



# The right to strike in the public sector

## Ukraine

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## 1. Legal basis

### International level

The Ukraine has ratified:

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

**International Covenant on Economic Social and Cultural Rights**

(ICESCR, Article 8)

**International Covenant on Civil and Political Rights**

(ICCPR, Article 22)

Ratified on 12 November 1973

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

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

ratified on 14 September 1956;

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

ratified on 14 September 1956;

**Convention No. 154 concerning Collective Bargaining**

ratified on 16 May 1994

#### European level Ukraine has ratified:

- **Article 6§4 (right to collective action) of the Revised European Social Charter of 1996** with no reservations

ratification: 21 December 2006, entry into force: 01 February 2007<sup>3</sup>

- **Article 11 (right to organise) of the European Convention of Human Rights**

ratification and entry into force on 11 September 1997<sup>4</sup>

Ukraine has not ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.<sup>5</sup>

## National level

- Constitution<sup>6</sup> Article 44 guarantees the right to strike with some restrictions as follows: *“Those who are employed have the right to strike for the protection of their economic and social interests. The procedure for exercising the right to strike is established by law, taking into account the necessity to ensure national security, health protection, and rights and freedoms of other persons (...) The prohibition of a strike is possible only on the basis of the law.”*
- Applicable laws
  - In general: the Law on the Procedure for Settlement of Collective Labour Disputes (hereinafter “LPSCLD”), Articles 17-28<sup>7</sup> provides rules on the procedure for exercising the right to strike.<sup>8</sup>
  - Specific laws for certain sectors: Article 24 of the LPSCLD provides that employees (with the exception of technical and maintenance personnel) of prosecution authorities, courts, military forces, state authorities, security and law-enforcement bodies shall be banned from striking.

It was noted that the right to strike is restricted by special laws for employees working in the emergency and rescue services, nuclear facilities and in the transport sector as well as for public servants, e.g. Law on Civil Service, Transport Law, Mining Law, Law on Electricity Market etc (see Section 4 of this paper)

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

The decision to call a strike at an enterprise shall be taken at the proposal of the elected body of the trade union or other organisation of employees authorised to represent them, by a vote of the general assembly of the employees and shall be considered adopted if **a majority of the employees or two thirds of the delegates at the conference vote in its favour.**<sup>9</sup>

The ILO CEACR recommended that if the national legislation requires a vote before a strike is held, it should ensure that account is taken only of the votes cast and the majority is fixed at a **reasonable level**. It requested the Government of Ukraine to take the necessary measures to amend Section 19 of the LPSCLD accordingly (see Section 7 below).<sup>10</sup>

Recommendations on whether to declare or not declare a branch or territorial strike are taken at the branch or territorial level at a conference, assembly, plenum or other elected body of representatives of employees and/or of trade unions, and are sent to the appropriate work forces or trade unions. The employees of branch enterprises or of administrative-territorial units shall take a decision independently on whether or not to declare a strike at their enterprise. A strike shall be considered a branch or territorial strike if the number of working people at the enterprises where a strike has been declared exceeds **half the total number of people working in the branch or territory** in question.

## 3. Definition of strike

Article 17 of the LPSCLD defines a strike as a temporary collective voluntary cessation of work (absence from work or non-performance of their labour duties) by workers of an enterprise, institution, organisation (or structural subdivision), **with the aim of settling a collective labour dispute.**<sup>11</sup>

A strike is called as the final means, after all other possibilities have been exhausted, of settling a collective labour dispute, in connection with the refusal of the employer or its authorised representative to meet the demands of employees or the body, trade-union or association of trade-unions authorised by them, or body authorised by it.<sup>12</sup>

According to Article 22 of the LPSCLD, strikes shall be deemed illegal if they are declared in connection to demands for changes to the constitutional order, to the state borders and the administrative-territorial system of Ukraine, as well as with demands that infringe on human rights.<sup>13</sup>

Solidarity strikes are not provided by the legislation. There are no explicit legal provisions on other types of collective action such as warning strikes, sit-ins, go-slow actions, rotating strikes, work-to-rule, blockades, etc. The LPSCLD in Article 19 provides that when conducting meetings, rallies, pickets outside the enterprise, the body or person leading the strike must notify the local executive authority or local authority regarding the event planned not later than 3 days in advance.<sup>14</sup>

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

As mentioned above, Article 44 guarantees the right to strike with some restrictions as follows: *“Those who are employed have the right to strike for the protection of their economic and social interests. The procedure for exercising the right to strike is established by law, taking into account the necessity to ensure national security, health protection, and rights and freedoms of other persons. No one shall be forced to participate or not to participate in a strike. The prohibition of a strike is possible only on the basis of the law.”*

- Limitations on the right to strike

According to the Constitution, Article 44 *“(…) The prohibition of a strike is possible only on the basis of the law.”*

Under Article 24 of LPSCLD, *“Cases in which it is forbidden to strike”*, strikes shall be prohibited if the cessation of work by workers creates a threat to the lives and health of people or to the environment; or impedes the prevention of natural calamities, accidents, disasters, epidemics and epizootics or the elimination of their consequences.<sup>15</sup>

Employees (with the exception of technical and maintenance personnel) of prosecution authorities, courts, military forces, state authorities, security and law-enforcement bodies shall be banned from striking.<sup>16</sup>

