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EUROPEAN SOCIAL CHARTER

Comments by the European trade union federations –
EPSU, EuroCOP and EUROMIL

on 32 (European) countries that have (partially) ratified the
(Revised) European Social Charter

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Trade union rights in the public services

A report to the European Committee of Social Rights of
the Council of Europe

On behalf of the European trade union federations – EPSU, EuroCOP and
EUROMIL

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Foreword

EPSU, EuroCOP and EUROMIL are three European trade union federations that represent millions of public service workers, including civil servants of all kinds, workers in health and social services, public administration, police and military personnel. The protection and extension of the basic trade union rights to organise, negotiate and take collective action are central concerns for all three federations and, in recent years, have led to joint initiatives.

Currently, the three federations are co-operating in a two-year, European Commission-funded project on trade union rights. The specific impulse for this project was the 2019 European Directive on Transparent and Predictable Working Conditions which includes an article that allows EU member states to exclude public service workers from some of its key provisions. The potential exclusion is very broad and unlike any seen in previous EU social legislation. A key aim of the project was to monitor the national transposition of the Directive and to respond to any attempt by a member state to use the exclusion. The workers concerned are those who have been, and continue to be, in the front line to fight the Covid-19 pandemic, they deserve the same rights as any other workers.

More broadly the project has allowed the three federations to run a series of online regional meetings to exchange information on both positive and negative developments in trade union rights in the public services, to discuss strategies for future work in this area and implications for the EU sectoral social dialogue, which is currently under review by the EU Commission.

Stefan Clauwaert, Senior Legal and Human Rights Advisor at the ETUC has made an important contribution to the project and suggested that the three federations submit a report to the ECSR in order to highlight the problems facing many of our affiliates and to initiate an exchange with the Committee on common issues and trends across Europe.

The project funding from the European Commission allowed us to commission research work from a team of experts led by Alexander de Becker of the University of Ghent and, following Stefan's suggestion, we re-focused some of their work so that they could put this report together.

We would like to underline our commitment to a joint approach to trade union rights across the public services. All three federations want to see the broadest possible rights afforded across all public services and are concerned that any unjustifiable limits on those rights pose a threat to all our unions and professional associations. The denial of trade union rights to large numbers of public service workers – particularly uniformed workers – sets a dangerous precedent that can be used to restrict rights where they already exist or deny rights where they might be claimed.

We think that the report helps identify where some major problems persist and expose the inconsistency of approach between countries. If civil servants and public service workers in the Nordic countries, Belgium, the Netherlands, for example, can organise, negotiate (including on pay) and take collective action, why not in countries such as the Baltic states, Hungary, Poland, Bulgaria or Turkey?

If the all the police services in Scandinavia can organise, negotiate and take (restricted) collective action, then why not in Ireland and Malta, for example?

And if military personnel in the Nordic countries, the Netherlands, Belgium and even Hungary, among others, can organise, negotiate and take (restricted) collective action, why not in the Baltic states, Bulgaria, Romania, Italy, Spain and Portugal, for example.

We would also stress that our three federations are determined to support their affiliates in securing the effective exercise of these rights which means challenging those governments that are happy to demonstrate that the rights exist on paper, but less happy to allow for their application in practice.

We hope that this report helps to identify the challenges faced by our members in specific countries and generates a positive discussion about the importance of defending and improving trade union rights across the public services. We see it as starting point for our future work, for exchanges with the Committee and to generate increased interest in and contributions from our affiliates to the work of the Committee.

EPSU, EuroCOP and EUROMIL

Introduction

This report is the result of academic research on the trade union rights of civil servants, police and military personnel in 32 (European) countries¹ that have (partially) ratified the (Revised) European Social Charter (RESC). The first section deals with the right to organise, the second section with the right to collective bargaining and the third section with the right to take collective action (including the right to strike). For each of these rights, we indicate any recent developments, highlight some of the countries where these rights exist and then any problems or trends.

As a starting point for this research, country overviews were drawn up for all 32 countries on the current state of affairs regarding these trade union rights. To compile these country overviews we have looked up the current applicable national legislation with adjustments based on recent case law. In doing so, we incorporated insights gained from interviews with trade union affiliates and academics from the relevant countries. Subsequently, we analysed the latest conclusions of the European Committee on Social Rights (ECSR), the relevant collective complaints (including the decisions of the ECSR and follow-ups on these) and the national reports submitted by the governments on articles 5 and 6 RESC on the right to organise and the right to collective bargaining.

