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NATIONAL REPORTS
Strikes in the public sector

General reporter: Dr. Mario Eylert
Richter am Bundesarbeitsgericht

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Australia

National reporter: The Honourable Les Kaufman, Senior Deputy President, Fair Work Australia

Introductory comment

To understand some of these answers it should be noted that Australia has a Commonwealth (Federal Government) and six state governments.

The Constitution created a federal system of government, where powers are divided between a central government (Federal Government) and the six individual states (State Governments).

In addition to the six states, there are two territories.

Finally, there are also local governments, established by the state and territory governments to take responsibility for a number of community services. Their powers are defined by the state or territory government which establish them.

In this questionnaire we concentrate primarily on legislation of the Commonwealth (Federal) Parliament and facts/information about federal courts, tribunals and government departments.

I. Definition and general regulations

1. Broadly the public sector, includes the employees of a Government (Commonwealth or State/Territories), employed to perform functions in a Department or Executive Agency under ministerial direction (commonly known as statutory corporations, or local governments or municipal councils).

1(a). Essential public services can be run privately or publicly, however, there are strict guidelines that prescribe rules and regulations depending on what service is being provided. The responsibility of public services are spread across the Commonwealth, State, Territories and local council levels and therefore it is difficult to be specific. Hospitals and transportation, for example, may be run by governments or owned and run by the private sector.

1(b). No

2. Employment Profile

- Working Age Population (15-64) : 15,247,500
- Employment Rate (15-64) : 72.7 % (approx 11,084,932.5 people employed)

Source: ABS Labour Force Survey, June 2011 data, cat. no. 6202.0

As stated previously essential public sector services are provided by private companies and also governments, and therefore made up of a number of private sector employees and public sector employees, it is difficult to ascertain the exact number in each group employed to perform these services.

As a broad indication, at 31 December 2010, there were 163,778 staff employed in the Australian Public Service (the federal government public service). This total comprised of 151,328 ongoing staff, and 12,450 non-ongoing staff.

Source: Australian Public Service Commission, Agency by Employment category and classification, 31 December 2010 (ongoing) & Agency by Employment category and classification, 31 December 2010 (non-ongoing).

3. Data collected about trade union members in their main job for August 2010 showed:

- 20% of full-time employees, and 14% of part-time employees were trade union members in their main job;
- 41% of public sector employees compared to 14% of private sector employees were trade union members in their main job; and
- Tasmania had the highest proportion (24%), while the Northern Territory had the lowest proportion (14%) of employees who were trade union members in their main job.

Source : ABS Employee Earnings, Benefits and Trade Union Membership Survey, August 2011 data, cat. no. 6310.0

4. During the year ended March 2011, there were 212 disputes and there were 117,500 working days lost.

The following are the types of industrial disputes undertaken:

- unauthorised stopwork meetings;
- general strikes;

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- sympathetic strikes (e.g. strikes in support of a group of workers already on strike);
 - political or protest strikes;
 - rotating or revolving strikes (i.e. strikes which occur when workers at different locations take turns to stop work);
 - unofficial strikes; and
 - work stoppages initiated by employers (e.g. lockouts).

These statistics do not differentiate between strikes in the public sector and those in the private sector.

Source : ABS Industrial Disputes, Australia, March 2011 data, cat. no. 6321.0.55.001

II. The legal framework

1. Yes

1(a). *Fair Work Act 2009*

Part 3-3—Industrial action

<http://www.comlaw.gov.au/Details/C2011C00444>

Since the introduction of this legislation, an overwhelming majority of employment issues are covered under this Act.

1(b). n/a

2. No, the right and freedom to strike is not guaranteed in the Australian Constitution. However, it is governed under the *Fair Work Act 2009*

3. No. Provisions of the European Social Charter or EU law on cases concerning industrial action are not applied in Australia.

4. No. Rules for strike action in the public sector are also governed by the *Fair Work Act 2009*. The Commonwealth is defined as a national system employer under s.14 of the *Fair Work Act 2009*, therefore strikes in the public sector are regulated by the same legislation as the private sector.

5. n/a

6. No. In order for a strike to be lawful the industrial action needs to be protected action (as defined under the s.408 of the *Fair Work Act 2009*), and can be co-ordinated either by a group of employees or organised by a union.

http://www.fwa.gov.au/documents/legislation/fw_act/FW_Act-02.htm#P5698_527700

7. No. Conciliation and/or arbitration is not obligatory prior to a strike. However, a protected action ballot order needs to be granted by Fair Work Australia before legal strike action can be taken. (s.437-469 of the Act deals with protected action ballots)

http://www.fwa.gov.au/documents/legislation/fw_act/FW_Act-02.htm#P5698_527700

8. Yes. Before protected industrial action is taken, there is a requirement under s.430(2)(a), that at least 3 working days notice needs to be provided.

III. Specifics of strikes in the “public sector”

- 1,2&3. The public sector is subject to the same statutory scheme in relation to the taking of strikes and other forms of industrial action. The legal requirements by which employees can take protected industrial action make no distinction as to whether the employees work in the public or private sector. There are no exceptions for essential services, however, the legislation contemplates industrial action in such areas may be suspended or terminated.

http://www.fwa.gov.au/documents/legislation/fw_act/FW_Act-02.htm#P5698_527700

Industrial action can take a variety of forms. For example, employees may go on strike or impose work bans. Employers may lock out their employees.

In general, for industrial action to be lawful it must be protected industrial action.

The requirements for taking protected industrial action include:

- an existing agreement has passed its nominal expiry date
- the industrial action is in support of a new enterprise agreement (or is in response to industrial action by the other side)
- the industrial action does not involve pattern bargaining
- in the case of employees initiating action in support of claims, Fair Work Australia (FWA) has granted an order for a protected action ballot to be held and the ballot has endorsed action being taken
- the required notice has been given to the other party
- the bargaining representative(s) organising the action, or representing the employees who are taking or organising the action, must be genuinely trying to reach agreement.

Industrial action will not be protected if it:

- is taken while the bargaining period has been suspended
- relates significantly to a demarcation dispute
- is in support of claims for a multi-enterprise or greenfields agreement
- is in support of the inclusion of claims that cannot be lawfully included in an agreement (these are known as **unlawful terms**), or
- contravenes any orders made by FWA.

Fair Work Australia plays a role in ensuring that the bargaining process, and any associated industrial action, occurs according to law. Bargaining representatives of employees wishing to take industrial action to support their claims, must first seek an order from Fair Work Australia for a protected action ballot authorising the industrial action.

4. Unions are not obliged by law to organise an emergency service, and emergency services are free to organise themselves, as is the case with any other industry.
5. After a protected action ballot is made, in either the public or private sector, written notice must be given by the employees (or their union) to the other side, to advise that industrial action will be taken. At least three days' notice must be given. The written notice must state the nature of the intended action and the day it will begin.

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6. Under s.431 of the Act the Minister for Workplace Relations may make a declaration terminating protected industrial action, provided the Minister is satisfied that:
- the industrial action is being engaged in, or is threatened, impending or probable; and
 - the industrial action is threatening, or would threaten:
 - o to endanger the life, the personal safety or health, or the welfare, of the population or a part of it; or
 - o to cause significant damage to the Australian economy or an important part of it.

7&8. FWA cannot suspend a strike in the public or private sector at the request of the government. An application may be made by the Minister under s.431 of the *Fair Work Act 2009*. On application of an affected party, FWA may suspend or terminate protected industrial action in certain circumstances, they are:

- Causing, or threatening to cause significant economic harm (s.423);
- Threatening to endanger the life, personal safety or health, or the welfare of the population or part of the population (s.424(1)(c));
- Threatening to cause significant damage to the Australian economy or an important part of it (s.424(1)(d)); and
- Threatening to cause significant harm to a third party (s.426).

FWA may also make orders to stop or prevent unprotected industrial action. Such orders are enforceable in the courts.

Furthermore, under section 30J of the *Crimes Act 1914*, in extreme cases where industrial action is causing serious industrial disturbance prejudicing or threatening trade or commerce with other countries or among the states, the Governor General may make a proclamation under the federal *Crimes Act 1914*.

9. With reference to strikes, there is no distinction between public and private sectors, all industries can potentially be affected by strikes. They are regulated by the Fair Work Act 2009, specifically Part 3-3.

http://www.fwa.gov.au/documents/legislation/fw_act/FW_Act-02.htm#P5698_527700

IV. Resume

General comment

In both the cases outlined, a protected action ballot to authorise industrial action must be obtained from FWA before industrial action can be lawfully taken, except where the action is in response to industrial action by the other party in enterprise bargaining.

A protected action ballot will only be conducted if there is a protected action ballot order.

An application for a protected action ballot order must:

- be made by one or more bargaining representatives of an employee who will be covered by a proposed enterprise agreement which is not a greenfields or multi-enterprise agreement
- be made **no more than 30 days** before the nominal expiry date of any existing agreement
- generally the Australian Electoral Commission will conduct the ballot.

In considering whether or not to order a protected action ballot, Fair Work Australia must be satisfied that the bargaining representative(s) of the employees seeking the ballot have been genuinely trying to reach agreement.

Industrial action is authorised by a ballot if:

- at least 50 per cent of those on the voting roll participated in the ballot, and
- more than 50 per cent of votes cast were in favour of the industrial action.

There are certain circumstances where Fair Work Australia may suspend or terminate industrial action (even if protected). They are:

- where the industrial action is causing significant economic harm to the employer or employers who would be covered by the agreement and/or the employees who would be covered by the agreement;
- where it threatens to endanger the life, personal safety, health or welfare of the population or of part of it, or to cause significant damage to the economy or an important part of it; or
- to allow a cooling off period which is threatening to cause significant harm to a third party.

Specific comments

- a) Yes. Under s.418 of the *Fair Work Act 2009*, an application could be made by the Rail Commissioner or the rail operator for the action to stop, not occur and/or to not be organised.
- b) The same application could be made by Hospital H as above, albeit the strike is legal. This is because an application for a s.418 order may include any person who is affected (or likely to be affected), either directly or indirectly, by the industrial action.

Belgium

National reporter: Judge Koen Mestdagh, Member of the Labour Chamber of the Court of Cassation, in collaboration with Mr. Freek Louckx, Legal Secretary

I. Definition and general regulations

1. What do you understand by “public sector” in your country?

Belgium has no official definition of the “public sector”. Nevertheless, it is generally agreed that the “public sector” encloses the federal state, the regions and communities, the provinces and municipalities, as well as the administrative entities established and organized by these authorities.

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?

Privately organized essential public services are not included in the “public sector” as formerly defined. Hospitals and providers of transportation or air traffic control services are only included in public sector if they are established and organized by the authorities listed above.

b) Are special institutions – e.g. the Church – included in the definition of the term?

Although the federal state pays the wages and pensions of the “clergy” of the officially recognized cults, their institutions are not included in the definition of the “public sector”.

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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?*

About 3,5 million on a population of almost 11 million are in an employment relationship. Of these nearly 1 million are employed in the public sector in general ($\pm 70\%$ in a statutory relationship and $\pm 30\%$ by contract).

3. *How many employees are unions-members in general; how many civil servants are unions-members in particular?*

54 % of the employees in general and between 35 and 40 % of the civil servants are union members.

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?*

No data available.

II. The legal framework

1. *Is there statute law ruling industrial disputes?*

Except for the 19 August 1948 Act regarding essential services in peace time, Belgium has no statute law ruling industrial disputes. This act is only applicable to the private sector. It prescribes that, with regard to the companies in their competence, the joint industrial committees have to determine the services that must be guaranteed in case of deliberate collective work stoppage or collective dismissal, in order to meet certain vital needs. If a joint industrial committee doesn't take any such decision, the minister of Employment and Work can demand it to do so. In that case, the joint industrial committee has to take a decision within six months. If it still fails to do so, the minister of Employment and Work determines which vital needs have to be met and which services have to be provided accordingly. The employees and employers can decide, with mutual consent, which employees have to guarantee the vital needs. In principle the employer has to accept that the work is done by those employees that are willing to work. If they fail to agree, the joint industrial committee can be authorized to designate the employees that have to guarantee the vital needs. If the committee fails to do so as well, the minister of Employment and Work can designate the employees that have to guarantee the vital needs.

The Belgian social partners have always opposed against the adoption of further statute law ruling industrial disputes. In 2002, for example, the minister of Employment and Work prepared a proposal for such legislation; the social partners subsequently made a gentlemen's agreement in which they asked the government not to take any initiative in this field. The government acted upon this request.

- 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.*

The right to strike in the private sector was gradually recognized by the Court of Cassation, based indirectly on the 19 August 1948 Act regarding essential services in peace time. Since 1981, the Court states that the mere participation in a strike is not a wrongful act (Cass., 21 December 1981). The right to strike as such is now generally accepted by all tribunals and courts.

In Belgium the labour tribunals and labour courts have no competence in collective disputes, just in individual disputes. Therefore the labour tribunals and labour courts have only to deal with the matter of strike indirectly, e.g. in case of dismissal following a strike.

More and more the ordinary civil courts have to deal with the matter of strike. An employer who wants to react against a strike usually will request, in summary proceedings, for a court order, under threat of a daily fine for failure to comply with the order (“astreinte”, “Zwangsstrafe”), not to forbid the employees to strike as such, but to forbid (some of) the methods used in the strike, like strikers posts preventing the employees who are willing to work to enter the premises. Whereas the Belgian trade unions by choice have no legal status, employers often use a unilateral procedure. Such a request is most likely granted. The notification of the court order by a bailiff to some individual strikers and/or to the local trade union leader usually leads to another procedure (“tierce-opposition”), still in summary proceedings, in which the employer’s claim is now contested. Whoever loses the case, appeals the judgment and by the time the court of appeal is able to hear the case, the strike is long over. As the opposing party’s usually aren’t interested anymore in getting a final court decision, the case quietly dies. Consequently, there isn’t any “established” jurisprudence offering a set of rules of conduct in industrial disputes either.

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.*

The Belgian constitution doesn’t recognize the freedom or right to strike, though it does recognize the right to associate (article 27 of the Belgian constitution) and the right to decent working conditions, fair remuneration, consideration and collective bargaining (article 23 of the Belgian constitution).

3. *Do you directly apply provisions of the European Social Charter (ESC) or EU law on cases concerning industrial action?*

Some authors claim that article 6.4 of the European Social Charter is directly applicable and provides a formal recognition of the right to strike in the Belgian legal order. So far, to my knowledge, there have been no cases in the Belgian jurisprudence that clearly confirm this statement, except for a judgment from the Antwerp Labour Tribunal of 18 May 2001.

In principle the Belgian courts have to take into consideration the directly applicable rules of EU law whenever these are relevant to the cases they have to decide; they have to apply these provisions and, if necessary, interpret national law accordingly. As such, the Belgian courts could not, for example, ignore the ECJ judgments in the cases Viking and Laval. But so far, to my knowledge, there have been no cases in the Belgian jurisprudence in which provisions of EU law have been directly applied in 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.*

No

5. *Are there any legal limitations concerning the aim in your country (e.g. rehiring of unionist X)?*

No

6. *Does a strike only have to be called out and led by an union in order to be lawful?*

In Belgian law, there is no legislation prohibiting an employee to participate in a strike that was not recognized by a representative trade union. (Cass., 21 december 1981).

7. *Is conciliation and/or arbitration obligatory prior to a strike?*

No

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?*

No

III. Specifics of strikes in the “public sector”

1. *Are strikes in the public sector generally legal or absolute illegal?*

There is no legislation that explicitly recognizes the right to strike for civil servants, nor any legislation that explicitly prohibits civil servants to strike.

In the past, it was generally accepted that it was absolutely illegal for civil servants to strike. This principle was based on the so-called “imperium theory” and the “theory of the continuity of public service”, on which the legal status of civil servants was founded. Further, a prohibition of the right to strike for civil servants was proclaimed on the basis of the legislation that prohibited civil servants to suspend their services without prior authorization of their superiors.

Several times disciplinary measures have been taken against civil servants going on strike. Nowadays though, this administrative practice is abandoned.

Since 1995 the Council of State (the highest administrative jurisdiction) rules that disciplinary sanctions can only be imposed when civil servants abuse the right to strike, but cannot be imposed when they exercise this right in a usual manner. According to the Council of State it would be incompatible with the recognition of the right to strike in article 6.4 of the European Social Charter, to take disciplinary measures against civil servants when they exercise the right to strike in a usual manner.

In the doctrine a right to strike for civil servants is derived from article 6.4. of the European Social Charter (see II/3 above) and, with regard to some civil servants, from the provision in the Royal Decree holding the Status of the Federal State’s personnel that states that the participation of a civil servant to an organized work stoppage can only have the loss of salary as a consequence.

2. *Are strikes in the public sector only legally permitted according to certain preconditions? If so, please name them.*

There is no legislation that submits the exercise of the right to strike in the public sector in general to specific conditions. For some public services, specific legislation was enacted. The exercise of the right to strike by police officers of the federal and local police, for example, is conditioned by the premonition of the strike by an officially recognized trade union and by prior consideration with the authority competent for the matter that caused the strike.

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)?*

No

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?*

In the public sector there is no generally applicable legislation of this kind. The 19 August 1948 Act regarding essential services in peace time doesn’t apply to the public sector. However, in the past this Act has been invoked by the authorities to order the organisation of minimal services. In 1988 the Minister of Public Transport used this act to order air traffic controllers to guarantee services. The Council of State judged later that this action had no legal basis.

There is the principle of continuity, which is an essential part of the “theory of public services”, that prescribes that public services should function continuously, without interruption. Nevertheless, it is doubtful whether this “general principle of law” provides a sufficient legal basis for the obligation to guarantee minimal services in the case of strike. The same goes for all other provisions of the different acts that have been invoked by the authorities for that purpose.

For some public services, specific legislation was enacted. With regard to the federal and local police, for example, the Minister of Internal Affairs can order the police officers that would like to exercise or exercise the right to strike, to continue or restart to work, during the time and for the missions he determines and in which their deployment is necessary. Further, the legislation concerning the public broadcasting services and the autonomous public enterprises hold provisions that minimal services have to be guaranteed in the case of strike.

5. *Are there particular deadlines (refer to II/8) for strikes in the public sector?*
No
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)?*
No
7. *Could (labour-) courts suspend a strike in the public sector (or declare it illegal) at the request of the government (or someone else)?*
No
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?

No

- b) *The union of doctors wants to achieve the doubling of the payment for employed hospitalists. After the negotiations have failed, the anaesthesiologists 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?

In Belgium most hospitalists are “self-employed”, those working in hospitals that are established and organized by local authorities as well. Except for those working in the university hospitals, who are falling under the legislation concerning higher education, very few hospitalists are working in an employment relationship, whether contractual or statutory.

Since the relationship between a hospital and its anaesthesiologists is normally of a purely civil contractual nature, Hospital H could ask in summary proceedings for a court order, enforced by imposing an “astreinte”, obliging the hospitalists to perform emergency services (according to article 1385bis of the Civil Procedure Code, an “astreinte” cannot be imposed to enforce the fulfilment of the duty to work resulting from a labour contract).

However, Hospital H doesn’t have to take such a step since the legislation ruling the medical profession (Royal Decree nr. 78 of 10 November 1967) offers another solution, independent of the nature of the relationship between the hospital and the hospitalists concerned. The Hospital Act requires hospitals to organize an emergency service. It also requires them to include in the contracts of hospitalists provisions concerning their obligation to fulfil emergency services. When the functioning of its emergency service is endangered, Hospital H should inform the Provincial Governor who has the authority to claim the anaesthesiologists for performing emergency services. Failing to comply is not only a criminal offence, subject to a prison sentence of 8 days to 3 months and/or a fine of 26 to 2.000 euros (multiplied by 5,5), but also a serious deontological offence which could be sanctioned with a suspension or even a ban from the medical profession.

Denmark

National reporter: Judge Niels Waage, Justice, Municipal Court

Definition and general regulations

1. What do you understand by “public sector” in your country?

The sum of state, regional and municipal authorities, institutions and activities.

- 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?

Normally, only the services owned/operated by the state, region or municipality are considered parts of the public sector, whereas services owned/operated by the private sector belong to the private sector, also where they perform tasks that are traditionally handled by public authorities or institutions.

- b) Are special institutions – e.g. the Church – included in the definition of the term?

Whether specific institutions are part of the public or private sector primarily depends on whether the institution is owned/operated by the state, region or municipality or by the private sector. Under the Danish constitution, the Danish Folkekirke (the Danish National Evangelical Lutheran Church) is subsidized by the state and is therefore considered part of the public sector. All other church societies are considered parts of the private sector.

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?

Approximately 5.5 million people live in Denmark of whom 2.6 million are in employment. Of these around 775,000 (approximately 30 per cent) are employed in the public services sector.

3. How many employees are unions-members in general; how many civil servants are unions-members in particular?

Under investigation.

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?

Yes, these statistics are calculated by Statistics Denmark, and from these it appears that in for instance 2009 and 2010, lost working days amounted to 3,300 and 2,000 respectively while the corresponding figures for the private sector were 9,300 and 13,600 respectively.

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.

Yes, the Labour Court and Industrial Arbitration Act (Labour Court Act no. 106 of 26 February 2008 attached in English).

- 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.

No.

3. Do you directly apply provisions of the European Social Charter (ESC) or EU law on cases concerning industrial action?

The Labour Court will apply EU law directly to the extent the Court is legally obliged to do so under EU law.

- a) If so, please sketch a situation, in which aforementioned legislation has played a decisive role.

For instance in cases where a dispute relates to questions regarding the free movement of labour. Here the Labour Court would apply Council regulation (EEC) no. 1612/68 of 15 October 1968 directly.

- b) Would your national court apply EU-legislation (or ESC) interpreting national law on industrial action?

Yes. Thus the Labour Court has twice referred preliminary matters to the EU Court of Justice.

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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.

In principle, there is no difference between the rules on strikes in the private and in the public sectors.

However, in the public sector the employment as **civil servant** enjoys special employment status.

This is the traditional employment status in the public sector, but since 1969 the scope has been limited to the academics employed at management level and the employees who are considered the most important within the areas of safety and infrastructure. Since the 1990's only the courts of law, the police, The Danish Prison and Probation Service and the military have appointed employees with civil servant status.

Civil servants work in the state, regional or municipal authorities and basically, their terms of employment mean that they can only be dismissed before retirement on grounds of age, infirmities, elimination of the position or the expiry of a fixed-term employment. Civil servants are under an obligation to be at the employer's command in all matters and **therefore have no right to strike, nor can they be locked out**. The terms of employment of civil servants are laid down in a special act on civil servants.

A special **civil service tribunal** has been set up, which is quite similar to the Labour Court. To a wide extent the rules of law governing the civil service tribunal correspond to the rules set out in the Labour Court and Industrial Arbitration Act.

Among other things, the civil service tribunal hears cases relating to strikes made by civil servants (which by definition are illegal), and civil servants who have violated the strike ban may be given a warning, a reprimand or a fine.

5. Are there any legal limitations concerning the aim in your country (e.g. rehiring of unionist X)?

Yes. A strike taking place during the term of a collective agreement is usually illegal notwithstanding the purpose. In cases where e.g. a trade union or a group of workers find that the dismissal of one or more employees is unfair or illegal, an action shall be brought before the Labour Court, the courts of law or the industrial arbitration tribunals instead of a strike.

6. Does a strike only have to be called out and led by a union in order to be lawful?

No, in principle any group of workers has the right to strike when the conditions for the strike are met. Accordingly, it is not a condition that an actual formal trade union exists.

7. Is conciliation and/or arbitration obligatory prior to a strike?

Yes. By act on conciliation in industrial disputes, a conciliation board has been set up the purpose of which is to contribute to avoiding industrial conflicts. The conciliation officer can, among other things, mediate between the parties, adjourn disputes and propose compromises that the parties are to decide upon through for instance a vote among the members of a union or employers' organisation. The organisations shall forward copies of warnings of industrial action to the conciliation officer. The conciliation officer can at the request of the parties or on his own initiative summon the parties to continue the negotiations under his management if the negotiations are broken off. The parties are under an obligation to appear before the conciliation board when summoned.

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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?

Yes. In most areas there are “cooling down” periods in the form of rules that lay down notices for launching strikes and lockouts. The main provision is set out in the General Agreement between LO, The Danish Confederation of Trade Unions (the workers’ central organisation) and DA, the Danish Employers’ Federation. The following appears, among other things, from section 2 of the General Agreement:

“... (2). A work stoppage is only lawful if it is approved by at least three-quarters of the votes cast by an assembly empowered to make decisions under the rules of the relevant organisation and only if due notice has been given in compliance with the provision laid down in (3)...”

(3) Any intention to submit proposals for a work stoppage to such an assembly shall be notified to the executive committee of the other central organisation by special and registered letter at least two weeks before the proposed work stoppage is planned to start according to the proposal, and the other party shall be informed in the same way of the assembly’s decision, at least 7 days in advance of the launch of the work stoppage...”

Specifics of strikes in the “public sector”

1. Are strikes in the public sector generally legal or absolute illegal?

Strikes in the public sector are legal to the same extent as strikes in the private sector apart from the fact that civil servants have no right to strike, see the answer above to question II 4.

2. Are strikes in the public sector only legally permitted according to certain preconditions? If so, please name them.

See answer to question III 1.

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)?

See answer to question III 1.

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?

There are no rules stating that specific employees working in areas of society of particular importance shall be excluded from labour disputes apart from civil servants who are barred from striking or being locked out, see the answer to question II 4. Often, however, collective agreements are concluded between public (or private) employers and trade unions on the barring of certain employees from participating in industrial disputes as strikers or as being locked out, see e.g. the general agreement between the Ministry of Finance and AC, the Danish Confederation of Professional Associations, referred to in the answer to question III 5.

5. Are there particular deadlines (refer to II/8) for strikes in the public sector?

General agreements have been concluded between public employers and trade unions on work stoppages, such as the general agreement between the Ministry of Finance and AC, the Danish Confederation of Professional Associations, which sets out in section 5:

Section 5

The parties acknowledge the right of the other to call and launch work stoppage according to the rules set out below. As regards the AC organisations, the rights are accorded to the individual member organisations.