In the event a state of emergency is declared, the Supreme Rada of Ukraine or the President of Ukraine may prohibit strikes from being conducted for a period not exceeding one month. An extension of such prohibition must be approved by a joint act of the Supreme Rada of Ukraine and the President of Ukraine. In the event a state of war is declared, an automatic prohibition of strikes shall apply until the moment it is repealed.<sup>17</sup>

##### *The settlement of labour disputes in the case of prohibition of strike*

In the above mentioned cases when the right to strike is prohibited (provided for by Article 24 of LPSCLD), and when the recommendations of the National Mediation and Conciliation Service on settling a collective labor dispute are not taken into account, the National Mediation and Conciliation Service shall apply for settlement of the collective labour dispute to the oblast court, or to the Kiev and Sebastopol municipal court as appropriate.<sup>18</sup>

##### *Ensuring the viability of the company during the strike*

The employer or its authorised representative, the local executive authority or body of local self-government and the body or person leading the strike must take the measures necessary to ensure the viability of the enterprise, to preserve property, to secure observance of the legal and social order, and to prevent any threat to the lives and health of people and to the environment during the strike.<sup>19</sup>

It was noted that the right to strike is restricted for employees working in the emergency and rescue services, nuclear facilities and in the transport sector by special laws.<sup>20</sup>

For example, strikes in the underground mines are prohibited according to Article 42 of the Mining Law No. 1127-XIV of 6.10.1999.

Article 18 of Transport Act (1994), “Strikes at transport enterprises” provides: “Cessation of work (strike) at transport enterprises may take place if the enterprise’s management fails to comply with tariff agreements, except in cases where passenger transportation or maintenance of a continuous production cycle are concerned, and also where a strike would endanger human life or health.”<sup>21</sup>

Article 29 of the Mining Law of Ukraine stipulates that state paramilitary emergency rescue services shall be established for dealing with emergencies in the coal and mining industries. This category of staff is also prohibited from striking.<sup>22</sup> The Committee asks whether strikes by other workers in undergrounds mines continue to be prohibited.

With regard to public servants, it was noted that according to the Law on Civil Service No. 4050-VI of 17.11.2011 which entered into force on 1.01.2014, a civil servant has no right to call a strike and to take part in it.<sup>23</sup>

It is of relevance that the “essential services” in the strict sense of the term have been defined by the International Labour Organisation as those services “the interruption of which would endanger the life, personal safety or health of the whole or part of the population.”<sup>24</sup>

## 5. Procedural requirements

- A strike may be initiated, if conciliation does not lead to resolution of a collective labor dispute; or an employer or his authorised representative organisation of employers or associations of employers avoids conciliation procedures; or does not comply with the agreement reached in the resolution of collective labor disputes;<sup>25</sup>
- The body or person leading a strike shall inform the employer or its authorised representative in writing **no later than seven days** before the commencement of the strike, or **no later than fifteen days** if the decision to strike concerns a continuous production plant;<sup>26</sup>
- In the event of gatherings, meetings or picketing held outside the boundaries of an enterprise, the body or person leading the strike must advise the local executive authority or the body of local self-government of the event planned **no later than three days in advance**;<sup>27</sup>
- The employer or its authorised representative must inform at the earliest possible date the suppliers and consumers, transport organisations, as well as other establishments, institutions and organisations concerned of the employees' decision to declare a strike;<sup>28</sup>
- The body or person leading a strike shall determine the **location** of the strike in agreement with the employer or his representative;<sup>29</sup>
- No one may be compelled to participate or not to participate in a strike;<sup>30</sup>
- **Balloting.** A decision to call a strike at the enterprise level shall be taken by a vote of the general assembly of the employees and shall be considered adopted if a **majority of the employees or two thirds of the delegates** at the conference vote in its favour.<sup>31</sup> A strike shall be considered a branch or territorial strike if the number of working people at the enterprises where a strike has been declared exceeds half the total number of people working in the branch or territory in question;<sup>32</sup>
- The employer or its authorised representative, the local executive authority or body of local self-government and the body or person leading the strike must take the measures necessary to ensure the *viability of the enterprise*, to preserve property, to secure observance of the legal and social order, and to prevent any threat to the lives and health of people and to the environment during the strike;<sup>33</sup>
- The legislation does not provide for the obligation to respect any *peace obligation*.

