BULGARIA – MEETING WITH THE TRIPARTITE EXPERT WORKING GROUP OF THE NATIONAL INSTITUTE FOR CONCILIATION AND ARBITRATION (NICA) – 17 OCTOBER 2017

BACKGROUND INFORMATION

I. INTRODUCTION

In the framework of the preparation of the meeting of 17 October 2017 with the tripartite expert working group, the National institute for Conciliation and Arbitration (NICA) of Bulgaria submitted 10 questions to the Office in relation to the issue of collective labour disputes settlement.

The Office collected the following background information for the meeting, which summarises international labour standards (ILS), decisions by ILO supervisory bodies[1] and relevant comparative legislative data from countries in the region.

The Office stands ready to provide further technical support to the reform of the Collective Labour Disputes Settlement Act of Bulgaria if so requested.

Main sources of information :

- *ILO Legal Database on Industrial Relations (IRLex)* : IRLex has a dedicated section under each country profile that contains legislative information on "labour disputes and their resolution". See: http://www.ilo.org/dyn/irlex/en/f?p=LEGPOL:1100:1016122143609::::P1100_THEME_ID:105131
- *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth (revised) edition, 2006.* See : http://www.ilo.ch/global/standards/information-resources-and-publications/publications/WCMS_090632/lang--en/index.htm
- *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008.* See: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf
- *Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised).* See: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_344248.pdf
- *ILO 1993 Resolution concerning statistics of strikes, lockouts and other action due to labour disputes*: this instrument provides a number of definitions of key terms, including "strikes", "labour dispute" and "lockout" (paragraph 4). See: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_087544.pdf

[1] In particular: the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Freedom of Association Committee (CFA).

ILS AND ILO SUPERVISORY BODIES – GENERAL PRINCIPLES ON THE RIGHT TO STRIKE

COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS (CEACR) 2012 GENERAL SURVEY:[2]

Over the years, the supervisory bodies have specified a series of elements concerning the peaceful exercise of the right to strike, its objectives and the conditions for its legitimate exercise, which may be summarized as follows:

- **(i)** the right to strike is a right which must be enjoyed by workers' organizations (trade unions, federations and confederations);
- **(ii)** as an essential means of defending the interests of workers through their organizations, only limited categories of workers may be denied this right and only limited restrictions may be imposed by law on its exercise;
- **(iii)** the objectives of strikes must be to further and defend the economic and social interests of workers ; and
- **(iv)** the legitimate exercise of the right to strike may not result in sanctions of any sort, which would be tantamount to acts of anti-union discrimination.

Finally, in the view of the Committee, any work stoppage, however brief and limited, may generally be considered as a strike, and restrictions in this respect can only be justified if the action ceases to be peaceful.

"Go-slow strikes" and "work-to-rule" actions are also covered by the principles developed. However, certain countries continue to consider these forms of strike action as unfair labour practices, which can be punished by fines, removal from trade union office and other sanctions.

FREEDOM OF ASSOCIATION COMMITTEE (CFA) – DIGEST OF DECISIONS:
The Committee in the Freedom of Association has consistently taken the view that the right to strike is "an intrinsic corollary to the right to organize protected by Convention No. 87", that it constitutes "a fundamental right of workers and of their organizations", and also that it is "an essential" or "legitimate" means of defending their economic and social interests.[3]

[2] *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization*, 2008 – Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution).
[3] For recent reaffirmation of those findings in the Committee's extensive case law, see Case No. 2258, Cuba, 2003, para. 522; Case No. 2305, Canada, 2004, para. 505; Case No. 2340, Nepal, 2005, para. 645; Case No. 2365, Zimbabwe, 2005, para. 1665.

II. QUESTIONS SUBMITTED BY THE NICA TO THE OFFICE

1. **QUESTION:** Does the labour law legislation in various countries contain a legal definition of the term "strike" and is there also a distinction between the types of strike action?

OVERVIEW[4]

Depending on the national legal system, the right to strike may be regulated in varying levels of detail, either in law, through judicial decisions, or by the parties themselves.

Most countries have included a definition of "strike action" (or "industrial action") in national legislative measures. Although the definitions differ slightly, they often comprise a stoppage of work (or other forms of interruption of normal work); a concerted action; and a purpose linked to obtaining satisfaction of workers' demands, such as remedying a grievance or resolving a dispute in respect of a matter of mutual interest.

I addition, some national legislations include definitions and regulations of specific forms of strike action – e.g. "solidarity/sympathy strikes" or "warning strikes".

EXAMPLES OF DOMESTIC REGULATIONS

Czech Republic – Act No. 2/1991 on Collective Bargaining – Section 16 (…)
(2) A strike shall be defined as a partial or complete interruption of work by the employees.
(3) A solidarity strike shall be defined as a strike in support of requirements of employees on strike in a dispute on conclusion of another collective agreement. ***(…)***

Source : https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64399/106140/F-844964019/SVK64399%20Eng.pdf

Estonia – Collective Labour Dispute Resolution Act – Section 2
§ 2. Definitions (…)
(1) A *collective labour dispute* is a disagreement between an employer or an association or a federation of employers and employees or an association or a federation of employees which arises upon the entry into or the performance of collective agreements or the establishment of new working conditions.
(2) A *strike* is an interruption of work on the initiative of employees or an association or a federation of employees in order to achieve concessions from an employer or an association or a federation of employers to lawful demands in labour matters. (…)
(3) A *lock-out* is an interruption of work on the initiative of an employer or an association or a federation of employers in order to achieve concessions from employees or an association or a federation of employees to lawful demands in labour matters.

[4] *Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised)*, paras. 68 et sequ.

(…)
§ 18. Warning and sympathy [support] strikes

(1) Employees and their associations or federations have the right to organise *warning strikes* with the duration of up to one hour.

(2) *Sympathy strikes* are permitted in support of employees engaging in a strike. The duration of such strikes shall be decided by the representative, association or federation of the employees who makes the decision to organise the strike. A sympathy strike shall not last longer than three days.

(3) The representative, an association or a federation of employees is required to notify the employer, association or federation of employers and the local government of a planned warning or sympathy strike in writing at least three days in advance.

Source : https://www.riigiteataja.ee/en/eli/511112014002/consolide

Ireland – Industrial Relations Act, 1990 – Section 8 - Definitions

"*industrial action*" means any action which affects, or is likely to affect, the terms or conditions, whether express or implied, of a contract and which is taken by any number or body of workers acting in combination or under a common understanding as a means of compelling their employer, or to aid other workers in compelling their employer, to accept or not to accept terms or conditions of or affecting employment;

"*strike*" means a cessation of work by any number or body of workers acting in combination or a concerted refusal or a refusal under a common understanding of any number of workers to continue to work for their employer done as a means of compelling their employer, or to aid other workers in compelling their employer, to accept or not to accept terms or conditions of or affecting employment.

Source : http://www.irishstatutebook.ie/eli/1990/act/19/section/8/enacted/en/html#sec8

Romania – Law on Social Dialogue, 2011

Art. 181 – By *strike* it is meant any form of collective and voluntary work stoppage in an undertaking.

Art. 182 – A strike may be declared only when, beforehand, all the possibilities to settle the collective labour dispute by recourse to the compulsory procedures set forth by this law have been exhausted, a warning strike took place and the employers' have been informed by organisers about the moment of calling the strike at least two working days in advance.

Art. 184 – The strikes may be warning strikes, solidarity strikes and so-called strikes.

Art. 185 – *Warning strike* shall not have a duration longer than two hours, if involves work stoppage, and shall, in all cases, precede by at least two working days the so-called strike.

Art. 186 – (1) *Solidarity strike* shall be declared with a view to support the requests formulated by the workers from other undertakings belonging to the same group of undertakings, branch or sector of economic activity.

(2) The decision to call a solidarity strike should be taken by observing the provisions of Art. 183, paragraph (1), by the most representative workers' organisations affiliated to the same trade union federation or confederation to which is affiliated the organising workers' organisation. Provisions of Art. 183, paragraph (2) do not apply for solidarity strikes.

(3) A solidarity strike should not have a duration longer than one working day and it has to be announced in writing to the management of the undertaking at least two working days before the date of work stoppage.

Slovakia – Act on Collective Bargaining, 2/1991 – Section 16

(1) Provided a collective agreement has not been concluded even after proceedings before the intermediary and the contractual parties have not requested a solution to the dispute through an arbitrator, strike may be declared as an extreme means in a dispute on conclusion of the collective agreement.

(2) A *strike* shall be defined as a partial or complete interruption of work by the employees.

(3) A *solidarity strike* shall be defined as a strike in support of requirements of employees on strike in a dispute on conclusion of another collective agreement. (…)

Spain

In Spain, the right to strike is enshrined in the Spanish Constitution (Constitución Española), Article 28. The article mandates the Parliament to pass a law regulating the right to strike.
However, such a law has not been passed yet.

Therefore, the right to strike is still regulated by a pre-constitutional decree-law: *Royal Decree-Law on industrial relations 17/1977* (*Real Decreto-Ley de Relaciones de Trabajo 17/1977, RDLRT*).

The Constitutional Tribunal (Tribunal Constitucional, TC) has repealed several articles of the RDLRT and interpreted many others in order to guarantee the effective exercise of the right to strike, as established in the Spanish Constitution.

(Question 1 – continued)

In this regard, does the legal framework allow the so-called "National strike" aiming to change the economic and social policy of the government?

OVERVIEW[5]

In many countries, political strikes, understood as non-work related industrial action, constitute a "grey zone" where a gap exists between law and practice. It is often difficult to distinguish between the political and occupational aspects of a strike, since a policy adopted by a government frequently has immediate repercussions for workers, in particular regarding employment, social protection and standards of living.

In other countries, an effective prohibition of political strikes arises from the restriction of lawful strike action to the sphere of collective bargaining. This is the case, for instance, in **Germany**.

In certain other common law jurisdictions, the possibility of taking lawful or protected strike action is limited to disputes between workers and their employer or other employers, known in law as trade or industrial disputes. Precisely what constitutes a trade dispute is frequently contested in the courts and interpretations vary. In the **United Kingdom,** for example, case law has defined "trade dispute" in such a way as to exclude most political or protest strikes from legal protection.

Interestingly, political strikes are in principle permitted in **Finland** and do not violate the peace obligation that is part of every collective agreement.

In other countries, although political strikes would appear to be prohibited, court decisions have introduced some nuances (e.g. **Netherlands and Spain**).

➔ On comments by ILO supervisory bodies on alleged prohibitions of national strikes in European countries, see: **Georgia**, 2014 Direct request[6] concerning Georgian Trade Unions Confederation (GTUC) allegation that section 47(3) of the Code restricts the right to strike, in particular general strikes, sympathy strikes and strikes related to occupational health and safety issues (see excerpt below).

[5] This section is based on: *Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised)*, paras. 79-83.
http://www.ilo.org/gb/events/WCMS_344248/lang--en/index.htm

[6] *Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015)* – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Georgia *(Ratification: 1999).*

EXAMPLES OF DOMESTIC REGULATIONS

Bosnia and Herzegovina – Act on Strikes (Official Gazette of the Republic of Sprska No. 110/08)
Article 4 (…)
(4) The decision to go on a *general strike* or strike warning is issued by the competent authority of the majority union of the Republic.

Spain

According to Article 11 RDLRT, the strike is unlawful if it is organised for political reasons and it does not affect the professional interest of the workers involved in it.