Subsection 2: The other party to the agreement shall be informed of the decision to launch work stoppage by special registered letter at least 1 month before it is launched.

Subsection 3: The letter mentioned in subsection 2 shall indicate the nature and specific scope of the work stoppage.

Subsection 4: Work stoppage can only be launched from the first day of any month.

Subsection 5: Work stoppages do not include:

- a) Management positions at salary level 36 and above*
- b) Members, whose contribution in the Ministry of Finance or in ministries or agencies is required for closing the negotiations and terminating the dispute*
- c) Members who are excluded by agreement.*

Subsection 6: Work stoppage covers strike, lockout, blockade and boycott.

Subsection 7: When the work stoppage is terminated the employees shall without undue delay return to work at the place of employment where they were employed. Neither party shall be subjected to any detrimental action on the occasion of the work stoppage.

Subsection 8: The parties are under an obligation not to support, but with all reasonable means hinder work stoppages in contravention of the general agreement and, if these take place, to seek to terminate these.

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)?

A strike can be postponed by the Official Conciliator in pursuance of the rules on conciliation in industrial disputes, but not by any other authorities.

7. Could (labour-) courts suspend a strike in the public sector (or declare it illegal) at the request of the government (or someone else)?

The Labour Court can declare a strike illegal, but only at the request of one of the parties to the dispute before the Labour Court (i.e. a party to the agreement).

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?

An example: An employer is subjected to a strike launched by members of the trade union with which he has made a collective agreement. He believes the strike is in contravention of the collective agreement because it is contrary to the no-strike agreement; i.e. the duty not to launch work stoppages in the period where the agreement applies.

Following futile negotiations with the trade union, the employer's organisation brings an action before the Labour Court. After the processing of the case in the Labour Court, the Labour Court passes judgment in the case. The judgment may e.g. state that the strike is in contravention of the collective agreement and that the strikers shall resume work immediately. In its judgment, the Labour Court can impose a fine on the strikers. If judgment is not delivered immediately after the court hearing, the Labour Court may, at the request of the employer's association (but

no other) in a preliminary ruling declare the strike contrary to the collective agreement and order the strikers to resume work.

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)?

If the case deals with alleged violations of collective agreements laying down that certain groups of employees cannot participate in work stoppages, the case will be processed like all other cases on alleged violations of the agreement.

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?

- a. It is understood that a collective agreement has been concluded between the Union of Railroad Workers and the Railroad PLC and that the strike is launched during the term of the collective agreement.

Railroad PLC reports on the impending work stoppage to its main union A, which the same day or the day after holds a joint meeting with Union of Railroad Workers' main organisation B. B typically acknowledges that the work stoppage is in contravention of the collective agreement (if not, B will be facing a considerable fine as B is under an obligation to contribute to the immediate termination of any unofficial action), and B will order the strikers to resume work. If this does not lead to any result, the case will be brought before the Labour Court claiming that the striking workers be ordered to resume work immediately. A preliminary meeting will be held in the Labour Court on the Thursday in the same week. Here the presiding judge will preside over the court alone (i.e. without the 6 judges from the employer and employee sides who are to participate in the processing of the case if it reaches the main negotiations). Here B will typically again acknowledge that the work stoppage is in contravention of the collective agreement and order the employees to resume work, and the presiding judge will on behalf of the Labour Court consent to this order. If this leads nowhere, the striking employees are facing a fine which is DKK 30 higher per hour than the fine payable for the time prior to the preliminary court meeting in the Labour Court. If, contrary to expectations, B does not acknowledge that the strike is contrary to the collective agreement, a date will be fixed for the main legal proceedings in the Labour Court which will no doubt order the employees to resume work and also to pay a fine. The fine is a sanction under civil law like damages. It is not a criminal procedure. The circumstance that the railway services are paralysed are irrelevant to the procedure, but the Labour Court will most likely set a date for the hearing of the case as quickly as possible in cases where major public interests are at stake.

- b) The union of doctors wants to achieve the doubling of the payment for employed hospitalists. After the negotiations have failed, the anaesthesiologists 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?

b. If the doctors' strike takes place during the term of the collective agreement, and the no-strike agreement is violated, the procedure will be as in example a).

If the collective agreement term has ended and a new agreement is being negotiated, and there exists no specific agreement to exclude the anaesthesiologists from the industrial dispute, the strike is legal and the hospital will have no legal possibilities of reacting against the strike. Experience shows, however, that in situations like these, the government would interfere and make Folketinget (Danish parliament) adopt a bill that lays down the collective agreement for the doctors and thereby establishes a no-strike agreement. Following this the strike will then be in contravention of the collective agreement.

Finland

National reporter: Jorma Saloheimo, President of the Labour Court

I. Definition and general regulations

1. *What do you understand by "public sector" in your country?*

The term "public sector" is used in everyday language to denote the sector of the national economy, which is run by the central and the local government, including the Lutheran and Orthodox Churches. Also businesses run by governmental institutes or agencies are included. Privately organized services are not referred to as belonging to the public sector in Finland. Several services, such as railway transportation and postal services, which were previously provided by public bodies, have been privatized and are no longer included in the public sector.

The somewhat more precise concept of "public administration" is used in many legal contexts. Thus, for instance, Chapter 11 of the Constitution (731/1999) deals with the organization of public administration and self-government. In Sec. 124 it is provided that tasks involving significant exercise of public powers can only be delegated to public authorities. Other public administrative tasks can be delegated to others than public authorities by a parliamentary Act under certain conditions.

When it comes to the regulation of the rights and duties of employees, such as the right to collective action, the decisive criterion is not public or private sector, but the nature of the employment relationship. There are workers employed under a contract of employment, and personnel, such as civil servants, working in a public-service employment relationship, which is governed by public law (*Dienstverhältnis*). This dividing line goes inside the public sector and means that a public body may, as an employer, have both types of personnel in its service. The general idea is that workers exercising public authority are meant to be employed in a public law relationship. By way of example, doctors in municipal hospitals are in a public-service employment relationship, whereas nurses in the same hospitals are, as a rule, in a contractual employment relationship.

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?*

In 2009, the total number of employed people in Finland was 2.29 million. Of these almost 90 per cent were employees and 10.3 per cent entrepreneurs.

The share of those employed in the public sector was 27 per cent. Ca. 120 000 were employed by the state, 100 000 under a public law relationship. From those figures, the

number of the state-employed has to date declined by about 25 per cent along with the privatization of the universities in 2010.

The number of the employees working for the municipalities was in 2009 ca. 430 000, of these ca. 33 per cent being employed in a public-service employment relationship.

There are no statistics available concerning the share of those employed in essential public services.

3. *How many employees are unions-members in general; how many civil servants are unions members in particular?*

The general union density in Finland is 69 per cent according to the latest figures available. Concerning the public sector, an estimate of 80 per cent has been presented by the Ministry of Finance.

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?*

In 2010, there were 191 strikes in Finland. Ca. 314 000 working days were lost due to the strikes. The statistics do not reveal any strikes to have been occurred in the public sector that year.

II. The legal framework

1. *Is there statute law ruling industrial disputes?*

Regarding workers in a contractual employment relationship, the labour peace obligation is regulated in the Collective Agreements Act (436/1946).

The labour peace obligation concerning employees in a public office is regulated in the Governmental Public Collective Agreements Act (664/1970) and the corresponding Acts for the municipalities (669/1970) and the Evangelical-Lutheran Church (968/1974). The relevant provisions in these three Acts are in essence identical.

The system of mediating labour disputes is governed by the Labour Disputes Mediation Act (420/1962) which is applicable both in the private and the public sector. Besides the conciliation procedure itself, the Act contains rules on the obligation of the parties to a labour dispute to give an advance notice prior to a strike, and the postponing of the start of a strike.

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.*

The freedom to take collective action is not expressly regulated in the Constitution, but it is derived from Sec. 13, which guarantees the freedom of association. Under the provision, the freedom to form trade unions and to organize in order to look after other interests is likewise guaranteed.

3. *Do you directly apply provisions of the European Social Charter (ESC) or EU law on cases concerning industrial action?*

The ESC is transposed into the Finnish legal order and its provisions have in some cases been directly applied, albeit not in a labour law context.

EU law is directly applicable in accordance with the general conditions of such a mechanism in a Member State. Direct application has not yet happened in Finland in a case concerning industrial action.

The Labour Court has in its decision 1998:17, concerning a strike arranged by public hospital doctors, interpreted the industrial peace provisions of the Municipal Public Collective Agreements Act in a restrictive way with a general reference to Finland's

international commitments and the provisions on freedom of association included in the Constitution.

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.*

There are such particular rules in the statutes regulating public collective agreements. For the details, see reply under III/2 below.

5. *Are there any legal limitations concerning the aim in your country (e.g. rehiring of unionist X)?*

The general condition for industrial action to be lawful is that the aim of the action is not to influence any issues covered by a collective agreement in force. For further conditions concerning employees in public office, see III/2 below.

6. *Does a strike only have to be called out and led by an union in order to be lawful?*

This is the case regarding employees in public office, but not employees in a private contractual employment relationship.

7. *Is conciliation and/or arbitration obligatory prior to a strike?*

Yes, obligatory conciliation is provided for in the Labour Disputes Mediation Act. The obligation is, however, in force only in relation to the time when a collective agreement, and the peace obligation attached to it, is not in force. In other words, the conciliation procedure is normally used in connection with a threat of strike the purpose of which is to influence the contents of a future collective agreement.

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?*

Yes, an advance notice period of 14 days must under Sec. 7 of Labour Disputes Mediation Act be observed prior to the start of a strike. This obligation, too, is limited in the way which is explained above in reply II/7.

III. Specifics of strikes in the “public sector”

1. *Are strikes in the public sector generally legal or absolute illegal?*

Strikes in the public sector are generally legal, under certain statutory preconditions which vary according to the nature, private or public, of the employment relationship.

2. *Are strikes in the public sector only legally permitted according to certain preconditions? If so, please name them.*

The specifics of strike regulation in the public sector come up when we examine the situation of workers in a public-service employment relationship. For these groups Sec. 8 and 9 of the relevant Public Collective Agreements Acts lay down mainly three kinds of preconditions according to which industrial action is permissible:

a. The action must involve a complete stoppage of work. Other types of measures, such as overtime bans, go-slows and mass resignations are forbidden. This leaves in practice strike as the only legal and feasible measure of pressure in a labour dispute.

b. The objective of the action must fulfill certain conditions. The action may not be targeted against the contents, validity or interpretation of a collective agreement currently in force. Thus, it is not permissible to pressure the employer to pay higher wages than those set in the agreement, etc.

In addition, there are further conditions which have to be observed regardless of whether the collective agreement is in force or not. The objective of the strike may not be to influence a list of issues, which are not negotiable between the parties to a public collective agreement. These issues are enumerated in Sec. 2 of the relevant Acts and comprise, for

instance, the organization and management of a public unit, working methods, duties of public servants, and pensions. Political actions are also forbidden.

c. To be legal, the strike of public servants must also be decided by a trade union.

As is apparent, the restrictions on the right to collective action for public servants are quite extensive. Also the European Committee of Social Rights has stated that the situation is not in every respect (points a and b above) in conformity with Art. 6§4 of the European Social Charter.

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)?*

No.

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?*

There is a general provision in the Acts on Public Collective Agreements, which allows for emergency work to be done during a strike. A public servant, who does not take part in an ongoing strike, is obliged to carry out such work, even if it is not part of his or her regular duties.

5. *Are there particular deadlines (refer to II/8) for strikes in the public sector?*

No.

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)?*

Sec. 8 of the Labour Disputes Mediation Act contains a general power, vested on the Ministry of Employment and the Economy, to temporarily prohibit an intended strike for a maximum of 14 days from its announced time of commencement. The exercise of this power presupposes that the strike is, due to its scale or the branch in question, considered to be directed against vital functions of the society or to cause considerable damage to the public interest, and sufficient time for mediation is deemed necessary. The prohibition must be suggested by the National Conciliator. For special reasons, an intended strike of public servants may be postponed for another seven days.

In addition, a specific measure can by virtue of the Acts on Public Collective Agreements be taken concerning public servants. If the public employer considers that a strike may seriously disturb important functions of the society, the dispute may be referred to a special body, the Public Labour Disputes Board. The institution of this procedure will automatically postpone the commencement of the strike by 14 days. The Board may in its decision recommend to the trade union that it partly or totally refrains from the intended action.

The mechanisms explained above mean in practice that a strike announced by a trade union of public servants may be postponed by 35 days altogether, but the strike cannot be totally prohibited. In practice, postponing procedures are quite seldom used.

7. *Could (labour-) courts suspend a strike in the public sector (or declare it illegal) at the request of the government (or someone else)?*

The courts cannot suspend strikes in Finland. However, if an action is brought before the Labour Court, in which the plaintiff claims that a strike violates the industrial peace obligation ensuing from the Collective Agreements Act (private or public), the Court may order the respondent trade union to pay a compensatory fine, which is the regular sanction for such a violation. This is also a way of declaring the strike illegal in this respect. The procedure can be carried out swiftly and finished even before the strike has started, and sometimes a sentence handed down at this stage may even prevent an illegal strike. If a first sentence is not effective, the procedure can be repeated. The plaintiff in such proceedings is the employer association or the public employer, which is party to the collective agreement in question.

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8. *Under what conditions could such court order be issued? Please outline a typical example of a real court case.*

As explained above, court orders of this kind cannot be issued.

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)?*

For emergency service, see III/4, and postponing a strike, III/6.

A very rare episode took place in Finland in 2007, when TEHY, a trade union representing nurses and other qualified health care professionals, declared a mass resignation as a measure to achieve its collective bargaining goals, including a considerable pay rise. The measure threatened to cease major functions in municipal hospitals, thus entailing a real risk to the health and lives of a number of patients. As no attempts to settle the dispute seemed successful, the Government finally proposed a Bill for an Act, *lex in casu*, by virtue of which the nurses could be compelled to carry out certain vital health care functions in hospitals. The Bill was also passed in the Parliament (Act 1027/2007). In the meantime, however, a special conciliation board managed to work out a solution to the dispute, and the Act was never applied in practice.

The main issue of principle, connected with the Bill, was the balance between two basic rights, the right to industrial action and the right to life and personal security.

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?

To begin with, it is useful to point out that railroad workers are not public servants in Finland. They are in a contractual employment relationship.

As explained above, there is no injunctive process available in strike cases in Finland.

If the strike is announced to take place after the expiry of the collective agreement, the action will not violate the industrial peace obligation. Instead, the Labour Disputes Mediation Act is applicable, and the duty to give advance notice 14 days prior to a strike must be observed. In this case the duty would seem to have been neglected. This is a criminal offence punishable with a fine, which can be ordered by a regular court (Sec. 17 of the Labour Disputes Mediation Act). The sanction is rarely used in practice.

If the strike is targeted against a collective agreement currently in force, the trade union can be ordered to pay a compensatory fine for a violation of the peace obligation. Already a serious threat of strike is regarded as a collective action.

As an example, reference may be made to Labour Court case 2009:135, which concerned a strike that stopped the whole railroad traffic in Finland for one day. The action was taken in protest against collective redundancies within the railroads. Since the matter was regulated in the collective agreement, the action violated the peace obligation. Two federations of railroad workers were ordered to pay a compensatory fine of 8.000 and 5.000 € to the employer association, and 73 local trade unions had to pay smaller sums to the plaintiff association.

- 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?

The mere fact that a strike embraces operations in a hospital does render the action illegal. A pay rise is also a permissible aim for a strike, even if public servants are concerned, as is the case here (see III/2 above).

To mitigate the consequences of the strike, Hospital H can have emergency work done by doctors not taking part in the strike, if any such competent personnel is available, which is unlikely (see III/4).

The strike may also be postponed, if the conditions for postponement are met, as explained in reply III/6.

Hungary

I. Definition and general regulations

1. What do you understand by “public sector” in your country?

According to the Hungarian system there are two big categories of employees who work for the state:

- **civil servants are the employees of schools, hospitals and other public institutions supported by local governments.**
- **Public servants (public officers) are the employees of the government who usually work in the ministries.**

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?

Just those that are run by the state or the municipalities. Therefore the public transportation, air traffic control, water and electricity supply are not part of the public sector.

b) Are special institutions – e.g. the Church – included in the definition of the term ?

Yes. For example the judiciary, the police, the military, but also the hospitals and schools run by the local governments or the state.

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?

We have 3.781.200 employees. 317,200 employees work in the civil sector as a public servant who work for the local government or the state.

Regarding the essential services:

251,600 employees work in hospitals.

The other essential services like public transportation (259.000. employees), water supply (48.100 employees), electricity supply (37.300. employees) are not part of the public sector,

while the schools (323.900 employees), academic field (139.000.), art sector (60.200 employees) don't provide essential service by all means.

Schools, academic and art institutions belong to the public sector if it is run by the local government or the state.

Public and civil servants altogether are 772.600 (civil servants are 465.300, public servants are 108.400).

3. How many employees are unions-members in general; how many civil servants are unions-members in particular?

In general 12 percentage of the employees are union member. In the public sector the percentage is higher above 20% (hospitals 20%, schools 23,9%, art sector 14,5%, civil sector 22,4%).

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?

	2007	2008	2009	2010
all day missed due to strike	32126	25004	6474	18854
employees 1000 head	2760	2762	2661	2718*
from these civil servants**	13	816	7	0

In case of civil servants the missed working hours are very low therefore the strikes usually do not have real impact, the strike are symbolical

II. The legal framework

1. Is there statute law ruling industrial disputes?

Yes

- a) If so, please name them and attach a copy of the legislation (including their translation) to this questionnaire.

- Act XXII of 1992 on the Labor Code
- Act VII of 1989 on Strike

- 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.

Yes, the Constitution guarantees the right to strike but with limitations:

"Everyone shall have the right to establish or join organizations together with others in order to protect their economic or social interests.

The right to strike may be exercised within the framework of the statute regulating such right.

A majority of two-thirds of the votes of the Members of Parliament present shall be required to pass the statute on the right to strike”.

The new constitution that comes into effect in January of 2012 states that the trade unions are free to organize and operate.

Besides this the Labour Code states: In the interest of protection of employees' social and economic interests and of maintaining peace in labor relations, this Act shall govern the relations between employees and employers, and their interest representation organizations. Within such framework, it shall guarantee the freedom of organization and the employees' participation in the formation of work conditions, furthermore, it shall govern the order of collective bargaining negotiations, as well as the procedures for the prevention and resolution of labor conflicts.

In accordance with the conditions prescribed in specific other legislation, employees and employers shall have the right to establish together with others, without any form of discrimination whatsoever, interest representation organizations for the promotion and protection of their economic and social interests.

(5) Szakszervezetek és más érdek-képviselői szervezetek az egyesülési jog alapján szabadon alakulhatnak és tevékenykedhetnek.

3. Do you directly apply provisions of the European Social Charter (ESC) or EU law on cases concerning industrial action?

We don't have a knowledge of a case where the judge did a direct application but in the future it may occur.

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.

Yes. According to the Hungarian system there are two big categories of employees who work for the state:

- Civil servants are the employees of schools, hospitals and other public institutions supported by local governments.**
- Public servants (public officers) are the employees of the government who usually work in the ministries.**

In case of public servants strike can be continue according to the agreement made by the Government and the trade unions in 1994. The agreement determines limitations and special rules comparing to other employees.

For example:

- strike only can be called out and led by those trade unions who signed the special agreement with the government that rules how public servants can have the right to strike.**

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- There is a condition for initiate a strike: that is the trade union's representative need to declare that the trade union were authorized for the strike by the majority of public servants. If this is disputed the trade union needs to prove the authorization with documents in a labour court process.
 - There is a limited possibility for a solidarity strike. It only can call out if it's aim is the public servants' social and economic interest.
 - A local mediation/conciliation process is necessary. If it fails the next step is mediation/conciliation at the ministry level. The strike can be start if these conciliations fail. During the strike the parties have to continue the conciliation.
 - The strike cannot stop the clients to manage theirs' case that cannot be postponed. The strike mustn't stop the general and local elections, the referendum and mustn't endanger to fulfill the task of disaster recovery and national defense, also mustn't stop the achievement of the important decisions of the Parliament, government, municipals that have social effect. The determination of these decisions are the part of the conciliation.
 - If the parties or one of the party turn to the labour court requesting that the court determines the strike legal or illegal, until the court's decision the public servants have to fulfill their work.
 - There is no right for strike at the judiciary, the police, fire service and the military.

5. Are there any legal limitations concerning the aim in your country (e.g. rehiring of unionist X)?

Yes: The workers have a right to strike to ensure their economic and social interests. The strike is prohibit if it's aim is against the Constitution.

It is prohibited to strike

- for an aim that is unconstitutional,
- for an aim that is not part of the workers' sociology and economic interest,
- if the aim of the strike is change of a valid collective agreement under the effect of the collective agreement
- the aim of the strike is an individual act of the employer that should be ask to change from the court.

The aim is disputes if it against the government's provision for example plan of changing the pension scheme. The second instance court declared that the aim of the strike against changing the pension scheme was not valid because the employer doesn't have any influence for the pension scheme and the strike is a tool for industrial disputes.

6. Does a strike only have to be called out and led by an union in order to be lawful?

No, workers can also strike without the assistance of trade unions. But in the case of public servants strike only can be called out and led by those trade unions who signed the special agreement with the government that rules how public servants can have the right to strike.

7. Is conciliation and/or arbitration obligatory prior to a strike?

Yes, with the exception of solidarity strike.

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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?

In the practice yes, because strike can be start only if the parties conciliation during 7 days wasn't successful.

III. Specifics of strikes in the “public sector”

1. Are strikes in the public sector generally legal or absolute illegal?

Legal with limitations.

But the strike is prohibited at the courts, police, military, fire service.

2. Are strikes in the public sector only legally permitted according to certain preconditions? If so, please name them.

In case of public servants who work for the ministries yes, see question 4.

- **strike only can be called out and led by those trade unions who signed the special agreement with the government that rules how public servants can have the right to strike.**
 - **There is a condition for initiate a strike: that is the trade union's representative need to declare that the trade union were authorized for the strike by the majority of public servants. If this is disputed the trade union needs to prove the authorization with documents in a labour court process.**
 - **There is a limited possibility for a solidarity strike. It only can call out if it's aim is the public servants' social and economic interest.**
 - **A local mediation/conciliation process is necessary. If it fails the next step is mediation/conciliation at the ministry level. The strike can be start if these conciliations fail. During the strike the parties have to continue the conciliation.**
 - **The strike mustn't stop the clients to manage theirs' case that cannot be postponed. The strike mustn't stop the general and local elections, the referendum and mustn't endanger to fulfill the task of disaster recovery and national defense, also mustn't stop the achievement of the important decisions of the Parliament, government, municipals that have social effect. The determination of these decisions are the part of the conciliation.**
 - **If the parties or one of the party turn to the labour court requesting that the court determines the strike legal or illegal, until the court's decision the public servants have to fulfill their work.**
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)?

Yes:

- **The strike is prohibited at the courts, police, military, fire service.**
- **There is a general rule that: Where the strike could directly and severely endanger person's life, health, or the environment (for example hospitals), the strike can continue in a way that avoid this risk.**
- **Besides this general provision public servants who usually work for ministries have right to strike with further certain limitations:**

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- strike only can be called out and led by those trade unions who signed the special agreement with the government that rules how public servants can have the right to strike.
 - There is a condition for initiate a strike: that is the trade union's representative need to declare that the trade union were authorized for the strike by the majority of public servants. If this is disputed the trade union needs to prove the authorization with documents in a labour court process.
 - There is a limited possibility for a solidarity strike. It only can call out if it's aim is the public servants' social and economic interest.
 - A local mediation/conciliation process is necessary. If it fails the next step is mediation/conciliation at the ministry level. The strike can be start if these conciliations fail. During the strike the parties have to continue the conciliation.
 - The strike mustn't stop the clients to manage theirs' case that cannot be postponed. The strike mustn't stop the general and local elections, the referendum and mustn't endanger to fulfill the task of disaster recovery and national defense, also mustn't stop the achievement of the important decisions of the Parliament, government, municipals that have social effect. The determination of these decisions are the part of the conciliation.
 - If the parties or one of the party turn to the labour court requesting that the court determines the strike legal or illegal, until the court's decision the public servants have to fulfill their work.
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?

There is a general rule applying for everybody that where the strike could directly and severely endanger person's life, health, or the environment (for example hospitals), the strike can continue in a way that avoid this risk.

- public servants who usually work for ministries have right to strike with further certain limitations: the strike mustn't stop the clients to manage theirs' case that cannot be postponed. The strike mustn't stop the general and local elections, the referendum and mustn't endanger to fulfill the task of disaster recovery and national defense, also mustn't stop the achievement of the important decisions of the Parliament, government, municipals that have social effect. The determination of these decisions are the part of the conciliation.
5. Are there particular deadlines (refer to II/8) for strikes in the public sector?
- Yes, there is a 7 working day deadline for the local and for the ministry conciliation. If there is no hope for the agreement upon the parties' joint will the local conciliation can be finished earlier.
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)?

No and Yes. In two cases a statement of claim (action) for the court postpone the strike until the court's decision. These two cases are the following:

- If the public servants want to strike and one of the party turn to the labour court requesting that the court determines the strike legal or illegal, until the court's decision the public servants have to fulfill their work.
- Where the employer's activity gives essential and basic service for the inhabitants, a minimum service is required. If the parties could not agree in the minimum service,

the labour court can decide what service is adequate as a minimum service. Until the court final decision the strike cannot start. There are rigid deadlines for the process: the labor court has to decide the case within five days. If there is an appeal it has to be send to the second instance court immediately. There is also a five days deadline for the decision of the second instance court.

7. Could (labour-) courts suspend a strike in the public sector (or declare it illegal) at the request of the government (or someone else)?

See question 6.

