

DEFENDING AND STRENGTHENING TRADE UNION RIGHTS IN PUBLIC SERVICES

A joint project of EPSU, EUROMIL and EuroCOP



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in collaboration with Universidad Carlos III de Madrid

CONTENT OF THE PRESENTATION

1. Brief introduction on international and European standards of collective rights in labour law
2. What did our research entail?
3. Brief overview of the research: only highlights, not in detail!
4. Close-up: detailed assessment of 2 countries / trade union federation at their request

1. INTERNATIONAL AND EUROPEAN STANDARDS ON TRADE UNION RIGHTS

- Multiple international and European institutions with standards on fundamental social rights
 - each with its own judicial body / supervisory body
 - IMPORTANT: not every decision is legally binding for a member state (SOFT LAW vs. HARD LAW)!
- Most important institutions regarding trade union rights:
 1. International Labour Organisation
 2. Council of Europe
 3. European Union
- The 3 fundamental social rights with regard to trade unions:
 1. Right to organise: right to join a trade union
 2. Right to collective bargaining
 3. Right to take collective action (including right to strike)

1. INTERNATIONAL AND EUROPEAN STANDARDS ON TRADE UNION RIGHTS

1. INTERNATIONAL LABOUR ORGANISATION

- **Right to organise: right to join a trade union:**
 - Convention no. 87 on freedom of association and protection of the right to organise
 - Convention no. 98 on right to organise and collective bargaining
 - Convention no. 151 on labour relations in the public service
- **Right to collective bargaining:**
 - Convention no. 98 on right to organise and collective bargaining
 - Convention no. 151 on labour relations in the public service
 - No ratification: Austria, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Ireland, Lithuania, Malta, Montenegro, Poland, Romania, Serbia
 - Convention no. 154 on collective bargaining
 - No ratification: Austria, Bulgaria, Croatia, Denmark, Estonia, France, Germany, Ireland, Italy, Luxembourg, Malta, Montenegro, Poland, Portugal, Serbia, Turkey
- **Right to take collective action:**
 - Recognised by the supervisory bodies of the ILO as an intrinsic corollary to the right to organise protected by Convention No. 87
- **Supervisory bodies:** cannot make legally binding decisions !

1. INTERNATIONAL AND EUROPEAN STANDARDS ON TRADE UNION RIGHTS

2. Council of Europe

– Revised European Social Charter

- Article 5: right to organise
- Article 6: right to collective bargaining, including the right to take collective action
- Supervisory body: European Committee of Social Rights
 - cannot make legally binding decisions !
- Monitoring system: discussed by next speaker
 - National governments regularly submit a report on the implementation of the accepted Charter articles
 - Conclusions by the European Committee of Social Rights: conformity / deferred / non-conformity
- Collective complaints procedure: discussed by the next speaker
 - Possible if ratification of Additional Protocol to the European Social Charter Providing for a System of Collective Complaints

1. INTERNATIONAL AND EUROPEAN STANDARDS ON TRADE UNION RIGHTS

2. Council of Europe

– Revised European Social Charter

- Countries which have ratified the ESC, but not the revised version: Denmark, Luxembourg, Poland
- Countries that did not ratify articles 5 and 6 European Social Charter: Turkey
- Countries with an exemption from application of article 6, §4 (R)ESC (right to take collective action): Austria, Luxembourg, Netherlands (for military personnel), Poland, Serbia (for military personnel), Turkey
- Countries not accepting the system of collective complaints: Albania, Austria, Denmark, Estonia, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Montenegro, North Macedonia, Poland, Romania, Serbia, Spain and Turkey

1. INTERNATIONAL AND EUROPEAN STANDARDS ON TRADE UNION RIGHTS

- **European Convention on Human Rights (ECHR)**
 - Freedom of assembly and association (art. 11)
 - This includes the right to strike
 - Judicial body: European Court of Human Rights
 - Legally binding decisions
 - Since 2008 the court decided that it should interpret the ECHR taking into account other international conventions and the interpretation of supervisory bodies → importance of collective complaint procedures!