The Constitutional Tribunal has clarified the meaning of "*political strike*" (judgement 36/1993, 8th February 1993). It considered national strikes against draft bills or Government decisions affecting labour and social issues to be legal strikes.

Ireland – Industrial Relations Act, 1990 – Section 8

- "strike" means a cessation of work by any number or body of workers acting in combination or a concerted refusal or a refusal under a common understanding of any number of workers to continue to work for their employer done as a means of compelling their employer, or to aid other workers in compelling their employer, to accept or not to accept terms or conditions of or affecting employment.

Source : http://www.irishstatutebook.ie/eli/1990/act/19/enacted/en/html.

ILS AND ILO SUPERVISORY BODIES

CEACR 2012 GENERAL SURVEY:
124. The Committee considers that strikes relating to the Government's economic and social policies, including general strikes, are legitimate and therefore should not be regarded as purely political strikes, which are not covered by the principles of the Convention. In its view, trade unions and employers' organizations responsible for defending socio-economic and occupational interests should be able to use, respectively, strike action or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members.

CFA DIGEST OF DECISIONS:
541. The Committee has stated on many occasions that strikes at the national level are legitimate in so far as they have economic and social objectives and not purely political ones; the prohibition of strikes could only be acceptable in the case of public servants exercising authority in the name of the State or of workers in essential services in the strict sense of the term, i.e. services whose interruption could endanger the life, personal safety or health of the whole or part of the population.

529. While purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies.

531. The right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests.

543. As regards a general strike, the Committee has considered that strike action is one of the means of action which should be available to workers' organizations. A 24-hour general strike seeking an increase in the minimum wage, respect of collective agreements in force and a change in economic policy (to decrease prices and unemployment) is legitimate and within the normal fi eld of activity of trade union organizations.

528. Strikes of a purely political nature and strikes decided systematically long before negotiations take place do not fall within the scope of the principles of freedom of association.

Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015)
Freedom of Association and Protection of the Right to Organise Convention, 1948
(No. 87) - Georgia *(Ratification: 1999) – Excerpt:*

" (…) The Committee notes that section 47(3) of the Labour Code sets the grounds that give rise to labour disputes – either individual or collective with respect to: (i) violation of human rights and freedoms stipulated in the Georgian legislation; (ii) violation of an individual employment contract or a collective agreement; and (iii) disagreement between the employer and the employee regarding the essential terms of the individual employment contract and/or the conditions of a collective agreement. The Committee notes that the Georgian Trade Unions Confederation (GTUC) alleges that the (restrictive) definition of the grounds for collective labour disputes contained in section 47(3) of the Code directly restricts the right to strike since, according to the Code, strikes are a result of a collective dispute. The GTUC adds that under section 47(3), general strikes, sympathy strikes or strikes related to occupational health and safety issues would be considered illegal. (…)

The Committee requests the Government to indicate whether strikes can be legally carried out on grounds not explicitly listed in section 47(3) and whether strikes not directly resulting from a dispute between the employer and his/her employees, such as general strikes related to the country's economic and social policy, can be legally carried out. (…)"

2. **QUESTION**: According to the Bulgarian legislation, the strike as an instrument for a settlement of collective labour disputes (CLD) is regulated only for the enterprise level. But CLD can also arise at the other levels. How has this objective legal case been solved under the law and practice in disputes and actions to protect economic and social interests at different levels? Res. is there any legal regulation in different labour law systems and, if so, what are the statutory terms and conditions for declaring a strike in a separate unit / unit of the enterprise (site, institution, etc.)?

OVERVIEW

Under ILS, collective bargaining must be possible at all levels, both national and enterprise level. It must also be possible for federations and confederations. By virtue of Article 2 of ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), freedom of association shall apply to all workers and employers, without distinction whatsoever. The right to strike is an intrinsic corollary to the right to organize protected by Convention No. 87.

Accordingly, strike action should be made possible at all levels. In this respect, ILO supervisory bodies have emphasised that the prohibition on the calling of strikes by federations and confederations is not compatible with Convention No. 87.

The issue is in principle a matter for the parties to decide. In practice, negotiations and strikes may take place at the workplace, establishment or plant level; the enterprise level; the level of industry, sector or branch of activity; or the municipal or regional level.[7]

The cases in which strikes may be restricted or even prohibited are striclty restricted by ILO supervisory bodies (i.e. in the public service for public servants exercising authority in the name of the State; in essential services in the strict sense of the term; and in case of acute national or local crisis).[8] Moreover there should be compensatory guarantees in the event of the prohibition of strikes in the public service or in essential services.

There does not seem to be any distinction in the legislation of European countries concerning the regulation of the right to strike at different levels, i.e. enterprise, sectoral or national level. The same rules seem to apply whatever the level for example, as far as the obligation to recourse to prior conciliation in collective disputes is concerned, or with respect to the requirement of providing an advance notice to the administrative authority or to the employer (and related “cooling-off period”), or the approval by a certain number of workers/secret ballot.

[7] *ILO, Collective bargaining: A policy guide*: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_425004.pdf, p.33.

[8] Over and above the armed forces and the police, the members of which may be excluded from the scope of Convention No. 87 in general, the right to strike may be restricted or prohibited only: (1) in the public service, for public servants exercising authority in the name of the State; (2) in the 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); or (3) in situations of acute national or local crisis, although only for a limited period and solely to the extent necessary to meet the requirements of those situations.

EXAMPLES OF DOMESTIC REGULATIONS

In **Slovenia**, strikes may be called by enterprise unions, unions at branch level or federations of unions (as a general strike).[9] A decision to start a strike can be adopted by a majority of workers or by a trade union. A decision to begin a general strike is adopted by the supreme body of the trade unions.[10]

In **Ireland**, the term "strike" is defined to be "a cessation of work by any number or body or workers in combination or a concerted refusal or a refusal under a common understanding of any number of workers to continue to work for their employer intended as a means of compelling their employer to accept or not to accept terms or conditions of or affecting employment". However, some of the immunities provided by statutory law are only applicable to members and officials of trade unions. All unions are required to hold a secret strike ballot before organizing, participating in, sanctioning or supporting a strike, and a week's advance notice must be given to the employer.[11]

In **Spain**, according to Article 3 RDLRT, the strike declaration, whatever its scope, needs to be agreed, expressly, in each work place.

ILS AND ILO SUPERVISORY BODIES

ILO Collective Bargaining Recommendation, 1981 (No. 163)

"measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels" (Paragraph 4(1)).

"in countries where collective bargaining takes place at several levels, the parties to negotiations should seek to ensure that there is co-ordination among these levels" (Paragraph 4(2)).

CFA DIGEST OF DECISIONS:

988. According to the principle of free and voluntary collective bargaining embodied in Article 4 of Convention No. 98, the determination of the bargaining level is essentially a matter to be left to the discretion of the parties and, consequently, the level of negotiation should not be imposed by law, by decision of the administrative authority or by the case-law of the administrative labour authority.

525. The prohibition on the calling of strikes by federations and confederations is not compatible with Convention No. 87.

[9] EURES website (Slovenia): https://ec.europa.eu/eures/main.jsp?catId=8551&acro=living&lang=en&parentId=7795&countryId=SI&living=
[10] Ibid.
A decision to start a strike sets out the workers' demands, the time when the strike will begin and the location where the strike participants will assemble. A body called a strike committee is formed, which represents the workers' interests and directs the strike on their behalf. The strike committee must announce the strike at least five days before the date on which it is set to begin.
[11] Industrial Relations Act, 1990: http://www.irishstatutebook.ie/eli/1990/act/19/enacted/en/html

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222. (…)"Accordingly, legislation that unilaterally imposes a level of bargaining, or makes it compulsory for bargaining to take place at a specific level, raises problems of compatibility with [Convention No. 98] » (…).

3. **QUESTION:** Is there a regulation in various countries and, if so, what are the statutory terms and conditions for declaring a "warning strike" and a "strike of solidarity"?

i. WARNING STRIKES

OVERVIEW

There is no explicit reference to "warning strikes" in ILS or in decisions made by the ILO supervisory bodies.

EXAMPLES OF DOMESTIC REGULATIONS

Estonia – Collective Labour Dispute Resolution Act 1993 – Section 18

Warning and sympathy strikes

(1) ''*Employees and their associations or federations have the right to organise warning strikes with the duration of up to one hour.*''

Azerbaijan – Labour Code of 1 February 1999

Division Forty-Three- Right to Strike in Order to Resolve Collective Labour Disputes

Section 273. Warning Strike

''*At any stage of the resolution process, employees may organize a short (up to one hour) strike. The decision on such a warning strike shall be made pursuant to Section 262 hereof. The employer must be notified in writing at least three days before said strike.*''

Lithuania – Labour Code Law No IX-926 of 4 June 2002 – Article 77

§ 4. ''*A strike may be preceded by a warning strike. It may not last longer than two hours. A warning strike shall be called by a written decision of the management body authorised by the trade union referred to in paragraphs 1 and 2 of this Article or of the works council, without special consent of the employees. The employer must be given an at least seven days' written notice of the warning strike*.''

§ 5. ''*When a decision is taken to hold a strike (including a warning strike) in railway and public transport, civil aviation enterprises, medical institutions, water, electricity, heat and gas supply, sewage and waste collection enterprises, the employer must be given an at least fourteen days' written notice of the beginning of the strike. 6. The decision to call a strike shall specify: 1) the*

demands with respect to which the strike is called; 2) the beginning of the strike; 3) the body leading the strike.''

Hungary – Act 7/1989 on Strikes (1989. évi VII. törvény a sztrájkról) (unofficial English translation) (as amended to 20/08/2015) (ss. 1(4) & 2)
2(1) A strike may be initiated in case:
(…)
(3) During the duration of the conciliation procedure specified in Subsections (1) and (2), one strike action (token strike) may take place, the duration of which, however, may not exceed two hours.'

Bosnia and Herzegovina – Act on Strikes (Official Gazette of the Republic of Sprska No. 110/08) Article 4 (…)
(4) The decision to go on a *general strike* or *strike warning* is issued by the competent authority of the majority union of the Republic.

ii. SOLIDARITY [SYMPATHY/SECONDARY] STRIKES

OVERVIEW[12]

Solidarity/secondary/sympathy strikes are "a form of industrial action in support of a strike initiated by workers in a separate undertaking. Definitions at national level vary slightly".

A number of countries recognize the lawfulness of solidarity strikes. That is the case, for instance [as far as European countries are concerned] in **Belgium**, **Croatia**, **Finland**, **Greece**, **Hungary**, **Republic of Moldova**, **Poland**. If the primary strike is lawful, solidarity strikes are also considered legal in **Albania**, **Denmark**, **France** and **Sweden**.

In **Ireland**, where there is no statutory exclusion of secondary action, this definition has been held by the courts to permit secondary industrial action.

In **Finland**, "sympathetic action" is only legal if it does not affect the participants' own terms of employment and is not directed towards modifying their own collective agreement.

In **Croatia**, notice has to be given to the employer and the strike cannot commence before the procedure for the conciliation of the initial strike has been followed, nor within a period of two days of the initial strike.

In contrast, in other countries, sympathy strikes that have the objective of putting pressure on a secondary employer are almost always considered unlawful (e.g. **Lithuania, Switzerland and United Kingdom**).

