

The right to strike in the public sector

Turkey

Contents

1. Legal basis
 2. Who has the right to call a strike?
 3. Definition of strike
 4. Who may participate in a strike?
 5. Procedural requirements
 6. Legal consequences of participating in a strike
 7. Case law of international/European bodies
 8. Bibliography
- Notes

This factsheet reflects the situation in in October 2018 and was elaborated by Natalia Delgado (independent expert), reviewed by EPSU/ETUI and sent for comment to EPSU affiliates.

1. Legal basis

International level

Turkey has ratified:

UN instruments¹

International Covenant on Economic Social and Cultural Rights

(ICESCR, Article 8)

International Covenant on Civil and Political Rights

(ICCPR, Article 22)

ILO instruments²

Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise

(ratification on 12 July 1993)

Convention No. 98 concerning the Right to Organise and to Bargain Collectively

(ratification on 23 January 1952)

Convention No. 151 concerning Labour Relations (Public Service)

(ratification on 12 July 1993)

Turkey did not ratify

Convention No. 154 concerning the Promotion of Collective Bargaining

European level

Turkey has ratified

The (Revised) European Social Charter

on 27 July 2007

However it did not accept Articles 5 and 6 in full³

Turkey did not ratify

The Collective Complaints Procedure Protocol

National level

The Constitution of Turkey

The Constitution of 1982 states in Article 54 that 'workers have the right to strike in the event of a labour dispute arising during negotiations for the conclusion of a collective agreement. The exercise, scope and exceptions of this right shall be governed by special legislation'.⁴

Since the right to strike has been guaranteed in the Constitution and the law, it is no longer necessary for the case law to update the right to strike. Also for the same reason, because the right to strike is in the Constitution of Turkey, collective agreements relating to the right to strike do not exist.⁵

The Turkish Constitution of 27 December 1947 is the only one to have a detailed provisions governing the position of public servants. Article 51 of the Constitution, as amended on 17 October 2001, establishes the right of workers and employers to organise in trade unions and associations in order to protect and develop their economic and social rights and interests. With regard to public servants, Article 128, paragraph 2 stipulates that 'the law regulates the qualifications, appointment, functions and attributions, rights and obligations and pay and allowances of civil servants and other public sector workers, and other matters relating to their status'.

Applicable laws

In general :

- The Labour Act No. 4857
- Act on Collective Labour Agreement, Strike and Lock out Number No. 2822 (1983)
- Act on Labour Unions and Collective Labour Agreement Number No.6356 (2012); in particular Articles 58-75.

Specific law(s) for public sector :

- Public Servants Act No. 657
- Public Servants Trade Unions Act No. 4688.⁶

2. Who has the right to call a strike?

In Turkey **only trade unions** have the right to call a strike and only with the aim of concluding a collective agreement. Non-union bodies, federations or confederations of workers and workers themselves are in general not allowed to call and launch a strike under Turkish law.

3. Definition of strike

Article 58 of the Act 6356 define strike as follows: 'Strike means any **concerted cessation by employees of their work** with the purpose of halting the activities of an establishment or of paralyzing activities to a considerable extent, or any abandonment by employees of their work in accordance with a decision taken to that effect by an organization.' Given that strikes must thus have an occupational objective related to an interest dispute, strikes aiming at bringing about a collective agreement or aiming at enforcing a collective agreement are not allowed.⁷

Also as a consequence of the definition in Article 58, **sympathy strikes** are not permitted.

Following the referendum of 2010, whereby Article 54§7 of the Constitution was abolished, **political strikes** are no longer prohibited. However as a consequence of Article 58, and the fact that it has to relate to a labour dispute, it seems that it is still accepted that the ban on political strikes still applies.⁸

Previous prohibitions of strike in public notary services, vaccine and serum producers, clinics, sanatoriums, dispensaries and pharmacies, education and schooling institutions, child-care institutions, aviation services and nursing homes have been removed with the new text of Act No. 6356.

Other modalities of industrial action such as **solidarity secondary strikes, warning strikes, go slow, sit-ins, work-to-the-rule, rotating strikes, occupation** of the enterprise's premises, **blockades, picketing** and other **acts of resistance** are not permitted under Turkish law.⁹

Strikes and **lockouts** are not allowed according to the Article 62 of the Act No.6356 for particular activities and services:

- operations for saving life and property;
- funeral and mortuary services;
- exploration, production, refining or purification and distribution of water, electricity, gas, coal, natural gas and petroleum;
- banking services
- fire-fighting and land, sea, railway and other urban public transportation by rail;
- hospitals,
- cemeteries;
- establishments run by the Ministry of Defence, Chief Constabulary or Coast Guard Command.¹⁰

The government is allowed to **temporarily prohibit a strike action** in case of war and natural disasters.