3. European Union

- **EU Charter of Fundamental Rights**
 - Freedom of association (art. 12)
 - Right to negotiate and conclude collective agreements; right to take collective action (art. 28)
 - However, the Charter does not have direct effect. Directives with a similar content need to be drafted

2. WHAT DID THE RESEARCH ENTAIL?

- Research on the 3 basic trade union rights in 32 (European) countries that have (partially) ratified the (Revised) European Social Charter:
 - Law in the books <-> law in practice
 - Recent developments, problems, trends...
 - Report of the research results to the European Committee on Social Rights
- EU Directive on Transparent and Predictable Working Conditions
 - Possibility for member states, based on objective grounds, not to apply this directive on civil servants, armed forces and police authorities

3. BRIEF OVERVIEW OF THE RESEARCH

1. Right to organise

- **Civil service workers (including civil servants):** in most countries: recognition of this basic right
 - Existing problems:
 - Prohibition of senior civil servants from holding trade union positions: Albania, Poland
 - Prohibiting civil servants' trade unions from joining national trade union (con)federations: Bulgaria
 - (Significant amount of) civil servants cannot join a trade union: Turkey
- **Police officers:**
 - Existing problems:
 - Total ban on forming a trade union and/or being a member of a trade union: Turkey
 - A limited number of trade unions allowed or mandatory monopoly (one trade union installed by the State): Albania, Cyprus, Greece
- **Military staff:**
 - Positive development: Since 2022 Italian military staff can join an “association with trade union character” (with limitations: e.g. no possibility to join federations)
 - Existing problems:
 - Prohibition on forming and/or joining a trade union: among others, Albania, Croatia, Cyprus, Czech Republic (including the Security and Intelligence Service), Estonia, France, Ireland, Latvia (including state security institutions), Lithuania, Poland, Romania, Spain and Turkey
 - Prohibition of joining national employees' organisations: Ireland

3. BRIEF OVERVIEW OF THE RESEARCH

2. Right to collective bargaining (pure consultation is included as covering the right to collective bargaining)

- **Civil service workers (including civil servants):**
 - Existing problems:
 - No right to collective bargaining: Hungary, Albania (services of vital importance: compulsory arbitration)
 - Limited right to collective bargaining in practice: Bulgaria, Hungary, Latvia, Lithuania, Poland, Romania and Turkey.
- **Police officers:**
 - Existing problems:
 - No right to collective bargaining: Turkey
 - Strongly limited: Ireland, Malta
- **Military staff:**
 - Existing problems:
 - No right to collective bargaining as a result of no right to organise: many countries, for example: Lithuania, Poland, Turkey,...

3. BRIEF OVERVIEW OF THE RESEARCH

3. Right to take collective action (incl. right to strike)

- **Civil service workers (including civil servants):**
 - Existing problems and trends:
 - Total prohibition on taking collective action: Estonia, Germany, Poland and Turkey (to a lesser extent: Denmark)
 - Several limitations to the right to strike
 - Interesting debate on the guard strike and the possibility to exercise it in Finland and similarly in Norway – specific procedures to address their issues
- **Police officers:**
 - Existing problems and trends:
 - Total prohibition on taking collective action: most of the researched countries apply a ban
 - Restrictions: continuity of certain services: Belgium, North Macedonia, Montenegro, Slovenia
- **Military staff:**
 - Existing trends:
 - Total prohibition in a majority of the researched countries
 - Limited right to strike: North Macedonia, Sweden; Right to participate in other forms of collective action: the Netherlands

3. BRIEF OVERVIEW OF THE RESEARCH

Countries where all or most trade union rights are available:

- **Civil service workers:**
 - Belgium, Finland, the Netherlands, North Macedonia, Sweden
- **Police officers:**
 - Belgium, Montenegro, the Netherlands, North Macedonia, Sweden (all limited right to strike!)
- **Military staff:**
 - Belgium, the Netherlands, Denmark (all strong collective bargaining, but no right to strike)
 - North Macedonia, Sweden (both limited right to strike!)