## 6. Legal consequences of participating in a strike

### Participation in a lawful strike

- The participation of workers in a strike, with the exception of strikes ruled unlawful by a court, shall not be considered a breach of labour discipline and cannot constitute grounds for disciplinary proceedings.<sup>34</sup>
  - The employees or trade-union may decide to create a strike fund made up of voluntary contributions and donations.<sup>35</sup>
  - Workers who did not participate in a strike, but because of the strike were not able to perform their duties, shall be paid in an amount not less than that established by legislation and the collective agreement concluded at the given enterprise for idle time that is not the fault of those workers. Keeping a record of such workers is the responsibility of the employer or its authorised representative.<sup>36</sup>
  - Compensation for damage caused as a result of a strike to other enterprises, institutions, organisations or citizens shall be awarded by a court according to legislation.<sup>37</sup>
  - An employer or its authorised representative who has violated the laws of Ukraine, as a result of which conditions for a strike have developed, with the strike ending in the workers' demands being fully or partially met, shall compensate participants in the strike for damages in the amount stipulated by a court (within the limits of funds and property owned).<sup>38</sup>
  - No provision found in the legislation concerning the right of the employer to replace workers on strike.<sup>39</sup>
  - *Lockout* – no definition found in the legislation.<sup>40</sup>
- **Participation in an unlawful strike**
    - An application by the employer or its authorised representative seeking to have a strike declared unlawful shall be considered by a court. Such application must be considered by a court within seven days.<sup>41</sup>
    - A court's judgment declaring a strike unlawful obliges persons taking part in the strike to adopt a decision discontinuing or cancelling the announced strike, and [it obliges] employees to return to work no later than the next day after the body (person) leading the strike is served with a copy of the court's judgment.<sup>42</sup>
    - According to the LPSCLD, organising or participating in a strike that has been ruled unlawful by a court constitutes a breach of labour discipline.<sup>43</sup>
    - Workers participating in a strike shall not be remunerated for the time during which they take part in the strike.<sup>44</sup>
    - A worker's time spent participating in a strike ruled unlawful by a court shall not be included in the period of his total and uninterrupted length of service.<sup>45</sup>
    - Persons who are organisers of a strike ruled unlawful by a court or who do not fulfill a ruling deeming a strike unlawful, as well as persons obstructing the termination of an illegal strike shall be subject to disciplinary or administrative proceedings in accordance with legislation.<sup>46</sup>
    - Persons compelling workers to participate in a strike or obstructing their participation in a strike by force or threat of use of force, or by other actions punishable under legislation, shall be subject to criminal proceedings according to legislation.<sup>47</sup>
    - Damage caused to the employer or its authorised representative by a strike deemed unlawful by a court shall be compensated by the body authorised by employees to



conduct the strike in the amount stipulated by the court (within the limits of the funds and property it owns).<sup>48</sup>

- Section 293 of the Criminal Code provides that organised group actions that seriously disturb public order, or significantly disrupt operations of public transport, any enterprise, institution or organisation and active participation therein, are punishable by a fine of up to 50 monthly minimum wages or imprisonment for a term of up to six months.<sup>49</sup>

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

- **International Labour Organisation**
  - **The Committee on Freedom of Association (CFA)**

**CFA, Case No. 2018, *The Independent Trade Union of Workers of the Ilyichevsk Maritime Commercial Port (NPRP)*, Report No. 318 November 1999<sup>50</sup>**

Through the complaint lodged on 23 February 1999, the NPRP alleged violations of trade union rights, including the right to strike. The Government's reply was that, under the Transport Act, strikes were prohibited in continuously operating transport enterprises.

In its Report No. 318 of November 1999 (Report in which the committee requests to be informed of development), the Committee stated:

"514. In cases concerning violations of the right to strike, the Committee has always recognized the right to strike of workers and their organizations as a legitimate means of defending their economic and social interests. It has also considered that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations. ... The Committee has also emphasized that while the right to strike may be restricted or prohibited in essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, provided that the workers are given appropriate guarantees, port activities generally do not constitute essential services in the strict sense of the term, although they are an important public service in which a minimum service could be required in case of a strike. ... The Committee, therefore, requests the Government to amend section 18 of the Transport Act to ensure that it cannot be construed as prohibiting strikes in ports."

Subsequently, the Committee issued several reports on the effect given to its recommendations. In particular, in November 2001 it issued Report No. 326<sup>51</sup>, in which it referred to the Government's communication of August 2001 stating that the Ministry of Transport was preparing a new transport bill, which would include the following provisions: "Voluntary cessation of work (strike) in transport undertakings may be initiated in accordance with the procedure established under relevant legislation. Except in cases where such cessation of work would endanger the life and health of individuals or pose an environmental threat, hinder the prevention of natural disasters, accidents or major incidents, epidemic or epizootic outbreaks, or impede efforts to deal with the consequences of such events."

- **The Committee of Experts on the Application of Conventions and Recommendations (CEACR)<sup>52</sup>**

**Observation CEACR – adopted 2018, published 108<sup>th</sup> ILC session (2019)<sup>53</sup>**

With regard to the Committee's previous request to amend section 19 of the Law on the procedure for settlement of collective labour disputes, which provides that a decision to call a strike has to be supported by a majority of the workers or two-thirds of the delegates of a conference, the Committee recalled that the Government's initial indication was that this requirement would be lowered in the

draft Labour Code. Subsequently, the Committee noted that the draft Labour Code did not contain provisions dealing with the manner in which the decisions to declare a strike were taken, and strikes carried out. The Committee had therefore requested the Government to clarify which legal provision will govern the exercise of the right to strike once the Labour Code is adopted. The Committee noted the Government's indication that the current version of the draft Labour Code refers to the relevant provision of the Law on the procedure for settlement of collective labour disputes and, as concerns the majority required to call a strike, to its section 19. The Committee once again recalled that if the national legislation requires a vote before a strike can be held, it should ensure that account is taken only of the votes cast and the majority is fixed at a reasonable level. The Committee therefore once again requested the Government to take the necessary measures to amend section 19 of the Law on the procedure for settlement of collective labour disputes accordingly and to indicate the progress achieved in this respect.