[12] This section is based on: *Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised)*, paras. 86-88.
http://www.ilo.org/gb/events/WCMS_344248/lang--en/index.htm

[In **Spain**, according to Article 11 RDLRT, solidarity strikes are unlawful, unless they affect directly the professional interest of the workers. However, the word "directly" has been considered to be unconstitutional and was repealed by the Constitutional Tribunal in its judgement 11/1981, 8th April 1981. The Constitutional Tribunal considered the strikes that affect **indirectly** the interests of the workers who participate in them to be legal strikes.]

In many countries, there are no specific legal provisions on the subject, either authorizing or prohibiting these forms of strikes, and it is left to the courts to decide.

However, in **Germany**, the courts have approved sympathy strikes on condition that they remain "proportional".

In **Italy**, the Constitutional Court has extended the right to strike to include interests that are common to entire categories of workers.

EXAMPLES OF DOMESTIC REGULATIONS

Albania – Labour Code of Republic of Albania, No 796112, July 1995
Article 197/7
''The solidarity strike shall be lawful if it supports a lawful strike, which is organized against an employer who is actively supported by the employer of the solidarity strikers, in order to stop or terminate the strike.''

Czech Republic – Act No. 2/1991 on Collective Bargaining – Section 16 (…)
(3) A solidarity strike shall be defined as a strike in support of requirements of employees on strike in a dispute on conclusion of another collective agreement. (…)

Hungary – Act 7/1989 on Strikes (1989. évi VII. törvény a sztrájkról) (unofficial English translation) (as amended to 20/08/2015) (ss. 1(4) & 2)
1. (4) ''The trade unions shall have the right to initiate a solidarity strike. In the case of a sympathy strike, prior conciliation (section 2(1)) is dispensed of.
…
2(1) A strike may be initiated in case:
a) the dispute in question has not been resolved by the conciliation procedure [egyeztető eljárás] within seven days, or
b) the conciliation procedure has not been initiated for a reason not attributable to the initiator of the strike.
(2) If the employer targeted by the strike cannot be defined, the government shall appoint a representative to participate in the conciliation procedure within five days. In case a strike targets several employers, they are obliged to appoint a representative, if requested.
(3) During the duration of the conciliation procedure specified in Subsections (1) and (2), one strike action (token strike) may take place, the duration of which, however, may not exceed two hours.'

Poland – Act of 23 May 1991 on the settlement of collective labour disputes (Text No. 236).

➔ While solidarity strikes are not prohibited, the duration of the strike is restricted.

Article 22. In order to defend the rights and interests of workers who do not have the right to strike, the trade union of another establishment may declare a solidarity strike not exceeding one half of a working day. The provisions of articles 17 to 21 shall apply accordingly.

Spain – Royal Decree-Law 17/1977, of March 4, 1977 on Labour Relations (Real Decreto-Ley 17/1977, de 4 de marzo, sobre relaciones de trabajo)

(IRLEX) Political strike – 11. A strike is illegal: (a) when initiated in support of political or any other purposes outside the professional interests of the workers concerned.

Solidarity strike: A strike is illegal: (b) where it is in solidarity or support, unless it affects the professional interests of those who promote or support it.

ILS AND ILO SUPERVISORY BODIES

CEACR 2012 GENERAL SURVEY

125. With regard to so-called "sympathy" strikes, the Committee considers that a general prohibition of this form of strike action could lead to abuse, particularly in the context of globalization characterized by increasing interdependence and the internationalization of production, and that workers should be able to take such action, provided that the initial strike they are supporting is itself lawful.

CFA DIGEST OF DECISIONS:

534. A general prohibition of sympathy strikes could lead to abuse and workers should be able to take such action provided the initial strike they are supporting is itself lawful.

Observation (CEACR) - adopted 2004, published 93rd ILC session (2005)
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - United Kingdom *(Ratification: 1949)*

2. Immunities in respect of civil liability for strikes and other industrial action (sections 223 and 224 of the TULRA). In its previous comments, the Committee had requested the Government to keep it informed in its future reports of developments in respect of the right of workers to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute, and to participate in sympathy strikes provided the initial strike they are supporting is itself lawful.

The Committee notes that the Government reports that there are no developments in respect of the treatment of sympathy strikes under United Kingdom law and that principles of fairness and partnership at work have resulted in more harmonious relationships and the avoidance of conflict. The Committee further notes the Government's indication that it believes that the restrictions on

secondary and solidarity strikes reflect the United Kingdom's experiences and needs and that its strike law gives sufficient scope for unions to protect the interests of their members.

The Committee once again recalls that workers should be able to participate in sympathy strikes, provided the initial strike they are supporting is lawful, and to take industrial action in relation to matters which affect them even though the direct employer may not be a party to the dispute, and requests the Government to continue to keep it informed in its future reports of developments in this respect.

4. **QUESTION:** Does the various countries legislation provide a mandatory mediation procedure before the start of the strike and in what proportion are methods mediation / conciliation - strike? Who and how conducts mediation and conciliation procedures?

OVERVIEW

Yes, the obligation to have recourse to conciliation and arbitration procedures in collective disputes before calling a strike exists, not in most countries but in quite a few.

Legislation in some countries establishes an obligation to have recourse to prior conciliation and/or mediation procedures in collective disputes before a strike may be called (e.g. **Czech Republic, Finland, Lithuania, Sweden, Switzerland, Poland**).[13] Various institutional arrangements exist for providing conciliation/mediation. In some countries, specialized independent bodies are established for offering conciliation/mediation, while in others a dedicated dispute-handling unit within the labour administration provides conciliation/mediation either by labour officers charged with the function, or by engaging private third-party independent actors who have expertise and knowledge about labour relations or particular sectors. There are also countries where tripartite or bipartite structures are used to ensure impartiality of conciliation/mediation processes. The objective is to ensure that, wherever possible, the parties to the dispute resolve it through a consensus-based process before recourse to strikes, or a tribunal or labour court in case of collective disputes over rights.[14]

The *ILO Legal Database on Industrial Relations (IRLex)* has a dedicated section under each country profile that contains legislative information on whether mediation/conciliation before recourse to

[13] *Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised)*: http://www.ilo.org/gb/events/WCMS_344248/lang--en/index.htm, Paras 120-123. Waas, B. "Strikes as a fundamental right of the workers and its risks of conflicting with other fundamental rights of the citizens", presented at the 20th World Congress of the International Society for Labour and Social Security Law, Santiago de Chile, September 2012, General Report III: http://islssl.org/wp-content/uploads/2013/01/Strike-Waas.pdf. Other useful sources that contain comparative information include B. Waas: *The right to strike: A comparative view* (Wolters Kluwer, 2014).

[14] *Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised)*: http://www.ilo.org/gb/events/WCMS_344248/lang--en/index.htm, paragraph 125; *ILO Legal Database on Industrial Relations (IRLex):* http://www.ilo.org/dyn/irlex/en/f?p=14100:1000:::NO

strikes is required (compulsory mediation/conciliation), as well as how and to whom mediation/conciliation is offered.[15]

For example in **Norway**, legislation requires parties to a dispute of interest to inform the National Mediator in writing when a notice of collective work stoppage has been given. The National Mediator shall temporarily prohibit the parties from going on strike or imposing a lockout while mediation is conducted. The National Mediator or a district mediator may, on his/her own initiative or at the request of one of the parties, initiate mediation.[16]

In **Poland**, legislation explicitly provides that a strike is a last resort and cannot be declared without prior exhaustion of mediation. A mediator shall be agreed upon by parties to the collective dispute. The mediator may be a person from a list fixed by the Minister for Labour Affairs in agreement with trade union organizations and employers' organizations, representative in accordance with the meaning of the law of 6 July 2001 concerning the Tripartite Commission for Socio-Economic Issues and regional social dialogue commissions.[17]

ILS AND ILO SUPERVISORY BODIES

According to the **ILO Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)**, "voluntary conciliation machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and workers" (Para 1).

Principles set forth in Recommendation No. 92 are the following:

- *Where voluntary conciliation machinery is constituted on a joint basis, it should include equal representation of employers and workers* (Para 2).
- *The procedure should be free of charge and expeditious; such time limits for the proceedings as may be prescribed by national laws or regulations should be fixed in advance and kept to a minimum* (Para 3(1)).
- *Provision should be made to enable the procedure to be set in motion, either on the initiative of any of the parties to the dispute or ex officio by the voluntary conciliation authority* (Para 3(2)).
- *If a dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lockouts while conciliation is in progress* (Para 4).

[15] See for example, Latvia: http://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:LVA,,2015:NO

[16] For more details, see ILO IRLex on Norway: http://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:NOR,,2015:NO

[17] See IRLex on Poland: http://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_YEAR:PL,:NO

- *All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner* (Para 5).

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) is of the view that "while it is true that strike action is a basic right, it is not an end in itself, but the last resort for workers' organizations, as its consequences are serious, not only for employers, but also for workers, their families and organizations and in some circumstances for third parties".[18] In general, a decision to suspend a strike for a reasonable period, so as to allow the parties to seek a negotiated solution through mediation or conciliation efforts, does not in itself constitute a violation of the principles of freedom of association.[19] The requirement that prior procedures be exhausted is "conceived as a stage designed to encourage the parties to engage in final negotiations before resorting to strike action, and therefore as a way of encouraging and promoting the development of voluntary bargaining".[20]

However, such procedural requirements "should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness",[21] and should be accompanied by "adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage".[22] According to the CEACR, "the imposition of a duration of over 60 working days as a prior condition for the exercise of a lawful strike may make the exercise of the right to strike difficult, or even impossible", and it suggests that legislation should set a time limit for the exhaustion of prior procedures.[23]

[18] *Giving globalization a human face: General Survey on the Fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008* (2012), Para 117.
[19] *ILO, Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 2006, para. 550.
[20] Ibid. para 121.
[21] Ibid, paragraph 144.
[22] Ibid, paragraph 551.
[23] *Giving globalization a human face: General Survey on the Fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008* (2012), paragraph 144.

5. **QUESTION:** Is there a "Minimum service" that cannot be stopped during a strike (activities whose failure or suspension can create a danger to human life and health, public order, etc.) according to the different legislation? How are these services/activities regulated, is there a legal limitation for the right to strike for individual groups of employees? Is there such a limitation for categories of healthcare, transport, and other similar?

The right to strike should be extended to all workers except officials engaged in the administration of the state and essential services in the strict sense of the term. However, restrictions on the right to strike in certain sectors to the extent necessary to comply with statutory safety requirements are normal restrictions.[24] In addition, a strike can be limited to the operations that are not strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear.

The establishment of minimum services in the case of strike action should only be possible in:

(1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term);

(2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and

(3) in public services of fundamental importance.

A minimum service could be appropriate as a possible alternative in situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users' basic needs are met or that facilities operate safely or without interruption. Measures should be taken to guarantee that the minimum services avoid danger to public health and safety.

Requirements:

(1) The minimum service must be limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and

(2) since this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities.

Even if the work is not an essential service in the strict sense of the term, a minimum service may be required to ensure the security of facilities and the maintenance of equipment.

[24] ILO. 2006. *Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Ch. 10: Right to strike, pp. 124-128

Comments:

(1) It is important to adopt explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services.

(2) Any disagreement on minimum services should be resolved by a joint or independent body which has the confidence of the parties, responsible for examining rapidly and without formalities the difficulties raised and empowered to issue enforceable decisions. Only the judicial authorities should issue a definitive ruling on whether the level of minimum services was indispensable, in so far as it requires thorough knowledge of the structure and functioning of the enterprises and establishments concerned and of the real impact of the strike action, which can only be ascertained through a finding of facts.

