covenant on Civil and Political Rights** (ICCPR, Article 21- 22).  
Ratified on January 4, 1999

#### ILO instruments<sup>2</sup>:

- **Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise**; ratified on November 26, 1993.
- **Convention No. 98 concerning the Right to Organise and to Bargain Collectively**; ratified on November 26, 1993.

### 1.2. Regional international treaties ratified by Tajikistan

#### CIS instrument<sup>3</sup>:

- **Convention of the Commonwealth of Independent States on human rights and fundamental freedoms** (Article 12); entered into force on August 11, 1998

### 1.3. National legislation of Tajikistan

- **Constitution.** The Constitution does not contain provisions on recognizing the right to strike. Article 29 of the Tajik Constitution contains only citizens' right to participate in "meetings, rallies, demonstrations and peaceful processions established by law."<sup>4</sup>
- **Labour Code.** The Labour Code does not contain the concept of a strike, but Article 18.1 provides for an employee's right to strike.<sup>5</sup> Article 323 of the Labour Code also establishes workers' right to use a strike as a "last resort" to resolve a dispute, with some reservations.<sup>6</sup> Article 324 of the Labour Code establishes a prohibition on coercion to participate or refuse to participate in a strike<sup>7</sup> and Article 326 establishes that the organization of a strike recognized by the court as illegal is considered a violation of labour discipline.<sup>8</sup>
- **Specific laws for certain sectors.** Several normative legal acts prohibit the participation of public sector employees in strikes. Such prohibitions are established in the laws on "Public Service" (2007), "Police" (2007), "Status of Servicemen" (2005), "Courier Communications" (2002) and in the Customs Code (2005 ) and the law "On the system of execution of criminal punishment" (2004). National legislation also regulates procedural requirements on organizing and holding strikes. These procedures are established in the Labour Code (2016) and the law on "Trade Unions" (2011). Restrictions on the organization and holding of strikes are established by the laws on "Security" (2014) and "Martial Law" (2019).

## **2. Who has the right to call a strike?**

### **2.1. Workers and employee representatives**

The Labour Code establishes that the representative bodies of workers in an organization have the right to call a strike in the manner prescribed by legislation.<sup>9</sup> The Labour Code also provides that a decision on a strike is made at a meeting (conference) of the labour collective or employees' representatives by secret ballot. The decision is considered adopted if at least two-thirds of the collective members (employee representatives) presented at the meeting voted for it. Alternatively, the decision is considered adopted if two-thirds of the delegates to the labour collective's conference representatives voted if the meeting is competent.<sup>10</sup>

### **2.2. The right of trade unions**

The law on "Trade Unions" provides the right of trade unions to organize strikes, following the established legislation, "as a means of fighting for improving working conditions, increasing wages, reducing unemployment, uniting workers in the struggle for labour rights and socio-economic interests, for protection from the arbitrariness of employers, influence on state bodies to conduct the socio-economic policy that satisfies the members of trade unions."<sup>11</sup>

### 3. Definition of strike

There is no definition of the concept of a strike in the Tajik Constitution, Labour Code or other legislation. However, within the meaning of Article 323.1 of the Labour Code, a strike is one of the “other means” or “last resort” for resolving a collective dispute between employees and the employer.<sup>12</sup>

Similarly, in Article 27 of the law on trade unions, strikes are one of the means of struggle of trade union organizations to improve working conditions, reduce unemployment, unite workers in the struggle for labour rights and socio-economic interests.<sup>13</sup> Article 27 also states that a strike, along with other means of struggle to improve working conditions (such as meetings, rallies, peaceful processions, demonstrations), can influence state bodies” to pursue the socio-economic policy that satisfies trade union members.”<sup>14</sup>

Tajik legislation does not contain the concepts of political strike, solidarity strike or warning strike. The law “On Assemblies, Rallies, Demonstrations, and Street Processions” does not apply to strikes held within enterprises, institutions, and other organizations.<sup>15</sup>

#### 4. Who may participate in a strike?

The Labour Code establishes that an employee has the right to strike, according to the procedure established by legislation.<sup>16</sup> It provides for the right of representative bodies<sup>17</sup> in an organization to call a strike in the way prescribed by legislation.<sup>18</sup>

The Labour Code allows restrictions on the conduct of strikes if it creates a severe threat to people's lives and health and the state's security and defence.<sup>19</sup> The procedure for establishing a restriction on a strike on the above grounds has not been established; the Labour Code establishes only the courts' competence to recognize a strike as legal or illegal.<sup>20</sup>

Sectoral laws provide for the prohibition of strike action and legislation also contains lists of persons who are prohibited from organizing and participating in strikes.