The Committee had previously requested the Government to list specific categories of public servants whose right to strike is restricted or prohibited by the Law on Civil Service, pursuant to section 10(5) of which, civil servants are prohibited from exercising the right to strike. The Committee noted the detailed information provided by the Government on various categories of civil servants, which, however, does not indicate whether or not they can exercise the right to strike. Recalling that the right to strike in the public service may be restricted or prohibited only for public servants exercising authority in the name of the State, the Committee requested the Government to clarify which categories of civil servants exercise authority in the name of the State and whether some or all civil servants are prohibited from exercising the right to strike and to amend the Law accordingly.

The Committee had previously noted that pursuant to section 293 of the Criminal Code, organized group actions that seriously disturb public order, or significantly disrupt operations of public transport, any enterprise, institution or organization and active participation therein, are punishable by a fine of up to 50 monthly minimum wages or imprisonment for a term of up to six months. The Committee noted the Government's general information about pretrial investigations into offences under section 293. The Committee once again requested the Government to provide information on the practical application of this section in respect of industrial actions.

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

#### ***Conclusions 2018 - Ukraine - Article 6§4***<sup>54</sup>

With regard to the entitlement to take collective action, the Committee previously noted that Article 19 of the Law on the Procedure for Settlement of Collective Labour Disputes, provides that a decision to call a strike has to be supported by a majority of the workers or two-thirds of the delegates at the conference vote in its favour. The Committee asked for explanations as to how this procedure operates. It had further noted that the Government indicated that the draft Labour Code would lower this requirement so as to set it at the majority of workers (delegates) present at the meeting (conference). The Committee asked for information on what is meant by a

conference and how many workers are required to attend. According to the report the draft Labour Code had not yet been formally adopted but the Committee on Social Policy, Employment and Pension Security supported the draft Labour Code and recommended that the Parliament adopt it. The Committee wished to be kept informed of all developments in this regard. Meanwhile, it reserved its position on this point.

With regard to specific restrictions on the right to strike, in its previous conclusion the Committee found the situation not to be in conformity with the Charter on the grounds that the restrictions on the right to strike for employees working in the emergency and rescue services, at nuclear facilities, in underground undertakings as well as at electric power engineering enterprises did not comply with the conditions established by Article G of the Charter nor did the restrictions on the right to strike for employees working in the transport sector comply with the conditions established by Article G of the Charter (Conclusions 2014).

The report stated that persons of the ordinary and commanding staff of the civil protection service, staff of professional rescue services are prohibited from organising or taking part in strikes. Article 29 of the Mining Law of Ukraine stipulates that state paramilitary emergency rescue services shall be established for dealing with emergencies in the coal and mining industries. This category of staff are also prohibited from striking. The Committee asked whether strikes by other workers in undergrounds mines continue to be prohibited. Article 22 of the Law of Ukraine "On Electricity Market" No. 2019-VI of 13 April 2017 stipulates that strikes at electric power plants are prohibited where they can lead to a "breach of the of the constancy of the united power system of Ukraine". The Committee asked whether this amounts to a total ban in this sector or whether under certain circumstances strikes are permitted. Meanwhile it reserved its position in this respect. The Committee noted that there has been no change to the situation regards the prohibition of strikes in the nuclear industry.

As regards the transport sector, the report stated that workers in this sector may strike under certain conditions. The Committee asked for further information on the situation. Further the report stated that draft legislation is pending before parliament which proposes to amend Article 18 of the Law of Ukraine "On Transport" in order to implement the judgment of the European Court of Human Rights in the case of "*Veniamin Tymoshenko and others v. Ukraine*". The Court found that the ban on a strike by AeroSvit Airlines cabin crew constituted a violation of the applicants' right under Article 11 of the European Convention on Human Rights. The Committee asked to be kept informed of all developments in this respect. Meanwhile it concluded that the situation was still not in conformity.

The Committee again recalled that restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health (Conclusions I (1969), Statement of Interpretation on Article 6§4). However, simply banning strikes even in essential sectors, particularly when they are extensively defined, is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4 (Conclusions XVII-1 (2004), Czech Republic). As there is no provision for the introduction of a minimum service, and strikes are simply prohibited for certain categories of employees, the Committee

found that the situation is not in conformity with the Charter as regards the emergency and rescue services, nuclear facilities and the transport sector.

With regard to the public servants, in its previous conclusion (Conclusions 2010) the Committee found the situation in Ukraine not to be in conformity with Article 6§4 of the Charter on the ground that all civil servants are denied the right to strike. The report indicated that the legislation had not changed during the reference period. It stated however that the National Civil Service Agency of Ukraine is currently considering the possibility of ratification of the ILO Convention No. 151 on the Protection of the Right to Organise and the Procedure for Determining the Conditions of Work in the Civil Service. The Committee asked to be kept informed of all developments, meanwhile it reiterated its previous finding of non-conformity.

The Committee concluded that the situation in Ukraine is not in conformity with Article 6§4 of the Charter on the grounds that:

- civil servants are denied the right to strike;
- the restrictions on the right to strike for employees working in the emergency and rescue facilities, nuclear facilities and in the transport sector go beyond the limits permitted by Article G of the Charter.

- **European Court of Human Rights**

- ***Veniamin Tymoshenko and others v. Ukraine, Application No. 48408/12***

The case concerned the ban on a strike by AeroSvit Airlines cabin crew.