Ratification and exemptions

Not all of the 32 countries covered in this report have ratified articles 5 and 6 of the Revised European Social Charter (RESC). In the case of **Greece**, article 5 and 6 RESC were accepted by the ratification of the Revised European Social Charter in 2016. However, ECSR has not yet been able to comment on these article in its conclusions. **Turkey** on the other hand, has not ratified articles 5 and 6 and in its second report on the non-accepted provisions of the European Social Charter (2018) the Turkish authorities mentioned that they informed the ECSR, by letter (4 November 2016), that the Turkish Government has decided to accept article 4, §1, 5 and 6, §1-3 of the RESC. Contrary to this statement, our contact in Turkey has informed us that no preparations or concrete steps in this regard have yet been taken.

In addition, some countries have made an exemption from the application of article 6 § 4 (right to collective action) RESC. For **Austria, Luxembourg, Poland**, it concerns a general exemption. For the **Netherlands**² and **Serbia**³ the exemption covers military staff. **Spain** declared that it will interpret and apply articles 5 and 6 of the European Social Charter in accordance with Article 31 and the Appendix to the Charter, in such a way that their provisions will be compatible with those of Articles 28, 37, 103(3) and 127 of the Spanish Constitution, all articles dealing with the rights of certain public servants.

Seventeen of the 32 countries have not ratified the Additional Protocol to the European Social Charter providing for a system of collective complaints.⁴ As a result, problems regarding trade union rights that exist in those countries are less easy to denounce.

1. The right to organise

Although there are some restrictions in a minority of countries, the right to organise is guaranteed for civil servants in most of the 32 countries in this study. This right guaranteed to a lesser extent for police officers and much less for military staff, with around half of the 32, denying the right to organise to the latter.

1.1 Positive developments

There have been some positive developments in recent years in three countries – **Malta, Turkey** and **Italy**.

Since the 2015 amendment of the Employment and Industrial Relations Act, police officers and members of the armed forces in **Malta** have had the right to become a member of a registered trade union of their choice.

While police officers in **Turkey** do not have a right to establish or to join a trade union (see below), civilian and unarmed personnel working in auxiliary services in the police may be trade union members. This is the result of a decision of the Turkish Constitutional Court⁵. In this context, two labour unions were established, however, the number of members and rate of representation are very low.

In a judgement of 13 June 2018 the **Italian** Constitutional Court concluded it was unconstitutional to deny military personnel the right to organise and that they should be allowed to form and join associations with a trade union character. In September 2018, the Italian Minister of Defence drafted a new procedure regarding the establishment of military associations. While the existing legislation has not yet been adapted, in the meantime several associations of Italian soldiers have been recognised by the defence minister as “associations with a trade union character”.

The Act of 28 April 2022 changed the code of military order in the sense that military staff can now form and join a trade union. Nevertheless, the prior consent for registration of the defence minister is still required. In its decision on the merits of the collective complaint no. 140/2016 (CGIL v Italy) the European Committee of Social Rights (ECSR) stated that as long as there is no provision of administrative and judicial remedies against an arbitrary refusal of registration, this restriction on the right to organise is too excessive.⁶ At the moment it is not clear whether such remedies exist. However, it is the first time that the Italian legislator recognises the right to join a trade union for military staff even if it seems that their freedom of association remains hampered with regard to the choice of the trade union and its competences. In addition, it is still not possible for military trade unions to join trade union federations.

1.2 Problems and trends

1.2.1 Civil servants

Prohibition of senior civil servants from holding trade union positions

The right of senior government officials exercising decision-making powers, to be elected as trade union officials is still denied in **Albania** and **Poland**.

In its last conclusion with regard to **Albania** (2010) the ECSR already noted (and before that in 2006) that senior government officials were prohibited from forming trade unions and for this reason the ECSR concluded that Albania was not in conformity with article 5 RESC. The ECSR considered that it was not established that this prohibition was not applied to excessively wide categories of senior civil servants. The government of Albania has not responded to this in any subsequent report. It is not clear whether this prohibition still exists. The current Act on civil servants (valid since 2014), on the other hand, does contain a prohibition for civil servants from the senior management to be elected at the steering bodies of trade unions or professional associations.

Also with regard to **Poland** the ECSR noted in its last conclusion (2019) (and before that several times in previous conclusions) that some civil servants exercising public powers (listed in section 52 of the Act on civil servants) are prohibited to hold a position within a trade union. According to the ECSR this list with senior civil servants not allowed to perform trade union functions, goes beyond the exceptions authorised by article 5. For this reason the ECSR considered Poland not to be in conformity with article 5 RESC. In its latest report (2022) The government did not react on this in its latest report (2022) and it appears that the legislation has not changed.