In two cases a statement of claim (action) for the court postpone the strike until the court's decision. These two cases are the following:

- - If the public servants want to strike and one of the party turn to the labour court requesting that the court determines the strike legal or illegal, until the court's decision the public servants have to fulfill their work.**
- Where the employer's activity gives essential and basic service for the inhabitants, a minimum service is required. Where the parties could not agree in the minimum service, the labour court can decide what service is adequate as a minimum service. Until the court final decision the strike cannot start. There are rigid deadlines for the process: the labor court has to decide the case within five days. If there is an appeal it has to be send to the second instance court immediately. There is also a five days deadline for the decision of the second instance court.**

Parties also bring an action requesting that the strike declared to be legal/illegal. This action can be brought before, during or after the strike, there is no deadline. Otherwise that the two above mentioned case the strike can be start without the court's decision. Of course it is always a risk if the strike already start that later the court will declare that it was illegal and in case the workers have to face with the consequences.

In lots of cases the parties bring the action before the strike. The trade unions' aim is to secure that the strike is legal, while the employer wants to put off the strike.

8. Under what conditions could such court order be issued? Please outline a typical example of a real court case.

One of the trade unions announces the strike in a certain date because it wants to gain higher salary for the workers. The employer turns to the labour court asking to declare the strike illegal because there is a valid collective agreement.

- a) In what kind of court proceedings are request for a court order (refer to III/7)?

The proceeding is in writing, there is no trial. If it is necessary the court can order a hearing. The deadline is 5 days, therefore the hearing is rare. The petitioner's claim is sent to the opponent party via fax to answer it and then the court brings the decision.

- b) Can a court issue a (preliminary) injunction against the illegal or a legal strike?

No, but in practice yes, because if the court finds the strike illegal and declares it, usually the strike is not hold. But because there is no deadline for the request, many times the strike is already hold and the parties turn to the labour court asking there decision after the strike.

The request asking to declare the strike is illegal doesn't suspend the strike however it usually have such an effect: if the court declares the strike illegal the trade unions usually don't strike.

Who is entitled to apply for such a court order?

The parties or someone who has a legal interest for declaring the strike legal or illegal.

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)?
- **See above: where the strike could directly and severely endanger person's life, health, or the environment (for example hospitals), the strike can continue in a way that avoid this risk. The strike is generally prohibit at the fire service, police stations, judiciary.**

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?

- **Public transportation is a sector where a minimum service required. Without providing a minimum service strike mustn't hold. If the parties could not agree in the minimum service, the labour court can decide what service is adequate as a minimum service. Until the court final decision the strike cannot start. There are rigid deadlines for the process: the labor court has to decide the case within five days. If there is an appeal it has to be send to the second instance court immediately. There is also a five days deadline for the decision of the second instance court.**

This is a new provision, therefore the court practice is now developing regarding what standards and conditions determine the court's decision.

In practice lots of time there is another request asking the court to declare the strike illegal for example because of its aim. This request doesn't suspend the strike however it usually have such an effect: if the court declares the strike illegal the trade unions usually don't strike.

Nowadays because of the new provision it is disputed what is the relation of the two court process and is there an order or not for deciding the cases.

- 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?

The same as above. Providing a minimum service is necessary to hold a strike. Until there is no decision about the minimum service, the strike cannot be held. Hospital H or even the union may issue a request for the court's decision.

Ireland

National reporter: Kevin Duffy, Chairman, The Labour Court

Definition and general regulations

1. What do you understand by “public sector” in your country?

In general the term ‘public sector’ means those services and enterprises that are under the direct control of the State in the sense that they are directly funded by the State, are established by law, or in the case of a commercial enterprise, a member of the Government is the shareholder of the company. This would include all Government offices, schools, universities and public health service organizations.

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?

No. such bodies would not be regarded as part of the public sector.

b) Are special institutions – e.g. the Church – included in the definition of the term ?

No

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?

The total workforce in Ireland is 1.8m of which 0.5m are in the public services. There is no breakdown on the numbers in essential services

3. How many employees are unions-members in general; how many civil servants are unions-members in particular?

In Ireland trade union density is around 35%. However the density in the private sector is of the order of 20% and around 70% in the Public Sector.

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?

Yes there are statistics. They show that for the first nine months of 2010 (the latest period for which figures are available) a total of 6,500 days were lost due to strikes. This compares to 80,000 days in the same period in 2009. 2,342 days were lost in Public Sector employments.

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.

Yes – The Industrial Relations Act 1990– Copy on <http://www.irishstatutebook.ie/1990/en/act/pub/0019/index.html>

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.

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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.
No. the right to strike is not guaranteed under the Constitution although is provided for in statute law. There are exceptions relating to the police and the armed forces.
 3. Do you directly apply provisions of the European Social Charter (ESC) or EU law on cases concerning industrial action?
The Irish Courts are obliged to interpret national law in conformity with the ESC.
 - a) If so, please sketch a situation, in which aforementioned legislation has played a decisive role.
The provisions of the ESC have not been relied upon in any reported case in the Irish Courts involving industrial action
 - b) Would your national court apply EU-legislation (or ESC) interpreting national law on industrial action ?
In so far as any provision of EU law is relevant to a case before the Irish Courts the general obligation to interpret national law in light of the wording and purpose of EU law applies.
 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.
No. Other than in relation to the police and the armed forces.
 5. Are there any legal limitations concerning the aim in your country (e.g. rehiring of unionist X)?
No.
 6. Does a strike only have to be called out and led by an union in order to be lawful?
Those called upon to participate or support the strike must be balloted by the Union
 7. Is conciliation and/or arbitration obligatory prior to a strike?
No.
 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?
No.

Specifics of strikes in the “public sector”

1. Are strikes in the public sector generally legal or absolute illegal?
Strikes in the public sector are legal. There is no distinction in that regard between the public and private sectors.
2. Are strikes in the public sector only legally permitted according to certain preconditions? If so, please name them.
See above
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)?
Only in relation to the police who cannot go on strike
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?
No. But there is a voluntary code of practice which provides that emergency services should be maintained during a strike.

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5. Are there particular deadlines (refer to II/8) for strikes in the public sector?

No.

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)?

No.

7. Could (labour-) courts suspend a strike in the public sector (or declare it illegal) at the request of the government (or someone else)?

No.

8. Under what conditions could such court order be issued? Please outline a typical example of a real court case.

The Labour Court would not have jurisdiction to prevent or restrain a strike. If it is contended that a strike is unlawful because some statutory conditions has not been fulfilled (i.e. the subject matter of the strike is not related to terms or conditions of employment) proceedings would have to be taken in the High Court.

- a) In what kind of court proceedings are request for a court order (refer to III/7)?

See above

- b) Can a court issue a (preliminary) injunction against the illegal or a legal strike?

The High Court can restrain a strike by injunction if the strike is unlawful.

- c) Who is entitled to apply for such a court order?

Anyone, but in practice only the employer.

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)?

There is a code of practice (see q 4) which lists the essential services.

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?

If the union failed to give at least one weeks notice of the action and if the unions had not conducted a ballot of its members on the strike an injunction could be granted.

- 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?

They could not obtain an injunction on the sole grounds that essential services are not provided.

National reporter: Judge Nili Arad, President, National Labour Court

Definition and general regulations

1. What do you understand by “public sector” in your country?

The group of workers included in the definition of “public sector” is defined in the Settlement of Labour Disputes law and includes all public service employees in the broad sense of the term, including state employees, municipalities' employees, employees of the health services, employees of the education system and employees engaged in essential services (including transport, air transport, production and distribution of fuel, supply of water and more).

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?

Yes – privately organized essential public services also belong to the “public sector” according to the definition in the Settlement of Labour Disputes law.

b) Are special institutions – e.g. the Church – included in the definition of the term?

The answer varies according to the character of the institution. In Israel many religious services are provided by the state or municipality and therefore included in the “public sector”.

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?

Employment rates in Israel in 2010 were about 56.6%. Public service employment rate stands at about 20%.

Data for 2009 is: Electricity and water: 0.65% Transportation, storage and communications: 6.5% Public administration: 4.7% Health and welfare: 10.2%

3. How many employees are unions-members in general; how many civil servants are unions-members in particular?

About 30% to 40% of all employees are members of labor unions. We have no data regarding public service employees but believe that the percentage is higher in regard to the general population.

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?

Yes. Number of working days lost due to strikes: 2006: 136,189 days 2007: 2,548,627 days 2008: 87,151 days 2009: 208,691 days 2010: 168,864 days

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.

The Collective Agreements Act and The Settlement of Labour Disputes Act, both from 1957, are the relevant laws (both attached).

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.

In addition to the laws specified above, there is also a comprehensive case law on strikes.

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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.

Israel lacks a comprehensive constitution, but there are “basic laws” with a higher hierarchy. The freedom to strike is included in them (by interpretation) and has the status of a constitutional right.

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 ?

Israel is not bound by the European Social Charter or EU case law. However, when the courts decide a point of law on which there is no direct Israeli legislation they may turn to the European Social Charter and EU case law as guiding principles and comparative law that can be taken into consideration.

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.

The fourth chapter in the Settlement of Labour Disputes Act sets restrictions on strikes in the public sector. The main difference is that a private sector strike can either be lawful or unlawful, while the public sector strike can also be protected or unprotected.

In addition - policemen, prison guards and soldiers are forbidden by law to strike.

5. Are there any legal limitations concerning the aim in your country (e.g. rehiring of unionist X)?

In general, a strike is permitted when it concerns working conditions in the broad sense (any subject that can be resolved with a collective agreement). A strike for quasi political purposes – directed against acts or decisions of the government – is also permitted but only as a protest demonstration for a few hours.

6. Does a strike only have to be called out and led by a union in order to be lawful?

In general – yes, but in case there is no union – a strike can be also led by a representation elected by the majority of the relevant employees.

7. Is conciliation and/or arbitration obligatory prior to a strike?

In general – no. In the public sector there are specific provisions in the Settlement of Labour Disputes Act – that send the parties to an arbitration unless the conflict is purely an economic one.

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?

According to the law there is a compulsory Notice - to the other party and to the relevant government officer - of at least fifteen days before commencement.

Specifics of strikes in the “public sector”

1. Are strikes in the public sector generally legal or absolute illegal?

Strikes in the public sector are generally valid. Even strikes in essential services are generally valid, when the only distinction is the scope of the limitations placed on the strike (in the vital services there are more restrictions).

2. Are strikes in the public sector only legally permitted according to certain preconditions? If so, please name them.

The law contains certain conditions regarding the strikes in the public sector: for example, a strike while a collective agreement that prescribes wage rates is still valid would be considered an unprotected strike. However, a strike can be held even during the existence of a collective

agreement, as long as it does not apply to wages or social benefits and provided that it was approved by the central institution of the union.

Case law also uses the criteria of proportionality.

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)?

No – except policemen, prison guards and soldiers that are forbidden by law to strike. There are also differences in the rulings of the court according to the proportionality test, i.e. the court would probably impose more restrictions on a wide scale strikes in essential services.

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?

Employees' organization is not an obligation in the essential services. In Israel there is a right or freedom of association in any workplace or public service (except for police officers, prison guards and soldiers), but there is no duty to form unions.

5. Are there particular deadlines (refer to II/8) for strikes in the public sector?

According to Israeli law there is an obligation to announce the strike at least fifteen days before it starts. Also, formal law does not limit the length of the strike but in practice, long-range strikes in the public sector were sometimes limited in accordance with the proportionality test.

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)?

It is possible to issue confinement orders, but it is done rarely.

7. Could (labour-) courts suspend a strike in the public sector (or declare it illegal) at the request of the government (or someone else)?

It is possible to file for an injunction against the strike.

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)?

The Court might issue an order to prevent a strike when no notice was given at least fifteen days before the beginning of the strike, or when the strike is for an illegitimate purpose, or if the strike is disproportionate or unreasonable.

b) Can a court issue a (preliminary) injunction against the illegal or a legal strike?

The Court in Israel can issue orders to prevent illegal strikes. When the strike is legal it is also possible to issue an injunction when the strike is not proportionate or will cause too much damage. However, it is done rarely.

c) Who is entitled to apply for such a court order?

The Employer, the state and a third party that is injured by the strike. The entitlement of the state and injured parties to file such a request is not regulated by law but done in practice.

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)?

There is no automatic ban on strikes in essential services (except soldiers, policemen and prison guards), even if a damage is caused to the public's convenience, because such a prohibition would hurt the workers' right of association. Instead, each strike is discussed according to its circumstances and the courts consider, among other things, the damage to the public, the scope of the strike, the length of the strike etc.

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?

The chances are high that the request for a restraining order in this case will be accepted, despite the fact that the strike's goal - improving the working conditions of railroad workers - is legal. The reason for that is that no notice was given at least fifteen days before the beginning of the strike.

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?

The hospital may request that restraining orders will be issued to prevent the strike, or apply for a restraining order for a partial limitation of the strike so emergency services will still be supplied. The first thing that the court will do is probably convince the parties to reconcile and bring them back to the negotiation table. The court sometimes monitors the negotiations until the dispute is solved.

If the mediation does not succeed – the court will decide on the merits:

If an authorized body of the union approved the strike; a proper notice was given; and the strike does not contradict a collective agreement in effect – the chances are higher that the strike will not be fully forbidden but only limited in scope (according to the proportionality test and in order not to cause severe irreversible damage to the public).

Italy

National reporter: Fabrizio Miani Canevari, Presidente di sezione Corte di Cassazione Roma

I 1. While Italian Constitution recognizes the right and freedom to strike (see II,1) Statute Law n.146/1990, modified by Statute Law n.83/2000, regulate strikes in the essential public services, both for the public sector and privately organized services, to protect the customer (and not the provider of the service). No special institutions are excluded.

I 2. Less than half of the population is currently employed in an employment relationship. About 3 millions people are employed in the public service sector, in general, and a minority are employed in the essential public services.

I 3. About 40% employees are union members; a minority of civil servants are union members.

I 4. In the year 2009 (most recent data) 2,6 million working hours were lost due to strikes. There are no separate statistics for the public sector

II 1/ 2. The Italian Constitution (art.40) states that “the right to strike is exercised within the rules stated by law” (“*il diritto di sciopero si esercita nell'ambito delle leggi che lo regolano*”). For more than forty years no general law was enacted, but Italian Constitutional Court (Corte Cost. n.222/1976, Foro Italiano 1976 I 2297) stated that this right finds its limits in the protection of the essential services of general interest and inviolable human rights, and so was not unconstitutional the provision of punishment in criminal judgement for the disruption of the essential service (provided in a psychiatric hospital).

II 3. No provisions of the European Social Charter or EU law are directly applied in cases concerning industrial action.

II 4. There are special laws that exclude the right to strike for military personnel and police force (art.8 statute law 382/1978, art.84 statute law 121/1981)

II 5. There are no legal limitations for the case specified

II 6. Every single worker has the individual right to strike, but only to protect a collective interest; so only a group (any kind of group) can call out and lead a strike, which must be a collective initiative, with the adhesion of the single worker.

II 7/ 8. Outside the statute law mentioned at I 1, no statute rules exist for the implementation of a strike

III 1/2 Strikes in the public sector are generally legal, with the limits of statutes nn.146/90 and 83/2000, which applies to the public services that guarantee the constitutionally protected personal rights to life, salute, freedom an security, freedom of circulation, social security, teaching, freedom of communication. The statute includes expressly, among others, medical care, transportation, sanitation, supply of energy and first necessity goods, bank and postal services ; these services, both in the public and private sector, are considered essential.

III 3 In this system there is no difference between different areas of the sector affected by the strike or types of civil servants (see II 4 for the exclusion of the right of strike)

III 4/6 The statute law mentioned above gives special powers to an indipendent Authority called Commissione di Garanzia per lo sciopero, while it states that collective labour agreements must contain provisions about cooling down periods between announcing and beginning a strike (the minimal period is fixed by law in ten days) to activate a mediation proceeding, and must also identify the essential activities that must be provided during the strike; the law indicates that 50 % of the normal service (with 1/3 of the normal personnel) should be provided. The unions must communicate the duration, the reasons of the strike and the modalities of implementation.

If there is no agreement with the unions, or it is not approved by the Commission, the same makes a proposal for the rules of the strike; if this is not accepted, the Commission states its own rules, which must be observed during the strike. An order of the Commission can suspend or postpone the strike.

A special order, called “precettazione” can be issued, on proposal of the Commission, by the State authority , with the necessary measures for the protection, in case of imminent danger for the rights of the users, following the interruption of the public services.

For the breach of the rules fixed for the strike the workers are liable to disciplinary measures; unions and their leaders are liable to fines, as for the breach of the “precettazione” order .

III 7/9

In this system, there is no intervention of the labour courts about the legality of a strike, or the postponement of it. Measures taken by the Commissione di Garanzia per lo sciopero, as the administrative order of “precettazione”, can be brought for review to administrative judges (Tribunale Amministrativo Regionale).

IV In case a), the strike without preventive notice is to be considered illegal by the Commissione di Garanzia, while the disruption of the rail service justifies the administrative order of precettazione to stop immediately the strike.

In case b), the strike is to be considered illegal because the union refuses to negotiate emergency services, and the interruption of the public service provided by the hospital can justify (in case of imminent dangers for the rights of possible users) the administrative order o stop the strike.

National reporter: Marit B. Frogner, Judge, Labour Court of Norway

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?

“Public sector” covers services run by the state and regional and local municipalities.

Several bodies that previously were considered public, including the mail and the national train system (NSB), have been organized as separate legal entities or fully or partly privatized. For instance, NSB is a limited company fully owned by the state.

- b) Are special institutions – e.g. the Church – included in the definition of the term?

Yes, Norway has a state church system, church of Norway. The Ministry of government administration, reform and church affairs is responsible for the church policy, including the capacity of employer, making the Norwegian national church part of the public sector.

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?

As of the end of 2010, 2 517 000 were employed in Norway, including a total of 754 647 in the public sector; there are no specific statistics for “essential public services sector”.

3. How many employees are unions-members in general; how many civil servants are unions-members in particular?

As of the end of 2010, the trade unions had 1 658 786 members. This figure includes members who are not employees (students, retired employees), making the number of employees who are members of trade unions, lower than 1 658 786.

In 2008, 80 per cent of the employees in public sector were union-members. The corresponding figure for private sector was 37 per cent.

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?

In 2010, when there was a negotiations for a main settlement (which takes place every two years), 67 000 employees were involved in a total of 12 work stoppages, with a total of 500 009 working days lost.

Within the area of health and social services, the number of lost working days in 2010 was 276 000, and within education 110 000. The majority of lost working days in 2010 was within the public sector.

A note on the statistics: The number of working days lost will be high when there are main settlements, such as in 2010. The number of lost working days in the previous main settlement (2008) was 62 568. The mid-term negotiations – that is revision of the existing agreements – are often conducted without the possibility of strikes, and in any case the number of lost working days is considerably lower. In 2009, the number of lost working days was 180, and in the previous mid-term negotiations (2007) was 3 954.

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.

There are two labour disputes acts in Norway applicable to the public sector:

The Public Service Labour Disputes Act (act of 18 July 1958 no. 2 – PSLDA) applies to the state part of the public sector.

The Labour Disputes Act (act of 5 May 1927 no 1 - LDA) covers the rest of the labour market, including the municipal sector and essential services run by other, “non-public” entities organized as limited liability companies etc.

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.

N/A

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.

There are no constitutional provisions concerning the right to strike, or concerning the freedom of association. However, the Human Rights Act (act of 21 May 1999 no. 30) declares that the European Convention on Human Rights, the UN Convention on Civil and Political Rights and the UN Convention on Economic, Social and Cultural Rights “shall have the force of Norwegian law insofar as they are binding for Norway”. The provisions in these conventions and the relevant case law are directly applicable in Norwegian law, and – as a starting point – will have supremacy over other provisions in Norwegian law than provisions in the Constitution.

The Norwegian Supreme Court has also stated that, based on case law, the freedom of association, including the right not to be organised, is a fundamental legal principle in Norwegian law.

Other human rights conventions (ILO, ESC etc) not covered by the Human Rights Act, will be taken into account when applying national provisions, but in the case of a conflict, national law will prevail.

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.

We do not have any examples from case law related to industrial actions where there has been any reference to ESC. However, the Norwegian Supreme Court has in two cases concerning the negative freedom of association referred to ESC.

b) Would your national court apply EU-legislation (or ESC) interpreting national law on industrial action?

Recent case law from the Norwegian Supreme Court indicates that ESC and case law from the committee of experts will be accorded some importance, although strictly speaking not as important as the conventions covered by the Human Rights Act.

Norway is not a member of the EU, however, the Agreement on the European Economic Area¹, provides for the inclusion of EU legislation covering the four freedoms. In addition, the EEA Agreement covers cooperation in other areas, including social policy.

As a general rule, within the scope of the EEA Agreement, EU legislation shall apply and the provisions of the Agreement shall, in its implementation and application be interpreted in conformity with the relevant rulings of the Court of Justice (ECJ) given prior to the date of signing of the Agreement². Further, due account shall be paid to the principles laid down by the relevant

¹ The Agreement entered into force 1 January 1994.

² 2 May 1992

rulings by the ECJ given after the date of signing of the Agreement. The Norwegian Supreme Court attached weight to practice by the ECJ in cases where EU-legislation has been implemented into Norwegian law.

The Supreme Court has not yet had any case concerning the right to strike where the relationship to EU-legislation has been considered.

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.

The basic procedural rules in LDA/PSLDA which must be complied with, are in their essential elements the same in the public and private sector:

Strikes can be called in disputes of interest, but not in disputes of rights.

If a strike is called, notice must be given to the National Mediator, and rules on time limits and possible “cooling off” periods will apply. When calling out a strike, notice must be given to the other party and at the same time to the National Mediator (LDA sec 28). Industrial action cannot be implemented until four days after the notice is given to the National Mediator, and in any case not until the notice period has expired (LDA sec 29). The notice period refers to the individual employee’s period of notice. According to the Working Environment Act, the notice period is 14 days in the event of dismissal pursuant to LDA.

The National Mediator may within two days after receiving notification issue a temporary ban on industrial action, and summon the parties to a compulsory mediation. If ten days has passed since the temporary ban was issued, each party may demand that the mediation is terminated within four days. The period for mediation will then amount to at least 14 days.

If there is a prior collective agreement between the parties regulating the disputed matter, the ordinary period of validity for the collective agreement must have expired.

The procedure in PSLDA is similar, but with some modifications: The state and the trade unions have a right and a duty to bargain collectively. For trade unions, this right is reserved for trade unions of a certain size and representativity (PSLDA sec 3). When the bargaining procedure is terminated, the National Mediator must be notified immediately, and compulsory mediation must be initiated within 14 days after receiving notification. Each party may require the mediation to be terminated within seven days. The period of mediation will then amount to at least 21 days.

The peace obligation – the obligation to refrain from the use of industrial action – is based partly on statute law and partly on collective agreements. Furthermore, the peace obligation in the LDA/PSLDA only extends to matters covered by collective agreements (LDA sec. 6/PSLDA sec. 20). If the aim of the strike is a matter covered by or intended to be covered by a collective agreement, the industrial action will be a breach of the peace obligation. In other words, if the aim of the strike is not related to the collective agreement, the strike will not be in breach of the collective agreement or LDA/PSLDA. As a consequence, sympathy strikes and political strikes are permitted.

Sympathy strikes are strikes in support of a party to a lawful strike. Technically speaking, a sympathy strike is a strike within the definitions of the LDA, and the procedural rules will apply insofar as these rules are applicable in the main strike. The major collective agreements in private sector have rules on sympathy actions. It should be noted that according to the PSLDA sec. 20 par. 5, sympathy action is only permitted if this is set out in the collective agreements; the basic agreement for the state sector has such provisions, and sets out certain procedural rules.

Political strikes are strikes as a form of expression of an opinion on political issues, cfr III.2 below

5. Are there any legal limitations concerning the aim in your country (e.g. rehiring of unionist X)?

No, cfr II.4 regarding sympathy strikes and political strikes.

6. Does a strike only have to be called out and led by an union in order to be lawful?

Within the area covered by the LDA, there are no limitations as to who may call out a strike. The reason is the wide ranging definition of a trade union: According to the LDA section 1 par. 3, a trade union is any federation of employees or of employees' associations acting to attend their common interests towards their employer.

Under the PSLDA the starting point is different. The bargaining rights and the right to conclude collective agreements are reserved for trade unions which satisfy specific requirements as to size of membership and representativeness, cf PSLDA sec 3. It is arguable that the right to call out a strike rests with trade unions or trade union confederations that meet the requirements of PSLDA sec 3, but the question has not been put to the test.

7. Is conciliation and/or arbitration obligatory prior to a strike?

Yes, see comments in II.4 above.

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?

There is a "cooling down" period if the national Mediator issues a temporary ban on industrial action,, cfr comments in II.4 above and III.6 below (for LDA: 14 days and for PSLDA: 21 days) .

According to the LDA/PSLDA it is for the National Mediator to assess whether or not a temporary ban should be issued – the mediator "may" issue a ban – but for all intents and purposes such bans are issued in interest disputes in the public sector. Further, according to PSLDA, mediation is compulsory.

Specifics of strikes in the "public sector"

1. Are strikes in the public sector generally legal or absolute illegal?

Strikes in the public sector are generally legal in interest disputes, if the procedural rules are complied with, see also comments in II.4 above and III.3 below.

2. Are strikes in the public sector only legally permitted according to certain preconditions? If so, please name them.

See comments in II.4 above.

Further, Norwegian law recognized the right to "political demonstrations / political strikes". The purpose of the action is to express an opinion. The condition is that the action does not intend to force through changes in matters regulated under collective agreements and that the action is of short duration. In public sector and due to the close relationship between the employer and the political authorities, the line between political strikes on the one hand and unlawful actions on the other hand that is not always easy to draw.

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)?

There is no legislation applying to strikes in special areas of the public sector. Until the Police Act of 1995, there was a ban on strikes by police officers. This ban was repealed in 1995.