Finally, the Labour Code establishes that participation in strikes is voluntary.<sup>21</sup>

##### 4.1. A ban on civil servants' participation in strikes

Article 30 of the Law "On Civil Service" says that a civil servant<sup>22</sup> has no right to participate in a strike that may disrupt the functioning of state bodies and hinder the performance of official duties.<sup>23</sup>

In addition, legislation provides direct prohibitions on participation in strikes for some workers and civil servants:

- **police officers** (law on the Police);<sup>24</sup>
- **military personnel** (law "On military personnel status") which also prohibits military personnel from any termination of the performance of military duties to resolve issues related to military service;<sup>25</sup>
- **customs officials** (the Custom's Code);<sup>26</sup>
- **prison staff** (The law "On the system of execution of criminal punishment");<sup>27</sup> and
- **government courier service workers**<sup>28</sup> (The law "On courier service").<sup>29</sup>

##### 4.2 Prohibition of strikes during the state of emergency

The Constitutional Law "On the Legal Regime of the State of Emergency" (1995) prohibits strikes in emergencies.<sup>30</sup> Prohibition of strikes, in this case, is the responsibility of state authorities.<sup>31</sup> However, the law does not provide a procedure for the implementation of such a ban. The ban will probably be carried out on common grounds provided by the Labour Code, i.e., by a court decision. Thus, Article 323 of the Labour Code provides that the court establishes the legality or illegality of the strike.<sup>32</sup> The given law also provides for the criminal liability of the leader(s) of a prohibited strike in a state of emergency and obstruction of the work of an enterprise, institution, organization.<sup>33</sup>

##### 4.3. Prohibition of strikes under martial law

Article 6 of the "Martial Law" of the Republic of Tajikistan (2019) prohibits the organization and conduct of strikes and other methods of suspending or terminating organizations' activities in

the territory where martial Law has been introduced.<sup>34</sup> This law sets out in detail the responsibilities of state bodies, including the executive and the judiciary's powers during the declared state of martial law. The power to impose bans on strikes within the martial law's duration is provided to the President of the Republic of Tajikistan as the Supreme Commander-in-Chief of the Armed Forces.<sup>35</sup>

#### **4.4. Unlawful strikes**

The Labour Code does not contain provisions that would establish the grounds for declaring a strike illegal. Probably, a violation of the requirements related to restrictions and prohibitions on holding strikes, as well as a violation of the procedures for organizing strikes, may be grounds for declaring a strike illegal. However, judicial practice in such cases is not known, and there are no resolutions of the plenums of the Supreme Court, which would generalize this category of cases.

The legislator also does not provide a procedure for communicating to the participants in the strike and providing them information about the court's decision on the strike's legality or illegality. There is no procedure to inform participants of the strike on the time frame for the entry into force of such a court decision.

The Law "On Security" (2014) provides that illegal strikes are among the threats to national security<sup>36</sup> and Article 6 provides that the complication of the socio-political situation, which is expressed, among other things, by illegal strikes, constitutes a threat to national security.<sup>37</sup>

## **5. Procedural requirements**

### **5.1. From what moment is the organization of a strike allowed?**

The organization and holding of a strike are permissible after the exhaustion of the conciliation commission and Labour arbitration procedures. The Labour Code establishes that if the conciliation commission and labour arbitration are unable to resolve the parties' disagreements, then the labour collective, trade union, or other representatives of workers have the right to use a strike to satisfy their demands.<sup>38</sup>

The Labour Code also provides for the workers' right to take advantage of the use of a strike if the employer evades conciliation procedures or does not fulfil the agreements reached during the resolution of the dispute.<sup>39</sup>

The strike is led by one person or a group of persons authorized by the labour collective or employee representatives.<sup>40</sup>

### **5.2. Balloting rules**

The decision to strike is taken at a meeting (conference) of the labour collective or employees' representatives by secret ballot. It is considered adopted if at least two-thirds of the collective members present at the meeting (employee representatives) or two-thirds of the delegates of the labour collective's conference representatives if the meeting is competent (employee representatives).<sup>41</sup>