(3) A certain minimum service may be requested in the event of strikes whose scope and duration would cause an acute national crisis, but in this case, the trade union organizations should be able to participate, along with employers and the public authorities, in defining the minimum service. This allows a careful exchange of viewpoints on what in a given situation can be considered to be the minimum services that are strictly necessary, and also contributes to guaranteeing that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organizations that a strike has come to nothing because of over-generous and unilaterally fixed minimum services.

(4) Non-compliance with a minimum service should not trigger a decision to suspend or revoke a trade union's legal status.

Specific services (illustrative, not exhaustive): The Committee has considered that the conditions were met for requiring a minimum operational service in the following situations, examined on a case-by-case basis:

1) Ferry service for islands along the coast
2) Ports
3) Underground railway to meet the minimal needs of the local communities
4) rail transport, in view of the **particular situation** of the railway services of one country, if a strike could lead to a situation of acute national emergency endangering the well-being of the population
5) transportation of passengers and commercial goods **in certain cases**
6) postal services
7) refuse collection service, which may become "essential" if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population
8) Mint, banking services and the petroleum sector: minimum **negotiated** service to ensure that the basic needs of the users of these services are satisfied.

9) education sector in cases of strikes of **long** duration, in full **consultation** with the social partners.

10) Animal Health Division, in the face of an outbreak of a highly contagious disease,

EXAMPLES OF DOMESTIC REGULATIONS

(1) In the **United Kingdom** there is no minimum or guaranteed service. The general legal restriction on strikes, combined with the ever-present threat of emergency use of the army, has resulted in there being very few strikes in the public services. The Act defining essential services for purposes of emergency army deployment simply mentions "the need to provide the community with vital essentials".[25] However, a minimum service requirement was proposed in 2015.

(2) Countries with no specific regulations for a minimum service do not on the whole have to deal with major industrial disputes, either because the right to strike is strictly regulated or because there is an effective labour relations dialogue. In **Norway,** a crisis brought by a health service strike in 2002 raised the issue of a minimum service in hospitals in the country.

(3) The Constitution of **Portugal** explicitly refers to minimum services: "The law defines the conditions for the provision during the strike of services necessary for the safety and maintenance of equipment and facilities, as well as the minimum services indispensable to occur to the satisfaction of unmet social needs."[26] Minimum service is arranged through collective negotiations or by ministerial order, according to the circumstances. Recently, the Government has issued decrees in ports (2016), train service (2015) and airline service (2015)

If a strike takes place in an enterprise or establishment intended to meet essential social needs, the notice must be issued at least ten days in advance and a minimum service must be ensured. In the most difficult situations the government may bring in the army, as it has more than twenty times since 1974, in 70% of cases in response to a transport dispute. The 2007 labour code included a requirement on workers' representatives to assess a strike's impact on users when giving notice of strike action and propose a definition and levels of minimum service, unless they have been defined in a collective labour regulation (including a CBA). If there is no collective agreement or agreement with staff representatives, the minimum service applicable is laid down by an arbitration group, which must ensure they are necessary, adequate and proportional. It also defines more precisely the minimum service necessary to ensure the safety and maintenance of plant and equipment. The union is responsible for the delivery of these minimum services and the government can order a "requisition or mobilization" in case of non-compliance.

(4) In **Italy**, the minimum service is governed by Act 146 of 1990, which regulates the right to strike in essential public services and protects the constitutional rights of the individual. The minimum-service arrangements have to be set out in collective agreements. Under the 1990 Act, in the event of disagreement about the minimum service, a guarantee committee assesses the appropriateness of the minimum services set out in collective agreements and, if necessary, orders further measures. It may lay down temporary regulations guaranteeing certain services at certain periods and issue an

[25] From the debate in the European Parliament: Report for discussion in the Standing Committee, http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10894&lang=EN (2005)
[26] Art. 57(3).

"arbitration judgment" on the interpretation of minimum service agreements. It also has the power to take action if the minimum service rules are not met. Its decisions may, however, be challenged in the Labour Court. In addition users have to be given notice of minimum service timetables. For example, in transport, a full service usually has to be guaranteed between 6 and 9 am and again from 6 to 9 pm. Essentially, only the major groups of affiliated trade unions take these measures. From the 1980s onwards, the main ones (UIL, CGIL, CISL) adopted "ethical codes" to limit the inconvenience caused by industrial disputes. The results of the minimum service are on the whole positive in Italy, particularly since there are quite effective dispute prevention procedures. The unions, however, find the pre-strike procedure particularly complicated. In addition, the guarantee committee is considered by some to have no real teeth and therefore to be ineffective. There are still wildcat strikes, especially in transport, the weak point of the public services.

In September 2016, trade unions negotiated a minimum service provision in the case of strike action by forestry workers. This is an important step to maintain the current rights of this group of workers that is facing militarisation and the loss of the right to strike through transfer to the carabineri police service. Trade unions are continuing to fight this transfer both through union campaigning and legal action.[27]

(5) In **Spain** the Constitution requires the maintenance of "services essential to the community" in the event of a strike. A 1977 legislative decree, approved by the Constitutional Court, provides that the "government authority", i.e. the national government or the government of the autonomous community, lays down the measures indispensable to keeping services going that are regarded as essential under the legislative decree. Many other legislative decrees have been promulgated on specific minimum-service arrangements in state hospitals, the railways and aviation. On the eve of the last general strike in June 2002, the government issued an emergency decree requiring a minimum service of between 20% and 30% in public transport and the media. As a result, despite the opposition of the unions, whose appeal was rejected, 20% of flights took off and 40% of metro services ran on the day of the strike. The union view was that the aim of the minimum service measures was to render strikes completely futile.

The Constitutional Court of Spain has ruled that "the community's right to vital services takes precedence over the right to strike". It has further ruled that "a service is essential not by virtue of its nature but by virtue of the results expected of it, taking into account the nature of the interests it is intended to satisfy". In Spanish case law, the main essential sectors are transport, hospital health services, assistance services, energy supply, water purification and provision, the collection and treatment of solid waste, the postal services and education. The minimum-service arrangements are compulsory.

The UGT and the CCOO alleged before the ILO in 2016 that public administrations issue decisions imposing minimum services that are abusive in view of their excessive scope and lack of justification, and which have been found null and void after having been challenged by trade unions in the courts (many rulings are cited). The CEACR requested the Government to address through tripartite dialogue the operation of the procedures for the determination of minimum services, as well as the other issues and concerns raised by these organizations.[28]

[27] From EPSU web site, www.epsu.org.
[28] CEACR DR, Spain, 2016 (C87).

(7) In **Hungary**, in addition to legal restrictions, an agreement between civil-service unions and the Ministry of the Interior imposes a legal duty to reach agreement in order to allow minimum service to be maintained, in particular for transport and electricity, gas and water supply during the pre-strike negotiation and arbitration periods. The level of service in other sectors deemed sufficient and the related requirements may be defined by an act of Parliament; if there is none, they shall be agreed upon by the parties during the pre-strike negotiations; or, failing such agreement, they are determined by final decision of the court of public administration and labour.

The scope of minimum service requirements in legitimate essential services has been systematically heightened, again generating criticism from the CEACR in 2014 and 2016.[29] For example, in Hungary the minimum level of service in the local and suburban passenger transport services is 66% and national and regional passenger transport services is 50%. In this respect the CEACR has expressed that as it stands "it is practically impossible to organize or maintain a lawful strike".[30] Act CLIX of 2012 (Postal Services Act) states that in case of a strike, official documents must be collected at least four days a week and shall be delivered within a period no more than 50 per cent longer than the specified time frame; and other mail shall be collected at least on every second working day and delivered within a period no more than twice as long.

The social partners and the government agreed in December 2014 to undertake consultations to modify the Strike Act within the framework of the Permanent Consultation Forum of the Market Sector and the Government, and the CEACR's comments are being discussed in these consultations. But the workers' group of the National ILO Council questions the efficiency and effectiveness of these consultations, and alleges that it is practically impossible to organize or maintain a lawful strike because of the unreasonably high minimum level of service.

The CEACR has called for amending the relevant laws (including the Strike Act, the Passenger Transport Services Act and the Postal Services Act), in order to ensure that the workers' organizations concerned may participate in the definition of a minimum service and that, where no agreement is possible, the matter is referred to a joint or independent body.

(8) In **Belgium**, minimum services are established through agreement by the social partners. The joint committees created by the Law on Collective Agreements and Joint Committees are responsible for identifying and delimitating, for enterprises falling within their scope of application, the measures or services that need to be guaranteed in case of a collective and voluntary work stoppage or in case of a collective layoff of personnel. If the joint committee does not agree, the Minister of Labour and Employment may request the committee to make such a decision. If this is not done within 6 months, the King has the power to make these decisions for the committee.

In a national anti-austerity Strike organized on 10 October 2017, the union objected "to plans to impose minimum service requirements when public service unions taken strike action. The union says that minimum service agreements are currently negotiated with public service employers and should not be unilaterally imposed by the government." (EPSU web site)

[29] Observation (CEACR) – adopted 2014, published 104th ILC session (2015) ILO Convention 1948 No. 87 (Hungary); Observation (CEACR) – adopted 2015, published 105th ILC session (2016). From Novitz, T. (2017). The Restricted Right to Strike: "Far-Reaching" ILO Jurisprudence on the Public Sector and Essential Services. Comparative Labor Law and Policy Journal, 38(3), 353-374:

[30] Observation (CEACR) – adopted 2015, published 105th ILC session (2016) ILO Convention 1948 No. 87 (Hungary).

(9) In **Slovakia** and **Slovenia**, the law requires the organisers of a strike to co-operate with management as much as necessary to protect the employer's property and ensure the continuous safe operation of certain production processes.

(10) The Law on Strikes in **Montenegro** provides that, when determining the minimum service, the employer shall be obliged to obtain an opinion from the competent body of the authorized trade union organization, or more than half of the employees;

(11) In **Romania**, medical services, social assistance and public transport must operate at least at one third of their normal level and be able to respond to the vital needs of the community.

(12) In **Germany**, the guidelines on industrial action of the umbrella trade union organization oblige unions to ensure the establishment of minimum services in case of emergency.

(13) In **Croatia**, at the proposal of the employer, the trade union and the employer must agree on the provision of those services which must not be interrupted during a strike. If they do not reach agreement, the employer or the trade union may request that these assignments be defined by an arbitration body. This arbitration body consists of one representative of the trade union, one representative of the employer and an independent chairperson.

(14) In **France**, there is no precise legislation or regulations on a minimum service except in public broadcasting, transport and aviation safety services. Otherwise it is the administrative authority that organises a minimum service through "regulatory" circulars. The legislator entrusts the social partners with signing a "collective agreement of predictability" identifying the functions necessary to ensure the levels of service and work organization in the event of a strike in the area of land transport for passengers. In the strike this week, some sectors did not guarantee minimum services. (Euronews)

(15) In **Bosnia and Herzegovina** (Republika Srpska), the employer is authorized to determine the minimum service to be maintained, taking into consideration the opinion of the trade union. If the employer does not provide such a minimum service, it is for the public authorities to establish the conditions for its effective provision and to engage workers from outside the enterprise if the work cannot be performed otherwise.