It is assumed – but not expressly stated in any statutes – that senior civil servants (so called "embetsmenn", such as senior government officials, judges and senior members of the clergy) and military personnel appointed in accordance with rules in the Constitution, do not have the right to strike.

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?

No

5. Are there particular deadlines (refer to II/8) for strikes in the public sector?

See comments in II.4 above on the differences between LDA (for municipalities) and PSLDA (for the state).

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)?

Reference is made to II.4 above.

With regard to the strikes that fall within the scope of the PSLDA, notice must, as mentioned under II.4, be given to the National Mediator. Mediation is compulsory and shall be initiated within 14 days (PSLDA sec 14). 14 days after the start of the mediation, each of the parties may demand that the mediation be terminated. The mediation shall then be terminated within a week at the latest. The minimum period is thus 21 days.

Hence, the National Mediator may temporarily postpone the strike.

The Parliament (Stortinget) may in each individual case intervene by adopting a separate act referring a dispute to compulsory arbitration by the National Wages Board (Act No. 7 of 19 December 1952 relating to wage committees in labour disputes.) During periods when the Storting is not in session, this may be done by a Provisional Ordinance by the Government. The Board's decision has the same effect as a collective agreement. Interference in a labour conflict may be considered if the conflict has consequences for life or health, or has other seriously damaging effects on society. In practice, this has been considered to be the case in regard to strikes in the health sector, finance (banks etc.) and oil industry. This option is thus not limited to public sector.

7. Could (labour-) courts suspend a strike in the public sector (or declare it illegal) at the request of the government (or someone else)?

The Government may not as such claim that a strike shall be considered illegal or in breach of the collective agreement. However, the affected public body, may, as other employers (or employers' organisations,) request that a dispute concerning the legality of industrial actions shall be considered by the Labour Court.

The Labour Court may not, as the case may be for the National Mediator (see II.4 and 6 above), prohibit the parties from commencing a strike until a final decision is reached. However, in disputes relating to the legality of industrial actions, the Court will request, and the parties will in most cases accept, to postpone the strike (or lockout) until the court has reached a decision.

The court will expedite the case as much as possible and fix a time for sitting out of turn. Decisions by the Labour Court are final and may not be appealed.

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)?

Disputes regarding the legality of industrial action are adjudicated by the Labour Court, see above.

- b) Can a court issue a (preliminary) injunction against the illegal or a legal strike?

Whether interlocutory injunctions may be granted in collective labour disputes, is a moot point in Norwegian law. The LDA/PSLDA have no provisions on interlocutory injunctions.

Cfr IV. below

- c) Who is entitled to apply for such a court order?

See a and b above.

The employer or the employers' association or the union has the right to take legal actions before the Labour Court (LDA sec 8/PSDLA sec 25).

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)?

There is no legislation that excludes groups from the right to strike or that apply to certain types of services. (As mentioned above, senior civil servants and military personnel cannot go on strike.)

Collective agreements may have rules on negotiations prior to a strike to agree on employees who must be present to avert danger to safeguard, inter alia, necessary work to prevent hazards to life and health or substantial damages. Further, according to the Basic agreement for civil service, the chief executive of an agency and head of the personnel function shall not be involved in the strike.

During a strike, the parties may also agree on exemptions for reasons as mentioned above. For instance, the Basic agreement for civil service has rules on applications for exemptions for employees who, owing to reasons as mentioned above or other special circumstances, must be present or recommence work.

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?

We assume that the collective agreement in force has been terminated in line with its provisions and that notice has been given in regard to the individual employees' employment relationship. In practice, notice of termination for the individual employees is often given as a collective notice by the union. This must, however, be agreed between the parties, for instance in a Basic Agreement.

The railroad workers union may have members that fall within the Basic Agreement in the public sector and the PSLDA, and agreements regulated by LDA. In the following, we will limit our comments to unions bound by agreements that fall within the scope of LDA. In regard to the differences between PSLDA and LDA, we refer to II4 and III6 above.

Notice must be sent to the National Mediator. In disputes concerning a national collective agreement, the National Mediator will, in practice, issue a temporary ban on industrial action and summon the parties to mediation. This must be done within two days. There is not a requirement that the National Mediator has received a formal notice. It is sufficient that the National Mediator is aware of the dispute.

If ten days has elapsed since the prohibition was issued, either of the parties may demand that the mediation shall terminate. The mediation process shall then be terminated not later than four days after the demand for termination. This implies a postponement of at least 14 days.

Provided that the union has observed the formal requirements laid down in the collective agreement (main agreement) and LDA, industrial action may then commence.

Stortinget may, however, as described above under III6, refer the dispute to compulsory arbitration by a separate act.

As mentioned under III8b above, neither LDA nor PSLDA has rules on interlocutory injunctions. The proposal for new Labour Disputes Act which is assumed to be considered by Stortinget during the fall 2011 does not contain any rules on interlocutory injunctions, and this is not discussed in the white paper either. The Labour Court may, however, consider whether an industrial action is legal / in breach of a collective agreement, and also award compensation if the court finds that there is a breach of a collective agreement or illegal stoppage of work. The Court will expedite the case and may, in practice, hear the case within a short time after writ of summons is received, see III7 above.

The Disputes Act (2005) has rules on interlocutory injunctions. Whether interlocutory injunctions may be granted by the ordinary courts is disputed since the Labour Court has exclusive

jurisdiction in disputes regarding illegal stoppage of work. Neither the Supreme Court nor the Labour Court has considered this issue.

The Labour Court heard two cases concerning illegal industrial actions in 2010. In both cases, the union accepted to postpone a possible strike until the court had considered the case and reached a final decision.

- 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?

If the formal procedures and rules have been observed, the union has a right to strike. However, the hospital could appeal for the legislator to intervene and issue a law banning industrial action in the specific dispute, and for the use of compulsory arbitration of the dispute, with reference to the consequences of the strike, see III6 above.

Slovenia

National reporter: Miran Blaha, Supreme Court of the Rep. of Slovenia

Definition and general regulations

1. What do you understand by “public sector” in your country?

- 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?
- Are special institutions – e.g. the Church – included in the definition of the term ?

For the purposes of Civil Servants Act, the public sector is comprised of:

- state bodies and the administrations of self-governing local communities,
- public agencies, public funds, public institutions, and public commercial institutions
- other entities of public law that indirectly use state or local budgetary funds.

Public companies and commercial companies, where the state or local communities are controlling shareholders or have prevailing influence, shall not be a part of the public sector under this Act.

Public hospitals and public schools are organized as public institutions and belong within the public sector. Rail and air transport are private commercial companies (limited liability company or joint stock company), as are Air Traffic Control (rail and air traffic control as a limited liability company 100% state owned).

Registered churches and other religious communities are legal entities under private law.

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?

Number of employees in employment relationship in Slovenia is currently around 730,000, of which around 160,000 in public sector: all together in state and local community administration, including the army and police, education, health and other public entities.

3. How many employees are unions-members in general; how many civil servants are unions-members in particular?

There is no official data on the actual number of union members. According to unofficial data, in 2008 there were only about 25% of all employees union members. There is also no official data how many civil servants are union members. Only few Trade unions publicly announce the number of members, for example Education, Science and Culture Trade Union of Slovenia allege 40.000 members. Recently, about a half of employees (80.000) from 22 public sector Trade Unions joined the strike to protest against the Government's plan to freeze their wages until the end of 2011.

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?

Statistical Office should separately collected data on strikes since 2008, including the working hours lost due to strikes. However, not published official figures yet.

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.

In Slovenia, is still used Strike Act, adopted as a regulation of the former Yugoslavia). There is no official translation into English (attached is the unofficial translation, appendix 1). That law only regulates strikes, other industrial action (for example, lock-out) are not regulated.

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.

According to the established case law:

- strike is illegal if it is not announced in a prescribed time before the start,
- strike is illegal if the workers on strike do not allow workers who do not participate to continue working,
- strike could be only legal or illegal and could not be in the same time partly legal and partly illegal.

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.

The Constitution guarantees the right of workers to strike, with the possibility of restrictions, if public interest so requires:

Article 77 (Right to Strike)

Employees have the right to strike.

Where required by the public interest, the right to strike may be restricted by law, with due consideration given to the type and nature of activity involved.

The Constitution also provides trade unions freedom and in this context, the right of trade unions to organize a strike:

Article 76 (Freedom of Trade Unions)

The freedom to establish, operate and join trade unions shall be guaranteed.

-
3. Do you directly apply provisions of the European Social Charter (ESC) or EU law on cases concerning industrial action?

No, as a rule, the court relied on the constitutional and statutory definition of the right to strike, part of which is wider than in the European Social Charter: the strike is permissible not only for promoting the interests, but also because of the exercise of rights.

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?

In the application or interpretation of the Strike Act the courts, in addition to interpret it in accordance with the Constitution, take into account the EU-legislation, notably those of the ILO Conventions and ILO Committees of Experts.

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.

Civil Servants Act

Article 19

(Right to strike)

1) Civil servants shall have the right to strike.

2) The manner in which the right to strike is exercised and restrictions on strikes in the interest of public benefit shall be governed by law.

Attached (appendix 2) are the unofficial translations of legislation regulating the rights of employees in the police, army, custom, prison guards, fireman, doctors and hospital personnel.

5. Are there any legal limitations concerning the aim in your country (e.g. rehiring of unionist X)?

Yes, strike could be organized only with an objective to obtain economic and social rights and interests of workers deriving from work. It was for example not lawful strike, in which workers have sought to annul the decision of the Supervisory Board of the installation of new CEO and re-appointment of the previous director.

6. Does a strike only have to be called out and led by a union in order to be lawful?

Strike is the right of workers and in principle workers themselves can organize it even if they are not members of Trade union. But under current Strike Law (§ 2) the workers themselves can only organise strike at the employer, but not in the branch or industry, or general strike. Such a provision is likely to be incompatible with the Constitution. Otherwise the strike in an activity or even a general strike organized by the workers themselves is practically difficult.

7. Is conciliation and/or arbitration obligatory prior to a strike?

No. According to Strike Act (§ 4) the strike committee and the employer must try to come to an agreement and settle the dispute, but there is no prescribed how or in what procedure.

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?

Yes, strike committee must announce strike at least five days prior to the day that has been put forward as the starting day of the strike.

Specifics of strikes in the “public sector”

1. Are strikes in the public sector generally legal or absolute illegal?

Generally legal.

-
2. Are strikes in the public sector only legally permitted according to certain preconditions? If so, please name them.

Right to strike in public services (Strike Act, § 7) can be carried out only after these conditions have been fulfilled:

- 1) minimum working process which enables safety of people and assets or is an irreplaceable condition for lives and work of people in the community or in other organisations,
- 2) Fulfillment of international obligations.

Conditions are prescribed by the state (Parliament) or local authority in Law or law based act, the tasks and services to be provided during the strike are prescribed by the internal act of the employer or by collective agreement.

Employees of a state bodies or local government bodies (Strike Act, § 11) can exercise the right to strike unless this seriously interferes with work responsibilities functioning) of the bodies.

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)?

Right to strike, restricted for employees of a state bodies or local government bodies (Strike Act, § 11), may relate only to those public servants who directly serve the public authorities, while others enjoy this right without restriction or only if it were a delimitation by 7th Article Strike Act. Thus, for example:

Defense Act prohibits strike for military personnel (soldiers); employees who perform administrative and professional services may exercise their right to strike in the same way as employees in state administration,

Customs Service Act restricts the right to strike for customs officials and inspectors, but not to other workers.

Courts Act restricts the right to strike for the judicial staff (such as typists, employed in the reception, etc.)

Police Act restricts strikes for police officers,

Enforcement of Criminal Sanctions Act restricts strikes for all workers in prisons, not just guards.

Restrictions of the right to strike for workers in commercial and non-commercial public services regulates Strike Act (§ 7), but the law does not distinguish between essential services and other services. Specific provisions of the strike have the Electronic communications Act (fixed line and mobile telephony), the Postal Services Act, the Road Transport Act, the Railway Transport Act, the Aviation Act, the Fire Service Act and the Medical Services Act and the Health activities Act. The essential characteristic (and disadvantages) of the legislation is that it imposes on employers the obligation to provide the prescribed minimum of work process and also leave to the employers the decision which workers must perform this work. This fact may lead to the subjective limitations of the right to strike.

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?

Yes, in special parts of the public sector where the obligation to provide the minimum of work process is prescribed by Law.

5. Are there particular deadlines (refer to II/8) for strikes in the public sector?

Yes, in organizations and employers engaged in public service strike must be announced to employer and trade union, where trade union is not the organizer of the strike, and the competent national authority no later than ten (10) days before the start of the strike.

Strike in a state bodies or local government bodies must be announced no later than seven (7) days before the start of the strike.

-
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)?

No, but responsible state or local authority may accept necessary measures, foreseen by the Constitution and the Law, on the basis of assessment that an immediate danger might occur or could have been severe consequences on lives and health of people and their security of assets or other irreplaceable consequences. The government in two specific cases of strikes (the rail strike and the veterinarians at border crossings strike) adopted a special Regulation to set the minimum working process, as it considered to the Act.

7. Could (labour-) courts suspend a strike in the public sector (or declare it illegal) at the request of the government (or someone else)?

In principle (in practice see answer 8b) during a proceeding in collective labour disputes, a court may even ex officio issue temporary injunctions required to prevent the use of force or the occurrence of damages that would be hard to remedy. Temporary injunctions shall be issued according to the provisions of the law governing insurance, unless otherwise specified in this article.

A proposal for commencing a procedure on the legality of a strike may be filed by a person who has the right under law to organise a strike, and those against whom a strike is organised. Trade union may take part in a procedure commenced by 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)?

If a party proposes the issue of a temporary injunction, the court shall decide within three days. The appeal court shall decide not later than in eight days on legal remedy against a decision on a temporary injunction.

b) Can a court issue a (preliminary) injunction against the illegal or a legal strike?

Appeal Court recently adopted a decision rejecting a proposal of employer for interim relief to prohibit the union initiated a strike until a final decision on its legality. The reason stated is that the courts in a dispute about the legality of the strike issued only a declaratory judgement, which is not enforceable. In this case it was a question of legality of strike employees in casinos. Such a decision is questionable. I would suggest that the court could also issue a temporary injunction, which would ban strikes start, especially in those cases where strike is clearly illegal.

c) Who is entitled to apply for such a court order?

Any party in a dispute, as a rule this will be the employer.

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)?

There are no specific regulations for Court preceding in these kinds of cases. Restrictions of the right to strike for workers in public services (condition that must be fulfilled) are prescribed by law, the task and services which must be provided during the strike are prescribed by an internal act of employer or by a collective agreement.

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?

According to the given aim the strike may be legitimate: it is the realization of economic and social interests of workers from work.

In a public service employees should announce a strike at least 10 days before the strike; otherwise the strike would be illegal. Constitutional Court has already decided that the legal requirement for advance notice of a strike in accordance with the Constitution. The Labour Court has also ruled that it is an illegal strike, which began the day following the announcement. Therefore, such a strike was manifestly illegal.

The law does not specify anything about the so-called “spontaneous strikes” which in practice are not uncommon. The law also has no provisions on solidarity strikes and the strikes carried out not as an interruption of work (for example slow work, work according to the rules).

Strike would also be illegal if during a strike would not be a guaranteed minimum working process to the extent required by law.

But, according to the Appeal Court judgement, stated in response 8b, the court would probably reject the application for interim relief – in my opinion incorrect and unfounded.

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?

Again, hospital would fail with application for interim relief.

Hospital should bring a claim for a declaration of illegality of the strike because there would not be guaranteed a minimum of work processes. In this procedure would probably be successful, the consequences would be felt particularly to striking workers: they will not get payment for the duration of the strike, may be hit by a disciplinary sanction or employer could even terminated the contract of employment - because they violated their contractual obligations.

Spain

National reporters: Antonio Martín Valverde, Professor of Law, Emeritus Supreme Court Judge (Labour Chamber); Miguel Ángel Limón Luque, Associate Professor of Law, Labour Judge, Canary Islands

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?

To our Constitution the relevant services to protect under Spanish Law in a strike are the “essential services”, what are those 1) that guarantee the exercise of the fundamental rights, or 2) that protect the “constitutional goods” declared by the Spanish Constitution. Essential services might be run by public authorities, which means the Spanish Administration (State or Regional Governments, Municipalities and the like), or by private companies (owned or not by a public Administration).

b) Are special institutions – e.g. the Church – included in the definition of the term?

There have not been such cases, as it is not a conflictive sector. But everything that guarantees the use of a fundamental right in our Constitution could be related to essential services, so freedom of religion could be considered at the very limit an essential service. Nevertheless it seems to us a non realistic question in Spain

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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?

At the end of 2010, there were in Spain 18.408.200 working people. The people under an employment relationship were 15.314.200. Employees at the public sector were 3.168.500 (including those who were employed by a private company owned by a Public Administration, 157.700) and at the private sector were 12.154.200. It is not possible to know exactly how many employees work in an essential sector as there is no previous knowledge of every sector that could be considered as essential.

3. How many employees are unions-members in general; how many civil servants are unions-members in particular?

There are no absolutely precised data but the union-members in 2008 were between 15% to 17,5%, one of the lowest of Europe. At the public sector union membership should be around 35% of the whole workforce.

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?

During 2010, there were in Spain 984 registered strikes, affecting 340.776 employees, loosing 671.498 working days, excluding general strikes. The working days lost at the services sector were 232.567. There are no specific data for the public sector.

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.

Summary of the Spanish regulation on strikes: “Current provisions governing the various aspects of strike action are contained in the **Labour Relations Decree-Law** of 1977. The right to strike is granted both to workers with a contract of employment and to public servants, with the exception of judges, magistrates, public prosecutors and police and military personnel. This right may be exercised (through a strike call, notice of strike and strike declaration) by trade unions, workforce and trade union representatives and groups of workers. Strike action is co-coordinated by an appointed strike committee. Because of their aim, political strikes, strikes that are in breach of legally binding no-strike clauses and, very exceptionally, sympathy strikes are deemed to be illegal. There are also some forms of strike which, because of the methods used, are deemed to be improper use of the right to strike; these include working-to-rule, sit-ins, selective strikes and rotating strikes. In all strikes, there is an obligation to ensure the safety and maintenance services necessary for human safety and protection of the enterprise's property. There are additional restrictions on exercising the right to strike in essential public services, since in these cases a strike must be accompanied by government measures to ensure minimum services; exceptionally, in the event of possible harm to the national economy, the Government may bring about the ending of a strike by imposing compulsory arbitration. A legal strike suspends the contract of employment, maintains strikers' social security eligibility and prevents the imposition of employer sanctions. The employer may not replace the striking workers unless they fail to provide the necessary safety and maintenance services. In the event of an illegal strike or improper use of the right to strike, the employer may impose disciplinary sanctions on workers, provided there is proof that the worker actively participated in it. A strike is not defined as either legal or illegal by an administrative check prior to its occurrence, but only when the labour courts have to decide whether or not any sanctions imposed on the strikers by the employer are lawful” (Source Eurofound)

Worker' Statute (1980) establish **that** the participation in a strike suspends the contract of employment (Section 45).

TITLE I
The right to strike

CHAPTER I
The strike

Section 1.[Exercise of the right to strike]

The right to strike, in labor relations, could be exercised according to what is provided by this Act.

Section 2.[Agreement on renunciation or limitation of the right to strike: nullity]

Any agreement contained in an individual employment contract renouncing or limiting the right to strike must be considered null and void.

Section 3. [Collective call to strike. Those who are entitled to call to strike]

1. *The strike call, no matter those who were called, shall need an agreement at any workplace.*

2. *Those who are entitled to declare on strike.*

a) *The employees, thorough their representatives. The agreement shall be taken, in a joint meeting of all the representatives, by decision of the majority of the representatives. There shall be a certificate of such meeting, signed by the attending representatives, that shall be at least a 75% of the whole.*

b) *Directly by the employees who are affected by the conflict, when 25 per 100 of them vote in favor on the strike. The vote shall be secret and shall be decided by simple majority. The result of this will be certified.*

** The above text in italic was declared according to the Spanish Constitution by the Constitutional Court in judgment of April 8th, 1981, only with certain restrictions in its interpretation.*

3. The settlement of a strike will be reported to the employer or employers affected and to the labor authorities by the representatives of the employees.

Communication to strike must be in writing and notified five calendar days in advance of its starting date. When the agreement to strike shall be taken by the employees directly, the notice period shall start once the representatives of the employees reported to the employer such agreement. Communication to strike shall contain its objectives, steps taken to resolve the differences, start date and composition of the strike committee.

Section 4. [Notice of a strike in companies operating public services]

Whether the strike affect companies in charge of any kind of public services, the strike notice to the employer and to the labor authority shall be done at least ten calendar days in advance. Representatives of employees should give to the strike, prior to its initiation, the necessary publicity for its knowledge by users of the service.

Section 5. [Strike committee]

*Only employees affected by the conflict at the workplace might be elected for the strike committee's.**

** The above text in italic was declared according to the Spanish Constitution by the Constitutional Court in judgment of April 8th, 1981, only with certain restrictions in its interpretation.*

The composition of the strike shall not exceed twelve members.

It corresponds to the strike committee to participate in such actions as union, administrative or judicial proceedings are conducted to resolve the conflict.

Section 6. [Effects of the strike on the employment relationship]

1. The right to strike does not terminate the employment relationship, nor can it lead to any penalties, unless the employee incurs in professional misconduct during the exercise of the right.

2. During the strike the contract is deemed under suspension and the employee is not entitled to any wages.

3. The striking employees remain in a situation of special social security protection, with suspension of the obligation of contribution by the employer and the employee himself. The striking employee is not entitled to unemployment benefit or any leave of absence benefit.

4. They employees on strike shall respect the freedom to work of employees who do not want to join the strike.

5. As long as the strike happens, the employer may not replace the strikers by employees who were not linked to the company at the time that the strike was reported, exception made for breach of the obligations contained in paragraph number 7 of this section.

6. Striking employees may make publicity of the strike, peacefully, and carry out fundraising to support it without any coercion.

7. The strike committee will ensure during the strike to provide the necessary services for the safety of persons and things, maintenance of premises, machinery, equipment, raw materials and any other care that was needed for the subsequent resumption of tasks of the company. *The employer shall designate the employees that have to carry out such services.**

** The above text in italic was declared according to the Spanish Constitution by the Constitutional Court in judgment of April 8th, 1981, only with certain restrictions in its interpretation.*

Section 7. [Exercising the right to strike. Unlawful and abusive actions]

1. The right to strike must be made precisely by ceasing the provision of services for affected employees and without occupying the workplace or any of its dependencies.

2. The rotating strikes, those made by workers providing services in strategic sectors in order to interrupt the production process, the rule or regulation and, in general, any form of collective disturbance in the work system other than the strike, shall be considered illegal or abusive actions.

Section 8. [Establishment of procedures for resolving conflicts that give rise of a strike. Effectiveness of the agreement to end the strike]

1. Collective agreements may lay down additional rules relating to procedures for resolving conflicts that give rise of a strike and the resignation of the exercise of the right to strike during its term.

2. From the time of notice and during the strike, the strike committee and the employer, the representatives appointed by the various committees to strike and the employers concerned, if it is such the case, must negotiate to reach an agreement without prejudice of the right of the employees to terminate the strike at any time. The pact to end the strike shall have the same efficacy as what is agreed in a collective agreement.

Section 9. [Mediation of the Labour Inspection to resolve the conflicts that give rise of a strike]

The Labour Inspection may exercise its role of mediation since the notice of strike in order to resolve the conflict.

Section 10. [Agreement by the Government of the resumption of work activities and measures to ensure the functioning of public services during the strike]

*The Government, at Ministry of Labour's proposal, taking into account the duration or the consequences of the strike, the positions of the parties and the serious damage to the national economy, may order the resumption of work activity for a maximum period of two months or so completely by the establishment of compulsory arbitration. Breach of this agreement may result in the application of Articles 15 and 16.**

** The above text in italic was declared according to the Spanish Constitution by the Constitutional Court in judgment of April 8th, 1981, only with certain restrictions in its interpretation.*

When the strike is declared in companies responsible for providing any kind of public or recognized and urgent need and under circumstances of particular gravity, the authorities may agree on necessary measures to ensure the operation of services. The Government also may take such measures for appropriate intervention.

Section 11. [Illegal strike]

The strike is illegal:

a) When it is declared or held for political reasons or for any other purpose not related to the professional interests of the employees concerned.

b) For sympathy or support, unless it *directly* affects the professional interest of those who promote or support them.*

* *The above text in italic was declared according to the Spanish Constitution by the Constitutional Court in judgment of April 8th, 1981, only with certain restrictions in its interpretation.*

c) When is intended to alter, within its period of validity, what it was agreed in a collective agreement or award.

d) In the event of contravention of the provisions of this Act or as expressly agreed in the Collective Agreement for the settlement of conflicts.

(...)

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.

Yes. Article 28.2 of the Spanish Constitution provides that “The right of workers to strike in defense of their interests is recognized. The law governing the exercise of this right shall establish the safeguards necessary to ensure the maintenance of essential public services.

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?

Of course the European Social Charter and the Eu Law applies directly to Spain regarding industrial relations, but as our Constitution establishes widely the right to strike there have not been a relevant practice to use those regulations in order to establish the sense of national law on an industrial action related to the right to strike.

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.

According to Section 15 c) of the Spanish Act 7/2007, regulating the Basic Statute of Public Employees, every public employee (even civil servant or public employee) is entitled to the right to strike, safeguarding the maintenance of essential public services. According to section 30.2 “Those who exercise the right to strike shall not be entitled to any salary for the time during which were on strike, although the salary deduction shall not punish the employee to participate in the strike, or affect to the Statutory regime of Social Security benefits”. According to section 95.2 it is a serious breach to participate in actions limiting the right to strike or not accomplishing the maintenance of the essential services during a strike.

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?

See answer II.2 above.