### **5.3. Employer notice period**

The employer must be notified in writing of the start of a strike no later than one month in advance.<sup>42</sup>

## **6. Legal consequences of participating in a strike**

### **6.1. Participation in a lawful strike**

The Labour Code guarantees that participation in a lawful strike cannot be considered as a violation of labour discipline or as a basis for terminating an employment contract.<sup>43</sup>

During the strike, the workers participating in it are not paid wages unless otherwise provided by the agreement on the dispute's settlement. Nevertheless, the trade union committee and other employee representatives have the right to create a strike fund at the expense of voluntary contributions and donations and a special insurance fund.<sup>44</sup>

The Code of Administrative Offences stipulates the employer's responsibility for dismissing employees in connection with a collective labour dispute or the announcement of a strike<sup>45</sup> and this can involve a fine from 40 to 50 times the base coefficient (as at 1 January 2021, 60 somoni (EUR 4.50)).<sup>46</sup>

This Code also covers individuals' and officials' responsibility for coercion to refuse to participate in a strike by violence or threats of violence or using a person's dependent position. Fines for individuals range from 10 to 20 times the base coefficient and for officials from 40 to 50 times the base coefficient.<sup>47</sup>

The Criminal Code also sets fines for liability for coercion to refuse to participate in a strike by violence or the threat of violence which can lead to the restriction of liberty (up to five years) and imprisonment (up to five years) with a high level of fines from 1000 to 2000 times the base coefficient.<sup>48</sup>

### **6.2. Participation in unlawful strikes**

Under the national legislation, participation in unlawful strikes can entail both consequences associated with the imposition of a disciplinary sanction or termination of an employment contract at the employer's initiative and criminal liability.

The Labour Code grants the employer the right to terminate the employment contract on its initiative if the employee continues to take part in the strike after the court decision declared that the strike is illegal and prohibited the strike.<sup>49</sup>

The Labour Code also provides for the imposition of disciplinary sanction on an employee after the entry into force of a court decision declaring a strike unlawful. Such a disciplinary penalty must be imposed on the employee no later than one month from the date of entry into force of the court decision.<sup>50</sup>

The Code also prohibits forcing an employee to strike by violence or threat.<sup>51</sup>

Trade unions or other workers' representatives are liable for compensation for damage if the strike is declared unlawful. If the damage is caused to the owner/victim due to an unlawful strike organized by a Labour collective, then compensation for damage is imposed on the organization.<sup>52</sup>

Responsibility for the coercion to a strike and forcing to abandon it entails administrative and criminal liability, which was discussed above.<sup>53</sup>

According to the Criminal Code the leadership of a prohibited strike during a state of emergency is liable and subject to punishment with a fine (500-900 times the base coefficient) or restraint of liberty or imprisonment for up to five years.<sup>54</sup>

## 7. Case law of international/European bodies

Tajikistan is not subject to the action or jurisdiction of European authorities.

### 7.1. The International Labour Organization

In 2019, the ILO Committee of Experts (CEACR) repeated its request regarding changes to Article 323.2 of the Labour Code. It considered that such a requirement was excessive and could impede the possibility of a strike. Therefore, the ILO Committee of Experts requested the country amend this provision to reduce the number of votes required to declare a strike. The article says that a decision on a strike is made at a meeting (conference) of the labour collective or workers' representatives by secret ballot and is considered adopted if supported by two-thirds or more of the members of the collective (employee representatives) present at the meeting or two-thirds of the delegates of the conference, representatives of the labour collective if the meeting is competent (representatives of the employees).

In relation to part 5 of Article 323 of the Labour Code,<sup>55</sup> the ILO Committee of Experts reminded Tajikistan that “when the right to strike is restricted or prohibited in certain enterprises or services that are considered necessary, or for certain civil servants exercising power on behalf of the state, workers should be provided adequate protection to compensate for the imposed restrictions on their freedom of action.”<sup>56</sup> The Committee asked the government to indicate whether alternative compensation guarantees are provided to workers deprived of the right to strike.

### 7.2. United Nations treaty bodies

In November 2020, the UN Committee on Economic, Cultural, and Social Rights adopted a list of issues for the fourth periodic report of Tajikistan. The Committee requested Tajikistan to provide more information on any steps taken to review section 323 (2) of the Labour Code, which requires a threshold, considered excessive, to declare a strike; the categories of workers whose rights to strike are restricted or prohibited and the alternatives of the same nature provided to those workers; and the application of section 323 (5) of the Labour Code.<sup>57</sup>

The UN Committee also requested clarification on what influence the state has on trade unions, including over selecting labour union leaders.