Also, the law allows the Council of Ministers to suspend for a period of 60 days a strike in the case of being prejudicial to public health or national security. The **suspension** comes into effect on the date of the publication of the government's order.

A law suit for the annulment of that order may however be brought before the Council of State.¹¹ Following the attempted coup on 15 July 2016 and the declaration of the state of emergency, more than thirty emergency decrees have been adopted including Emergency Decree No. 678 which amended article 63§1 of Act N° 6356 which extended the criteria for allowing suspension. Next to public health and national security, the strike may also not be prejudicial to local public transportation services of the metropolitan municipality and economic and financial stability in banking services.

Furthermore, any strike might not be exercised in contravention with the principle of **good faith** or in such a manner as to **cause a harm to society** or to **destroy national wealth**. The concepts of good faith is embedded in the Turkish Civil Code.¹²

4. Who may participate in a strike?

In general, **non-union members** and **union members** (even if they belong to another union than the one that called the strike) can participate in a strike.

In Turkey, a **law** completely **barring public servants from striking** was passed in 2001.¹³ Nevertheless, according to the Article 53 of the Constitution public servants has the right to bargain collectively.¹⁴

Article 27 prohibits the right to strike for these workers: 'It is prohibited for state civil servants [...] to organise, declare or publicise a strike [...] state civil servants may not take part in a strike [...] may not support or provoke the continuation of a strike'.¹⁵

This thus applies amongst other to the following categories:

- armed forces, including civilian officials and public servants in the Ministry of National Defence and the Turkish Armed Forces;
- Police;
- judges and public prosecutors, financial auditors, employees of penal institutions, special security personnel, public employees "in positions of trust", presidents of universities and directors of higher schools.

Essential services are not defined by Turkish law. However, the activities within the context of the strike bans stated above, come within the scope of 'essential services' and this irrespective of whether these activities are carried out by public or private sector entities.

5. Procedural requirements ¹⁶

- Strikes can only be initiated after **exhausting** all means of **negotiations** between the parties to the conflict.
- Act No. 6365 (in particular articles 60-61) provides for the taking of a **strike ballot** if one-fourth of the employees working in the enterprise request such a vote to be conducted. For determining the one-fourth ratio, all employees, members or not of a union, must be taken into account. An appeal against the strike ballot may be lodged within three working days with the local labour court, which needs to render a final ruling on the appeal within the next three working days.
- The decision to call a strike may be taken within 60 days after the date of notification of the mediator's report to the parties by the competent authority to the effect that **mediation** have failed. Within that 60-day period, the decision to call a strike shall come be communicated 6 days in advance to the strike date and this date must be immediately also announced in the establishment.
- If no collective agreement is reached within the 60-days period, a **mediation process** will start, and the mediator has 15 days (extendable with a maximum of six working days with the consent of the parties) to try to resolve the dispute. No strike action can be initiated before the exhaustion of the mediation stage.
- Art. 65 of the new Law on Trade Unions and Collective Labour Agreements (No. 6356), grants the employer to select a sufficient number of workers excluded from taking part in a lawful strike, with the objective of ensuring the **continuity of work** in processes which have to be maintained for technical reasons; ensuring the safety of the workplace and preventing damage to machinery, installations, equipment, raw materials and finished and semi-finished products; and ensuring the protection of animals and plants.
- The employer may **hire new workers** in lieu of worker who went on a strike in sectors where strikes are prohibited (Art.65 (5) Law on Trade Unions and Collective Labour Agreements (No. 6356)).
- The employer is also allowed via article 71§1 of Act No 6356 to make an injunction before the court ordering the union to stop the industrial action. The court can also a interlocutory injunction ordering the suspension of the action until a final ruling is given in the case.
- The violation of any procedural requirement when calling a strike may lead to a **fine** of 5,000 TL (Art.78 Law on Trade Unions and Collective Labour Agreements (No. 6356)).

6. Legal consequences of participating in a strike

Participation in lawful strike:

The **employment contracts** of employees participating in the strike will be suspended and wages or other benefits will thus not be paid. The period of the employee is striking will also not be taken into account in the calculation of the employee's severance pay. Deductions from wages such as taxes, social insurance premiums, union dues cannot be made for the duration of the strike. Dismissing the employee with notice during the strike shall be considered unlawful and abusive.¹⁷

Participation in unlawful strike

If a strike was declared unlawful by government or the competent court, the employer may, without any liability as to notice or compensation, terminate the employment contract (Article 70§1 Act No. 6356). Instead of dismissal, other sanctions can also be taken such as withholding pay or fines, however if the latter is opted for the employer loses his/her right to terminate the contract.

Damages sustained by the employer must be compensated by either the trade union and/or the employees which as taken part in the strike.