7. Is conciliation and/or arbitration obligatory prior to a strike?

No, but there are sector collective agreements that provides mainly conciliation and mediation measures prior to start a strike, and exceptionally arbitration measures.

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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?

There is only a right to five days previous notice under Section 3.3 of the RDL 17/1977, but when the strike affects public services, the previous notice is extended up to ten days before its beginning.

Specifics of strikes in the “public sector”

1. Are strikes in the public sector generally legal or absolute illegal?

Generally legal. Strikes in the public sector are contemplated as legal, in principle, in Section 4 RD-L 17/1977 (translated); and submitted to special preconditions in Section 10 RD-L 17/1977 (translated).

2. Are strikes in the public sector only legally permitted according to certain preconditions? If so, please name them.

The special preconditions are: 1) Notice with ten days in advance to the Labour Administration and to the employer. 2) “Maintenance of the essential services” through emergency task provided by employees of the same office or workplace (*servicios mínimos*); the determination of the emergency task is up to the public power politically responsible of the essential service. 3) Strike in the essential services may be submitted, under exceptional circumstances, to compulsory arbitration.

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)?

A) The maintenance of the essential services is, obviously, more demanding in certain sensitive areas of the public sector; then, in these areas, the emergency task (“*servicios mínimos*”) during the strike may be (and use to be) a higher percentage of the staff.

B) The proceeding of the strike (declaration, start, evolvement) is similar but not exactly the same for workers in essential services than for public servant in essential services.

C) Right to strike is not recognized to policemen (*Ley Orgánica 2/1986, Ley Orgánica 4/2010*), nor to the military (*Ley 85/1978*).

D) Judges and prosecutors? Not expressly foreseen in legislation; not any case law in the matter (fortunately, lack of experience); the answer is probably not, because judges and prosecutors are not entitled to the freedom of union (Constitution, art. 129).

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?

Yes, in general; the volume of the emergency service depends on the “sensitivity” of the sector in the circumstances of the strike. See under 2.

5. Are there particular deadlines (refer to II/8) for strikes in the public sector?

The notice in advance (ten days) of the strike (Section 4 DLRT) has a twofold purpose: a) to enable the employer and third parties to take measures to prevent the negative consequences of the strike in the essential services, and b) to allow for further negotiations in order to settle the dispute. La Ley 7/2007 (Section 45) foresees a special Regulation for the settling of labour disputes (mediation, arbitration) in the public sector; this regulation is not yet approved.

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)?

Not in a normal situation. Yes in a “Not-state” (in german, *Notstand*) declared by the government under strict qualifications (*Ley Orgánica 4/1981*). Before that date there were some strategic sectors strikes in which employees were replaced by the military, but that was because there was a special Law that lost its force afterwards, and under which it was not necessary to declare de Not-

state situation in order to decide the military replacements. The declaration of the Not-state requires a situation of “catastrophe”, “calamity”, “sanitary crisis”, “lacking of supplies”, etc. Not-state of emergency has been declared once in the whole time of de Constitution of 1978: December 2010 (strike of air controllers). Anyway, there are a few times (around twelve more or less) in the last thirty years that a strike has been submitted to compulsory arbitration under section 10 of the Act 17/77 (public transportation, cleaning companies, and companies related to air traffic).

7. Could (labour-) courts suspend a strike in the public sector (or declare it illegal) at the request of the government (or someone else)?

The labour courts are competent to declare illegal a strike as collective situation, and to declare illegal the participation of a worker in a strike (illegal strikes, not-fulfilment of the task-emergency). But they are not expressly entitled to suspend the strike, and actually they do not.

8. Under what conditions could such court order be issued? Please outline a typical example of a real court case.

See 6 and 7. It is up to the Government to cope directly with specially troubled situations arisen in certain strikes. Two real cases of industrial disputes in air traffic: 1) July 2002, airlines pilot; the Government closes temporarily the Airport of Madrid and appoints a compulsory arbitrator in order to settle the labour dispute between the air-pilots and the main aircraft company operating in Spain at that time. 2) December 2010, air controllers; the Government declares “Not-state” and subject the air controllers to “military discipline” (*militarización*). The courts competent for the revision of these decisions are the “administrative” courts.

- a) In what kind of court proceedings are request for a court order (refer to III/7)?

There is no example of a court order requesting, i.e., the continuation in case of strike of the activity or the fulfillment of the emergency task

- b) Can a court issue a (preliminary) injunction against the illegal or a legal strike?

Certainly not in legal strike. It is not expressly entitled to nor prevented from issuing an injunction against illegal strikes. Actually they do not. See 7.

- c) Who is entitled to apply for such a court order?

In the hypothetical (not actual) case of an injunction against an illegal strike, the police, we suppose.

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)?

See 3, 6 y 7. Besides, the behaviour (promotion and/or participation) of “collective desertion of service” by authorities and public servants, when it is “glaring illegal”, is a crime (Section 409 Criminal Code); specially, the desertion of sanitary services by “professionals” is also a crime (Section 196 Criminal Code).

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?

The strike is illegal because of a) lack of notice or premonition, and b) lack of emergency task (*servicios mínimos*). The union that has called out the strike is liable (but liability of unions in Spain is not very effective up till now). The participation in illegal strike is a breach of the contract of

employment punishable by the employer according the circumstances of the infraction; the disciplinary sanctions by the employer in case of breach of the employment are inflicted (when inflicted) most of the times to the promoters and not to the simple participants. The injunctive process to suspend the strike is not made use of; see 8.

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?

The strike is illegal because of a) lack of *servicios mínimos*, and (probably) b) exclusively launched by employees who are strategically placed in the whole organization of the service (Section 7.2 DLRT: “selective strike”). The Hospital may react by asking the intervention of the governmental authority.

Sweden

National reporter: Judge Cathrine Lilja Hansson, National Labour Court

I. Definition and general regulations

1. a) Privately organized essential public service doesn't belong to the public sector. The legal framework, the regulations, are mainly the same for the private sector and the public sector.

1. b) In The Public Employment Act (1994:260) are some certain rules for employees employed by the parliament and theirs authorities and in authorities belonging to the government. In The enabling act (1994:261) are certain rules concerning e.g. judges. The church is separated from the state since 1 January 2000 and is not included in the definition.

2. During the second quarter of the year 2011 80,3 % in the ages of 20–64 years and 68 % in the ages of 15–74 years were employed in an employment relationship.

Employees in the public sector were, for the same period, around 1.200.000 persons or 30 % of the employees in the age of 20–64.

3. About 73 % of the employees are unions-members. There is no statistics concerning specifically the public sector.

4. The year 2010 was 28.892 days lost due to legal strikes. The number of legal strikes was 7 and it affected 3.431 employees. The year 2009 were 1.014 days lost due to legal strikes. There were 3 legal strikes which affected 875 employees. There were also 3 illegal strikes. The lost of days was 546 and it affected 244 employees. There is no statistics concerning specifically the public sector.

II. The legal framework

1–2. The right to take industrial action in Sweden is constitutionally protected by Chapter 2, Article 14 of the Instrument of Government. Restrictions to this right can be made by an act of law or agreement.

The precise wording of the provision is:

“A trade union or an employer or employers' association shall be entitled to take industrial action unless otherwise provided in an act of law or under an agreement.”

In the Employment (Co-Determination in the Workplace) Act (1976:580) there are provisions that restrict the right to initiate or participate in industrial actions. (See the provisions concerning Labour-stability obligations, Sections 41–44, in the attached copy of this act.)

Generally an employer and an employee are not allowed to take part in a strike when they are bound by a collective bargaining agreement that is in force.

3. a) In the Laval-case.

3. b) Yes, if the court finds that the national rules are in conflict with EU-law.

4. See the answer to the questions 1–3 and 5 below.

5. Section 41 in the above mentioned act states certain aims which will make a strike unlawful. The aims stated under point 1 in that section is considered to express the fundamental principle that legal disputes are not supposed to be solved by using industrial actions.

6. Yes, that is the principal rule.

7. Section 45 in the above mentioned act states that a written notice must be given to the other party and the special Mediator Office before an industrial action is implemented. Even though this rule is obligatory it doesn't make the action taken unlawful if notice is not given. The organization risks however to pay damages. The following Sections 46–53 regulate the system of mediating in industrial disputes between the parties on the labour market. This function lies on the special Mediator Office. In the power of the office lies to appoint mediators to mediate in a dispute – even without the parties consent – when the Mediator Office considers that there is a risk for industrial actions or if industrial actions have already been commenced. One of the mediators tasks is to work to ensure that a party postpones or cancels industrial actions.

8. See the answer on question 7 about notice prior to industrial action. The notice shall be given at least seven working days in advance. As mentioned in the answer above a mediator also can try to persuade a party to postpone (or even cancel) an industrial action.

III. Specifics of strikes in the “public sector”

1-3. Strikes in the public sector are generally legal.

There are however limitations according to the The Public Employment Act.

– In work that comprises the exercise of official power or which is unavoidably necessary in order ensure the exercise of official power, industrial actions may only be implemented in the form of lockout, strike, refusal of overtime or blockade of new employment.

– Industrial actions aimed at influencing domestic political circumstances are not allowed.

There are also limitations according to collective agreements. In the public sector where the state is employer there are three different agreements with rules and limitations. Similar rules are found in the public sector where the municipalities are employment.

– There are for instance rules about exempting industrial actions in sectors that are considered to be vital for the state or community, for instance national security, law and order, medical care. The parties also agrees on to avoid actions that are assumed to cause serious disorders in the economy or the public supply. There is a special board dealing with these matters. The board has the power to make a statement but can not prohibit the action.

– There are also rules which exempts categories of civil servants, for instance employees that are representing the employer.

– There are rules on avoiding industrial actions that violates politics, the democracy, and an other certain board dealing with those matters.

4. There are no rules on a specific emergency service.

5. There are no specific deadlines for industrial actions in the public sector. If a dispute arises as to whether a particular industrial action is allowed under the The Public Employment Act, the action may however not be implemented before the dispute has been finally determined.

6-9. The Labour Court cannot suspend a strike in the public sector or declare it illegal if it is legal according to the law or an agreement. An “lawful” industrial action can however be prohibited through a law, decided by the parliament. This has happened once, in 1971.

IV. Résumé

a) The strike is illegal if the parties are bound by an collective agreement that is in force. In that case the Laubour Court can, in a decision, tell the employees to go back to work.

If for instance the parties are negotiating a new collective agreement, in practice amendments in the old one, and are not bound by the old one it is legal to take industrial action. In that case its not possible for the Court to suspend a strike. The union has in the case mentioned, violated the rule on written notice – seven days ahead an industrial action – but this does not mean that the action is unlawful. The Mediator Office will probably act and has the power to appoint negotiation leaders or mediators. There is also a possibility for the Office, at the request of a mediator, to postpone an industrial action for a period of at most 14 days.

The railroad is run by a state-owned company (SJ AB), which is a member of an employers organization in the private sector. The parties are therefore not bound by the above-mentioned three collective agreements in the public sector. It's unknown to us if there is an collective agreement for SJ AB that has a similar regulation on conflicts that affects vital interests of the society, as communications.

b) Such a strike is legal. We don't recognize the term "emergency service".

Hospital H can apply, at the Union, for dispensation and go to the board appointed by the parties, which has the power to make a statement on whether the conflict is damaging vital interests of the community. If it's only one hospital that is affected, the strike probably is not considered to be in conflict with the rules to avoid strikes in sectors that are vital for the community.

Venezuela

National reporter: Dr. Juan Rafael Perdomo, Magistrado, Tribunal Supremo de Justicia

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?

R. In Venezuela, the public sector only includes public entities such as the Republic, states, municipalities or autonomous institutes, public entity or enterprise over which the Republic, states or municipalities have decisive and permanent control in terms of management and administration.

The main public services that are organized privately, such as electric power – in a few areas of the country – transport, health (clinics), universities, are not part of the public sector.

b) Are special institutions – e.g. the Church – included in the definition of the term?

R. No. The Civil Code states that churches from any creed are moral, public and corporate bodies and, therefore, are able to acquire rights and obligations. Among them, the Catholic Church and other churches are included, as they are constituted in the country to worship and are recognized by the Executive as bodies which internal laws are not contrary to the principles of public order contained in the Constitution and Laws of the Republic (Article 19.2 of the Civil Code (CC) from July 26th, 1982). However, no church is considered as part of the "public sector". In relation to the Catholic Church, see the Act of ratification of the Agreement signed between the Republic of Venezuela and the Holy Apostolic See on September 24th, 1964.

Websites: http://www.gobiernoenlinea.ve/docMgr/sharedfiles/Codigo_Civil.pdf

http://www.pgr.gob.ve/cgi-win/be_alex.exe?Acceso=T020700004328/1&Nombrebd=bibconsulta

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?

R. Currently, – June 2011 – the employment rate is 91,6%. We could not find information about the number of employees in the public service sector.

Website: http://www.mintra.gov.ve/index.php?option=com_wrapper&view=wrapper&Itemid=61

3. How many employees are unions-members in general; how many civil servants are unions-members in particular?

R. There are no reliable sources of information. However, it is known that the number of union members is generally low.

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?

R. No. However, it is important to highlight that there was an “oil strike” in 2002-2003, which comprehended the illegal suspension of all the activities in the oil industry with the aim of overthrowing the President of the Republic, which caused inestimable damages to the country.

Website: http://es.wikipedia.org/wiki/Paro_petrolero_de_2002-2003

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.

R. The laws to solve industrial disputes are the following:

a) The Organic Labor Law of June 19th, 1997.

Website: http://www.tsj.gov.ve/legislacion/legislacion/Organic_Labor_Law.html

b) Rules of the Organic Labor Law of April 28th, 2006.

Website: http://www.ucv.ve/fileadmin/user_upload/asesoria_juridica/reg_orga_trabajo.pdf

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.

R. No.

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.

R. All workers from the public and private sectors have the right and freedom to strike, according to the conditions established by the law. (Article 97 of the Constitution of the Bolivarian Republic of Venezuela of March 24th, 2000).

Website: <http://www.tsj.gov.ve/legislacion/constitucion1999.htm>

3. Do you directly apply provisions of the European Social Charter (ESC) or EU law on cases concerning industrial action?

R. No, only national legislation is applied, particularly, mandatory constitutional and legal dispositions. To solve specific cases, these steps must be respected:

a) The collective labor convention or arbitration, if applicable;

b) The work contract;

c) The principles the inspire the Labor Legislation, such as those contained implicitly or explicitly in constitutional declarations or in agreements and recommendations adopted in the heart of the International Labor Organization or in the case law and national doctrine;

d) The costume and use, when they are not opposed to the aforementioned legal dispositions and principles;

-
- e) The principles universally admitted by the Labor Law;
 - f) The general rules and principles of Law; and
 - g) Equity (Article 60 of the Organic Labor Law)

a) If so, please sketch a situation, in which aforementioned legislation has played a decisive role.

R. None.

b) Would your national court apply EU-legislation (or ESC) interpreting national law on industrial action?

R. No.

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.

R. No, there are no particular rules for strikes in the public sector. Strikes are regulated by the Fifth Section, Chapter III of the Negotiations of Collective Conflicts, Chapter VII Collective Labor Law of the Organic Labor Law (Articles 494 to 506).

The workers of the private and public sectors must assure the essential services related to the health of the population and institutions, or to the maintenance of machinery and enterprise security. All this is established in the collective agreement. If the parties have not agreed on which services are essential, they may agree these terms before the administrative authority. In case of disagreement, they may ask the administrative authority to establish such terms. The parties may use such terms as administrative or legal resources. The default of such obligation renders any strike illegal, which would be considered as a serious fault that could lead to the redundancy of the responsible workers. This regulation is applied in several Latin-American countries. Strikes are regulated by special dispositions (Article 498, 499 of the Organic Labor Law).

5. Are there any legal limitations concerning the aim in your country (e.g. rehiring of unionist X)?

R. Yes. The strike must be based on a claim about the conditions given by the employer for the strike to be celebrated under collective convention and to respect compliance. Plus, the union or coalition must represent the majority of the workers; they must have gone through all previous legal and contractual procedures and must notify the authorities to avoid breach of peace. (Article 497 of the Organic Labor Law).

However, it is possible to organize a strike for the rehiring of an union member if he/she was dismissed with no fair justification and if it affects the working conditions of the union members, in particular, and the rest of the workers, in general, as they are losing the person that represents their rights and because, in most of the cases, this means a violation of the collective convention and the law.

6. Does a strike only have to be called out and led by a union in order to be lawful?

R. Yes. To exercise the right to strike in Venezuela, it is only necessary to file conflictive claims to proceed to the collective suspension of the work or any other activity that affects the regular development of the productive process. The union or coalition must represent the majority of the workers; they must have gone through all previous legal and contractual procedures and must notify the authorities to avoid breach of peace. (Article 497 of the Organic Labor Law).

In case of doubts about which is the most representative union in relation to an eventual strike of collective conflict, the administrative authority may summon a union referendum, as established by law (Article 115 of the Rules of the Organic Labor Law).

7. Is conciliation and/or arbitration obligatory prior to a strike?

R. Collective negotiation and conciliation established by law are mandatory. The working activities may not be interrupted before using these instruments. However, using these instruments, does not infringe the right of the union to formally initiate a conflict through filing its claims, which may be of conflictive or conciliatory character, according to the petitioner (Articles 470 472 and 497 of the Organic Labor Law).

If the conciliation process does not succeed, a board of arbitration may be organized. The decisions of this board are mandatory for the parties for a determined period of time. (Articles 479, 490, 493 of the Organic Labor Law)

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?

R. Yes. To exercise the right to strike in Venezuela, it is only necessary to file conflictive claims. After filing this document, there is a brief period of one hundred and twenty hours (120) to respect to proceed to the collective suspension of the work or any other activity that affects the regular development of the productive process. (Article 477 of the Organic Labor Law).

Specifics of strikes in the “public sector”

1. Are strikes in the public sector generally legal or absolute illegal?

R. They are legal, although there are often illegal actions that accompany them. All workers from the public and private sectors have the right and freedom to strike, according to the conditions established by the law. (Article 97 of the Constitution of the Bolivarian Republic of Venezuela of March 24th, 2000).

2. Are strikes in the public sector only legally permitted according to certain preconditions? If so, please name them.

R. No, there are no particular preconditions for strikes in the public sector. Strikes are regulated by the Fifth Section, Chapter III of the Negotiations of Collective Conflicts, Part VII Collective Labor Law of the Organic Labor Law (Articles 494 to 506 of the Organic Labor Law).

The workers of the private and public sectors must assure the essential services related to the health of the population and institutions, or to the maintenance of machinery and enterprise security. All this is established in the collective agreement. If the parties have not agreed on which services are essential, they may agree these terms before the administrative authority. In case of disagreement, they may ask the administrative authority to establish such terms. The parties may use such terms as administrative or legal resources. The default of such obligation renders any strike illegal, which would be considered as a serious fault that could lead to the redundancy of the responsible workers. This regulation is applied in several Latin-American countries. (Article 498 of the Organic Labor Law).

Although the range and tradition of the right to strike in Venezuela, it is important to highlight that such right is limited. On the contrary, it is submitted to a series of regulations, which include the power of authorities to order the resumption of activities when they consider that the strike, due to its particularities, is damaging the life or security of the population. This administrative order does not end the collective conflict but demands the dispute to be submitted to arbitration (Article 504 of the Organic Labor Law).

For instance, there was an actual violation of these rules with the “oil strike” that took place in 2002-2003, which lasted more than two months and caused inestimable losses to the country.

Website: http://es.wikipedia.org/wiki/Paro_petrolero_de_2002-2003

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)?

R. No. The legitimacy of the strike does not depend on the affected area of the public sector or officers. It depends rather on the compliance than on the law. The workers of the private and public sectors must assure the essential services related to the health of the population and institutions, or to the maintenance of machinery and enterprise security. All this is established in the collective agreement or, in the lack of such agreement, by the law. (Article 498 of the Organic Labor Law).

However, “illegal strikes” are more frequent than legal ones.

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?

R. a) Yes. Those workers in conflict, even though they are on strike, must assure the essential services related to the health of the population and must maintain the machinery, in order to avoid problems in the ulterior resumption of the work and serious deterioration. Moreover, those workers in charge of security and maintenance of the working places must continue working. In such effects, the employer and his representatives are forced to give them access to come to work and help them in delivering their responsibilities.

Those who are obliged to continue working are strictly essential to preserve the hygiene and security and the workplace, according to the technical requirements of the working activity.

The union and employer shall agree on the number of employees that will continue working.

The union may file claims when, to its consideration, workers are being obliged to work without enough justification (Article 498 of the Organic Labor Law)

b) The essential services are organized as long as the specific area of the public sector requires them.

5. Are there particular deadlines (refer to II/8) for strikes in the public sector?

R. No, there are no particular rules for strikes in the public sector. To exercise the right to strike in Venezuela, it is only necessary to file conflictive claims. After filing this document, there is a brief period of one hundred and twenty hours (120) to respect to proceed to the collective suspension of the work or any other activity that affects the regular development of the productive process. (Article 487 of the Organic Labor Law).

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)?

R. Yes. Although it is important to highlight that the right to strike is limited. On the contrary, it is submitted to a series of regulations that include the power of administrative authorities – the National Executive Power – to order the resumption of activities when they consider that the strike, due to its particularities, is damaging the life or security of the population. This administrative order does not end the collective conflict but demands the dispute to be submitted to arbitration (Article 504 of the Organic Labor Law).

7. Could (labor-) courts suspend a strike in the public sector (or declare it illegal) at the request of the government (or someone else)?

R. No. Labor courts have no jurisdiction to address claims concerning conciliation or arbitration. (Article 29.1 of the Organic Labor Law of August 13th, 2002).

Website: http://www.tsj.gov.ve/legislacion/ley_organica_procesal_trabajo.htm

As an exception, a claim to protect constitutional rights may be interposed if the workers in strike do not assure the essential services, for instance, in the health sector, in order to force them to render such services not to solve the collective conflict.

Website: <http://www.tsj.gov.ve/legislacion/loadgc.html>

8. Under what conditions could such court order be issued? Please outline a typical example of a real court case.

R. Such court order cannot be issued. Only the administrative authority – the National Executive Power – may order the resumption of activities when they consider that the strike, due to its particularities, is damaging the life or security of the population. This administrative order does not end the collective conflict but demands the dispute to be submitted to arbitration (Article 504 of the Organic Labor Law), with the exception mentioned in question 7.

a) In what kind of court proceedings are request for a court order (refer to III/7)?

R. None. In the case of the exception mentioned in question 7, a special (oral) legal procedure is required.

Website: <http://www.tsj.gov.ve/legislacion/loadgc.html>

b) Can a court issue a (preliminary) injunction against the illegal or a legal strike?

R. No. Labor courts have no jurisdiction to address claims concerning conciliation or arbitration. (Article 29.1 of the Organic Labor Law of August 13th, 2002), with the exception mentioned in question 7.

c) Who is entitled to apply for such a court order?

R. No entity from the Judicial Power. Only the administrative authority – the National Executive Power –, with the exception mentioned in question 7.

9. According to the specific national proceedings, how are these cases regulated, in which existential labor must be provided and could potentially be affected by strikes (e.g. the intensive care unit of a hospital or the fire brigade)?

R. Those workers in conflict, even though they are on strike, must assure the essential services related to the health of the population and must maintain the machinery, in order to avoid problems in the ulterior resumption of the work and serious deterioration. Moreover, those workers in charge of security and maintenance of the working places must continue working. In such effects, the employer and his representatives are forced to give them access to come to work and help them in delivering their responsibilities.

Those who are obliged to continue working are strictly essential to preserve the hygiene and security and the workplace, according to the technical requirements of the working activity.

The union and employer shall agree on the number of employees that will continue working.

The union may file claims when, to its consideration, workers are being obliged to work without enough justification (Article 498 of the Organic Labor Law)

Moreover, the default of rendering the essential public services in areas such as health, public health, water service, electric power, hydrocarbons, food, civil defense, garbage collection, customs, justices, environmental protection, public transportation, air traffic, social security, education and telecommunications determines the illegality of the (Article 181 and 182 of the Rules of the Organic Labor Law).

The parties may regulate, in the collective convention, the essential services to be rendered. In case they do not agree on these terms, they could be established through the board of conciliation, without damage that, in case of disagreement between the parties, the administrative authority – National Executive Power – may take a determination on the subject (Articles 183, only paragraph, 184 and 186 of the Rules of the Organic Labor Law).

As an exception, a claim to protect constitutional rights may be interposed if the workers in strike do not assure the essential services, for instance, in the health sector, in order to force them to render such services not to solve the collective conflict.

Website: <http://www.tsj.gov.ve/legislacion/loadgc.html>

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?

R. No. The union has to abide by the procedure that has been legally established, which consists on filing the conflictive claims. After filing this document, there is a brief period of one hundred and twenty hours (120) to respect to proceed to the collective suspension of the work or any other activity that affects the regular development of the productive process. (Article 487 of the Organic Labor Law).

If the union does not proceed according to the law, without guaranteeing the essential services, such default render the strike illegal. Therefore, the administrative authorities – the National Executive Power – may order the resumption of activities when they consider that the strike, due to its particularities, is damaging the life or security of the population. (Article 504 of the Organic Labor Law).

In Venezuela, courts have no jurisdiction to address claims concerning conciliation or arbitration. (Article 29.1 of the Organic Labor Law).

As an exception, a claim to protect constitutional rights may be interposed if the workers in strike do not assure the essential services, for instance, in the health sector, in order to force them to render such services not to solve the collective conflict.

Website: <http://www.tsj.gov.ve/legislacion/loadgc.html>

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?

R. Yes. Those workers in conflict, even though they are on strike, must assure the essential services related to the health of the population. The services they are forced to render are strictly essential. Therefore, they are only forced to perform emergency surgeries.

In order to do this, they must demand the application of the clause of the collective convention concerning the essential services or, by default, such services may be established through a conciliation board, without damage that, in case of disagreement between the parties, the administrative authority – National Executive Power – may take a determination on the subject (Articles 183, only paragraph, 184 and 186 of the Rules of the Organic Labor Law).