## 8. Latest developments

Strikes in the classical form (at least according to the requirements set in the Labour Code) are not observed in Tajikistan. However, over the past two years, there have been events that the media or foreign observers have classified as strikes.

Over the past three years, the US Embassy's human rights reports have highlighted concerns that the right to strike for workers and unions, although provided by law, is not enforceable in practice and the 2019 report cites two cases in which protesters or striking workers were detained by the police and faced with various charges<sup>58</sup>

The recent US Department of State's report "On investment climate" indicates that the country has no formal labour dispute resolution mechanisms. It was also highlighted that although collective bargaining can occur, it is rare.<sup>59</sup>

There were a couple of actions in 2020, including a strike by a group of drivers of the Russian taxi service "Maxim" in Khujand where the protesters were dispersed by the authorities<sup>60</sup> and action by 60 Chinese citizens working for a Tajik-Chinese mining company in the northern city of Zarnisor, demanding the payment for eight months' wages and to return them home.<sup>61</sup> To prevent further conflict, the company paid the workers' wages for three months.<sup>62</sup>

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## Notes

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1 Available at

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3 Available at <<https://cis.minsk.by/reestr/ru/index.html#reestr/view/summary?doc=451>>

4 The Constitution of the Republic of Tajikistan was adopted on November 6, 1994. Amendments were made in 1999, 2003 and 2016.

5 Article 18.1 establishes that an employee has the right to resolve individual and collective Labour disputes, including the right to strike, in the manner prescribed by the Labour Code and other legislative acts of the Republic of Tajikistan. Labour Code of the Republic of Tajikistan dated July 23, 2016, No. 1329.

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10 Labour Code of the Republic of Tajikistan, Article 323.2 "Strike" (2016).

11 Law of the Republic of Tajikistan "On Trade Unions", Article 27 "Organization and holding of meetings, rallies, peaceful processions, demonstrations and strikes" (2011)

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13 Law of the Republic of Tajikistan "On Trade Unions", Article 27 (2011)

14 *ibid*

15 Law of the Republic of Tajikistan "On Assemblies, Rallies, Demonstrations and Street Processions", Article 3 (2014)

16 Labour Code of the Republic of Tajikistan, Article 18.1 "Basic rights and obligations of the employee" (2016)

17 In accordance with Article 319 Labour Code of the Republic of Tajikistan representatives of employees in collective Labour disputes - are the bodies of trade unions and their associations, authorized to represent in accordance with their statutes, as well as other representatives of employees elected by the meeting (conference) of employees and authorized by them.

18 Labour Code of the Republic of Tajikistan, Article 291.1 "Rights of representative bodies in an organization" (2016)

19 *Ibid.*, (2016), Article 323 Part 5 "Strike".

20 *Ibid.*, Article 323 Part 6 "Strike"

21 *Ibid.*, Article 324 "Guarantees and compensations to employees when exercising the right to strike"

22 Article 1 of the Law of the Republic of Tajikistan "On Civil Service" (2010) defines the following concepts of who civil servants are: civil servant - a citizen of the Republic of Tajikistan occupying a paid public position on a professional basis, exercising the competence of state bodies; political civil servant - a civil servant whose activities are related to national policy and who is responsible for the implementation of domestic and foreign policy of the Republic of Tajikistan; administrative civil servant - a civil servant whose official duties are aimed at ensuring the execution of the powers of persons holding public positions of government and political positions in the civil service, as well as the implementation of the competence of government bodies.

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26 Customs Code of the Republic of Tajikistan (as amended on 01/02/2020, № 1678), article 484 "Limitations during the service in the customs authorities"

27 Law of the Republic of Tajikistan "On the system of execution of criminal punishment" (of 2004, as amended on 15.03.2016, No. 1288), article 37 "Procedure and conditions of service in the system of execution of criminal punishment"

28 The law determines that courier service delivers in the Republic of Tajikistan, as well as to other states and back, especially important, top secret, secret and other official items (correspondence).

29 Law of the Republic of Tajikistan "On courier service" (2002), article 10 "Legal status of courier service employees".