4. DETAILED ASSESSMENTS

At request of the three federations (EPSU, EUROMIL and EuroCOP) more details on:

- Hungary, Romania (EPSU)
- Ireland, Malta (EuroCOP)
- Ireland, Portugal (EUROMIL)

DETAILED ASSESSMENT AT REQUEST OF

EPSU

Current situation of civil servants in :

- Hungary
- Romania

EPSU DETAILED ASSESSMENTS: HUNGARY

General important observations:

- On paper many of the researched rights exist as blackletter law ('formal rights'), but practice shows additional thresholds and rights being empty boxes
- Hungarian public sector does not have a tradition of social dialogue
- Last few years practice of governing by government decrees. Reason?
Covid-19 (= state of emergency),
war in Ukraine (= state of emergency),
Political circumstances

EPSU DETAILED ASSESSMENTS: HUNGARY

- Right to join/form a trade union
 - Exists in regulation (article 3.2. of the Strike Act)

But: existence of MKK (public administration professional body created by the government itself; compulsory membership) (Same situation for police-officers: MRK)
- Right to collective bargaining
 - According to the law: not allowed to conclude collective agreements
 - Government opposes negotiation and acts in such a way as to try to circumvent the right to be consulted → ILO complaint
 - For example: child care workers: No collective bargaining at national level, not at sectoral level (no party at employers' side); only slightly at local level
 - Outsourcing of cultural workers and healthcare workers without social dialogue

EPSU DETAILED ASSESSMENTS: HUNGARY

– Right to collective action:

- The right to strike exists in regulation (Article 3 Strike Act)
- But: there exists a requirement of agreement on minimum service with government employer (Article 3.2. Strike Act)

If no agreement: a Court decision provides the outcome

- Thresholds: Government employer is not open to negotiation on minimum service; Psychological pressure of employers in order not to strike

Example: last strike at national level from the social sector was in 2016; it took three years to find an agreement.

EPSU DETAILED ASSESSMENTS: ROMANIA

- Right to join a trade union: yes
- Right to collective bargaining:
 - limited to certain subjects:
 - Not: payment (wages determined by law)
 - Law includes target for upgrading salary, however there exists a difference between practice and regulation
 - Included: Amounts for health and safety, working time, training,...
 - Non-compliance with collective agreements: only disciplinary actions, no possibility to go to court. → binding effect?
 - Act on social dialogue of 2011 :
 - Diminution of categories with right to strike
 - Change in criteria of representativeness: 1/3 employees (before 2011), 50% +1 (since 2011)

EPSU DETAILED ASSESSMENTS: ROMANIA

- Right to take collective action: Yes, with exception of: prosecutors, judges, police, prison officers, military staff
 - Prison officers had right to strike between 2004-2011 (change of Act on social dialogue; but prison Statute still recognizes right to strike...)

DETAILED ASSESSMENT AT REQUEST OF

EUROCCP

Current situation of police officers in :

- Ireland
- Malta

EUROCOP DETAILED ASSESSMENTS: IRELAND

- Right to join a trade union:
 - Prohibition to join a trade union
 - Only allowed to join a representative association
- Right to collective bargaining:
 - Limited possibility to collective bargaining because no right to strike, no status of “associated membership” of ICTU (which is the current case for the military)
 - Since 2016: on ad hoc basis invitation to negotiate with Department of Justice (not regularised)
 - Since 2019: Irish police has now access to industrial relations mechanism of the Industrial Relations Act → more power (access to court) → limited ability to negotiate
 - Internal conciliation with management based on “dispute resolution procedure” (new scheme since 2020)