If the workers still deny to render the essential services, such default determines the illegality of the strike and hospital H may demand the administrative authorities – the National Executive Power – to order the resumption of activities for considering that the strike, due to its particularities, is damaging the life or security of the population. (Article 504 of the Organic Labor Law).

As an exception, a claim to protect constitutional rights may be interposed if the workers in strike do not assure the essential services, for instance, in the health sector, in order to force them to render such services not to solve the collective conflict.

Website: <http://www.tsj.gov.ve/legislacion/loadgc.html>

Appendices

Finland

Act on Mediation in Labour Disputes (420/1962)

(as amended by several acts, including No. 354/2009)

Chapter 1. National conciliator, conciliator and conciliation board (354/2009)

Section 1. (354/2009)

For the purpose of promoting the functioning of the labour market and providing mediation in labour disputes between employers and workers or civil servants, there shall be a permanent position for a national conciliator. In addition, there shall be a sufficient number of part-time conciliators.

Provisions concerning the appointment of a national conciliator and his deputies, qualification requirements for a national conciliator, and the assignment of conciliators, requirements for assignment as a conciliator and conciliators' terms of office are laid down by Government decree.

A conciliation board may be appointed for a particular conciliation duty. Provisions concerning the appointment of a conciliation board and its assistants are laid down by Government decree.

Section 2. Repealed (1198/1987)

Section 3. (354/2009)

The national conciliator shall have an office attached to the Ministry of Employment and the Economy. The national conciliator shall act as the head of this office. Provisions concerning the appointment of the national conciliator's office staff and appointment to their duties are laid down by Government decree.

It shall be the duty of the national conciliator:

- 1) in co-operation with the employment market organisations, to endeavour to further the relationships between employers and workers or civil servants and their organisations;
- 2) at the request of the parties, to preside over negotiations for the conclusion of workers' and civil servants' collective agreements or appoint a conciliator to preside over such negotiations;
- 3) to direct conciliation in labour disputes throughout the country and, when necessary, appoint a conciliator for a particular conciliation duty, to act independently or as an assistant to the national conciliator;
- 4) to carry out the other duties entrusted to him or her by the Council of State.

Section 4. Repealed (354/2009)

Section 5. (354/2009)

It shall be the duty of a conciliator to carry out such other duties as may be entrusted to him by the competent national conciliator under section 3.

Section 6. The provisions governing the disqualification of judges shall apply to the disqualification of conciliators.

Chapter 2. Arrangement of stoppages of work

Section 7. (354/2009)

It shall not be permissible for a stoppage of work to be extended or commenced in connection with a labour dispute unless the office of the national conciliator and the other party to the dispute have been given notice in writing at least two weeks beforehand, with an indication of the causes of the projected stoppage or the extension of the stoppage, the date of its commencement and its scope.

The party giving such notice shall not be permitted, without the consent of the other party, to postpone the commencement or extension of the projected action until a later date than is stated in the notice or to restrict such action to a more limited field.

Section 8.

If a labour dispute is intended to give rise to a work stoppage or the extension of the same that is considered, in the light of its scope or the nature of the sector involved, to affect essential functions of society or to prejudice the general interest to a considerable extent, the Ministry of Employment and the Economy may, at the proposal of the conciliator or conciliation board involved, and with the object of reserving sufficient time for mediation, prohibit the projected stoppage or its extension or commencement for a maximum of fourteen days from the announced date of its commencement. In the case of a dispute over the terms of employment of civil servants, the Ministry may, for special reasons, at the proposal of the conciliator or conciliation board involved, extend its prohibition of the work stoppage for an additional seven days. The parties shall be notified of the prohibition at least three days prior to the date on which the action was intended to begin, or, in the latter case, before the expiry of the prohibition period. (354/2009)

Neither party shall be permitted, without the consent of the other party, to commence a projected stoppage of work or to extend such a stoppage after more than three days have elapsed since the end of the prohibition. The date on which action in connection with a labour dispute is to begin shall invariably be notified to the conciliator and to the other party at least three days before the prohibition ends.

Chapter 3. Conciliation procedure**Section 9.** (354/2009)

As soon as the national conciliator or a conciliator appointed by him or her has received notice under section 7, he shall take such measures as he deems appropriate to settle the dispute. He shall also have power to take action whenever he becomes aware of a labour dispute that endangers industrial peace.

Section 10.

A conciliator shall have power, whenever he deems fit or if either of the parties so requests, to convene the parties for negotiations; during such negotiations he shall act as chairman and shall determine in what manner and what order the matters in dispute should be considered.

The parties shall attend the negotiations appointed by the conciliator, or shall arrange to be represented at such negotiations, and shall supply such information as the conciliator may deem necessary. Either party may make it a condition that the information supplied should not be revealed without its consent to the other party.

Either before or during the negotiations the conciliator may request the parties to consider whether the date for the commencement of any action that is projected in connection with the labour dispute should not be postponed until the results of the negotiations are known.

Section 11.

In the discharge of his duties the conciliator shall, after making himself thoroughly conversant with the dispute, with the circumstances of importance in forming an opinion thereon and with the demands of the parties, endeavour to induce the parties to determine the precise matters in dispute and to limit them as far as possible, and shall seek to bring about a compromise between them on terms as close as possible to their own proposals and offers, suggesting such concessions and adjustments as appear to him to be appropriate and fair.

Section 12.

In connection with the conciliation proceedings a conciliator may, on his own initiative, hear experts or other persons whom he may require for the purpose of obtaining information; if they so request, they shall be paid such compensation out of public funds as the conciliator considers reasonable.

The expenses incurred by the parties in connection with the mediation shall be borne by the parties themselves.

Section 13.

If a conciliator fails to settle a dispute by negotiation or in any other manner, he may present the parties with a draft settlement, prepared in writing, at the same time recommending them to accept it within a short time limit, to be fixed by him. The draft settlement shall not be made public without the conciliator's consent, until the conciliation proceedings are successfully completed or are broken off.

If the parties do not accept the draft settlement, the conciliator shall consider whether the proceedings should be continued or stopped.

If the conciliator decides that the necessary conditions for proposing a draft settlement, as prescribed in the first paragraph of this section, are not fulfilled, he may break off the conciliation proceedings.

Section 14.

If a settlement is reached, the terms shall be entered in the record kept by the conciliator.

Section 15. (354/2009)

If the parties have set up a special body for the purpose of mediating in a labour dispute or determining it, notice of the fact shall be given to the office of the national conciliator. No steps to conciliate such a dispute may be taken unless the body has failed in its efforts to settle the case or the circumstances indicate that it is not able to undertake its task or to handle it successfully.

Chapter 4. Miscellaneous provisions

Section 16. (1179/1993)

This Act shall not be applied to any dispute over a workers' or civil servants' collective agreement that calls for consideration by the Labour Court or for arbitration in accordance with the terms of the agreement. Once the conciliator is informed that a dispute is of this nature, he shall so notify the parties.

Section 17. (354/2009)

Any person failing to comply with the requirements of section 7 or the second paragraph of section 8 of this Act or with a prohibition imposed under section 8 (1) shall be sentenced to a fine for *a violation of the Act on Mediation in Labour Disputes*.

The public prosecutor shall not institute proceedings for any failure to comply with the requirements of section 7 of this Act unless the injured party presses charges with respect to such a crime.

Section 18. (799/1989)

A conciliator shall make no unauthorised disclosure of any trade or business secret that has come to his knowledge in performing his duties, nor of any matter that has been entrusted to his knowledge subject to the condition mentioned in the second paragraph of section 10.

The punishment for breaking the obligation to secrecy of civil servants and workers of public bodies is given in chapter 40, section 5 of the Criminal Code.

Section 19.

The authorities shall be required, if so requested by a conciliator, to give him any assistance he may need for the performance of his duties under this Act.

Section 20. (354/2009)

The remuneration payable to a conciliator and to the chairman and members of a conciliation board, and any expenses incurred in connection with conciliation proceedings shall be covered in accordance with the grounds for remuneration specified by the Ministry of Employment and the Economy.

All documents drawn up or given by a conciliator shall be exempt from any fees.

Section 21. Repealed (354/2009)

Section 22.

This Act shall come into operation on 1 October 1962; the Act of 12 July 1946 respecting conciliation in labour disputes (570/1946) shall stand repealed.

Part of the labour code related collective labour disputes

Chapter I.

Collective Labor Disputes

Section 194.

(1) Any dispute arising in connection with employment relationships (collective labor dispute) between the employer and the workers' council or between the employer (the employer's interest representation organization) and the trade union, which does not qualify as a legal dispute, shall be settled by negotiations between the parties concerned.

(2) Negotiations shall commence upon the submission to the other party of a written statement by the party initiating the talks.

(3) The action serving as the basis of the dispute shall not be executed during the time of negotiations, not to exceed seven days, furthermore, the parties shall refrain from taking any action that may jeopardize an agreement.

Mediation

Section 195.

(1) In the interest of settling a conflict, the parties may use the services of an independent mediator who is not involved in the conflict. Parties shall jointly request the mediator to participate.

(2) The mediator may request information and data from the parties, to the extent deemed necessary, during negotiations. In such event the deadline specified in Subsection (3) of Section 194 for the provision of information shall be extended by the deadline prescribed for the disclosure of data, not to exceed five days.

(3) Upon the conclusion of negotiations, the mediator shall summarize in writing the parties' positions and the results of the negotiations, and deliver it to the parties.

Arbitration

Section 196.

(1) In the interest of settlement of a collective labor dispute, the parties may employ an arbitrator based on an agreement. The decision of the arbitrator shall be binding, if so agreed by the parties in advance in a written statement.

(2) The arbitrator may set up a conciliation committee, to which the parties shall delegate an equal number of representatives.

Section 197.

An arbitrator must be employed for disputes in connection with

- a) Section 24 (trade union right to use the employee's tool and accommodation);
- b) Section 63, regarding the extent (the cost of the election and the operation of the workers' council) ;
- c) Subsection (1) of Section 65, in the event of disagreement (the co-determination right of the workers' council).

Section 198.

(1) An agreement concluded by negotiations (Sections 194-195) or the arbitrator's decision (Sections 196-197) shall be construed as a collective contractual agreement.

(2) In the course of negotiations and arbitration, in agreement with the parties, experts or witnesses may be employed or consulted.

(3) Unless otherwise agreed, substantiated and necessary costs incurred in connection with the negotiations or the arbitration proceeding shall be borne by the employer.

Israel – Appendix 1

SETTLEMENT OF LABOR DISPUTES ACT, 5717 – 1957

CHAPTER ONE: INTRODUCTION

§ 1. LABOR RELATIONS OFFICERS

The Minister of Labor and Social Affairs shall appoint a chief labor relations officer (hereinafter – “the Chief Officer”) and labor relations officers (hereinafter – “Officers”); notice of appointment shall be promulgated in *Reshumot*.

§ 2. LABOR DISPUTE

For the purpose of this Law, “a labor dispute” means a dispute regarding any of the matters listed hereunder arising between an employer and its employees or some of them, or between an employer and an employees' organization, or between an employers' organization and an employees' organization, but does not include a dispute of an individual; the matters are:

- (1) the signing, renewal, amendment or termination of a collective agreement;
- (2) the determination of employment conditions;
- (3) the acceptance or refusal of an employee for employment, or the termination of a person's employment;
- (4) the determination of rights and obligations deriving from employer-employee relations.

§ 3. THE PARTIES TO A LABOR DISPUTE BETWEEN AN EMPLOYER AND ITS EMPLOYEES

In a labor dispute between an employer and its employees or some of them, the parties to the dispute are the employer and the employees' organization representing the majority of the employees concerned in the dispute or, where there is no employees' organization as aforesaid, the representation elected by the majority of those employees either for any matter or for that labor dispute.

§ 4. REPRESENTATION OF AN EMPLOYER

An employer being a party to a labor dispute may be represented by an employers' organization in relation to any matter pertaining to the dispute, and the person empowered to act on behalf of that organization shall have powers tantamount to those of the employer.

CHAPTER TWO: MEDIATION

§ 5. DELIVERY OF NOTICES OF A LABOR DISPUTE

A party to a labor dispute may give notice of the dispute to the Chief Officer; the contents, form and mode of delivery of the notice shall be prescribed in regulations by the Minister of Labor and Social Affairs.

§ 5A. OBLIGATION TO GIVE NOTICE OF A STRIKE OR LOCKOUT

Notwithstanding that stated in section 5, a party to a dispute is obligated to give notice, as stated in that section, to the other party and to the Chief Officer of every strike or lockout, as the case may be, at least fifteen days before the initiation thereof.

§ 5B. PRECEDENCE OF A COLLECTIVE AGREEMENT

If a different arrangement from that stated in section 5A. has been specified in a collective agreement, the provisions prescribed in the collective agreement shall apply.

§ 5C. EXCLUSION FROM APPLICABILITY

The Minister of Labor and Social Affairs, with the approval of the *Knesset* Labor and Social Affairs Committee, may prescribe in regulations types of disputes or branches of employment to which the provisions of section 5A shall not apply.

§ 6. DECISION-MAKING REGARDING MEDIATION

If a notice pursuant to sections 5 or 5A. has been delivered, or if the Chief Officer has been informed of a labor dispute in any other manner, the Chief Officer shall decide whether he shall mediate the dispute. If the Chief Officer decides to do so, he shall assume the role of mediator, unless the Minister of Labor and Social Affairs has assumed that role, or shall delegate that role to an officer or to a person specifically appointed by the Minister of Labor and Social Affairs for the settlement of that labor dispute.

§ 7. EFFORTS OF THE MEDIATOR TO SETTLE A DISPUTE

The mediator shall exert his best efforts to settle the dispute by way of negotiation, and may –

- (1) hold meetings with the parties, together or separately, hear their arguments and their proposals for the settlement of the dispute, and may submit proposals of his own for that purpose;
- (2) require the parties to give a reasoned answer to the allegations of the other party and to the proposals for the settlement of the dispute;
- (3) have recourse to the opinions of experts and of representatives of employees' organizations and of employers' organizations;
- (4) examine the economic position of the enterprise where the dispute has arisen, and any account-books and other documents likely to provide him with material for his investigation.

§ 8. POWERS OF THE MEDIATOR

(a) Within the scope of his functions pursuant to section 7, and for the purpose of carrying them out, the mediator may –

- (1) obtain any written or oral testimony, and question any person, if, in the mediator's opinion, this would have relevance to the settlement of the dispute; however, a person shall not be compelled to answer a question that is liable to incriminate him;
- (2) summon any person to attend the mediation meeting in order to give testimony or to submit a document in his possession, as well as examine him as a witness or require him to submit a document in his possession;
- (3) require any witness to confirm his testimony by oath or affirmation;
- (4) issue an order compelling a person to appear before him after failing to comply with a summons and failing to justify his absence to the mediator's satisfaction, and require him to pay the expenses caused by his refusal to obey the summons, the mediator and may fine him a sum not exceeding one hundred Israeli pounds;
- (5) impose a fine on any person, at a sum not exceeding one hundred Israeli pounds, who had been ordered by the mediator to give testimony under oath, to submit any document, to respond to the allegations of the other party as stated in section 7(2), or to enable an investigation as stated in section 7(4), and who has not complied as required and has not justified his non-compliance to the satisfaction of the mediator.

(b) A fine imposed pursuant to subsection (a) shall be collected in the same way that a fine imposed by a court is collected.

§ 9. AGREEMENT FOR THE SETTLEMENT OF A DISPUTE

If the parties have reached an agreement for the settlement of a labor dispute, whether of their own accord, or pursuant to the mediator's proposal, the mediator or the parties shall draw up a written agreement for this purpose specifying all conditions pursuant where to the dispute shall be settled; the agreement shall be signed by the parties and confirmed by the signature of the mediator.

§ 10. EXEMPTION FROM STAMP DUTY

An agreement signed pursuant to section 9 shall be exempt from stamp duty.

§ 11. TERMINATION OF MEDIATION WITHOUT AN AGREEMENT BEING REACHED

(a) If an agreement as stated in section 9 has not been signed within fourteen days of the date on which the parties were first summoned to appear before the mediator, the mediator shall terminate the mediation and

shall submit a report to the Chief Officer about the course of the mediation, the demands and proposals of the parties, and about his own proposals for the settlement of the dispute.

(b) With the consent of the parties, the Chief Officer may, in such manner as he shall deem fit, publish the report or a summary thereof.

§ 12. RESUMPTION OF MEDIATION

Upon receiving a report pursuant to section 11, the Chief Officer may propose to the parties that they resume the mediation, and if they consent thereto, the mediator shall resume the mediation and the provisions of this chapter shall apply to the resumed mediation.

§ 13. CONFIDENTIALITY

(a) Facts that come to the attention of the mediator during the course of the mediation that are not publicly known are presumed to be confidential, and the mediator shall not disclose them to any person, except to the extent required for the carrying out of his role and for the exercise of his powers.

(b) The penalty imposed on a person who contravenes the provisions of subsection (a) is one year of incarceration or a fine of 1,000 Israeli pounds.

§ 14. RESERVATION OF RIGHTS

If an agreement as stated in section 9 has not been signed, all that stated by the parties during the course of the mediation, any testimony heard therein and any proposal for the settlement of the dispute submitted thereto shall not be binding upon the parties and shall not be used as evidence in an arbitration proceeding pursuant to this Law, unless the parties have consented thereto in writing.

CHAPTER THREE: ARBITRATION

§ 15. MATTERS FOR ARBITRATION

The following are matters for arbitration pursuant to this Law.

- (1) any labor dispute that the parties have consented in writing to refer to arbitration pursuant to this chapter;
- (2) any labor dispute which, pursuant to a collective agreement, including a collective agreement as defined in section 37(a) or pursuant to the Addendum, must be referred to arbitration as prescribed in the agreement or in the Addendum, as the case may be, and in which the arbitrator or arbitrators or the manner of their appointment has or have not been determined, or in which the manner of appointment has been determined, but the arbitrator or arbitrators has not or have not been appointed within a reasonable time, or in which they have been appointed, but have not concluded the arbitration within a reasonable time; and any contention disputing one of these facts shall likewise be decided upon by arbitration pursuant to this Law.

§ ADDENDUM

1. If a labor dispute has arisen and the parties have not reached an agreement regarding the modes for deciding the dispute within seven days, the dispute shall be referred to arbitration at the request of one of the parties by way of a balanced committee of representatives of the parties, which shall convene within seven days of the date of the request for the arbitration.
2. If the balanced committee has reached an agreed decision for resolution of the dispute, the decision shall be tantamount to an arbitrament, in accordance with section 31(b) of the Law.
3. If the balanced committee as stated in paragraph 1 did not convene, or did not reach an agreed decision within thirty days of the date of the request for the arbitration, the dispute shall be referred for resolution by arbitration at the request of one of the parties; the arbitration shall be deliberated by one or more arbitrators as shall be agreed upon between the parties, and if they have not agreed within seven days of the date of the request to convene the arbitration – by three arbitrators, whereby each side shall appoint one arbitrator, and the two arbitrators shall appoint an additional arbitrator, and he shall be chairman.
4. The arbitration shall conclude within thirty days of the date of the request to convene it.
5. (a) The periods specified in this Addendum may be extended by the parties; the period specified in paragraph 3 may also be extended by the balanced committee, and the period specified in paragraph 4 may also be extended by the arbitrator or the arbitrators.

(b) The duration of the periods specified in this Addendum shall not take into account the period during which mediation pursuant to Chapter Two of the Law is being conducted.

§ 16. DELIVERY OF NOTICE

Either party to a labor dispute, being a matter for arbitration pursuant to this chapter, may deliver a notice of the dispute to an Officer; the provisions of section 5 shall apply to a notice pursuant to this section.

§ 17. APPOINTMENT OF AN ARBITRAL PANEL

When a copy of the notice delivered to the Officer has reached the Chief Officer, he shall appoint an arbitral panel for that dispute (hereinafter –"the Arbitral Panel"), or shall act in accordance with section 18.

§ 18. SOLE ARBITRATOR

As long as the Chief Officer has not appointed an Arbitral Panel, he may, at the request of the parties, assume the function of sole arbitrator or appoint an officer to be sole arbitrator in the dispute, and, upon his doing either of these, the sole arbitrator shall have all the powers of an Arbitral Panel; the provisions of this chapter concerning arbitration by an Arbitral Panel shall apply, *mutatis mutandis* as the case may be, to arbitration by a sole arbitrator as stated.

§ 19. COMPOSITION OF AN ARBITRAL PANEL

An Arbitral Panel shall consist of three members: a chairman appointed from among the persons whose names are included in a list of chairmen of arbitral panels drawn up by the Minister of Labor and Social Affairs, after having consulted with the Labor Relations Council; an employees' representative and an employers' representative, who have been appointed, after having consulted, in respect of each of them, with the party being represented by him, from among the persons whose names are included in lists of employees' representatives and employers' representatives on Arbitral Panels drawn up by the Minister of Labor and Social Affairs, after having consulted with the employees' organization representing the largest number of employees in the State and with representative organizations of employers, all as the case may be.

§ 20. MEDIATOR AS ARBITRATOR

A person who has acted as a mediator in a particular labor dispute shall not be appointed sole arbitrator or a member of an Arbitral Panel for that dispute, save with the written consent of the parties.

§ 21. OPENING OF ARBITRATION

The chairman of the Arbitral Panel shall determine the times and venues of the meetings thereof, shall inform the other panel members thereof and shall summon the parties to appear before the panel.

§ 22. SOURCES OF LAW IN ARBITRATION

(a) An Arbitral Panel shall deliberate and decide in accordance with any statute, collective agreement or professional practice, and if these provide no solution to the matter, the panel shall decide according to justice and equity.

(b) "Professional Practice" is that which is practiced or accepted with regard to the subject-matter of the arbitration, and an arbitral panel may dispense with substantiating it by witness or experts, if it is satisfied of the existence thereof.

§ 23. POWERS OF AN ARBITRAL PANEL

(a) For the purpose of carrying out its functions, an arbitral panel may –

(1) obtain any written or oral testimony, and question any person, if, in the Arbitral Panel's opinion, this would have relevance to the dispute referred to arbitration, however, a person shall not be compelled to answer any question that is liable to incriminate him;

(2) require any witness to confirm his evidence by oath or affirmation;

(3) summon any person to appear before the Arbitral Panel in order to give testimony or submit a document in his possession, and may question him as a witness or require him to submit any document in his possession;

(4) issue an order compelling a person to appear before the Arbitral Panel, after failing to comply with a summons and failing to justify his absence to the Panel's satisfaction, and require him to pay the expenses caused by his refusal to obey the summons, and the Arbitral Panel may fine him a sum not exceeding one hundred Israeli pounds;

(5) impose a fine on any person at a sum not exceeding one hundred Israeli pounds, who has been required by the Panel to give testimony under oath or to submit any document and who has not done as required and has not justified his non-compliance to the satisfaction of the Arbitral Panel.

(b) A fine imposed pursuant to subsection (a) shall be collected in the same way that a fine imposed by a court is collected.

§ 24. EVIDENCE

An Arbitral Panel shall not be bound by the laws of evidence, but shall act in the manner deemed by it to be most conducive to the clarification of the matter.

§ 25. PROCEDURES

An Arbitral Panel shall prescribe its rules of procedure, insofar as they have not been prescribed in this Law or in regulations pursuant thereto.

§ 26. CONDITIONS FOR DELIBERATING WITH A DEFECTIVE QUORUM

The chairman of an Arbitral Panel may convene a meeting of the panel in the absence of one of the arbitrators, if he has first ascertained that a notice of the time and venue of the meeting had been sent to the Panel member who was absent from the meeting, and the member did not give written notice of his inability to attend the meeting, and failed to show sufficient reasons, in the opinion of the chairman; this section shall not apply to the first meeting of the Panel, unless it is being convened on a postponed date.

§ 27. DELIBERATION BY A DEFECTIVE QUORUM

If a meeting was convened in the absence of one of the members, as stated in section 26, or if one of the members has not taken part in the acts of the Panel, neither the legality of the meeting nor the acts and powers of the Panel shall be affected by such absence; however, at the request of the member who was absent from the meeting of the Panel, the chairman may resume the deliberation of the questions that were deliberated in the absence of the member, if the chairman was satisfied that there was sufficient reason for his absence.

§ 28. INTERIM AWARD

An Arbitral Panel may issue an interim award and may rescind that interim award at any time.

§ 29. AWARD BY MAJORITY VOTE OR BY THE CHAIRMAN

An arbitrament or interim award shall be given by majority vote; in the absence of a majority of votes, the arbitrament or interim award shall be given by the chairman.

§ 30. CORRECTION OF A CLERICAL ERROR

The person who was the chairman of the Arbitral Panel may correct a clerical error that inadvertently occurred in an arbitrament.

§ 31. VALIDITY OF AN ARBITRAMENT

(a) The period of validity of an arbitrament regarding employment conditions is one year from the day of issue, unless a shorter period has been specified therein.

(b) An arbitrament shall come into force on the date of issue thereof, unless an earlier or later date has been specified therein.

(c) An arbitrament shall be tantamount to a contract or a collective agreement, as the case may be, between the parties to the arbitration; an arbitrament in connection with a valid collective agreement shall be tantamount to that collective agreement.

§ 32. INTERPRETATION OF AN ARBITRAMENT

(a) If differences of opinion arise between the parties to an arbitration regarding the interpretation of a particular point in the arbitrament, and the Chief Officer is of the opinion that the particular point in the arbitrament indeed requires interpretation, he may, at the request of one of the parties, instruct an arbitral panel or, with the consent of both parties, a sole arbitrator as stated in section 18, to interpret the arbitrament, and the decision of such panel or arbitrator shall become a part of the arbitrament.

(b) The provisions of this chapter shall apply to the acts of the Arbitral Panel pursuant to subsection (a).

§ 33. FINALITY OF AN ARBITRAMENT

An arbitrament is final and indisputable.