Prohibiting civil servants' trade unions from joining national trade union (con)federations

According to the Act on the Ministry of Interior trade unions in **Bulgaria** having civil servants working in the Ministry of Interior as members are not allowed to join or affiliate with national trade unions outside the Ministry of Interior. The ECSR has consistently held that article 5 implies for the organisations themselves, the right to establish and join federations. We also hereby refer to the decision of the ECSR of 12 September 2017 following the Complaint No. 112/2014 (EUROMIL v. **Ireland**), §§ 47-49, which will be discussed later on.

Civil servants who do not have the right to form/join a trade union

In the case of **Turkey**, the Act No. 4688 on public servants' trade unions and collective agreement of 2001 prohibits a long list⁷ of civil servants from forming or joining a trade union. However, Turkey has not yet ratified article 5 of the RESC, and so there are no ECSR conclusions regarding this subject.

In the case of **Malta**, the Prime Minister has the power to declare a certain office in the public service to be an office whereof the holder may not be a member of a trade union because he may be required to represent or advise the Government in industrial relations with the trade union or unions. The holder of this office may not become, or cease to be a member of a trade union. This prohibition to join a trade unions is an implied term of the contract of employment.⁸ Although the Employment and Industrial Relations act limits the number of such offices whereof the holder may not be a member of a trade union⁹, it implies a discretionary power of the Prime Minister to choose which holder of offices are excluded from their right to organise.

Compulsory membership of a public administration professional body

In **Hungary**, the existence of the faculty of government officials poses a challenge to trade unions. This is a public administration professional body with compulsory membership. A government official becomes a member of the MKK upon appointment. The MKK, among others, protects the interests of its bodies and members, and the rights of government officials but is not a trade union.

1.2.2 Police officers

Although article 5 permits states to restrict the right to organise for police officers, they cannot completely deny police officers' right to organise. Members of police forces must be free to form or join genuine organisations for the protection of their material and moral interests and [...] such organisations must be able to benefit from most trade union prerogatives [...]. These are basic guarantees with regard to i) the constitution of their professional associations; ii) the trade union prerogatives that may be used by these associations; and iii) the protection of their representatives. As long as these basic guarantees are provided, states parties may make distinctions according to different categories of police personnel.¹⁰

Total ban on forming a trade union and/or being a member of a trade union

Of the 32 countries, only **Turkey** still has an absolute prohibition on police officers exercising any trade union rights. They are not allowed to establish or join a trade union and have no right to collective bargaining or to take collective action (see below).

A limited number of trade unions allowed or mandatory monopoly

The Act on State Police in **Albania** prescribes the monopoly of the State Police Union. All members of the State police may be members, with the exception of the General Director and the Deputy General Directors. Employees of the State Police not wishing to be members of the State Police Union must submit a written notice to the steering body of the Union.¹¹ The ECSR's conclusions of 2010 made clear that this monopoly is contrary to article 5 ESC, as members of the police do not enjoy the right to form a trade union.¹² The freedom of association still seems very limited for Albanian police officers.

Members of the police force in **Greece** have the right to become a member of a trade union, but can only join the primary trade union organization of the Police Directorate or of the district where they serve. The exercise of their trade union rights may not exceed the limits determined by the peculiarities, the mission and especially the national, social and cross-party character of the police. It is not clear what this last part means and to what extent it limits the right to organise of police officers. The restriction that they may only be members of one particular trade union implies that they are not allowed to form a trade union and so is at odds with article 5. Since Greece only accepted article 5 at its ratification of the RESC in 2016, the ECSR has not yet had the opportunity to write conclusions on this question but a similar conclusion as for Albania in 2010 can be expected.

In **Cyprus**, police officers can join only one of the two permitted trade unions: one for senior officers and one for the other ranks. Therefore their right to freely form a trade union is limited. The limitation of this freedom of association seems to be at odds with article 5 RESC.

Compulsory membership of a public administration professional body of police officers

In addition to the existence of trade unions of police officers in **Hungary**, there is a faculty of law enforcement staff that plays an important role in the right to consultation and so poses a competitive challenge to the trade unions (similar situation as for civil servants – see above).

Prohibition of joining national employees' organisations

In its decision of 2 December 2013, following complaint 83/2012 (*EuroCOP v. Ireland*), the ECSR considered that the prohibition in **Irish** legislation against police representative associations from joining national employees' organisations was a violation of article 5, because it had the factual effect of depriving them of the possibility to negotiate on pay, pensions and service conditions represented by national organisations. In its third assessment of the follow-up the ECSR found that the regulations had been amended and that the police associations now can take part in national public service pay negotiations.

1.2.3 Military staff

In the current position of the ECSR on article 5 RESC allows states to impose restrictions upon the right to organise of members of the armed forces and grants them broad scope in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as the blanket prohibition of professional associations of a trade union nature and of the affiliation of such associations to national federations/ confederations.¹³

Prohibition on forming and/or joining a trade union

In several of the 32 countries in this study military staff are forbidden from forming and/or joining a trade union: **Albania, Croatia, Cyprus, Czech Republic** (including the Security and Intelligence Service)¹⁴, **Estonia, France, Ireland, Latvia** (including state security institutions), **Lithuania, Poland, Romania, Spain and Turkey**.