Level of minimum services in air traffic service[31]
Spain and Portugal define a minimum service including flights to islands, which is generally in response to a requirement that the inhabitants of the islands should not be 'cut off' in the event of strike. Other Member States (e.g. **Italy and Greece**) protect 100 percent overflights.
Croatia: 70% of flights
Cyprus: 40% normal capacity
France: 50% of normal capacity
Greece: 100% (through agreement with unions)
Hungary: 46 flights/hr
Italy: 100%
Portugal: 33% normal capacity, with 3 emergency routes, by agreement
Romania: 33% normal capacity

[31] European Commission, Practices favouring Air Traffic Management Service Continuity (2017, https://ec.europa.eu/transport/sites/transport/files/swd20170207-practices-favouring-air-traffic-management-service-continuity.pdf).

6. **QUESTION:** What are the statutory terms and conditions for declaring a strike under the various legislation - quorum, representation, and empowerment?

OVERVIEW[32]

Terms and conditions of strike action are regulated by law in most countries.

For example, in various European systems, a common type of prerequisite for calling a strike consists of making the exercise of the right to strike conditional upon approval by a certain percentage of the workers. Many national legislative measures provide that to be able to call a strike, it must be so decided by a certain percentage of workers, members or those present and voting, for instance more than the half (**Ireland, Kyrgyzstan** (quorum of two-thirds and the decision by the majority), **Latvia, Lithuania, Turkey, United Kingdom**)); or by two-thirds (**Armenia**).

In some countries, account is taken only of the votes cast, while in others this distinction is not applied (*note : the ILO supervisory bodies emphasise that if a country deems it appropriate to require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level – see box below*).

For instance, in **Turkey**, if one fourth of the workers employed in a workplace call for a vote on strike action, the strike can take place if the absolute majority of all the workers employed (not only the members of the trade union) vote in favour. In addition, national systems vary with respect to the consequences of the vote (in cases where the required threshold has or has not been reached).

Ballot modalities – Another distinction relates to whether the modalities for ballots are established by law, or whether it is left to trade unions to adopt rules. Some countries have established a comprehensive set of rules concerning strike ballots, including requirements for union by-laws (e.g. **Ireland and United Kingdom**). In others, such as **Poland**, this issue is essentially considered an internal matter for trade unions. In **Germany**, most trade unions have established guidelines in this respect. In practice, most trade union rules require a direct secret vote before starting a strike.

EXAMPLES OF DOMESTIC REGULATIONS (source: IRLex)

Bosnia and Herzegovina	4. (1) The decision to go on strike or strike warning at the employer shall be issued by the competent authority of the majority union, or by more than half of the employees of that employer. (2) The decision to go on strike or warning strike at the employer can be issued by the competent authority of another trade union, if supported by more than half of the employees of that employer. (3) The decision to go on strike or warning strike in the industry or activity is made by the competent authority of the majority union in that branch or activity.

[32] This section is based on: *Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised)*, paras. 131-134
http://www.ilo.org/gb/events/WCMS_344248/lang--en/index.htm

	(4) The decision to go on a general strike or strike warning is issued by the competent authority of the majority union of the Republic. • Act on Strikes (Official Gazette of the Republic of Sprska No. 110/08). (Art. 4)
Ireland	Section 14 (2) The rules of every trade union shall contain a provision that— (a) the union shall not organise, participate in, sanction or support a strike or other industrial action without a secret ballot, entitlement to vote in which shall be accorded equally to all members whom it is reasonable at the time of the ballot for the union concerned to believe will be called upon to engage in the strike or other industrial action; (b) the union shall take reasonable steps to ensure that every member entitled to vote in the ballot votes without interference from, or constraint imposed by, the union or any of its members, officials or employees and, so far as is reasonably possible, that such members shall be given a fair opportunity of voting; (c) the committee of management or other controlling authority of a trade union shall have full discretion in relation to organising, participating in, sanctioning or supporting a strike or other industrial action notwithstanding that the majority of those voting in the ballot, including an aggregate ballot referred to in paragraph (d), favour such strike or other industrial action; (d) the committee of management or other controlling authority of a trade union shall not organise, participate in, sanction or support a strike or other industrial action against the wishes of a majority of its members voting in a secret ballot, except where, in the case of ballots by more than one trade union, an aggregate majority of all the votes cast, favours such strike or other industrial action; • Industrial Relations Act, 1990 (No. 19 of 1990). (s. 14)
Latvia	(1) A trade union shall take a decision regarding the declaration of a strike in accordance with the procedures prescribed by the articles of association at a general meeting of the members thereof and in which more than half of the number of members of such trade union participate. A decision shall be taken if a simple majority of the members of the relevant trade union who are present have voted for it. The process and the results of the voting shall be recorded in the minutes. (2) If it is impossible to convene a general meeting of the members of the relevant trade union due to the large number of the members or due to the specific nature of the work organisation, the decision regarding the declaration of a strike shall be taken in accordance with the procedures prescribed by the articles of association at a meeting of authorised representatives of members of the trade union. A decision shall be taken if simple majority of the authorised representatives of the members of the relevant trade union who are present have voted for it. The process and the results of the voting shall be recorded in the minutes. (3) A trade union or authorised representatives of the members of a trade union referred to in Paragraph two of this Section (hereinafter – authorised

	representatives of the members of a trade union) may take a decision regarding the declaration of a strike also on behalf those employees who are not members of the relevant trade union, if such employees have authorised the trade union or the authorised representatives of the members of the trade union. • Act on Strikes of 23 April 1998 (s. 11)
Poland	If the strike is triggered by the representative trade union: at least ½ out from the trade union's members should vote in favour of the strike. If the strike is triggered within a company without a representative trade union: at least ¼ out of the employees should vote in favour of the strike. • Law No. 62/ 2011 on Social Dialogue (Legea dialogului social) (unofficial English translation) (Art. 183)
Slovakia	A strike in a dispute on conclusion of a company collective agreement shall be declared and its commencement shall be decided by the respective trade union body, if the strike is approved by the absolute majority of the employer's employees who are participating in the strike ballot whom the collective agreement concerns to, provided that at least absolute majority of employees counted out of total employees participate in strike ballot. • Collective Bargaining Act , Act No. 2/1991 [Zákon o kolektívnom vyjednávaní] (unofficial English translation) (as amended to Act No. 416/2013 Coll.) (§ 17)
Spain	In **Spain**, strike can be declared by workers representatives or by workers themselves in each work place. • By workers representatives: Quorum 75%. Simple majority. • By workers themselves: Quorum: 25%. Simple majority. 3.(1)The declaration of a strike, whatever its scope, requires, in any case, the adoption of express agreement to that effect, in every workplace. (2) The following are authorized to agree to a strike declaration: (a) employees, through their representatives. The agreement will be adopted at joint meeting of the representatives by majority decision thereof. In the meeting, which must be attended by at least seventy-five percent of the representatives, the attendees must sign the minutes of the meeting. (b) the employees themselves, when twenty five percent of the employees affected by the conflict decide to undergo such voting agreement. The voting will be secret and shall be decided by majority vote. The result of this record will be made in the minutes. • Royal Decree-Law 17/1977, of March 4, 1977 on Labour Relations (Real Decreto-Ley 17/1977, de 4 de marzo, sobre relaciones de trabajo) (unofficial English translation) (Art. 3(1) & (2))
United Kingdom	226. Vote to partake in industrial action (see Section 5). (1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action (a) is not protected unless the industrial action has the support of a ballot, and (b) where section 226A falls to be complied with in relation to the person's

	employer, is not protected as respects the employer unless the trade union has complied with section 226A in relation to him. In this section "the relevant time", in relation to an act by a trade union to induce a person to take part, or continue to take part, in industrial action, means the time at which proceedings are commenced in respect of the act. (2) Industrial action shall be regarded as having the support of a ballot only if— (a) the union has held a ballot in respect of the action— (i) in relation to which the requirements of section 226B so far as applicable before and during the holding of the ballot were satisfied, (ii) in relation to which the requirements of sections 227 to were satisfied, and (iii) in which the majority voting in the ballot answered "Yes" to the question applicable in accordance with section 229(2) to industrial action of the kind to which the act of inducement relates; (b) such of the requirements of the following sections as have fallen to be satisfied at the relevant time have been satisfied, namely— (i) section 226B so far as applicable after the holding of the ballot, and (ii) section 231B; (bb) section 232A does not prevent the industrial action from being regarded as having the support of the ballot; and (c) the requirements of section 233 (calling of industrial action with support of ballot) are satisfied. Any reference in this subsection to a requirement of a provision which is disapplied or modified by section 232 has effect subject to that section. (3) Where separate workplace ballots are held by virtue of section 228(1)— (a) industrial action shall be regarded as having the support of a ballot if the conditions specified in subsection (2) are satisfied, and (b) the trade union shall be taken to have complied with the requirements relating to a ballot imposed by section 226A if those requirements are complied with, in relation] to the ballot for the place of work of the person induced to take part, or continue to take part, in the industrial action. If the requirements of section 231A fall to be satisfied in relation to an employer, as respects that employer industrial action shall not be regarded as having the support of a ballot unless those requirements are satisfied in relation to that employer. (4) For the purposes of this section an inducement, in relation to a person, includes an inducement which is or would be ineffective, whether because of his unwillingness to be influenced by it or for any other reason." 226A: Notice of ballot and sample voting paper for employers. 226B: Appointment of an independent scrutineer • Trade Union and Labour Relations (Consolidation) Act 1992 (Chapter 52) (as amended to 2014) (s. 226)
Albania, Belgium, France, Hungary, Italy	No provision found in legislation

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147. Certain countries provide that, to be able to call a strike, it must be so decided by two-thirds [] or three-quarters [] of workers. In general, the Committee considers that requiring a decision by over half of the workers involved in order to declare a strike is excessive and could unduly hinder the possibility of calling a strike, particularly in large enterprises.

In the Committee's view, if a country deems it appropriate to require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level.

For example, the observance of a quorum of two-thirds of those present may be difficult to reach and could restrict the right to strike in practice.

In this context, it has noted with satisfaction, among other measures, the legislative amendment in **Latvia** which reduced the quorum required to declare a strike from three-quarters to one half of the members of a trade union or a company participating in the respective meeting.

7. **QUESTION:** Is there a legal prohibition under the various legislation to declare a strike in case of an existing collective agreement?

OVERVIEW[33]

In some countries with a tradition of little state intervention in industrial conflicts, strike action has almost no limitations and can therefore take various forms (e.g. **Austria**).

In other countries, strike action is limited to the area of collective bargaining or to the framework of collective negotiations, and strikes cannot take place during the period of validity of a collective agreement and are generally only possible as a means of pressure for the adoption of a first collective agreement or its renewal. In these countries, the right to strike is provided as a means to induce employers to conclude collective agreements. This system prevails, for instance, in **Czech Republic, Germany, Turkey.**

However, in various countries, collective agreements are viewed as "social peace treaties" for a certain period during which strikes and lock-outs are prohibited, with workers and employers having access in compensation to arbitration machinery. Under these systems, industrial action is illegal during the period of validity of the collective agreement if it is directed against the collective

[33] This section is based on: *Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised)*, paras. 77 and 112-116
http://www.ilo.org/gb/events/WCMS_344248/lang--en/index.htm

agreement as a whole, or part of it. Strikes are generally only possible as a means of pressure with a view to the adoption of a first collective agreement or its renewal.

