



The Right to Strike in Public Sector: International Legal Aspects

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Concept of the principle freedom of association

- Right to organize
- Right to establish trade unions, associations and join them
- Right to collective bargaining
- Right to social dialogue
- Right to solving collective conflicts
- Right to strike
- Right to pickets



Fundamental collective right

- The right to strike is long recognised as a fundamental right of workers.
- Is it an absolute right?
- Can it be restricted or even prohibited in exceptional circumstances and for certain categories of workers?
- What are the compensatory guarantees that should be put in place for efficient and impartial resolution of workplace disputes that may arise?



International Legal Standards

- International Covenant on Civil and Political Rights (1966): Art. 22 – freedom of association / possible restriction for armed forces
- International Covenant on Economic, Social and Cultural Rights (1966) Art. 8:
 - (i) the right of everyone to form trade unions and join the trade union;
 - (ii) the right of trade unions to establish federations; the right of trade unions to function freely;
 - (iii) the right to strike.
- Allows to restrict these all rights for members of the armed forces, the police and the administration of the State.



ILO Legal Standards

- **Right to strike = An implied right**
- **No explicit recognition of the right to strike**
 - ILO Convention No. 87 on *Freedom of Association and Protection of the Right to Organise* (1949)
 - ILO Convention No. 98 on *Right to Organize and Collective Bargaining* (1949)
 - ILO Convention No. 151 on *Public Service* (1978)
- ‘Case-law’ of the CFA and CE – significant contribution to the development of ‘*strike law*’



European Legal Standards

- European Convention on Human Rights (1950) and case-law of the Court of Human Rights:
 - restrictions must not impair the very essence of the right to organize‘;
 - lawful restrictions must meet a pressing social need and be “necessary in a democratic society ” = requirement of proportionality;
 - it is a legitimate aim in any democratic society to have a politically neutral army;
 - preserving the order and discipline necessary in the armed forces pursue a legitimate aim;
 - restrictions should not deprive the general right of association to defend their occupational and non-pecuniary interests.



European Legal Standards

- European Social Charter (revised) (1996):
 - Art. 6.4.: „the right to strike in the armed forces may be restricted“
- ‘Case-law’ of the European Committee of Social Rights:
 - The right to strike of certain categories of public officials, such as members of the armed forces, may be restricted. Under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest.



EU Legal Norms and Principles

- European Charter of Fundamental Social Rights of Workers (1989):
 - Article 13 regulates the right to organize collective action in cases of conflicts of interests, including the right to strike;
 - Article 14 national legal system determines under what conditions and to what extent it will apply the right to strike in the armed forces, police and civil service.



EU Legal Norms and Principles

- European Union Charter of Fundamental Rights, Art. 28 (2000):
 - Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.
 - No rules for possible restrictions
 - Concept of ‚worker‘ in the EU law
 - EUCJ C-742/19, B. K. v Republika Slovenija (Ministrstvo za obrambo) (15 July 2021)



The Essence of the Phenomenon

- What is “industrial/collective action”?
- For what purposes may “industrial action” be employed?
 - “conflicts of rights”, “conflicts of interest”, “peace obligation”, etc.
- What procedural requirements may be imposed?
 - ADR methods, *ultima ratio*
- Which limitations may be imposed?
 - *ratione personae*, *ratione temporis*, *ratione loci*.
- What are consequences of the exercise of the right to industrial action?



Workers rights

- Worker *vs.* Public servant
- Workers in essential services
 - defined by ILO as services whose interruption would “endanger the life, personal safety and health of the whole or part of the population”.
- *Examples:*
 - The Essential Defence Services Bill (India) allows the central government to prohibit strikes, lock-outs, and lay-offs in units engaged in essential defence services.
 - Laws in Macedonia right to strike with *strictu sensu* regulation.



Restrictions of the right to strike

Ratione personae

- Public servants
- Essential services in the strict sense
- Compensatory guarantees in the event of the prohibition of strikes in the public service or in essential services
- Minimum safety service



Restrictions of the right to strike

Racione temporis

- So-called ‚peace obligations‘
- Strikes are prohibited unless they do not aim at amending an existing collective agreement (
- Any strikes is prohibited irrespective of its cause and underlying demands.



Restrictions of the right to strike

- *Ratione loci*
 - Applies to all persons
 - In specific extreme cases: natural disaster areas / major accidents / epidemics cases / emergency or military situation
 - Only for limited period



‘Strike without Striking’

- Specifically industrial action may include one or more of the following:
 - Occupation of factories
 - Work-to-rule
 - General strike (mass strike)
 - Slowdown or go-slow
 - Overtime ban
 - Secondary strike
 - Sympathy strike



Realities in the 21st century...

- Yes or No for collective labour rights in army forces
- Whether social dialogue is possible during the validity of the statutes?
- Whether a collective voice poses a threat to security and public order?
- Whether statutory subordination is incompatible with freedom of expression?

The time has come for the qualitatively new democracy in the public sector, inter alia, in the army forces



THANK YOU!

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