As to the facts, in September 2011 Aerosvit cabin crew, including the five applicants who were employed with the airline at the time, decided to embark on industrial action seeking resolution of a labour dispute with the management of Aerosvit over a number of issues, including salaries, allowances and safety. The relevant authorities were notified of the decision to hold a strike. However, in October 2011, following a claim lodged by the management of Aerosvit, the domestic courts banned the strike on the ground that it would be unlawful. The courts relied notably on the Transport Act, which prohibits strikes at transport enterprises if they affect the transportation of passengers and on the Resolution of Labour Disputes Act, which prohibits strikes if they are likely to endanger human life or health. Relying on Article 11 (freedom of assembly and association) of the Convention, the applicants complained about the authorities' unconditional ban on their strike on the sole ground that they had been employed by a passenger carrier.<sup>55</sup>

The Court<sup>56</sup> noted that Section 24 of the 1998 Resolution of Labour Disputes Act, which concerns labour disputes in all sectors, prohibits strikes in the following cases: *"if the cessation of work by employees endangers human life or health or the environment, or if it hinders prevention of a natural disaster, an accident, a catastrophe, an epidemic or an epizootic outbreak, or hampers rectification of their consequences"*. The Court noted that nothing in the wording used suggests that this list is not exhaustive. The Court further noted that, at the same time, Section 18 of the 1994 Transport Act, which has not been amended since its adoption and which concerns the transport sector alone, also stipulates in which situations strikes must be prohibited. This provision is much more restrictive: in addition to cases where a strike endangers human life or health, it must be prohibited *"where passenger transportation or maintenance of a continuous production cycle are concerned"*.

The Court stated that although the Resolution of Labour Disputes Act provides in its Final Provisions that other laws and regulations should be applicable only in the part which does not contradict that Act, and that they should be brought into compliance with it, the Transport Act nonetheless has so far continued to apply without amendment for the sixteen or so years since the Resolution of Labour Disputes Act entered into force in 1998. The Court concluded therefore that the interference with the applicants' rights under Article 11 of the Convention was not based on sufficiently clear and foreseeable legislation, and there had accordingly been a violation of Article 11 of the Convention.

○ ***Trofimchuk v. Ukraine, Application No. 4241/03***

Concerning the facts, the applicant, Yekaterina Trofimchuk, worked as a boiler engine operator in a municipal central heating enterprise until her dismissal for systematic breach of her employment duties on 10 March 1999, which was one week after she had participated in a picket to express concerns over past unpaid wages and the management of the company she worked for. Relying on Article 11 (freedom of assembly and association) of the Convention, Ms Trofimchuk alleged in particular that she had been dismissed because of her participation in that picket and her involvement in the trade union which had organised it.

The Court<sup>57</sup> noted that Ukrainian law provides for the right to strike, one of the means available to resolve labour disputes and which entails temporary cessation of work, and establishes the procedure in accordance with which this right is to be exercised. The procedure envisages certain guarantees to employees, including immunity from disciplinary action taken on the basis of participation in a lawful strike. The Court further noted that in this case, the applicant engaged in a protest action against her employer which caused her to be absent from work for two hours. However, the applicant did not follow the procedure for a strike set out in Section 19 of the Resolution of Labour Disputes (Procedure) Act of 3 March 1998 – nor did she argue that she had been prevented from doing so in any way. Moreover, the applicant did not challenge the conformity of the procedure made available in domestic law to the requirements of Article 11 of the Convention. In the light of the foregoing, the Court found that the disciplinary sanction was lawfully imposed on the applicant and thus the interference was “prescribed by law” within the meaning of Article 11 § 2 of the Convention. The Court also considered that the interference pursued a “legitimate aim,” which was the protection of the rights of the applicant's former employer under domestic labour law.

The Court further observed that the notice given by the applicant to the local authorities on 22 February 1999 did not contain an indication of the planned duration of the picket, nor did it suggest that the applicant intended to strike or would otherwise be absent from work because of her participation in the picket. Due to the nature of the applicant's work responsibilities, her two-hour absence from work on 3 March 1999 and failure to give her direct supervisor advance notice of her absence resulted in serious disruption to workplace processes. Even assuming that one of the applicant's colleagues agreed to replace her on the day, such action is not sufficient to demonstrate that the applicant took all necessary steps to ensure that she exercised her freedom of peaceful assembly in accordance with the due respect to the rights and interests of her employer. In these circumstances, the Court found that the disciplinary measure taken against the applicant was not disproportionate and thus that there had been no violation of Article 11 of the Convention.<sup>58</sup>

## 8. Recent developments

With regard to the legal framework, it was noted that the adoption of the new Labour Code, which would advance legal approximation, has not progressed since the draft law was prepared for second reading in 2017. A modernisation of the social dialogue, including through the adoption of legislation on collective bargaining, is pending.<sup>59</sup>

In practice, pressures and even physical violence against unionised workers and trade unions leaders were reported in various fields such as mining<sup>60</sup>, medical<sup>61</sup>, transport<sup>62</sup> or schools<sup>63</sup>. It was emphasised that respect for the rule of law is essential when it comes to the protection of the rights of workers.<sup>64</sup>

For example, in the coal mining industry, workers went on strike for unpaid wages.<sup>65</sup> Other strikes concerned disputes over unpaid wages, a claim for increased pay and for proper application of the pay system for the health workers<sup>66</sup> or a protest over pay, prices and investments by workers in nuclear energy.<sup>67</sup>