Anyone who calls a **strike** or **lockout** in the **public services** listed above risks a term of **imprisonment** of up to two years (Article 72 of Act 2822).

7. Case law of international/European bodies on standing violations

International Labour Organisation

Committee of Freedom of Association (CFA)

Case No 3084 (Turkey) - Complaint date: 15 July 2014, Kristal-Is (Trade Union of Glass, Cement and Soil Workers of Turkey) supported by the IndustriALL Global Union¹⁸:

The complainant organization alleges that section 63 of Act No. 6356, which allows the Government to suspend a strike by way of a decree and to impose a compulsory arbitration, in general, and the Government's Decree No. 2014/6524 of 27 June 2014, which suspended a strike in the glass industry for a period of 60 days on grounds of public health and national security, in particular, are not in conformity with Conventions Nos 87 and 98.

The CFA invited the Governing Body to approve the following recommendations:

- (a) The Committee notes with regret that a strike has been once again suspended and compulsory arbitration imposed in the glass industry, and requests the Government to ensure in the future that such restrictions may only be imposed in cases of essential services in the strict sense of the term, public servants exercising authority in the name of the State or an acute national crisis.
- (b) Noting that the legislation does not provide for the possibility of appeal to an independent body of a Council of Ministers' decision to suspend a strike, the Committee requests the Government to take the necessary measures for the amendment of section 63 of Act No. 6356 so as to ensure that the final decision whether to suspend a strike rests with an independent and impartial body. It requests the Government to keep it informed of the progress made in this respect.

Case No 3011 (Turkey) - Complaint date: 04 March 2013, Turkish Civil Aviation Union (Hava-İş) and International Transport Workers' Federation (ITF)¹⁹

The complainant organizations allege the dismissal by Turkish Airlines of 316 workers for taking part in a protest strike on 29 May 2012, measures impeding on the right to strike taken during the industrial action called on 15 May 2013, as well as shortcomings in national legislation in the field of industrial action.

The CFA invited the Governing Body to approve amongst others the following recommendations:

(...)

- (b) The Committee requests the Government to review together with the social partners concerned section 58(2) of Act No. 6356 and article 54(1) of the Turkish Constitution so that lawful industrial action is no longer limited to strikes linked to a dispute during the collective bargaining process, with a view to ensuring that the relevant provisions are brought into harmony with the principles of freedom of association.

(c) In view of the claimed continued excessiveness of the fines provided for in section 78(1) of Act No. 6356 for workers participating in or unions organizing an unlawful strike, and recalling that such sanctions should only be imposed as regards strikes which violate prohibitions which are themselves in conformity with the principles of freedom of association, the Committee requests the Government to consider reviewing the system of fines with the social partners concerned along the lines enounced in its conclusions. (...)

Case No 2892 Union of Judges and Public Prosecutors (YARGI-SEN)²⁰

The complainant alleged that the legislation in force denies judges and public prosecutors the right to organize and that on the basis of this legislation, the Labour Court has ordered the dissolution of the complainant organization. It further alleges anti-union discrimination in the form of transfers of its leaders.

The Committee recommended that the Government should renew its efforts, in consultation with the social partners, so as to bring Act No. 4688 into conformity with Convention No. 87 to ensure the right of judges and public prosecutors to establish trade unions to defend their occupational interests.

Also, the Committee urged the Government to take the necessary measures to immediately register YARGI-SEN as a trade union organization of judges and prosecutors so as to ensure that it can function, exercise its activities and enjoy the rights afforded by the Convention to further and defend the interests of these categories of public servants.

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

*Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016)
Convention No. 87.²¹*

Regarding the Article 3 of the ILO Convention, the Committee noted in relation to the section 58 of Act No. 6356, that this provision restricted lawful strikes to disputes during collective bargaining negotiations and had requested the Government to indicate the manner in which protest action, sympathy strikes and other means of legitimate industrial action are protected in line with the 2010 constitutional amendment.

In its previous comments, the Committee requested the Government to take steps to review section 65 of Act No. 6356. The Committee noted in the information provided by the Government that there is no provision impeding consultation and prior agreement between the employer and the workers' representatives on the required minimum service before the employer's decision in this regard, and that the union has the right to challenge the employer's decision before the courts for a final determination. The Committee considers that, in order to promote the participation of the union in the determination of a minimum service in the event of industrial action, it would be important for the Government to clearly provide for such participation in the law, rather than granting this authority unilaterally to the employer.

Finally, with reference to its observation, the Committee noted the observations of the Confederation of Public Employees' Trade Unions (KESK) alleging that the public service in the broad sense of the term is prohibited from taking industrial action, and that the Public Employees Act No. 657 and Act No. 6111 provide disciplinary sanctions for such action.