30 In accordance with article 1 of the Constitutional Law of the Republic of Tajikistan "On the legal regime of a state

of emergency" - a state of emergency is a temporary measure declared in accordance with the Constitution of the Republic of Tajikistan and provides for a special legal regime for the activities of state authorities, local governments, enterprises, institutions and organizations, and temporarily allowing restrictions provided by law in the exercise of constitutional rights and freedoms of citizens, as well as the rights of legal entities and imposing additional obligations on them. A state of emergency is introduced subject to natural disasters, accidents and catastrophes, epidemics that threaten the life and health of the population; massive violations of law and order that pose a real threat to the rights and freedoms of citizens; attempts to seize state power or change the constitutional order of the Republic of Tajikistan by force; encroachments on the territorial integrity of a state threatening to change its borders; the need to restore constitutional law and order and the activities of public authorities.

31 Constitutional Law of the Republic of Tajikistan "On the legal regime of a state of emergency" (from 1995, as amended on July 26, 2014, No. 1085), article 4.

32 Labour Code of the Republic of Tajikistan (2016), article 323 part 6

33 Constitutional Law of the Republic of Tajikistan "On the legal regime of a state of emergency" (from 1995, as amended on July 26, 2014, No. 1085), article 10.

34 The law defines martial law as a special legal regime that provides for a complex of political, economic, administrative, military and other measures, which is announced by the President of the Republic of Tajikistan throughout its entire territory or its individual administrative-territorial units. Article 1 of the Law of the Republic of Tajikistan "On martial law" (from 20.06.2019).

35 Law of the Republic of Tajikistan "On martial law", article 9 "Competence of the President of the Republic of Tajikistan - the Supreme Commander of the Armed Forces of the Republic of Tajikistan during the period of martial law".

36 Article 1 of the Law of the Republic of Tajikistan "On Security" provides that national security is defined as the state of protection of the country's vital interests from real, potential internal and external threats. As a threat to security, the Law of the Republic of Tajikistan "On Security" defines a set of conditions, processes and factors that impede the realization of national interests or create a danger to them. The law identifies 7 types of security, which are regulated by the Law of the Republic of Tajikistan "On Security" - economic security, public security, military security, environmental security, information security, external and internal security.

37 Law of the Republic of Tajikistan "On Security" dated November 27, 2014, as amended on 08/03/2018, No. 1540

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39 Labour Code of the Republic of Tajikistan, Article 323 "Strike" (2016)

40 *ibid.*, Part 3, Article 323

41 *ibid.*, Part 2, Article 323

42 *ibid.*, Part 4, Article 323

43 Labour Code of the Republic of Tajikistan, article 324, part 2 "Guarantees and compensation for workers in the exercise of the right to strike".

44 *ibid.*, Part 4 and 5.

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46 As of January 2021, 1 minimum base coefficient is 60 Tajik somoni, which is equivalent to USD 5.26.

47 CAO RT, Article 107 "Compulsion to participate or refuse to participate in a strike"

48 Criminal Code of the Republic of Tajikistan, article 152 "Compulsion to participate in a strike or refusal to participate in a strike".

49 Labour Code of the Republic of Tajikistan, article 42 "Termination of an employment contract at the initiative of the employer"

50 *ibid.*, Article 64 "Term for imposing a disciplinary sanction"

51 *ibid.*, Article 326 "Responsibility of workers for unlawful strikes"

52 *ibid.*, Part 3 and 4 Article 326

53 Under the Article 152 Criminal Code of Tajikistan and Article 107 CAO RT.

54 Criminal Code of Tajikistan, Article 152(1) "Leadership of a prohibited strike in a state of emergency" (amendments from 26.07.2014, No. 1088).

55 This part provides for the limitation of strikes in the event that the strike poses a serious threat to the life and health of people, the security and defense of the state.

56 CEASR, Direct Request adopted 2019, published 109th ILC session (2021),

57 Committee on Economic, Social and Cultural Rights, List of issues in relation to the fourth periodic report of Tajikistan (Adopted by the pre-sessional working group at its sixty-seventh session 19–23 October 2020)

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58 U.S. Embassy in Tajikistan, Tajikistan 2019, Human Rights Report (2019)

59 Bureau of Economic and Business Affairs of US Department of State, Climate Investment in Tajikistan (2020)

60 M. Yusufzoda, "In Khujand, taxi drivers went on strike to protest the reduction of tariffs", (January 15, 2020)

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