The Government reported that the draft Labour Code has not yet been formally adopted but the Committee on Social Policy, Employment and Pension Security supported the draft Labour Code and recommended that the Parliament adopt it.<sup>68</sup> It was also reported that draft legislation was pending before Parliament which proposed to amend Article 18 of the Law of Ukraine “On Transport” in order to implement the judgment of the European Court of Human Rights in the case of “*Veniamin Tymoshenko and others v. Ukraine*”.<sup>69</sup>

With regard to public servants, it was reported that the National Civil Service Agency of Ukraine was considering the possibility of ratification of the ILO Convention No. 151 on the Protection of the Right to Organise and the Procedure for Determining the Conditions of Work in the Civil Service.<sup>70</sup> However, the ILO Convention No. 151 has not been ratified yet by Ukraine to this date.<sup>71</sup>

## 9. Bibliography

- The Constitution of Ukraine adopted on 28.06.1996, available (in English) at: [https://www.legislationline.org/download/id/8233/file/Ukraine\\_Constitution\\_am2019\\_EN.pdf](https://www.legislationline.org/download/id/8233/file/Ukraine_Constitution_am2019_EN.pdf)
- Law No. 137/98-VR of 3 March 1998 on the procedure of settlement of collective labour disputes, available in Ukrainian at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=50886&p\\_country=UKR&p\\_count=536&p\\_classification=02&p\\_classcount=22](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=50886&p_country=UKR&p_count=536&p_classification=02&p_classcount=22) and in English at : <https://www.legislationline.org/documents/id/7137>
- IRLEX Industrial Relations Country Profile Ukraine, 2015, available at: [https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:UKR,,2015](https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:UKR,,2015)
- The ITUC Global Rights Index, Survey of violations of Trade Unions Rights, Ukraine
- <https://survey.ituc-csi.org/Ukraine.html?lang=en#tabs-1>
- 10th National Report on the implementation of the European Social Charter submitted by Ukraine, 26 July 2018, available at: <https://rm.coe.int/10th-national-report-on-the-implementation-of-the-european-social-char/16808e45b9>
- Law No. 137/98-VR of 3 March 1998 on the procedure for settlement of collective labour disputes, available (in English) at: <https://www.legislationline.org/documents/id/7137> and (in Ukrainian) at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=50886&p\\_country=UKR&p\\_count=536&p\\_classification=02&p\\_classcount=22](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=50886&p_country=UKR&p_count=536&p_classification=02&p_classcount=22)
- HUDOC ESC, Conclusions on Article 6§4 of the European Committee of Social Rights in respect of Ukraine, available at: <https://hudoc.esc.coe.int/eng#%7B%22ESCArticle%22:%7B%2206-04-000%22,%22ESCDcLanguage%22:%7B%22ENG%22,%22ESCDcType%22:%7B%22Conclusion%22,%22ESCStateParty%22:%7B%22UKR%22%7D%7D>
- ECtHR, *Trofimchuk v. Ukraine*, Application No. 4241/03, Judgment of 28.10.2010, available at: <http://hudoc.echr.coe.int/eng?i=001-101310>
- ECtHR, *Veniamin Tymoshenko and others v. Ukraine*, Application No. 48408/12, Judgment of 2.10.2014, available at: <http://hudoc.echr.coe.int/eng?i=001-146671>
- EPSU, Ukraine, available at : <https://www.epsu.org/search/countries/ukraine>
- European Commission, Joint Staff Working Document Association Implementation Report on Ukraine, 7.11.2018, Brussels, SWD(2018) 462 final, available at: [https://eeas.europa.eu/sites/eeas/files/2018\\_association\\_implementation\\_report\\_on\\_ukraine.pdf](https://eeas.europa.eu/sites/eeas/files/2018_association_implementation_report_on_ukraine.pdf)
- Compilation of decisions of the Committee on Freedom of Association (ILO CFA), 6<sup>th</sup> edition, 2018, Chapter 10, paras. 853-863, available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_632659.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf)
- ETUI Report « Better defending and promoting trade union rights in the public sector », No. 105, 2008, pp. 79-81, available at: <https://www.etui.org/Publications2/Reports/Better-defending-and-promoting-trade-union-rights-in-the-public-sector2>