The Committee indicated, in its 2012 General Survey on the fundamental Conventions, paragraph 129, that public servants who are not exercising authority in the name of the State should be able to carry out their activities, including industrial action, without sanction. The Committee requested the Government to review the legislation concerning public service workers with the relevant social partners with a view to its amendment, so as to ensure that the ban on industrial action is limited to public servants exercising authority in the name of the State and those working in essential services.

European Social Charter

Collective complaints under article 6§4 of the ESC

Turkey did not ratify the Collective Complaints Procedure Protocol.

ECSR Conclusions

No relevant conclusions as Turkey did not ratify article 6§4.

8. Bibliography

- Aydın, U. (2004), 'From the Taft-Hartley Act to Turkish industrial relations – Postponement of legal strikes: A legal borrowing case', *Comparative labor law and policy journal*, Vol. 25, No. 3, pp. 365–390.
- Centel, T. (2014) Chapter 29 The right to strike: Turkey, in Waas, B. (ed.), 'The Right to Strike. A Comparative View', *Kluwers Law International*, 2014, p. 537–550.
- Clauwaert, S. (2016) *Le droit à l'action collective du point de vue de la Charte sociale européenne*, *Revue de Droit du Travail*, No. 6 – June 2016, pp. 438-447.
- Clauwaert, S. and Warneck, W. (2008) *Better defending and promoting trade union rights in the public sector. Part I: Summary of available tools and action points*, Report 105, Brussels: ETUI (<https://www.etui.org/Publications2/Reports/Better-defending-and-promoting-trade-union-rights-in-the-public-sector2>).
- Clauwaert, S. and Warneck, W. (2009) *Better defending and promoting trade union rights in the public sector. Part II: Country reports*, Report 108, Brussels: ETUI (<https://www.etui.org/Publications2/Reports/Better-defending-and-promoting-trade-union-rights-in-the-public-sector>).
- Novitz, T. (2017) The Restricted Right to Strike: "Far-Reaching" ILO Jurisprudence on the Public Sector and Essential Services, *Comparative Labour Law and Policy Journal*, 38(3/ p. 353-374.
- Warneck, W. (2007) *Strike rules in the EU27 and beyond: A comparative overview*, Report 103, Brussels: ETUI (<https://www.etui.org/Publications2/Reports/Strike-rules-in-the-EU27-and-beyond>).
- Uçkan, B. (2007), 'From the perspective of EU integration and ILO standards: Trade union rights in Turkey', *South East Europe Review*, Vol. 4, pp. 107–127.
- Uncular, S. (2018) The right to collective action under European law and Turkish law: What kind of present and future?, *European Labour Law Journal*, 2018, Vol. 9(2), p. 144-170.

Notes

¹ Status of ratification by Turkey of UN instruments: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en> .

² Status of ratification by Turkey of ILO conventions: https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102893

³ In the meantime two so-called 'reports on non-accepted provisions' are available for Turkey respectively from 2013 and 2018. However, in none of them the situation of article 6§4 is addressed. See <https://www.coe.int/en/web/turin-european-social-charter/turkey-and-the-european-social-charter> .

⁴ Centel, p.538; Eurofound p.3.

⁵ Centel, p. 538.

⁶ Eurofound p.4.

⁷ Centel, p. 537 and 539.

⁸ Centel, p. 539-540.

⁹ Centel, p. 544. However, on page 548, Centel also mentions in relation to picketing that with the new Act No. 6536 all restrictions on the activities of pickets by trade unions are removed and that strike pickets are even entitled to enter and exit the workplace without restrictions in order to monitor the procedures regarding the strike.

¹⁰ Ibid, p. 543. According to Centel, the scope of legal prohibitions on strikes is narrowed down since the new text of the Act 6356. In particular, the prohibition of strikes regarding public notary services, vaccine and serum producers, clinics, sanatoriums, dispensaries and pharmacies (except hospitals), education and schooling institutions, child-care institutions, aviation services and nursing homes are removed. See p.548.

¹¹ Ibid p.177.

¹² Centel, p. 542-543.

¹³ ETUI Report 105, p.66.

¹⁴ ETUI Report 108, p. 176 ; Eurofound p.6.

¹⁵ Ibid, p. 175-176.

¹⁶ ITUC Global Index: Turkey - <https://survey.ituc-csi.org/Turkey.html#tabs-2> ; Centel, p. 540-541.

¹⁷ Centel, p. 544-545.

¹⁸ Case documents available at: <https://www.ilo.org/dyn/normlex/en/f?p=1000:50001:::NO:::>

¹⁹ Case documents available at: <https://www.ilo.org/dyn/normlex/en/f?p=1000:50001:::NO:::>

²⁰ Case documents available at :

http://www.ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001_COMPLAINT_FILE_ID:2898025

²¹ See

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3255742,102893,Turkey,2015