§ 34. CONFIDENTIALITY

(a) Facts that come to the attention of a member of an Arbitral Panel during the course of the arbitration that are not publically known are presumed to be confidential, and Panel members shall not disclose them to any person, except to the extent required for the carrying out of their roles and for the exercise of their powers.

(b) The penalty imposed on a person who contravenes the provisions of subsection (a) is one year of incarceration or a fine of one thousand Israeli pounds.

§ 35. COPY OF AN ARBITRAMENT

The chairman of the Arbitral Panel shall deliver a copy of the arbitrament to the Chief Officer and to the parties, being verified by his signature.

§ 36. EXEMPTION FROM STAMP DUTY

An arbitrament, and a letter of delegation, given by one of the parties to a person appearing on its behalf before an Arbitral Panel, are exempt from stamp duty.

§ 37. ARBITRATION ORDINANCE

The Arbitration Ordinance shall not apply to arbitration pursuant to this Law.

CHAPTER FOUR: COLLECTIVE AGREEMENT IN PUBLIC SERVICE

§ 37A. DEFINITIONS

For the purposes of this chapter –

“Collective Agreement” has the same meaning as in section 1 of the Collective Agreements Act, 5717 – 1957, whether or not the agreement was made and submitted for registration pursuant to the said Law, including any other collective arrangement, provided that the agreement or arrangement was made in writing and wage levels were stipulated therein;

“Public Service” means any of the following services:

- (1) the Civil Service, including the Defense Establishment and any enterprise or institution established by Law, whether or not the Civil Service (Appointments) Act, 5719 – 1959, applies to those employed therein;
- (2) the local authority services;
- (3) the health services, excluding any enterprise or institution not publicly-owned, and operating for profit that is included in the list of enterprises and institutions as stated, which was drawn up by the Minister of Health with the approval of the *Knesset* Labor and Social Affairs Committee and promulgated in *Reshumot*;
- (4) compulsory education, as this term is defined in the Compulsory Education Act, 5709 – 1949;
- (5) post-compulsory, high-school education, including vocational and agricultural, excluding any non-publicly-owned institution operating for profit that is included in the list of institutions as stated, which was drawn up by the Minister of Education and Culture with the approval of the *Knesset* Labor and Social Affairs Committee and promulgated in *Reshumot*;
- (6) institutions of higher education recognized pursuant to the Council for Higher Education Act, 5718 – 1958;
- (7) other institutions for post-secondary studies, except a non-publicly-owned institution operating for profit that is included in the list of institutions as stated, which was drawn up by the Minister of Education and Culture with the approval of the *Knesset* Labor and Social Affairs Committee and promulgated in *Reshumot*;
- (8) air transportation and air transport;
- (9) the production and manufacture of fuel and the piping of fuel;
- (10) the production and supply of water;
- (11) the generation and supply of electricity;

(12) the operation of a telecommunication installation and the provision of a telecommunication service, as well as the provision of broadcasting services pursuant to the Second Authority for Television and Radio Act, 5750 – 1990.

“Authorized Employees' Organization” –

- (1) while a Collective Agreement is applicable — the organization that is a party to the agreement;
- (2) while a Collective Agreement that had applied is no longer in force — the organization that had been a party to the agreement;
- (3) if there had never been a Collective Agreement — the organization to which the largest number of organized employees in that Public Service belong;
- (4) if an organization as stated in paragraphs (1) through (3) is a part of a more comprehensive employees' organization – the umbrella organization; however, an employees' organization that implemented an agreement made prior to the inception of this Law between it and a more comprehensive employees' organization concerning the former's accession to that umbrella organization, and, pursuant to the agreement, the acceding organization is empowered to declare or approve a strike, the acceding organization shall be regarded as an authorized employees' organization, to the extent that the authority to declare or approve a strike is not vested by the agreement to the umbrella organization;

“Strike or Unprotected Lockout” means any of the following:

- (1) a strike or lockout of employees in a Public Service while a Collective Agreement applies, excluding a strike that does not pertain to wages or social benefits, which has been declared or approved by the national central governing body of the Authorized Employees' Organization;
- (2) a strike by employees in a Public Service while no Collective Agreement is applicable to them, or when a Collective Agreement that had applied to them is no longer in force, and the strike has not been declared or approved by the institution or institutions authorized for this purpose and in proceedings prescribed therefore, all according to the articles of the Authorized Employees' Organization; written confirmation by the national central governing body of the Authorized Employees' Organization that a particular strike has been declared or approved as stated shall be conclusive evidence thereof;
- (3) a strike or lockout in a Public Service for which no notice has been given in accordance with this Law;

For the purposes of this definition, a strike shall be deemed:

- (a) an organised total or partial work stoppage by a group of employees, including a slowdown or other organized disruption of the normal course of the work;
- (b) organized refusal to work overtime by a group of employees as a step in a labor dispute, if the duty to work overtime has been prescribed in a Collective Agreement and such work is permitted pursuant to the Hours of Work and Rest Act, 5711 – 1951.

§ 37B. LEGAL SIGNIFICANCE OF AN UNPROTECTED STRIKE OR LOCKOUT

- (a) An unprotected strike or lockout is not deemed a strike or lockout for the purpose of section 62(b) of the Torts Ordinance (New Version), however, this provision shall only apply in an action instituted by an employee or employer who was a party to the strike or lockout, as the case may be, or by his alternate.
- (b) An unprotected strike is not deemed a strike for the purpose of section 19 of the Collective Agreements Act, 5717 – 1957.
- (c) An unprotected strike is not deemed a strike for the purpose of the second paragraph of section 44 of the Employment Service Act, 5719 – 1959, in respect of the dispatch of workers to the place of employment where the strike is in progress. However, if a person seeking employment is offered employment by the employment bureau at a place of employment where an unprotected strike is in progress and by reason thereof he refuses to accept the said employment, his rights under the articles instituted by virtue of section 41 of the said Law shall not be affected by such refusal.
- (d) An employees' organization and an employers' organization shall bear no responsibility whatsoever for an unprotected strike or lockout not declared or approved by it. Written confirmation by the national central governing body of an Authorized Employees' Organization or of an Employers' Organization that the organization did not declare or approve a particular strike or lockout, as the case may be, shall be conclusive evidence for the purposes of this subsection.

§ 37C. LEGAL SIGNIFICANCE OF AN UNPROTECTED PARTIAL STRIKE.

(a) A regional court, as this term is defined in the Labor Court Act, 5729–1969, is competent to declare, at the request of an employer in a Public Service that its employees at a particular place of employment or some of them engaged or are engaging in an unprotected strike not being a complete work stoppage; upon the court having so declared, the employees at that place of employment or some of them, as the court prescribed, shall only be entitled to a partial wage for the work they actually performed during the period of the said strike, at the rate prescribed by the court in accordance with the circumstances of the case.

(b) A regional court shall not entertain a request pursuant to subsection (a) in respect of a period more than six months prior to its submission.

(c) When an employee is entitled to a partial wage only, as stated in subsection (a), an amount equal to half his ordinary wage shall be regarded as the partial wage due to him, as long as the court has not prescribed the rate of the partial wage as aforesaid; for the purposes of this subsection, “ordinary wage” means the aggregate of the wage components taken into account for the purposes of severance pay, pursuant to section 13 of the Severance Pay Act, 5723 – 1963, less allowances payable in respect of output or work effort.

(d) Wage differentials due to an employee from the employer or to the employer from an employee by virtue of the provisions of this section shall be paid within thirty days of the day on which the regional court prescribes the rate of the partial wage as stated in subsection (a), unless the court has prescribed another date of payment;

Any excess amount paid as aforesaid to an employee shall be regarded as an advance to which section 25(a)(7) of the Wage Protection Act, 5718 – 1958, applies, provided that the amount of the deduction shall not exceed 25 percent of the employee's wage.

§ 37D. INCREASED COMPENSATION

If an employer in a Public Service has breached any provision of a Collective Agreement, the labor court, at the request of the employee in respect of whom the agreement has been breached, or of the employees' organization of which he is a member, may, in addition to any other remedy, require the employer to pay increased compensation, and the labor court may also award compensation in the case of a breach not involving a pecuniary damage.

§ 37E. DECIDING DISPUTES

A Collective Agreement applying to a Public Service shall be deemed to contain the provisions set out in the Addendum in respect of any dispute, when the agreement contains no other provision for deciding it.

CHAPTER FIVE: LABOR RELATIONS COUNCIL

§ 38. APPOINTMENT OF A LABOR RELATIONS COUNCIL

The Minister of Labor and Social Affairs shall appoint a Labor Relations Council (hereinafter – “the Council”), which shall advise him in relation to any matter pertaining to labor relations.

§ 39. COMPOSITION OF THE COUNCIL

(a) The members of the Council shall be employees' representatives and employers' representatives in equal numbers.

(b) The employees' representatives on the Council shall be appointed after having consulted with the employees' organization representing the largest number of employees in the State, while the employers' representatives shall be appointed after having consulted with representative organizations of employers in the State.

(c) Notice of the appointment of the Council and of the names of its members shall be promulgated in *Reshumot*.

§ 40. TERM OF OFFICE

The Minister of Labor and Social Affairs may prescribe in regulations the term of office of the Council and conditions for the expiration of membership of the Council before the end of the full term of office.

§ 41. CHAIRMAN OF THE COUNCIL

The Minister of Labor and Social Affairs, or a person appointed by him for this purpose, shall be the chairman of the Council.

§ 42. PROCEDURES OF THE COUNCIL.

The Council shall itself prescribe its rules of procedure and its work, if they have not been prescribed in regulations.

CHAPTER SIX: MISCELLANEOUS PROVISIONS

§ 43. IMPLEMENTATION AND REGULATIONS

The Minister of Labor and Social Affairs is charged with the implementation of this Law and may, after having consulted with the Council, institute regulations in relation to any matter pertaining to such implementation.

§ 44. REPEALS

The Industrial Courts Ordinance, 1947, and the Ottoman Law of Strikes of the 27th July, 1909, are hereby repealed.

§ 44A. STATUS OF THE STATE.

44A. For the purposes of this Law, the State as an employer is tantamount to any other employer; however –

(1) the decision regarding mediation in a labour dispute to which the State is a party shall be that of the Minister of Labor and Social Affairs; (2) in a dispute between the State and the representative employees' organization as specified in section 3, the mediator shall be a person whose name is included in a list of mediators other than State employees, who has been agreed upon between the State and the employees' organization representing the largest number of State employees;

(3) if the parties to a dispute have agreed upon a mediator from the agreed list, he shall be the mediator in the dispute; if the parties do not agree upon the appointment of a mediator within three days of the date of the decision regarding mediation, the Minister of Labor and Social Affairs may appoint a mediator from the agreed list.

§ 45. INCEPTION

This Law shall come into force on the 28th Adar Alef, 5717 (1 March 1957).

SPECIAL PROVISION - AMENDMENT NO. 2 OF THE LAW,

(5732 – 1972)

§ BAR TO THE IMPOSITION OF INCARCERATION

No incarceration shall be imposed pursuant to sections 142 or 143 of the Penal Code, 1936, or pursuant to section 6 of the Contempt of Court Ordinance, or pursuant to section 70 of the Execution of Court Decisions Act, 5727 – 1967, for a contravention of any judgment, decision, order or statutory provision relating to participation in a strike.

§ SAVING OF LAW

This Law shall not derogate from the powers of a Labor Court or from any law or collective agreement applying to employment other than in a Public Service or from the Contracts (Remedies for Breach of Contract) Act, 5731 – 1970.

SPECIAL PROVISIONS – AMENDMENT NO. 3 OF THE LAW,

(5736 – 1976)

§ SAVING OF LAW

This Law shall not derogate from any power of a Labor Court or from any Law that was in force prior to the inception of this Law, but rather adds thereto.

Collective Agreements Law, 5717 – 1957
Complete Revised Version

Insights into Law

Labor – Collective Agreements

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Definition of a Collective Agreement

1. **A collective agreement is an agreement between an employer or an employers' organization and an employees' organization, made and submitted for registration pursuant to this Law, concerning the acceptance of a person for employment or the termination of his employment, employment conditions, labor relations, and the rights and obligations of the organizations which are parties to the agreement, or some of these matters.**

Types of Collective Agreements

2. There are two types of collective agreements:

- (1) special collective agreements – for a particular enterprise or for a particular employer – between an employer or an employers' organization representing the employer and the representative employees' organization of the employees to whom the agreement is to apply;
- (2) general collective agreements – for the entire territory of the State or a part thereof, for particular employment sectors or for all employment sectors, when the agreement is between the representative employees' organization in the employment sector or in the territory concerned, and an employers' organization therein, all as the case may be.

Representative Organization in the Case of a Special Collective Agreement

3. **A representative employees' organization, for the purposes of a special collective agreement, is the employees' organization whose members comprise the largest number of organized employees to whom the agreement is to apply, or which represents them for the purposes of that agreement, provided that this number is not less than one-third of the total number of employees to whom the agreement is to apply.**

Representative Organization in the Case of a General Collective Agreement

4. **A representative employees' organization, for the purposes of a general collective agreement, is the employees' organization whose members comprise the largest number of organized employees to whom the agreement is to apply.**

A Change in the Representation Does Not Affect the Agreement

5. Where a collective agreement has been made, it shall be deemed valid even if during its period of validity an employees' organization has lost the attributes that make it a representative organization pursuant to sections 3 or 4.

Prohibition of Contention of Competence after Signing

6. The contention that an employees' organization, being a party to a collective agreement, was not, at the time of the making of the agreement, a representative employees' organization for the purposes of that agreement, shall not be entertained, unless made by another employees' organization.

A Collective Agreement Must Be in Writing.

7. **A collective agreement and any amendment or extension thereof shall be in writing.**

* Published in *Sefer HaChukkim* 5716 No. 221 of February 28, 1957, p. 63 (*Hatza'ot Chok* 5715 No. 256, p. 58).

Amended in *Sefer HaChukkim* 5735 No. 779 of August 8, 1975, p. 223 (*Hatza'ot Chok* 5735 No. 1194, p. 391) – Amendment No. 1; see section 5 regarding transitional provisions.

Sefer HaChukkim 5736 No. 804 of April 8, 1976, p. 138 (*Hatza'ot Chok* 5735 No. 1194, p. 391) – Amendment No. 2; see section 3 regarding transitional provisions.

Sefer HaChukkim 5736 No. 823 of July 30, 1976, p. 264 (*Hatza'ot Chok* 5736 No. 1244, p. 261) – Amendment No. 3).

Sefer HaChukkim 5743 No. 1079 of March 30, 1983, p. 62 (*Hatza'ot Chok* 5743 No. 1605, p. 32) – Amendment No. 4).

Sefer HaChukkim 5746 No. 1193 of August 13, 1986, p. 242 (*Hatza'ot Chok* 5746 No. 1755, p. 15) – Amendment No. 5; see section 2 regarding application.

Sefer HaChukkim 5761 No. 1772 of January 10, 2001, p. 123 (*Hatza'ot Chok* 5761 No. 2925 p. 38) – Amendment No. 6; inception of the amendment 30 days after its publication, and see section 3(b) regarding non-application to certain employees as well as the Orders for extension of the validity of the exemption.

Sefer HaChukkim 5769 No. 2203 of July 23, 2009, p. 243 (*Hatza'ot Chok HaMemshala* 5769 No. 436, p. 348) – Amendment No. 7 in section 135 of the Economic Efficiency Law (Legislative Amendments for Implementing the Economic Plan for 2009-2010), 5769-2009; inception of the amendment on July 15, 2009.

Sefer HaChukkim 5769 No. 2208 of August 10, 2009, p. 316 (*Hatza'ot Chok HaMemshala* 5769 No. 436, p. 719) – Amendment No. 8.

Collective Agreement by Way of Accession

8. A special collective agreement may also be made by -
- (1) the signing of an instrument of accession to rules agreed upon between an employees' organization and an employers' organization, regarding matters likely to be the subject of a collective agreement;
 - (2) the signing of an instrument of accession to an existing special collective agreement.

Exemption from Stamp Duty

9. **A collective agreement and an agreement amending or extending a collective agreement shall be exempt from stamp duty.**

Registration

(Amendment No. 3) 5736-1976

10. (a) A copy of any collective agreement, of agreed rules, or of an instrument of accession as stated in section 8, shall be submitted for registration within two months of the signing date, in the manner prescribed in regulations, to the Minister of Labor or to the person appointed by him for this purpose. The same shall apply to an instrument of amendment, termination or extension of the said documents.
- (b) The duty to submit a document requiring registration as stated in subsection (a) shall apply to each of the parties thereto; if one of them submits the document, the others shall be exempt from doing so.
- (c) The chief labor relations officer pursuant to the Settlement of Labor Disputes Law, 5717-1957, may extend the period stated in subsection (a) or in section 10B (a) if he deems it justified under the circumstances of the matter.
- (d) The Minister of Labor shall promulgate a notice, in the manner to be prescribed in regulations, regarding the submission of a document requiring registration as aforesaid for registration.

Perusal

(Amendment No. 1) 5735-1975

(Amendment No. 3) 5736-1976

- 10A. **Any person may peruse any collective agreement registered pursuant to section 10, or any arrangement in respect whereof a notice has been given as stated in section 10B.**

Duty of Notification

(Amendment No. 3) 5736-1976

- 10B. (a) An employer in a Public Service that employs 100 or more employees is required to notify the Minister of Labor, or the person appointed by him for this purpose, of every arrangement in writing that is not a document requiring registration pursuant to section 10, concerning the wages or social benefits of all of its employees, or of a category thereof, within two months of the signing date of the arrangement.
- (b) The Minister of Labor, with the approval of the Knesset Labor Committee, may exempt by way of an Order an employer or category of employers from the application of the provisions of subsection (a), conditionally or unconditionally, either generally or in respect of a particular arrangement or a category of arrangements.
- (c) For the purpose of this section, "Public Service" means -
- (1) an audited body, as this term is defined in sections 9(1) through 9(5) of the State Comptroller Law [Consolidated Version], 5718-1958;
 - (2) a corporation established or recognized by a Law that addresses it specifically;
 - (3) a corporation, when the management of its business is subject to control or to auditing pursuant to a Law specifically addressing businesses of the type that the corporation conducts.
- (d) The Minister of Labor shall prescribe in the regulations regarding the notice specified in subsection (a) the modes of delivery thereof, the particulars to be included therein and the documents to be attached thereto.

(e) A person who contravenes any one of the provisions of this section or an Order pursuant thereto shall be liable to a fine of 10,000 Israeli pounds.

(f) A person who in his capacity as manager or senior employee was responsible for compliance with the provisions of this section or an Order pursuant thereto, or, lacking such manager or senior employee – whoever signed the arrangement on behalf of the Public Service, shall also be held liable for an offense pursuant to subsection (e), unless he proves that he took reasonable means to prevent the offense or that the offense was committed due to a factor not under his control.

Inception of an Agreement

11. A collective agreement shall come into force on the day prescribed therein or, if a date has not been prescribed, on the date on which it is signed.

Agreement for a Specific Period and Agreement for an Unspecified Period

12. A collective agreement may be for a specific period prescribed therein or for an unspecified period, or partly for a specific period and partly for an unspecified period.

Period of Validity of a Collective Agreement for a Specific Period

13. Where the period of validity of a collective agreement for a specific period has expired, and none of the parties to that agreement has given notice to the other, at the correct time and in writing, of the termination thereof, the agreement shall continue in force as a collective agreement for an unspecified period; the deadline for a notice of termination shall be as prescribed in the agreement or, if not prescribed in the agreement, at least two months before the expiration of the agreement.

Period of Validity of a Collective Agreement for an Unspecified Period

14. Where a collective agreement is for an unspecified period, either party may terminate it by delivering prior notice thereof to the other party by the date prescribed in the agreement, or, if not prescribed in the agreement, at least two months before the termination date; however, a collective agreement originally made for an unspecified period shall be valid for at least one year.

Scope of a Special Collective Agreement

15. A special collective agreement is applicable to –

- (1) the parties to the agreement;
- (2) the employers being represented for the purposes of that agreement by an employers' organization that is a party to the agreement;
- (3) all employees of the categories included in the agreement who are being employed by an employer that is a party to the agreement or that is being represented as stated in paragraph (2), in professions or in functions included in the agreement.

Scope of a General Collective Agreement

16. A general collective agreement is applicable to –

- (1) the parties to the agreement;
- (2) the employers in the sectors or in the territory included in the agreement, that, at the time the agreement was signed, were members of the employers' organization that is a party to the agreement, or that became members during the period of validity of the agreement, except members expressly excluded from the agreement;
- (3) all employees of the categories included in the agreement who are being employed by an employer as stated in paragraph (2), in professions or functions included in the agreement.

Proof of Membership in an Organization

17. For the purposes of section 16, a written confirmation by an employees' or employers' organization that someone is a member thereof, or was a member thereof at some time, shall be sufficient proof of his membership.

Change of Employers

18. If an enterprise changes hands or is split or merged, the new employer shall be deemed the employer to which the collective agreement applies.

Rights and Obligations of Employees and Employers

19. Provisions of a collective agreement concerning employment conditions, termination of employment and personal obligations imposed on employees and employers pursuant to those provisions as well as rights being granted to them (hereinafter –“Personal Provisions”), shall be deemed an employment contract between every employer and every employee to whom the agreement applies, and shall be valid even subsequent to the expiration of the collective agreement, as long as they have not been lawfully amended or cancelled; participation in a strike shall not be deemed a breach of a personal obligation.

Prohibition of Waiver of Rights

20. Rights granted to an employee in Personal Provisions of a collective agreement cannot be waived.

Preservation of Rights

21. A collective agreement can add to, but not derogate from, employee rights prescribed by law.

Contract of Employment and Collective Agreement

22. If a provision of an employment contract differs from a Personal Provision of a collective agreement that is applicable to the parties to the contract, the provision of the collective agreement shall take precedence; if the change is favorable to the employee, the provision of the employment contract shall take precedence, provided that the collective agreement contains no express preclusion of that change.

Contradiction between Agreements

23. If more than one collective agreement applies to an employee, the provisions that benefit the employee shall be applied.

Compensation

24. Notwithstanding any law, an employees' organization or an employers' organization shall not be obligated to pay compensation for a breach of its obligations pursuant to a collective agreement, unless it has expressly undertaken to pay such compensation in a general collective agreement.

Power to Extend a Collective Agreement

25. The Minister of Labor, at his own initiative or at the request of a party to a general collective agreement, may extend, by way of an Order (hereinafter – “Extension Order”), the scope of application of any provision of a general collective agreement, if, in his opinion, it is right to do so, considering the number of employees and employers to whom that collective agreement applies, and the importance of the agreement in regulating labor relations and determining conditions in the labor market; the Minister may do so whether the agreement is valid or whether its validity has been made conditional upon the issuance of an Extension Order.

Procedure for Issuing an Extension Order

(Amendment No. 1) 5735-1975

26. The Minister of Labor shall not issue an Extension Order unless he has promulgated his intention to do so, in writing, one month previously, in *Reshumot* and in any additional manner as he deems fit; once promulgated, any person desiring to object to the issuance of the Order may submit his objection to the Minister in the manner to be prescribed in regulations; the Minister of Labor shall promulgate a notice as aforesaid, only after having consulted with the employees' organization representing the largest number of employees in the State, and with representative national employers' organizations which, in the Minister's opinion, are concerned parties.

Conditions for Issuing an Extension Order

(Amendment No. 1) 5735-1975

27. The Minister of Labor shall not issue an Extension Order unless these conditions have been fulfilled –

- (1) the provisions of the collective agreement in question, which are the subject of the Extension Order, do not prejudice the right of any person to employment by reason of his membership or non-membership in an employees' organization;
- (2) the provisions in the collective agreement, which are the subject of the Extension Order, do not contradict an international labor convention ratified by Israel;

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- (3) the labor relations council functioning by virtue of the Settlement of Labor Disputes Law, 5717-1957 (hereinafter – “the Council”) has deliberated the matter and its opinion has been brought before the Minister of Labor. The Council may delegate its authority pursuant to this paragraph to a committee from among its members, comprised of an equal number of representatives of employees and representatives of employers.
- (4) The Minister of Labor shall decide an objection submitted pursuant to section 26.

Extension Order

(Amendment No. 4) 5743-1983

(Amendment No. 5) 5746-1986

28. (a) An Extension Order shall be promulgated in *Reshumot* and shall specify the extended provisions and the categories of employees and employers to which the Order applies.
- (b) In respect of provisions as specified hereunder, an Extension Order may prescribe that it shall take effect on a date prior to its promulgation, up to the inception date of the provisions of the agreement that were extended by the Order:
- (1) any provision of a general collective agreement pertaining to one of the following:
- (a) cost-of-living increment;
- (b) compensation for a rise in prices;
- (c) minimum wage;
- (2) any provision of a general collective agreement applying to several sectors, where, in the opinion of the Minister of Labor, there is justification for prescribing retroactive inception of that provision, considering the number of parties to the agreement and the nature of the provision.

(Amendment No. 5) 5746-1986

(c) If an Extension Order with retroactive inception has been promulgated as stated in subsection (b), the employer may pay the differentials resulting from the Order's retroactive inception in equal consecutive monthly installments of a number equal to the number of months from the inception date to the promulgation date of the Order; for this purpose, a fraction of a month shall be deemed to be a whole month. The first monthly installment shall be paid by the date on which the monthly wage is payable for the month in which the said Order was promulgated, or ten days after the promulgation date of the Order, whichever is later; every subsequent monthly installment shall be paid by the date on which the monthly wage is payable for that same month; every such installment, as well as linkage differentials and interest as stated in subsection (d), which are not paid by the ninth day after the date on which they were payable as stated, shall be deemed a delayed wage, as this term is defined in the Wage Protection Law, 5718-1958;

(Amendment No. 5) 5746-1986

(d) Linkage differentials and interest, as these terms are defined in the Adjudication of Interest and Linkage Law, 5721-1961, shall be added to the differentials deriving from the retroactive inception of a provision as stated in subsection (b), with respect to the period commencing on the inception date of the Extension Order until the date on which the differentials are paid or are payable pursuant to subsection (c), whichever is earlier; this subsection shall not apply to differentials if, pursuant to the provisions of the extended collective agreement, the differentials are payable retroactively without linkage differentials or interest, as the case may be.