## Notes

- <sup>1</sup> Status of ratification by Ukraine of UN Treaties available at: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en>, consulted on 24.10.2019
- <sup>2</sup> Status of ratification by Ukraine of ILO Conventions available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102867](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102867), consulted on 24.10.2019
- <sup>3</sup> Status of ratification by Ukraine of the Revised European Social Charter available at: [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures?p\\_auth=jPYjkVEL](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures?p_auth=jPYjkVEL) and <https://www.coe.int/en/web/european-social-charter/signatures-ratifications>, consulted on 25.10.2019
- <sup>4</sup> Status of ECHR ratifications available at: [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p\\_auth=jPYjkVEL](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=jPYjkVEL), consulted on 25.10.2019
- <sup>5</sup> For more details on the collective complaints system of the European Social Charter see: <https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure>
- <sup>6</sup> The Constitution of Ukraine was adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28.06.1996, available in English, as amended subsequently, at: [https://www.legislationline.org/download/id/8233/file/Ukraine\\_Constitution\\_am2019\\_EN.pdf](https://www.legislationline.org/download/id/8233/file/Ukraine_Constitution_am2019_EN.pdf)
- <sup>7</sup> Law No. 137/98-VR of 3 March 1998 on the procedure of settlement of collective labour disputes, available in Ukrainian at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=50886&p\\_country=UKR&p\\_count=536&p\\_classification=02&p\\_lasscount=22](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=50886&p_country=UKR&p_count=536&p_classification=02&p_lasscount=22) and in English at: <https://www.legislationline.org/documents/id/7137>
- <sup>8</sup> ECSR, Conclusions 2014 on Article 6§4 Ukraine available at: <http://hudoc.esc.coe.int/eng?i=2014/def/UKR/6/4/EN>
- <sup>9</sup> Article 19(1) of the LPSCLD; see also the ITUC Global Rights Index, Survey of violations of trade union rights, Ukraine, available at: <https://survey.ituc-csi.org/Ukraine.html?lang=en#tabs-2>
- <sup>10</sup> ILO CEACR, Observation (CEACR) – adopted 2018, published 108<sup>th</sup> ILC session (2019), available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3962360](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3962360)
- <sup>11</sup> Article 17(1) of the LPSCLD
- <sup>12</sup> Article 17(2) of the LPSCLD
- <sup>13</sup> Article 22 (a) of the LPSCLD
- <sup>14</sup> Article 19 of the LPSCLD (last paragraph)
- <sup>15</sup> Article 24 (1) of the LPSCLD
- <sup>16</sup> Article 24 (2) of the LPSCLD
- <sup>17</sup> Article 24 (3) of the LPSCLD
- <sup>18</sup> Article 25 of the LPSCLD
- <sup>19</sup> Article 26 of the LPSCLD
- <sup>20</sup> ECSR, Conclusions 2018 on Article 6§4 Ukraine available at: <http://hudoc.esc.coe.int/eng?i=2018/def/UKR/6/4/EN>
- <sup>21</sup> ECSR, Conclusions 2018 on Article 6§4 Ukraine available at: <http://hudoc.esc.coe.int/eng?i=2018/def/UKR/6/4/EN> and ECtHR, *Veniamin Tymoshenko and others v. Ukraine*, Judgment of 2.10.2014, para. 29, available at: <http://hudoc.echr.coe.int/eng?i=001-146671>
- <sup>22</sup> ECSR, Conclusions 2018 on Article 6§4 Ukraine available at: <http://hudoc.esc.coe.int/eng?i=2018/def/UKR/6/4/EN>
- <sup>23</sup> ECSR, Conclusions 2014 on Article 6§4 Ukraine available at: <http://hudoc.esc.coe.int/eng?i=2014/def/UKR/6/4/EN> and Conclusions 2018 on Article 6§4 Ukraine available at: <http://hudoc.esc.coe.int/eng?i=2018/def/UKR/6/4/EN>
- <sup>24</sup> Compilation of decisions of the Committee on Freedom of Association (ILO CFA), 6<sup>th</sup> edition, 2018, Chapter 10, paras. 836 - 841 – ILO CFA has defined and listed as “essential services in the strict sense of the term” where the right to strike may be subject to restrictions or even prohibitions, the following: the hospital sector, electricity services, water supply services, the telephone service, the police and armed forces, the fire-fighting services, public or private prison services, the provision of food to pupils of school age and the cleaning of schools, air traffic control. The ILO CFA has stressed that compensatory guarantees should be provided to workers in the event of prohibition of strikes in essential services, see paras. 853 - 863; See also ETUI Report 105, pp. 79-81
- <sup>25</sup> Article 18 (3) of the LPSCLD
- <sup>26</sup> Article 19 of the LPSCLD
- <sup>27</sup> Article 19 of the LPSCLD
- <sup>28</sup> Article 19 of the LPSCLD
- <sup>29</sup> Article 19 of the LPSCLD
- <sup>30</sup> Article 19 of the LPSCLD
- <sup>31</sup> Article 19 of the LPSCLD
- <sup>32</sup> Article 19 of the LPSCLD
- <sup>33</sup> Article 26 of the LPSCLD
- <sup>34</sup> Article 27 (1) of the LPSCLD
- <sup>35</sup> Article 27 (2) of the LPSCLD
- <sup>36</sup> Article 27 (3) of the LPSCLD
- <sup>37</sup> Article 34 (1) of the LPSCLD
- <sup>38</sup> Article 34 (3) of the LPSCLD
- <sup>39</sup> ILO IRLEX, Industrial Relations Country Profile, Ukraine, item 7.4.8, available at: [https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:UKR,,2015](https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:UKR,,2015)
- <sup>40</sup> ILO IRLEX, Industrial Relations Country Profile, Ukraine, item 7.5, available at: [https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:UKR,,2015](https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:UKR,,2015)
- <sup>41</sup> Article 23 (1) and (2) of the LPSCLD
- <sup>42</sup> Article 23 (3) of the LPSCLD
- <sup>43</sup> Article 28 (1) of the LPSCLD
- <sup>44</sup> Article 28 (2) of the LPSCLD
- <sup>45</sup> Article 28 (3) of the LPSCLD
- <sup>46</sup> Article 32 of the LPSCLD
- <sup>47</sup> Article 33 of the LPSCLD
- <sup>48</sup> Article 34 (2) of the LPSCLD