The obligation of social peace may be set out explicitly in law, in a general agreement between confederations of workers and employers at the central level (e.g. **Denmark**), in an explicit clause contained in the collective agreements concluded by the parties or by case law (e.g. **Austria, Germany and Switzerland**).

In many other countries, strike action for the purpose of enforcing a collective agreement is considered illegal because it is regarded as a violation of the peace obligation (e.g. **Czech Republic, Finland and Turkey**).

In **Germany**, a strike is only lawful if its underlying objective is to reach a collective bargaining agreement.

In **Sweden**, collective action aimed at the conclusion of a collective agreement is allowed. However, collective action to enforce a collective agreement is prohibited, with the exception of collective action to recover unpaid wages.

In **Israel**, the law defines "unprotected strikes" as strike action by employees in a public service where a collective agreement applies, except a strike unconnected with wages or social conditions and declared or approved by the central national governing body of the authorized employees' organization.

Major differences exist regarding the consequences of violations of the peace obligation. In **Germany**, for instance, as in many countries, a strike that violates the peace obligation is illegal. In Japan, on the other hand, it is far from clear whether such a violation impacts on the lawfulness of the strike as such, or whether it should be regarded as a mere breach of contract.

In other countries, no peace obligation exists, either relative or absolute. This is the case, for instance, in **Slovenia**, where even if a no-strike clause is agreed by the parties to a collective agreement, such a clause could not prevent workers from striking.

EXAMPLES OF DOMESTIC REGULATIONS (source: IRLex)

ALBANIA	169. (2) Neither of the parties must use any conflicting means against the other party concerning matters regulated by the agreement. A peace obligation is only absolute when the parties have expressly agreed to it. (3) The peace obligation, as provided in Paragraph (2) of this provision, is to be implemented by each contracting professional organization within the territorial and occupational scope of implementation of the collective agreement, and by any person bound by the latter. • Labour Code of the Republic of Albania, 1995 (Law No. 7961) (Kodi i Punes I Republikes te Shqiperise) (unofficial English translation) (as amended to 29/12/2008) (Art. 169(2) & (3))

BELGIUM	No provision found in legislation. However, in practice most collective agreements contain such a clause. In addition, it is indicated that the peace obligation is implicit if no provision on this is included in the collective agreement, and derives from the duty to implement the agreement in good faith.
Hungary	3(1) A strike is unlawful: (d) if the purpose is to change an agreed upon collective agreement before its duration has come to term. • Act 7/1989 on Strikes (1989. évi VII. törvény a sztrájkról) (unofficial English translation) (as amended to 20/08/2015) (s. 3(1))
Ireland	Section 27 of the IR Act regulates procedures for the registration of employment agreements. One of the criteria that the Labour Court is to take into consideration before registering the agreement is whether or not the agreement contains a provision which only allows a strike or lock-out after the dispute has been submitted for settlement by negotiation in the manner set out in the agreement. Section 27(3)(e) provides "where an application is duly made to the Court to register in the register an employment agreement, the Court shall, subject to the provisions of this section, register the agreement in the register if it is satisfied…(e) that the agreement provides that if a trade dispute occurs between workers to whom the agreement relates and their employers a strike or lock-out shall not take place until the dispute has been submitted for settlement by negotiation in the manner specified in the agreement." • Industrial Relations Act, 1946 (No. 26 of 1946). (s. 26(3)(e))
LATVIA	"(1) A strike or an declaration of a strike shall be regarded as illegal if: … 2) the strike has been declared during the term of validity of a collective agreement which has already been entered into in order to change the conditions of this collective agreement, thus violating the procedures for amending a collective agreement referred to therein." • Act on Strikes of 23 April 1998 (s. 23(1)(2))
NORWAY	In both the private and public sector there is a peace obligation, which prohibits workers going on strike or undertaking other industrial action under certain circumstances. i. Labour Disputes Act In the case of a collective dispute of rights (rettstvist) in the private (and public municipal) sector, under the LDA, disputes of rights are not to be resolved through strike, lockout or other industrial action (s. 8(1)). These must be resolved by the Labour Court, which has sole jurisdiction over such disputes, or through voluntary arbitration. Dispute of rights is defined as a dispute between a trade union and an employer or employers' association concerning the validity, interpretation or existence of a collective agreement or concerning demands founded on a collective agreement (LDA s. 1(i)). With respect to disputes of interest (interessetvist), there is also a substantive peace obligation, however, industrial action may be undertaken if the validty

	of the relevant collective agreement has expired and notice has been given (section 18) and mediation has failed (section 25) (s. 8(2)). ii. Public Service Disputes Act With respect to disputes of rights in the public sector, section 20 of the PSDA stipulates that no attempts must be made to settle by stoppage of work, lockouts or any other form of industrial action a dispute concerning the validity, interpretation, or existence of a collective agreement, or claims based on a collective agreement. • Public Service Disputes Act, 1958 (Act No. 2 of 18 July 1958). (s. 20) • Act (No. 9 of 2012) on Labour Disputes. (s. 8)
POLAND	If the dispute concerns the content of a collective agreement or other agreement to which the trade union organization is a party, and the purpose of the dispute is to amend the agreement, such a dispute may not be entered and conducted prior to the date of notice of termination of the agreement. • Act of 23 May 1991 on the Settlement of Collective Labour Disputes, Text No. 236 (Ustawa z dnia 23 maja 1991 r. o rozwiazywaniu sporów zbiorowych) (Art. 4(2))
SPAIN	A strike is illegal: (d) when it occurs in contravention of the provisions of this Decree, or as expressly agreed in collective agreements for the settlement of disputes. • Royal Decree-Law 17/1977, of March 4, 1977 on Labour Relations (Real Decreto-Ley 17/1977, de 4 de marzo, sobre relaciones de trabajo) (unofficial English translation) (Art. 11(d))
ROMANIA	The collective labour conflicts may be initiated (therefore, also the strikes) only on the occasion of bargaining of the collective labour contract. i.e. if the employer refuses to bargain; if the employer rejects the employees' claims; or if the parties don't reach an agreement. • Law No. 62/ 2011 on Social Dialogue (Legea dialogului social) (unofficial English translation) (Art. 161)
SLOVAKIA	20. (1) It is considered under this Act to be unlawful to strike-… b) if it has been declared or continues after the commencement of arbitration proceedings (§13 and §14) or after the conclusion of a collective agreement. • Collective Bargaining Act , Act No. 2/1991 [Zákon o kolektívnom vyjednávaní] (unofficial English translation) (as amended to Act No. 416/2013 Coll.) (§ 20)
[Spain]	According to article 11 RDLRT (Real Decreto-Ley de Relaciones de Trabajo 17/1977), a strike that aims to change what has been agreed in a valid collective agreement is considered to be unlawful.

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CFA DIGEST OF DECISIONS:

533. If strikes are prohibited while a collective agreement is in force, this restriction must be compensated for by the right to have recourse to impartial and rapid mechanisms, within which individual or collective complaints about the interpretation or application of collective agreements can be examined; this type of mechanism not only allows the inevitable diffi culties which may occur regarding the interpretation or application of collective agreements to be resolved while the agreements are in force, but also has the advantage of preparing the ground for future rounds of negotiations, given that it allows problems which have arisen during the period of validity of the collective agreement in question to be identified.

8. **QUESTION:** What is the legal regulation of the lockout under the various legislation?

OVERVIEW

The ILO 1993 Resolution concerning statistics of strikes, lockouts and other action due to labour disputes[34] gives the following definitions:

- *A **lockout** is a total or partial temporary closure of one or more places of employment, or the hindering of the normal work activities of employees, by one or more employers with a view to enforcing or resisting demands or expressing grievances, or supporting other employers in their demands or grievances.*

- *Workers involved in a **lockout**: Workers directly involved in a lockout are those employees of the establishments involved who were directly concerned by the labour dispute and who were prevented from working by the lockout. Workers indirectly involved in a lockout are those employees of the establishments involved who were not directly concerned by the labour dispute but who were prevented from working by the lockout.*

In practice, lockouts hardly ever occur within the European Union[35] – whether lockouts (if lawful) are regulated by law or by accumulated case law, and whether or not those regulations are extensive or concise.

[34] International Labour Office. *Resolution concerning statistics of strikes, lockouts and other action due to labour stoppages*, adopted by the Fifteenth International Conference of Labour Statisticians (January 1993). Current International Recommendations on Labour Statistics. 2000 Edition, p. 79. This Resolution is also available on the Web at: http://www.ilo.org/public/english/bureau/stat/list.htm.

[35] Possible explanations that have been raised for the rare occurrence of lockouts include the following. Employers have other collective action instruments that are less disruptive than lockouts and cause less financial risk for the employer. Furthermore, in general, regardless of differences in legal system, culture or economic situation of different Member States, the opinion seems to be that lockouts do not contribute to a climate of industrial peace. Diepenbach, M. Bennaars, H. Verhulp, E. (eds.) 2016, ‘‘*Comparative European practice on the regulation and practice of lockouts*’’, Hugo Sinzheimer Institute, pp. 1-28.

In some member States lockouts are lawful (e.g. **Germany, Latvia**, **Montenegro**, **Sweden**, **Slovakia**, **United Kingdom** – *see boxes on national domestic regulation below*). In others, lockouts are (explicitly) forbidden by law (e.g. **Portugal**).

EXAMPLES OF DOMESTIC REGULATIONS

Croatia – Labour Act of 4 December 2009 (text No. 3635) – Article 277

(1) Employers may engage in a *lockout* only as a response to a strike already in progress.

(2) A *lockout* must not commence prior to expiration of eight days from the date of the commencement of a strike.

(3) The number of employees *locked out* from work must not be higher than one half of the employees which are on strike.

(4) With respect to the employees who are *locked out*, employers must pay contributions prescribed by specific regulations on the base equivalent to the minimum salary.

(5) This Act's provisions applicable to strikes are also applicable, as appropriate, to the employer's *right to lock* the employees *out* in the course of a collective labour dispute.

Ireland – Industrial Relations Act, 1946

Section 27 of the IR Act 1946 regulates procedures for the registration of employment agreements. One of the criteria that the Labour Court is to take into consideration before registering the agreement is whether or not the agreement contains a provision which only allows a strike or *lock-out* after the dispute has been submitted for settlement by negotiation in the manner set out in the agreement.

Section 27(3)(e) provides "where an application is duly made to the Court to register in the register an employment agreement, the Court shall, subject to the provisions of this section, register the agreement in the register if it is satisfied…(e) that the agreement provides that if a trade dispute occurs between workers to whom the agreement relates and their employers a strike or *lock-out* shall not take place until the dispute has been submitted for settlement by negotiation in the manner specified in the agreement"

Part V of the IR Act 1946 deals with the registration of Joint Industrial Councils. Section 59(c) provides that in this Part "the expression "qualified joint industrial council" means an association of persons which complies with the following conditions…(c) that its rules provide that, if a trade dispute arises between such workers and their employers a *lock-out* or strike will not be undertaken in support of the dispute until the dispute has been referred to the association and considered by it."

Conditions concerning lock-outs are also contained in the **Redundancy Payment Act, 1967 and the Minimum Notice and Terms of Employment Act, 1973.**

The RPA, section 9 provides sets out the circumstances under which an employee may be deemed to have had their employment contract terminated by the employer.