Presumption of Validity

29. The validity of an Extension Order promulgated as aforesaid shall not be disputed.

Operation of an Extension Order

30. (a) If an Extension Order has been issued, the provisions of the collective agreement which have been extended by the Order shall apply to all employees and all employers to whom the Order applies and shall be deemed a part of a contract of employment between those employees and those employers.
- (b) The provisions of subsection (a) shall not derogate from the right of an employee pursuant to any provision of an employment contract or collective agreement that grants better terms.

Nullity of an Extension Order

31. If an Extension Order has been issued in relation to the provisions of a collective agreement, and the collective agreement expires, the Extension Order shall become null and void, and notice to such effect shall be promulgated in *Reshumot*.

Cancellation of an Extension Order

32. Should the Minister of Labor deem that the circumstances referred to in section 25 no longer exist, he may, after consulting with the Council, with the employees' organization representing the largest number of employees in the State and with representative national employers' organizations which, in the Minister's opinion, are concerned parties, cancel the Extension Order, and notice of the cancellation of and the date thereof shall be promulgated in *Reshumot*, provided that the cancellation date shall not be prior to the promulgation date.

Continued Validity of Personal Provisions

33. If an Extension Order has been nullified by virtue of section 31 or has been canceled by virtue of section 32, the Personal Provisions of the collective agreement that were extended by the Order shall remain valid as part of the employment contracts that existed while the Order was in force, as long as they have not been amended or terminated in new employment contracts.

Supervisory Committee

(Amendment No.2) 5736-1976

33A. For the purposes of every general collective agreement in respect whereof an Extension Order has been issued, the Minister of Labor may appoint a supervisory committee of three members:

- (1) a representative of the Minister of Labor, who shall be the chairman;
- (2) a member recommended by the employees' organization that signed the extended collective agreement;
- (3) a member recommended by the employers' organization that signed the said agreement.

Records and Publication

(Amendment No.2) 5736-1976

33B. A supervisory committee shall keep a record of the enterprises to which the Extension Order applies and shall publish the list of enterprises in the manner prescribed by the Minister of Labor.

Application of an Extension Order to an Enterprise, and Supervision of the Implementation Thereof

(Amendment No.2) 5736-1976

- 33C. (a) A person empowered by the Minister of Labor to be an inspector may request information from any enterprise in order to ascertain whether an Extension Order applies to that enterprise, and whether the enterprise is complying with the provisions of the Order; for this purpose, the inspector may, after giving advance notice, also enter any enterprise, question the owners, managers and employees thereof and inspect the books and documents of the enterprise that pertain to the employees of the enterprise.
- (b) An inspector shall not disclose anything that comes to his knowledge in his capacity pursuant to subsection (a), save in the discharge of a duty imposed on him by law.

Power of the Court

(Amendment No.2) 5736-1976

33D. The regional court, as this term is defined in the Labor Courts Law, 5729-1969 (hereinafter –"the Court"), shall have the sole authority to decide whether an Extension Order applies to any enterprise, as well as to adjudicate any action filed by an employee, employer or inspector in relation to any matter deriving from the provisions of sections 33B. and 33C.

Provisions Concerning Proceedings for the Settlement of Disputes

(Amendment No.2) 5736-1976

33E. If proceedings for the settlement of disputes have been prescribed in a collective agreement in respect whereof an Extension Order has been issued, the Minister of Labor may prescribe, with respect to all or some of the extended provisions, that in relation to the enterprises to which the order applies –

- (1) the supervisory committee shall serve as the body for the settlement of disputes as aforesaid instead of a body prescribed in the collective agreement, and different proceedings from those prescribed in the collective agreement shall apply;
- (2) any right or obligation of an employee or employer which, according to an extended provision, is contingent upon the consent of an employees' organization or an employers' organization, shall be contingent upon the consent of the employer or of the employees' committee at the place of employment, as the case may be, or, if there is no employees' committee at the place of employment – upon the mutual consent of the employee and the employer.

Powers of a Supervisory Committee

(Amendment No.2) 5736-1976

33F. The powers of a supervisory committee pertaining to the settlement of disputes, the committee's procedures and the effect of its decisions shall be, *mutatis mutandis*, the same as those of the body it is replacing as stated in section 33E, or, if it replaces several such bodies, as those of the last deciding body from among them.

Organizational/Professional Handling Fee to an Employers' Organization

(Amendment No.2) 5736-1976

33G. (a) The Minister of Labor, with the approval of the Knesset Labor Committee, may prescribe provisions in regulations regarding the obligation of an employer, to whom an Extension Order applies, to pay an organizational/professional handling fee to the employers' organization that is a party to the extended collective agreement, at the rate and under the conditions prescribed as aforesaid. The regulations may apply to categories of employers, employment sectors, economic sectors, geographical areas or to particular employers, with the exception of enterprises or employers belonging to an organization of enterprises or employers specified in such regulations.

(b) The Court shall have the sole power to adjudicate disputes arising from the provisions of subsection (a).

The Right to be Active in or a Member of an Employees' Committee or Employees' Organization

(Amendment No.6) 5761-2001

33H. Every employee has the right to be active in the cause of organizing employees in an employees' committee or in an employees' organization, to be a member of an employees' committee and of an employees' organization, and to be active in the framework thereof.

Initial Organizing – Duty to Conduct Negotiations with a Representative Employees' Organization

(Amendment No.8) 5769-2009

33H1. (a) An employer is obligated to conduct negotiations in the matters enumerated in section 1, with an employees' organization according to section 3, upon the initial organizing thereof at the employer; that stated in the provisions of this section shall not obligate an employer to sign a collective agreement with an employees' organization upon the initial organizing thereof.

(b) In this section, "initial organizing" means – the organizing of an employees' organization that has become a representative organization pursuant to section 3, at the employer.

Prohibition on Preventing Entry

(Amendment No.6) 5761-2001

33I. No employer shall prevent a representative of an employees' organization from entering a place of employment where an employee is being employed, for the purpose of promoting the right specified in section 33H. and for the purpose of advancing the interests of employees, this, while taking into account the needs of the work and the right to privacy.

Prohibition on Penalizing an Employee for Membership or Activity in an Employees' Committee or Employees' Organization

(Amendment No.6) 5761-2001

- 33J. (a) **An employer shall not dismiss an employee, shall not degrade an employee's employment conditions and shall not refrain from accepting a person for employment, due to one of the following:**
- (1) his membership or activity in an employees' organization;
 - (2) his activity towards the establishment of an employees' organization;
 - (3) his abstaining from becoming a member in an employees' organization or discontinuing his membership in an employees' organization;
 - (4) his membership or activity in an employees' committee that is operating within the framework of an employees' organization; in this regard, an employees' committee shall be deemed to be operating within the framework of an employees' organization, if the chairman of the employees' organization or any person acting on his behalf has issued a written confirmation of this;
 - (5) his activity towards the establishment of an employees' committee.
- (b) **In this section, "employment conditions" means – including promotions, professional training or studies, severance pay, and separation benefits and payments to an employee.**

Jurisdiction and Remedies

(Amendment No.6) 5761-2001

(Amendment No. 7) 5769-2009

- 33K. (a) **A regional labor court shall have the sole jurisdiction to adjudicate a civil proceeding arising from a violation of any provision of sections 33I. or 33J., and may –**
- (1) **issue an injunction or mandatory injunction; the provision of this paragraph is valid notwithstanding that stated in section 3(2) of the Contracts (Remedies for Breach of Contract) Law, 5731-1970.**
 - (2) **award compensation, even if no pecuniary damage has been caused, in an amount it deems appropriate under the circumstances of the matter.**

(Amendment No. 7) 5769-2009

- (b)
- (1) **If a regional labor court finds that an employer has violated the provisions of sections 33I. or 33J., it may order the violating employer to pay compensation not dependent on damage (in this section – "exemplary damages"), in an amount not exceeding 50,000 new Israeli shekels; however, the court may award, in respect of such a violation, exemplary damages in an amount exceeding 50,000 new Israeli shekels, but not more than 200,000 new Israeli shekels, taking into consideration the seriousness of the violation or its circumstances.**
 - (2) **The provisions of paragraph (1) shall not prejudice the right of an employee to compensation or to any other relief in accordance with any law, in respect of the that violation; however, the court shall not award compensation pursuant to the said paragraph in a class action, as this term is defined in the Class Actions Law, 5766-2006.**
 - (3) **When awarding damages against an employer due to a violation of any provision of section 33K. as stated in paragraph (1), the court may take into consideration the fact that the employer was convicted of the same act and the fine that was imposed on the employer.**
 - (4) **When imposing a fine on an employer who was convicted of an offense under section 33N., a court or a regional labor court may take into consideration the fact that exemplary damages pursuant to this section were awarded against the employer, in a final judgment, in respect of the act for which he was convicted as stated.**
 - (5) **The amounts specified in this section will be adjusted on January 1 of every year (in this subsection – "the adjustment day"), according to the rate of increase of the new index compared to the basic index; in this regard –**

“index” – the consumer price index published by the Central Bureau of Statistics;

“the new index” – the index last published before the adjustment day;

“the basic index” – the index published in July 2009.

Right to Institute Actions

(Amendment No.6) 5761-2001

33L. Actions resulting from a violation of any provision of sections 33I. or 33J. may be filed by –

- (1) an employee or a job seeker;
- (2) an employees' organization.

Prescription

(Amendment No.6) 5761-2001

(Amendment No.7) 5769-2009

33M. A regional labor court shall not consider a civil action resulting from a violation of any provision of sections 33I. or 33J. after twelve months have elapsed since the cause was created.

Punishment

(Amendment No.6) 5761-2001

(Amendment No.8) 5769-2009

33N. (a) Any person who refrains from accepting a person for employment, degrades the employment conditions of an employee or dismisses an employee due to one of the following, shall be liable to a fine as specified in section 61(a)(2) of the Penal Law, 5737-1977 (hereinafter – “the Penal Law”):

- (1) his membership in an employees' organization or in an employees' committee;
- (2) his abstaining from becoming a member in an employees' organization;
- (3) his discontinuing his membership in an employees' organization.

(Amendment No.7) 5769-2009

(b) An employer who violates a provision of an effective sectoral general collective agreement, whose application was extended in an effective Extension Order pursuant to section 25 and which provides expressly for an increase in the minimum wage prescribed in the Minimum Wage Law, 5747-1987, shall be liable to a fine as specified in section 61(a)(3) of the Penal Law.

Law Applicable to the State

(Amendment No.6) 5761-2001

33O. For the purpose of sections 33H. through 33N., the State in its capacity as an employer shall be deemed the same any other employer.

Non-Application

(Amendment No.6) 5761-2001

33P. Sections 33H.through 33O.shall not apply to anyone who is legally prohibited from organizing.

Implementation and Regulations

34. The Minister of Labor is charged with the implementation of this Law and may institute regulations in relation to any matter pertaining to the implementation thereof; however, the Minister shall only institute regulations pursuant to section 26 after consulting with the employees' organization representing the largest number of employees in the State and with representative national employers' organizations which, in the Minister's opinion, are concerned parties.

Transitional Provisions

35. This Law does not apply to agreements made before its inception, but shall not affect their validity.

Inception

36. This Law shall come into force on 28 Adar Alef 5717 (March 1, 1957).

Slovenia

STRIKE ACT

Article 1

A strike is an organised interruption of work with an objective to obtain economic and social rights and labour interests.

The right to strike shall be exercised under the conditions set out in this Act.

Workers shall freely decide whether to participate in a strike or not.

Article 2

Strikes may be organised in a company, other legal entity (hereinafter: organisation), part of an organisation, at an employer, in a certain industry branch or business activity, or as a general strike.

A decision on the commencement of a strike by workers in an organisation, part of an organisation or at an employer shall be adopted by a trade union body of that organisation, part of organisation or at the employer, and a decision on the commencement of a strike by workers of certain industry branches or business activities shall be adopted by a trade union body of the industry branches or activities concerned, whereas a decision on the commencement of a general strike shall be adopted by the highest trade union authority in the Republic (=State).

A decision on the commencement of a strike may also be adopted by the majority of workers in the organisation, part of the organisation or at the employer.

The decision on the commencement of a strike shall set out the workers' demands and indicate the time when the strike begins and the gathering place for strike participants, and shall create a body representing the workers' interests and conducting the strike on their behalf (hereinafter: strike committee).

Article 3

The strike committee must announce a strike at least five days prior to the day set for its commencement, whereby it shall send the decision on the commencement of the strike to a corporate governance body and management body or employer.

The decision on the commencement of a strike by workers of certain industry branches or business activities and of a general strike must be submitted to the competent authority of the chamber of commerce and industry or professional society.

Article 4

The strike committee and the representatives of authorities to whom the strike was announced must seek to resolve the dispute amicably from the date of the strike announcement and during the strike.

At the request of a party to the dispute, negotiations for the amicable resolution of the dispute may involve representatives of a trade union if a trade union does not organise the strike, representatives of the chamber of commerce and industry or professional associations provided that the strike was not announced to them, and also representatives of state or local communities authority.

Article 5

The strike committee and workers participating in the strike should organise the strike and conduct the strike in a way that does not jeopardise the safety and health of people and their property, and that facilitates the continuation of work after the strike is over.

The strike committee and workers participating in the strike may not prevent workers not participating in the strike from working.

Article 6

A strike shall be ended through an agreement between the parties that adopted the decision on the strike and the bodies to whom this decision was sent, or by means of a decision of the trade union or workers who adopted the decision on the commencement of the strike.

Article 7

The right to strike in organisations and at employers who perform an activity or work of special social significance provided by law or decree of the assembly of local community (=public services), and in organisations of special significance for the national defence, may be exercised solely provided that the following is ensured:

- 1) a minimum of operations ensuring the safety of people and their property or ensuring the indispensable conditions for the life and work of citizens or the work of other organisations.
- 2) fulfilment of international obligations.

The manner of fulfilling the conditions referred to in the first paragraph of this Article shall be provided by law or decree of the assembly of local community based on such law and laying down activities and work of special social importance.

In accordance with the law, a general act or collective agreement shall lay down the work and tasks referred to in the first paragraph of this Article and the manner of carrying out the works and tasks during a strike.

Article 8

In activities referred to in the first paragraph of Article 7 of this Act, the strike shall be announced to a corporate governance body and a management body or employer, trade union if a trade union is not organising the strike action and to a competent body of the state or local community at least 10 days prior to its commencement, whereby a decision shall be sent on the commencement of the strike, together with a statement indicating how the minimum operations shall be ensured in accordance with the first paragraph of Article 7 of this Act.

Article 9

In addition to the obligations referred to in Article 4 of this Act, during the period from the announcement of the strike until the date set for its commencement, a proposal for settlement of the dispute must be offered in the organisations or at the employers performing the activities referred to in the first paragraph of Article 7 of this Act by the strike committee, the representatives of the corporate governance body and the management body in the organisation or at the employer, and the representatives of the state or local community, and the workers who announced the strike and the general public shall be informed of this proposal.

Article 10

The strike committee must, during the strike, cooperate with the management body of the organisation or employer in order to provide the minimum of operations referred to in the first paragraph of Article 7 of this Act.

During the strike, workers who perform work and tasks referred to in the third paragraph of Article 7 of this Act must fulfil the tasks of the management body or employer.

Article 11

Workers in the body or organisation of the state or local community administration and in any other state body shall exercise their right to strike provided that the fulfilment of functions of these bodies and organisations are not significantly threatened.

The work and tasks that must be performed during a strike, since they are essential for fulfilling the functions of the above-mentioned authorities and organisations, shall be laid down in the general act or collective agreement, in accordance with the law.

In the body and organisation referred to in the first paragraph of this Article, a strike shall be announced to the official who manages this body or organisation whereby the decision on the commencement of the strike and the statement of the manner of performing the work and tasks shall be sent at least seven days prior to the commencement of the strike.

The strike committee, trade union if it does not carry out the function of this body, official who manages the body or organisation referred to in the first paragraph of this Article, as well as the representative of the executive body of the assembly of the state or local community, shall all be involved in resolving the dispute amicably.

Article 12

Workers in bodies for public defence and home affairs shall exercise their right to strike under the conditions laid down in the laws governing the rights and obligations of workers in these bodies.

Article 13

The organisation of a strike or participation in a strike under the conditions laid down in this Act shall not constitute a breach of duties, it should not provide a basis for the institution of proceedings for establishing disciplinary and material responsibilities of workers, and it should not result in the termination of employment.

Workers participating in a strike shall enjoy the fundamental rights arising from their employment relationships, except for the right to salary compensation, while rights relating to compulsory pension and disability insurance shall be exercised in accordance with the pension and disability insurance regulations.

Material compensation during a strike may be claimed if laid down in the collective agreement or in the general act.

The organisers of or participants in a strike in contravention of this Act shall not enjoy the protection referred to in the first and second paragraphs of this Article.

Article 14

The corporate governance body and management body in the organisation, the employer or the official referred to in Article 11 of this Act shall not employ new workers who would replace strike participants unless there has been a failure to ensure the conditions referred to in the first paragraph of Article 5, Article 7 and the first paragraph of Article 11 of this Act.

The corporate governance body and management body in the organisation and the employer or official referred to in Article 11 of this Act may not prevent workers from participating in a strike and may not use violent measures in order to end a strike.

Article 15

The competent body of a state or local community shall adopt urgent measures laid down by Constitution and by Law if it assesses that an infringement of the first paragraph of Article 5, the first paragraph of Article 7 and the first paragraph of Article 11 of this Act might pose an imminent threat or have exceptionally grave consequences for the life and health of people or their safety and the safety of their property, or other harmful and irreparable consequences.

Article 16

The application of the provisions of this Act, collective agreements and general acts governing the rights and obligations of workers and the corporate governance body and management body or employer concerning a strike shall be supervised by the labour inspection service as laid down by the law.

Article 17

A fine of SIT 13,500 (56€) to SIT 540,000 (2.253€) for a violation shall be imposed on a company or legal entity:

(1) if during a strike organised under the conditions set out in this Act a company or other legal entity employs new workers to replace the strike participants, unless otherwise provided by this Act (first paragraph of Articles 14 and 15);

2) if a company or other legal entity prevents a worker from participating in a strike or if it uses violent measures in order to end the strike (second paragraph of Article 14).

A fine of SIT 3,000 (13€) to SIT 120,000 (500€) shall be imposed on the responsible person in a company or other legal entity for committing an offence referred to in the first paragraph of this Article.

A fine of SIT 3,000 to SIT 120,000 shall be imposed on the responsible person of a state or local community or other state body for committing an offence referred to in the first paragraph of this Article.

Article 18

A fine of SIT 3,000 to SIT 120,000 shall be imposed on an employer who does not have the status of a legal entity as follows:

(1) If during a strike organised under conditions provided in this Act, the employer employs new workers in order to replace the strike participants, unless otherwise provided by this Act (first paragraph of Articles 14 and 15),

2) If the employer prevents a worker from participating in the strike or if the employer uses violent measures to end the strike (second paragraph of Article 14).

Article 19

A fine of SIT 3,000 to SIT 120,000 shall be imposed on a worker who refuses cooperation with the management body in the organisation in order to ensure a minimum of operations to ensure the safety of people and property or to ensure the indispensable conditions for life and work of citizens or for the work of other organisations, or to ensure compliance with international obligations assumed by the state, or who refuses to carry out an order issued by an authorised person in the organisation (second paragraph of Article 10 and second paragraph of Article 11) in realising these goals.

Article 20

Collective agreements and general acts shall be brought into line with this Act within six months of its entry into force.

Article 21

This Act shall enter into force on the eighth day following its publication in the Official Gazette.

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Appendix 2

Police Act :

During a strike, police officers shall be under the obligation to continue to:

- protect people's lives, personal safety and property;
- prevent, detect and investigate criminal offences;
- detect and apprehend criminal offenders and other wanted persons, and hand them over to competent authorities;
- protect certain persons, bodies, buildings, neighbourhoods, work premises and classified information of state agencies;
- maintain public order;
- monitor and direct traffic on public roads;
- protect the state border and conduct border checks;
- implement the tasks set in the regulations on aliens;

Police officers shall be required to implement the tasks referred to in the preceding paragraph in a timely and efficient manner according to the instructions given by their superior officers.

During a strike, police personnel shall be required to ensure uninterrupted implementation of tasks defined in the first paragraph of this Article.

Health Services Act :

During a strike health care professionals (i.e. nurses) must provide emergency medical and nursing care to patients.

Fire Service Act :

(Fire service is compulsory local public service)

Workers in professional fire service can organize and conduct a strike in the manner provided by general rules, however, to ensure the continued readiness of firefighters on fire watch and intervene in case of fire or natural or other disasters. Firefighters should not in favor of a strike used fire protection and rescue equipment or signs for alerting and warning.

If during the strike comes to an increased risk of fire or other disaster or event of a fire or natural disasters and accidents, the professional firefighters must immediately interrupt the strike. A strike may be resumed when the fire was extinguished and removed the aftermath of disasters and to restore the readiness of the unit.

Defence Act

(1) Military personnel shall have no right to strike during the performance of military service.

(2) Workers carrying out regulatory and expert tasks in the field of defence shall exercise the right to strike under the conditions laid down in the Civil Servants Act.

(3) In addition to the conditions referred to in the preceding paragraph, during a strike, workers must ensure the following:

- the uninterrupted fulfilment of military affairs and other tasks related to the implementation of basic duties of citizens, companies, institutions and other organisations in the field of defence.

- uninterrupted fulfilment of civil defence affairs;

- continuous readiness for carrying out preparedness, courier service and mobilisation measures;

- continuous operation of emergency services, information and telecommunication systems;

- continuous and uninterrupted fulfilment of all affairs and functions related to the material care and health care of the armed forces, the maintenance of means, facilities and equipment, transport and storage for military needs;

- continuous and uninterrupted fulfilment of obligations assumed under international treaties in the field of defence or in connection with defence activities.

(4) Military persons and workers performing administrative and expert tasks in the field of defence shall have no right to strike if a heightened threat of attack on the country exists or if there is an imminent threat of war or if war and a state of emergency are declared, until such a situation has been eliminated. Strikes shall also be prohibited in other circumstances if the security and defence of the country are at risk and such circumstances are determined by the Government.

Customs Service Act

(1) During a strike, authorised officials shall be bound to ensure the uninterrupted fulfilment of the following tasks:

1. customs control of goods, passengers and means of transport;

2. customs approved employment or use of goods, and the accounting or charging of customs duties;

3. control of goods whose import and export are specifically regulated;

4. foreign exchange and currency control in international passenger and border traffic with other countries;

5. prevention and detection of customs offences and other criminal acts committed in customs procedures;

6. prevention and detection of offences in taking out of the country or bringing into the country domestic and foreign currencies;

7. the conducting of administrative procedure of first instance and second instance and minor offence proceedings of first instance.

(2) The positions of authorised officials who are obliged to provide continuous performance of tasks, during a strike, as referred to in the preceding paragraph shall be defined in the act regulating the internal organisation and classification of posts.

Aviation Act

(1) Personnel working in air traffic navigation services, flight and other professional airline personnel, personnel maintaining manoeuvring areas, facilities, equipment and installations at airports that are important for air traffic safety, meteorological services personnel in aviation, personnel involved in the reception and dispatch of aircraft, passenger and items, personnel of the security, fire and rescue services, services of emergency medical aid or first aid and personnel of other services referred to in this Act and of the mandatory inspection services that must be organised at a public airport according to the provisions of this Act, shall exercise the right to strike provided that air traffic safety is ensured in accordance with the provisions of this Act and other regulations governing strikes and collective agreements. During a strike, personnel shall ensure the safety of air traffic as set out in the provisions of this Act, other regulations in the field of aviation, aviation standards and recommendations as well as the agreed strike rules.

(2) Personnel referred to in the preceding paragraph must, during a strike, ensure the safe and unimpeded flights of:

1. aircraft participating in search and rescue operations and emergency aircraft,
2. aircraft serving humanitarian missions or medical purposes,
3. state aircraft referred to in the third paragraph of Article 7 of this Act and aircraft of other state bodies.

(3) The strike organiser must announce the strike to the employer through a strike decision at least 15 days prior to its commencement.

(4) The strike rules referred to in the first paragraph of this Article shall be agreed by a representative trade union and employer.

Enforcement of Criminal Sanctions Act

Staff of the Administration must, during a strike, perform all work and tasks that ensure the safety and undisturbed operation of the Administration, and prison officers must also accompany and guard detained persons by order of a court.

General Practitioner Services Act

During a strike, general practitioners (=doctors) shall be bound to provide those health care services referred to in the first paragraph of Article 4 of this Act whose omission would cause, within a short period of time, irreparable and serious damage to health or death. These include in particular:

- treatment of fever conditions and infections;
- treatment of injuries and poisoning;
- treatment of chronic diseases if its omission would directly, in a very short period of time, cause a deterioration of the health condition, disability, other permanent damage to health or death;
- other services of urgent medical assistance;
- performance of first medical examinations without a waiting period to the extent that it confirms or rules out the state referred to in the preceding indents (triage examination);
- prescription of medicinal products and medical devices for the treatment of states referred to in the preceding indents.

First examination shall be considered to be the first treatment at the primary level, while at the secondary or tertiary level, this is the first referral to a specialist on the basis of a new disease or condition or on the basis of deterioration of disease.

Moreover, general practitioners shall also be bound to perform the following services during a strike:

- all health care service for children aged up to 18 years and patients over 65 years of age;
- all health care services in connection with pregnancy and childbirth;
- measures for the prevention and control of communicable diseases.

Veterinary Compliance Criteria Act

(6) During a strike, the Veterinary Administration of the Republic of Slovenia must ensure the implementation of urgent measures in the event of an outbreak of specific animal diseases, and urgent measures for the protection of animals.