- <sup>49</sup> ECSR, Conclusions 2014 on Article 6§4 Ukraine available at: <http://hudoc.esc.coe.int/eng?i=2014/def/UKR/6/4/EN>, and Observation (CEACR) adopted 2018, published 108<sup>th</sup> ILC session (2019), available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3962360](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3962360)
- <sup>50</sup> CFA, Case No. 2018 (Ukraine), Report in which the Committee requests to be kept informed of development - No. 318, November 1999, available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:2905216](https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2905216)
- <sup>51</sup> CFA, Case No. 2018 (Ukraine), Report No. 326 of November 2001, para. 162 available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:2905217](https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2905217)
- <sup>52</sup> See Observations and Direct Requests of CEACR concerning the implementation of ILO Convention No. 87, in respect of Ukraine, available at: <https://www.ilo.org/dyn/normlex/en/f?p=1000:20010::NO::>
- <sup>53</sup> Observation (CEACR) adopted 2018, published 108<sup>th</sup> ILC session (2019), available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3962360](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3962360)
- <sup>54</sup> ECSR, Conclusions 2018 on Article 6§4 Ukraine available at: <http://hudoc.esc.coe.int/eng?i=2018/def/UKR/6/4/EN>
- <sup>55</sup> *Veniamin Tymoshenko and others v. Ukraine*, Application No. 48408/12, Press Release of the Registrar of the Court, file:///C:/Users/user/Downloads/Judgments%20concerning%20the%20Czech%20Republic.%20Greece.%20Portugal.%20Russia.%20and%20Ukraine%202002.10.14.pdf
- <sup>56</sup> ECtHR, *Veniamin Tymoshenko and others v. Ukraine*, Application No. 48408/12, Judgment of 2.10.2014, paras. 80-86, available at: <http://hudoc.echr.coe.int/eng?i=001-146671>
- <sup>57</sup> ECtHR, *Trofimchuk v. Ukraine*, Application No. 4241/03, Judgment of 28.10.2010, paras. 38-47, available at: <http://hudoc.echr.coe.int/eng?i=001-101310>
- <sup>58</sup> *Idem*, paras. 44-47
- <sup>59</sup> European Commission, Joint Staff Working Document Association Implementation Report on Ukraine, 7.11.2018, Brussels, SWD(2018) 462 final, available at: [https://eeas.europa.eu/sites/eeas/files/2018\\_association\\_implementation\\_report\\_on\\_ukraine.pdf](https://eeas.europa.eu/sites/eeas/files/2018_association_implementation_report_on_ukraine.pdf)
- <sup>60</sup> "The Public Joint "Marganets Mining and Processing Plant" (PJ 'MMPP') threatens unionised workers and pressure them to resign"; "Workers of the EVRAZ Sukha Balka mining company associated with the Independent Union of Miners of Ukraine (NGPU) are being discriminated"; "Assault on mine workers' leader"; "Striking miners sacked and facing possible treason charges in Donetsk", available at: <https://survey.ituc-csi.org/Ukraine.html?lang=en#tabs-3>
- <sup>61</sup> "The Independent Trade Union of Medical Workers of Ukraine (VPMPU) excluded from collective bargaining process", available at: <https://survey.ituc-csi.org/Ukraine.html?lang=en#tabs-3>
- <sup>62</sup> "Kurynivske trolleybus depot of Municipal Enterprise "Kyivpastrans" violates basic labour rights and refuses to recognise the creation of an independent union. Workers start a hunger strike in response", available at: <https://survey.ituc-csi.org/Ukraine.html?lang=en#tabs-3>
- <sup>63</sup> "Unionised workers of the Lviv higher vocational art school victims of pressure and physical violence", available at: <https://survey.ituc-csi.org/Ukraine.html?lang=en#tabs-3>
- <sup>64</sup> ITUC Global Rights Index, Survey of violations of Trade Unions Rights, Ukraine, available at: <https://survey.ituc-csi.org/Ukraine.html?lang=en#tabs-1>
- <sup>65</sup> <https://www.mining-technology.com/features/mining-ukraine-strikes-hit-hard-lies-ahead-mega-coal-miner/>
- <sup>66</sup> "Ukraine: EPSU sends solidarity to health workers' union", 18.09.2017, available at: <https://www.epsu.org/article/ukraine-epsu-sends-solidarity-health-workers-union>
- <sup>67</sup> "Ukrainian energy workers protest over pay, prices and investment", 26.04.2018, available at: <https://www.epsu.org/article/ukrainian-energy-workers-protest-over-pay-prices-and-investment>
- <sup>68</sup> 10<sup>th</sup> National Report of Ukraine on the implementation of the ESC, July 2018, p. 46, available at: <https://rm.coe.int/10th-national-report-on-the-implementation-of-the-european-social-char/16808e45b9>; ECSR, Conclusions 2018 on Article 6§4 Ukraine available at: <http://hudoc.esc.coe.int/eng?i=2018/def/UKR/6/4/EN>
- <sup>69</sup> 10<sup>th</sup> National Report of Ukraine on the implementation of the ESC, July 2018, p. 50, available at: <https://rm.coe.int/10th-national-report-on-the-implementation-of-the-european-social-char/16808e45b9>
- <sup>70</sup> 10<sup>th</sup> National Report of Ukraine on the implementation of the ESC, July 2018, p. 51, available at: <https://rm.coe.int/10th-national-report-on-the-implementation-of-the-european-social-char/16808e45b9>
- <sup>71</sup> 10 December 2019