Subsection 1(c) provides that an employment contract will be deemed to have terminated only if "the employee terminates the contract under which he is employed by the employer in circumstances (not falling within subsection (5)) such that he is entitled so to terminate it by reason of the employer's conduct."

Subsection (5) provides that "when an employee terminates his contract of employment without notice, being entitled to do so by reason of a lock-out by his employer, subsection (1)(c) shall not apply to that termination."

Sections 12 and 13 and Schedule 3 contain provisions providing that time out of work due to lock-out is not to be counted as time off when calculating redundancy payments. Similar provisions exist under the MNTEA in sections 12 and 13 which provide that if, in any week or part of a week, an employee was, for the whole or any part of the week, absent from work because of a lock-out by his employer, or strike or lock-out in a trade or business other than that in which he is employed, that week shall count as a period of service.

Source: IRLEx.

Latvia – Labour Dispute Law, 2003

Section 16. Mediation

(…) (3) During the time period when a collective dispute regarding interests is settled utilising a mediation method the parties to the collective dispute regarding interests must refrain from exercising the right to a collective action (including a strike and *lockout*). (…)

Section 21. Lockout

(1) If for the settlement of a collective dispute regarding interests the representatives of employees or the employees (a group of employees) utilise a strike as a final means for the settlement of the dispute, the employer, employers (a group of employers) or an organisation of employers, or an association of such organisations have the right to a response action for the protection of their economic interests – to a *lockout*.

(2) Within the meaning of this Law a *lockout* is a refusal by the employer, employers (a group of employers) or an organisation of employers, or an association of such organisations to employ employees and to pay work remuneration if a strike significantly affects the economic activity of the undertaking. The number of employees against whom the lockout has been directed may not exceed the number of employees on strike.

(3) The employer, employers (a group of employers) or an organisation of employers, or an association of such organisations shall take a decision regarding the application of a *lockout* in a general meeting which has been convened in accordance with procedures specified in the articles of association of the relevant organisation of employers or association of such organisations and in which at least three quarters of the members of the relevant organisation of employers or association of such organisations participate. The decision of an organisation of employers or an association of such organisations shall be taken if the three-quarters of the members of the relevant organisation of employers or association of such organisations present vote for it.

(4) Not later than 10 days prior to the commencement of a *lockout* the employer shall submit in writing to the relevant representatives of employees or to employees against whom the lockout has been directed, as well as to the State Labour Inspection and a secretary of the National Trilateral Co-operation Council:

1) an application for a lockout including: a) the date, time of commencement of the lockout and the place of the lockout, b) reasons for the lockout, and c) the number of such employees against whom the lockout is directed;

2) the decision of the general meeting regarding the application of the lockout and a report in which number of votes has been recorded by which the referred to decision has been taken if the decision on declaration of the lockout has been taken by employers (a group of employers) or an organisation of employers, or an association of such organisations.

(5) A *lockout* is prohibited in State administration and local government institutions, as well as in undertakings that shall be regarded as services necessary to public in accordance with the Strike Law.

(6) Conformity of the *lockout* procedures to this Law and other regulatory enactments shall be supervised by the State Labour Inspection. The State Labour Inspection has the right to suspend or terminate a lockout for a time period not exceeding three months if it is necessary to take

measures for the prevention or elimination of consequences of a natural disaster, large-scale accident or epidemic.
(7) *A lockout or an application for a lockout shall be unlawful* if: 1) provisions of this Section have been violated; and 2) it is directed against rights to freely unite in organisations.
(8) Only the court may acknowledge a *lockout* or the application for a lockout to be unlawful. An application regarding adjudication of the lockout as unlawful shall be submitted to the court within a time period of five days from the day of application for the lockout. If an application regarding adjudication of the application for the lockout as unlawful has been submitted to the court by the date of lockout initiation specified in the application for the lockout, the lockout may not be commenced until the judgment of the court comes into force.
(9) A *lockout* acknowledged as unlawful shall be terminated immediately. If a lockout has not yet been commenced and the court has adjudged the application for a lockout to be unlawful, it is prohibited to commence the lockout.
(10) The employer has an obligation to compensate losses caused during the *lockout* if it has been acknowledged as unlawful.
Source : http://www.lm.gov.lv/upload/legislation/leg_er_2.pdf

Montenegro – Law on Strikes, 2015

Article 14 – The Exclusion from the Work Process (Lock out)

The employer may exclude from the process of working the employees who do not participate in strike (*lock out*) if at least 30 days have passed from the initiation of the strike.
The employees referred to in paragraph 1 of this Article can not be the persons who are guaranteed a special protection, in accordance with the Law.
Number of employees excluded from the process of working can not exceed one third of employees participating in the strike.
Lock out shall last no longer than the termination of the strike.
Employees locked out are not entitled to a salary, and the employer is obliged to pay contributions to social insurance as if they were at work, in accordance with the regulations on social insurance.
The *lock out* can not be organized in activities referred to in Art. 18, 19 and 20 of this Law

Source :
http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=99883&p_count=11&p_classification=02

Portugal – Constitution and Law 7/2009 amending the Labour Code

Constitution, Article 57 (Right to strike and prohibition of lock-outs)
(…) (4) *Lock-outs shall be prohibited*.

Labour Code – Article 544

1. A *lockout* takes place when, according to reasons different from the normal business of the company and due to the unilateral decision of the employer:
   a) there is a total or partial stoppage in the company,

b) access to the workplace is prohibited to all or some workers, or
c) the company refuses to provide workers with work, conditions and working tools that renders, or might render, all or some of the sectors of the company paralysed.

2. *Lock-outs* shall be prohibited.

Source: https://dre.pt/application/dir/pdf1sdip/2009/02/03000/0092601029.pdf

Slovakia – Act on Collective Bargaining 2/1991

Section 27

(1) In case of failure to conclude a collective agreement even after proceedings before the intermediary and if the contractual parties have not sought solution of the dispute by the arbitrator, as an extreme means of solution of the dispute on conclusion of the collective agreement, *lock-out* may be declared.
(2) A *lock-out* shall be defined as partial or complete cessation of work by the employer.
(3) It shall be the duty of the employer to give at least a three working days notice in writing to the respective trade union body commencing about initiation of the *lock-out*, its extent, reasons, goals and providing a name list of employees involved in the *lock-out*. It shall also be duty of the employer to notify *lock-out*, within it same period of time, the employees involved.

Section 28

Pursuant to this law, an *illegal lock-out* is one
a) not preceded the proceeding before the intermediary (§ 11 and § 12), with the exception of lock-out in solidarity strike,
b) that has been declared or continues after initiation the proceedings before the arbitrator (§ 13 and § 14) or after conclusion of a collective agreement,
c) that has not been declared by the employer for reasons and under conditions specified in § 27,
d) in case of military stand by of the state and in time of emergency precautions,
e) applying to employees of health-care facilities or institutions of social services, provided this might pose a threat to the life or health of citizens,
f) applying to employees operating equipment of nuclear power plants, equipment with fissionable material and equipment of crude oil and gas pipelines,
g) applying to judges, prosecutors, members of the armed forces and armed corps, members and employees of fire fighting corps and rescue corps and employees in charge of air traffic control and operation,
h) applying to employees ensuring telecommunications operation and employees servicing and operating public water pipelines, provided their lockout would jeopardise the life and health of citizens,
i) applying to employees working in areas inflicted by natural disasters in which emergency precautions have been declared by the respective state bodies.

Section 29

The respective trade union body, or the prosecutor, may submit a proposal to declare a *lock-out* illegal to the regional court situated in the same circuit as the respective employer against which the proposal is directed; delivery of the proposal has not dilatory effect. In decision, the regional

court proceeds in compliance with provisions of the civil court order governing first degree proceedings.

Section 30
(1) If the employee was unable to perform work as a result of *lock-out*, this shall be considered as an obstacle at work on the part of the employer. Provided an illegal *lock-out* was not involved, the employee shall be entitled to wage replacement only to the tune half of the average earning.
(2) Under the Civil Code, the employee involved in *lock-out* shall be liable for damage arising from an event occurring during the course of the *lock-out* to the employer, and the employer shall be liable to the employee involved in *lock-out*. The employee involved in the *lock-out* shall not be liable for damage caused exclusively by interruption of work due to *lock-out*, and the employer shall not be liable to the employee involved in the *lock-out*.

Section 31
The *lock-out* shall be terminated, if decided so by the employer declaring the *lock-out*; information about *lock-out* termination shall be notified in writing without undue delay to the respective trade union body. Information about *lock-out* termination shall likewise be notified to the employees involved in the *lock-out*.
Source : http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=64399

Spain – Royal Decree-Law 17/1977, of March 4, 1977 on Labour Relations
According to article 12, RDLRT (Real Decreto-Ley de Relaciones de Trabajo 17/1977, RDLRT), the employer can declare a lockout in the following circumstances: evident threats of violence towards people, or serious damages to goods; unlawful occupation of the work place; that a great non-attendance to work seriously hinders the normal production.

According to article 13 RDLRT, the employer must notify the lockout to the Government within the next 12 hours. The lockout must be limited to the time strictly necessary to solve the circumstances that gave rise to the lockout.

Article 14 RDLRT establishes that if the employer does not reopen the work place at his/her own initiative, or at the workers' request, he/she will have to do it at the Government's request, otherwise she/he will be sanctioned according to the law on labour offences and sanctions (Real Decreto Legislativo 5/2000, de 4 de agosto, por el que se aprueba el texto refundido de la Ley sobre Infracciones y Sanciones en el Orden Social).

Sweden – Employment (Codetermination in the Workplace) Act – Section 41
An employer and an employee who are bound by a collective bargaining agreement may not initiate or participate in a stoppage of work (*lockout* or strike), blockade, boycott, or other industrial action comparable therewith, where an organisation is party to that agreement and that organisation has not duly sanctioned the action, and where the action is in breach of a provision regarding a labour-stability obligation in a collective bargaining agreement or where the action has as its aim:

1. to exert pressure in a dispute over the validity of a collective bargaining agreement, its existence, or its correct interpretation, or in a dispute as to whether a particular action is contrary to the agreement or to this Act;
2. to bring about an amendment to the agreement,
3. to effect a provision that is intended to enter into force upon termination of the agreement; or
4. to aid someone else who is not permitted to implement an industrial action. Industrial actions that have been taken contrary to the first paragraph are unlawful.
(…)
Source:
http://www.government.se/4ac87f/contentassets/bea67b6c1de2488cb454f9acd4064961/sfs-1976580-employment-co-determination-in-the-workplace-act

United Kingdom – Section 235(4), Employment Rights Act 1996
(….) In sections 136(2), 154 and 216(3) and paragraph 14 of Schedule 2 "*lock-out*" means—
(a)the closing of a place of employment,
(b)the suspension of work, or
(c)the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute,
done with a view to compelling persons employed by the employer, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment. (…)

Source: https://www.legislation.gov.uk/ukpga/1996/18/section/235

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Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)
(…) 4. If a dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lockouts while conciliation is in progress.
(…)
6. If a dispute has been submitted to arbitration for final settlement with the consent of all parties concerned, the latter should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award.

CFA DIGEST OF DECISIONS:
600. Employees deprived of the right to strike because they perform essential services must have appropriate guarantees to safeguard their interests; a corresponding denial of the right of lockout, provision of joint conciliation procedures and where, and only where, conciliation fails, the provision of joint arbitration machinery.

