

**XIXth Meeting of European Labour Court Judges
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QUESTIONNAIRE 1

Strikes in the public sector

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I. Definition and general regulations

1. What do you understand by „public sector“ in your country?
 - a) Do privately organized essential public services – e.g. parts of the medical care system (hospitals), transportation (train/ aviation) or the air traffic control- also belong to public sector, or just those that are run by the (central) state, respectively the municipalities or councils?
 - b) Are special institutions – e.g. the Church – included in the definition of the term ?
2. Which part of the population in your country is currently employed – in an employment relationship? How many employees are employed in the essential public services sector in particular and in the public service sector (being employed by the state or the municipalities) in general?
3. How many employees are unions-members in general; how many civil servants are unions-members in particular?
4. Are there any statistics, which show how many working days have been lost due to strikes? Do these statistics show the impact of strikes on the public sector, in terms of missed working days, separately?

II. The legal framework

1. Is there statute law ruling industrial disputes?
 - a) If so, please name them and attach a copy of the legislation (including their translation) to this questionnaire.
 - b) If not, is there an „established“ case law dealing with the matter of strike in your country? Please outline a typical case and its legal handling by the national court.
2. Is the right and the freedom to strike guaranteed in your national constitution? If so, please state the precise wording of these constitutional provisions.

3. Do you directly apply provisions of the European Social Charter (ESC) or EU law on cases concerning industrial action?
 - a) If so, please sketch a situation, in which aforementioned legislation has played a decisive role.
 - b) Would your national court apply EU-legislation (or ESC) interpreting national law on industrial action ?
4. Are there particular rules – statute or case law for strikes in the public sector? Please name the statutory provisions in particular; furthermore please outline any legal peculiarities of strikes in the public sector to those in the private business.
5. Are there any legal limitations concerning the aim in your country (e.g. rehiring of unionist X)?
6. Does a strike only have to be called out and led by an union in order to be lawful?
7. Is conciliation and/or arbitration obligatory prior to a strike?
8. Is there any kind of a compulsory “cooling down” period between announcing and beginning a strike (prior to statute or case law)? If so, how long is this period?

III. Specifics of strikes in the „public sector“

1. Are strikes in the public sector generally legal or absolute illegal?
2. Are strikes in the public sector only legally permitted according to certain preconditions? If so, please name them.
3. Is there a difference in the legitimacy of a strike between the different areas of the public sector, which is affected by the strike (e.g. hospitals, police, fire department on the one side, nurseries or public transportation on the other side) or different types of civil servants (e.g. bus drivers on the one side, policemen on the other side)?
4. Are unions obliged by law to organize or tolerate the organization of an emergency service? If so, in general or only in special parts of the public sector?
5. Are there particular deadlines (refer to II/8) for strikes in the public sector?
6. Could a strike in the public sector be prohibited or temporarily postponed by the state (e.g. the President, a governmental department or another official institution)?
7. Could (labour-) courts suspend a strike in the public sector (or declare it illegal) at the request of the government (or someone else)?
8. Under what conditions could such court order be issued? Please outline a typical example of a real court case.
 - a) In what kind of court proceedings are request for a court order (refer to III/7)?

- b) Can a court issue a (preliminary) injunction against the illegal or a legal strike?
 - c) Who is entitled to apply for such a court order?
9. According to the specific national proceedings, how are these cases regulated, in which existential labour must be provided and could potentially be affected by strikes (e.g. the intensive care unit of a hospital or the fire brigade)?

IV. Résumé

Please solve the following two cases according to your national legal order.

- a) Monday, the union of railroad workers calls out their members to go on a strike – without premonition – beginning on Tuesday for one week on, to gain additional recovery time (1 hour per working day) for every union member.

The entire rail service of the country is intended to be disrupted and paralyzed for one week. On the same day, the Railroad PLC pleads an injunctive process to suspend the strike.

Would this request be successful in your country?

- b) The union of doctors wants to achieve the doubling of the payment for employed hospitalists. After the negotiations have failed, the anesthesiologists are called out to go on strike.

Hospital H thinks, the strike is illegal, because no operations – scheduled or emergency – can be performed and the union refuses to negotiate emergency services.

How could Hospital H react against the strike call in your country?