EUROCOP DETAILED ASSESSMENTS: IRELAND

- Right to take collective action (including right to strike)
 - Prohibition to strike
 - ECSR collective complaint no. 83/2012 (EuroCOP v. Ireland): concrete pressing social need for prohibition?
 - Prohibition of advocating any form of collective action
 - Only possibility of collective action: “work to rule”

EUROCOP DETAILED ASSESSMENTS: MALTA

General important observations concerning the police:

- Since 2015 the right to become a member of a registered trade union of their choice + right to negotiate (blackletter law)
- In practice no real collective bargaining outside the only existing sectoral collective agreement of 2018

EUROCOP DETAILED ASSESSMENTS: MALTA

- Right to join a trade union:
 - Since 2015
 - Malta Police Association changed to Malta Police Union
- Right to collective bargaining
 - Since 2015 (blackletter law)
 - In practice:
 - First sectoral collective agreement in 2018:
 - ❑ Choose your battles (in order to reduce working hours → forced to agree with significant diminution of vacation leave)
 - ❑ Next sectoral collective agreement should be in 2023
 - No real collective bargaining outside the existing collective agreement. Not even a right to consultation / to be heard: disputes, concerns and propositions are ignored most of the times.
 - Change from association to union brought more responsibilities, but no broadening of impact

EUROCOP DETAILED ASSESSMENTS: MALTA

- Right to take collective action
 - Absolute prohibition to take collective action of any kind
 - No negotiation possible on this and no reaction to the request of the implementation of a minimum service
 - The absence of this right impacts possibility to enforce their legal right to negotiate

DETAILED ASSESSMENT AT REQUEST OF

EUROMIL

Current situation of Military staff in :

- Ireland
- Portugal

EUROMIL DETAILED ASSESSMENTS: IRELAND

- Right to join a trade union:
 - Only a right to join a professional association (*PA*) (prohibition to associate or affiliate with a trade union)
 - PA's are prohibited to join national employees' organisations
 - Violation of art. 5 RESC (ECSR, complaint No. 112/2014 EUROMIL v. Ireland)
 - Nothing changed. Finding gave only a moral standing, because government pointed at non-binding character
 - Practice: 2 PA's established by Statute: PDFORRA and RACO

EUROMIL DETAILED ASSESSMENTS: IRELAND

- Right to collective bargaining
 - No real right to collective bargaining, low ability to influence
 - Submitting claims via Conciliation and Arbitration Scheme
 - Right of consultation with management
 - **But** determination of **pay and allowances** is centralised through the Public Services Committee (PSC) within the Irish Congress of Trade Unions (ICTU)
 - PDFORRA and RACO specifically excluded from membership of ICTU → no possibility to have any input on behalf of military staff
 - 2022: PDFORRA and RACO = temporary “associate members” of ICTU
 - No voting rights, only input through PSC
 - PSC now allowed to advance matters on behalf of military staff at national pay talks → little influence, but more than before!

EUROMIL DETAILED ASSESSMENTS: IRELAND

- No right to take collective action

EUROMIL DETAILED ASSESSMENTS: PORTUGAL

- Right to join a trade union
 - Since 2001 right of association, but....empty box?
- Right to collective bargaining
 - The Act recognizing the freedom of association prohibits trade union activities and denies collective bargaining
 - Right to be heard (blackletter law), but hardly consulted in practice or government makes it very difficult in practice to even submit comments
 - EUROMIL pending complaint no. 199/2021:
 - no meaningful dialogue or negotiation
 - Windowdressing by Portuguese government
- Right to take collective action: not existing

CONCLUSION

General conclusions are difficult to draw: however:

1. Right to join a trade union remains mainly an issue for military staff mainly but not exclusively for younger EU-Member States
2. Right to negotiate collectively: rising difficulties in the evolutions for countries as Hungary and Romania which remains in general a right
3. Right to collective action: almost totally excluded for military staff with interesting evolutions in Sweden

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