COUNCIL OF EUROPE – European Committee of Social Rights (ECSR)

The ECSR, noted in its Conclusions that "*[t]he competent tribunals were entitled to place certain restrictions of the exercise of lockout in specific cases where it would in particular constitute an abuse of right or where it would be devoid of justification on the ground of 'force majeure' or of the disorganisation of the enterprise by the workers' collective action*".[36]

- In its conclusions on **France**, the ECSR, stressed that lockouts can be justified by managerial prerogative of the head of the company, when order and the safety of property and persons are endangered on company premises".[37]
- In relation to **Italy,** the Committee considered that "an employer can lawfully decide to close the firm down during a collective dispute if the action of the striking workers takes violent or extreme forms (sabotage, interference with the right to work of non-striking employees and violence). In such cases, the employer's action is designed to preserve the means of production and prevent disruption of the work process.[38]
- **Portugal's** ratification was subject to the reservation that Article 6(4) ESC does not affect the prohibition of lockout established in Article 57(4) of the Portuguese Constitution.

9. **QUESTION:** What is the legal basis under the various legislation for the recognition of the strike as illegal? What are the legal consequences? Is there such a responsibility, if yes, what kind is it and who bears the responsibility for the unlawful acts?

OVERVIEW[39]

Many countries afford protection against dismissal to strikers by guaranteeing that recourse to strike action does not suspend or constitute a breach of the contract of employment. The protection may even cover unlawful strikes. For example, in **Malta**, where the period of the strike does not constitute an interruption of service, protection against dismissal is valid even in cases where the strike has been called when the dispute has been submitted to compulsory arbitration.

In common law countries, the principal consequence of unlawful strike action is that the legal immunities that would otherwise protect strikers and unions do not apply. Striking is thereby treated as an actionable repudiation or material breach of the employment contract. In these circumstances, it is open to employers to discipline or dismiss the workers concerned.

Those who organize unlawful strike action, most usually trade unions, may be guilty of one or more economic torts, such as conspiracy or inducement to breach of contract, and may therefore be liable for damages. In the **United Kingdom and Ireland**, the possibility that strike action may be unlawful can be used as a basis for seeking injunctions against unions to prevent strikes from beginning or

[36] Conclusions VIII, 1984, p. 95.
[37] Conclusion IX-2, 1986, p. 47-48.
[38] Conclusion IX-2, 1986, p. 48-49.
[39] This section is based on: *Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised)*, paras. 77 and 165 et seq.

continuing until the question of lawfulness has been finally settled by the appropriate court or tribunal. Breaking such injunctions may lead to the award of damages or proceedings for contempt of court.

Penal sanctions (including imprisonment) – Most legislation restricting or prohibiting the right to strike provides for various sanctions against workers and trade unions, including penal sanctions. Specific penalties for strike action are included in the criminal codes of at least **30 countries** in the world.

In some cases, penalties of imprisonment may also be applied to the employer or any other responsible person who lays off employees on the grounds of taking part in a lawful strike (**Montenegro**). In **Romania**, the law establishes that a person who, by threats or violence, impedes or obliges a worker or a group of workers to participate in a lawful strike or to work during the strike can be sentenced to imprisonment.

EXAMPLES OF DOMESTIC REGULATIONS

Croatia – Labour Act of 4 December 2009 (text No. 3635)

Judicial prohibition of an illegal strike and compensation for damages

Article 281

''*(1) An employer or an employers' association may move the court having jurisdiction to prohibit the organisation and undertaking of a strike which is contrary to the provisions of the law.*

(2) An employer may claim compensation for damages suffered as a result of a strike which was organised and undertaken contrary to the provisions of the law.''

France – Penal code (Art. 431-1) [40]

Sanctions for unlawful strikes
The obstruction, in a concerted manner and using threats, of the exercise of freedom of expression, labour, association, assembly or demonstration, or impeding the progress of the debates of a parliamentary assembly or a legislative body or a local authority is punishable by one year imprisonment and a 15,000 Euros fine.

The obstruction, in a concerted manner and with blows, violence, assault, destruction or damage within the meaning of this Code, of the exercise of the freedoms referred to in the preceding paragraph is punished three years imprisonment and a 45,000 Euro fine.

Ireland – Industrial Relations Act, 1946 (No. 26 of 1946). (ss. 12, 13, 17 & 19)

Civil sanctions
12."An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that—
(a) it induces some other person to break a contract of employment, or
(b) it consists of a threat by a person to induce some other person to break a contract of employment or a threat by a person to break his own contract of employment, or
(c) it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills."

13(1)" An action against a trade union, whether of workers or employers, or its trustees or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act committed by or on behalf of the trade union in contemplation or furtherance of a trade dispute, shall not be entertained by any court.
(2) In an action against any trade union or person referred to in subsection (1) in respect of any tortious act alleged or found to have been committed by or on behalf of a trade union it shall be a defence that the act was done in the reasonable belief that it was done in contemplation or furtherance of a trade dispute."

17(1) "Sections 10, 11 and 12 shall not apply in respect of proceedings arising out of or relating to a strike or other industrial action by a trade union or a group of workers in disregard of or contrary to, the outcome of a secret ballot relating to the issue or issues involved in the dispute."

19(1) "Where a secret ballot has been held in accordance with the rules of a trade union as provided for in section 14, the outcome of which or, in the case of an aggregation of ballots, the outcome of the aggregated ballots, favours a strike or other industrial action and the trade union

[40] Le fait d'entraver, d'une manière concertée et à l'aide de menaces, l'exercice de la liberté d'expression, du travail, d'association, de réunion ou de manifestation ou d'entraver le déroulement des débats d'une assemblée parlementaire ou d'un organe délibérant d'une collectivité territoriale est puni d'un an d'emprisonnement et de 15 000 euros d'amende.
Le fait d'entraver, d'une manière concertée et à l'aide de menaces, l'exercice de la liberté de création artistique ou de la liberté de la diffusion de la création artistique est puni d'un an d'emprisonnement et de 15 000 euros d'amende.
Le fait d'entraver, d'une manière concertée et à l'aide de coups, violences, voies de fait, destructions ou dégradations au sens du présent code, l'exercice d'une des libertés visées aux alinéas précédents est puni de trois ans d'emprisonnement et de 45 000 euros d'amende.

before engaging in the strike or other industrial action gives notice of not less than one week to the employer concerned of its intention to do so, that employer shall not be entitled to apply to any court for an injunction restraining the strike or other industrial action unless notice of the application has been given to the trade union and its members who are party to the trade dispute.
(2) Where a secret ballot has been held in accordance with the rules of a trade union as provided for in section 14 , the outcome of which or, in the case of an aggregation of ballots, the outcome of the aggregated ballots, favours a strike or other industrial action and the trade union before engaging in the strike or other industrial action gives notice of not less than one week to the employer concerned of its intention to do so, a court shall not grant an injunction restraining the strike or other industrial action where the respondent establishes a fair case that he was acting in contemplation or furtherance of a trade dispute.
(3) Notice as provided for in subsection (1) may be given to the members of a trade union by referring such members to a document containing the notice which the members have reasonable opportunity of reading during the course of their employment or which is reasonably accessible to them in some other way.
(4) Subsections (1) and (2) do not apply—
(a) in respect of proceedings arising out of or relating to unlawfully entering into or remaining upon any property belonging to another, or unlawfully causing damage or causing or permitting damage to be caused to the property of another, or (b) in respect of proceedings arising out of or relating to any action resulting or likely to result in death or personal injury.
(5) Where two or more secret ballots have been held in relation to a dispute, the ballot referred to in subsections (1) and (2) shall be the last such ballot."

Spain

In Spain, according to article 11 RDLRT, a strike is unlawful if:

- It is declared for political purposes and its aim does not affect the professional interest of the workers involved;
- It is a solidarity strike, unless it affects the professional interest of the workers involved;
- It aims to change what has been established in a valid collective agreement or in an arbitration award;
- It is declared contravening the provisions of RDLRT, or the provisions established in a collective agreement regarding the system to resolve collective disputes.

As stated above, there is not a strong legal framework regulating the right to strike. The RDLRT does not contain provisions regarding the legal consequences of an unlawful strike. Therefore, the compensation for damages caused by an unlawful strike is regulated by civil law.

The unlawful strike also allows employers to impose disciplinary sanctions to the workers, including dismissals, according to article 54 of the Workers' Statute (Estatuto de los Trabajadores).

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158. Most legislation restricting or prohibiting the right to strike provides for various sanctions against workers and trade unions that infringe this prohibition, including penal sanctions. However, the Committee has continually emphasized that no penal sanctions should be imposed against a worker for having carried out a peaceful strike and thus for merely exercising an essential right, and therefore that measures of imprisonment or fines should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and can be imposed exclusively pursuant to legislation punishing such acts, such as the Penal Code (for example, in the case of failure to assist a person in danger, deliberate injury or damage deliberately caused to property). The concern expressed by the Committee to ensure that sentences of imprisonment are on no account imposed on strikers is also supported by the supervisory bodies of the United Nations, and particularly the Committee on Economic, Social and Cultural Rights, which has considered that the imposition of such sanctions constitutes non-compliance with the obligations of the State party to the Covenant.

159. Other types of sanctions are sometimes imposed, such as fines, the closure of trade union premises, the suspension or deregistration of the trade union concerned, or the removal from office of trade union officers. The Committee considers that such sanctions should be possible only where the prohibition of strike action is in conformity with the Convention and the sanctions are proportionate to the seriousness of the fault committed. In any case, a right of appeal should exist against sanctions imposed by the authorities. Finally, certain systems are characterized by specific features and convict strikers on the basis of more general provisions of penal legislation, such as the offence of “obstruction of business”; or provide for sentences of imprisonment for failure to appear before the conciliator in the framework of the settlement of an industrial dispute; or provide for penal sanctions in the case of a work slowdown. In the view of the Committee, such sanctions are not compatible with the Convention. In this context, it has noted with satisfaction, among other measures, the removal of penal sanctions for strike action in the Republic of Moldova (...).

161. Since the maintaining of the employment relationship is a normal consequence of recognition of the right to strike, its lawful exercise should not result in striking workers being dismissed or discriminated against. In the view of the Committee, dismissal for strike action in the case of a lawful strike constitutes serious discrimination based on the exercise of lawful trade union activities, in violation of Convention No. 98. It considers that, if the right to strike is to be effectively guaranteed, workers who participate in a lawful strike should be able to return to work once the strike has ended and the fact of making their return to work subject to certain time limits or the consent of the employer is an obstacle to the effective exercise of this right.

10. **QUESTION:** What is the time limit for considering disputes related to lawfulness of the strike under the various legislation?

EXAMPLES OF DOMESTIC REGULATIONS

In **Spain**, According to article 160, labour procedural law (Ley de la Jurisdicción Social, LJS), once the lawsuit has been admitted, the trial will take place within the following five days. Afterwards, the judge will issue the judgement within the three following days.

In **Greece,** the law explicitly prohibits the prevention of strikes via the use of preliminary injunctions – even if the call for strike is manifestly deficient. However, the Law provides for the rapid completion of the regular procedure and the shortening of various deadlines so that emergency cases can be heard within five days from the employer's petition. The court decision though, frequently is issued after the strike has ended. See Articles 19-22 (strike provisions) of *Law 1264/1982 for the democratization of the trade union movement and the safeguarding of workers' union freedoms*, in relation with Articles 663 to 676 of the Code of Civil Procedure.

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Geneva, 1st November 2017