In **Croatia**, the prohibition only applies to active military personnel. Other civil servants and employees in the armed forces are allowed to organise in accordance with the general labour regulations.

Some of the countries listed above do allow military staff to form or join professional associations. This is the case in **Cyprus, France, Ireland and Poland**.

In order to enable the study and submission by members of the army of matters relating to the welfare, improvement of terms and conditions of employment, elevation of professional standards and development of fraternal relations of members of the army, including matters relating to their pay, pension and conditions of service, professional associations may be established by members of the armed forces in **Cyprus**. However, only two professional associations are allowed – one for officers and one for non-commissioned personnel.

In **France** legislation adopted in 2015 gave military staff the right to form and join a national professional association of military personnel and exercise its responsibilities. This change is the result of the *Matelly v France* judgment in which the European Court of Human Rights decided that the absolute prohibition for military staff to join and to form a trade union was a violation of article 11 of the European Convention on Human Rights.¹⁵

In **Ireland**, an association can be established for the purpose of representing members in relation to remuneration and such other matters as the Minister may specify in regulations. Such an association can't be affiliated to any trade union. This has been denounced by EUROMIL to the ECSR (see below).

In **Poland** professional soldiers are allowed to associate in organisations conducting welfare and loan activities at employers where they perform their professional military service.

The ECSR has noted that it is not bound by the categorisation adopted by the national authorities of a representative body, or its official name (whether a “trade union” or a “professional association”), when determining whether the requirements of Article 5 have been fulfilled. It says that it is necessary in each case to examine whether in the concrete situation the representative body has the basic trade union rights (the right to express demands with regards to working conditions and pay, the right of access to the working place, as well as the right of assembly and speech). (ECSR decision 2 December 2013, Complaint No. 83/2012, EUROCOPI v. **Ireland**, §76-80)

In a few other countries the national legislation provides for some form of alternative arrangement where the right to associate is denied. For example in **Latvia**, soldiers have a right to nominate a representative in each unit to protect the interests of soldiers and to solve practical issues with the unit commander and higher officials. In **Romania**, there are social dialogue committees within the Ministry of National Defence. It is, however, difficult to understand how a social dialogue committee could be an alternative to the right to organise.

Prohibition of joining national employees' organisations

In its decision of 12 September 2017 following the Complaint No. 112/2014 (*EUROMIL v. Ireland*) the ECSR considered that the prohibition in **Irish** legislation against military representative associations from joining national employees' organisations was a violation of article 5. This restriction has the factual effect of depriving the representative associations of an effective means of negotiating the conditions of employment on behalf of their members. After all, national umbrella organisations possess significant bargaining power in national negotiations. In its first assessment of the follow-up of this decision the ECSR noted that the statutory limitations in section 2 (3) of the Irish Defence Act 1990 remained the same and therefore came to the conclusion that Ireland was still not in conformity with article 5. To date, this legislation has not been changed. However, recently the national associations for military staff (PDFORRA and RACO) were allowed to join the national umbrella organisation, the Irish Congress of Trade Unions. But this affiliation has only been accepted by the Government to be part of the salary negotiations.

2. The right to collective bargaining

Common to the development of civil services across much of Western Europe was the idea that civil servants should not enter into contractual relations with the state (or public services). They had to be appointed unilaterally and were submitted to an impersonal and general regulatory framework which designs their legal status. A consequence of this is that collectively binding agreements were not considered to fit in the legal framework of civil servants. However, this approach has changed in many countries as the status of civil servants has developed. **Denmark** and **the Netherlands** are just two examples where changes have taken place to the status of civil servants along with the introduction of real collective bargaining agreements for civil servant, and in the case of Denmark for police officers and military staff as well.

2.1 Positive developments

The right to collective bargaining in the public sector (including for civil servants) has been recognized in **France** for some time, albeit with a question mark over the extent to which pay is really subject to a proper process of negotiation. However, since 9 July 2021 it has also been possible for trade unions of civil servants to conclude collective agreements. The General Civil Service Code lists the different subjects on which a collective agreement can be reached, but the legislation allows trade unions to negotiate in any other area as well.

2.2 Problems and trends

2.2.1 Civil servants

No right to collective bargaining

Civil servants in **Hungary** are not allowed to conclude collective agreements or to conduct any other form of collective bargaining. Trade unions of civil servants only have the right to give their opinion.

No real collective bargaining exists in **Albania** in services deemed of vital importance, nor a right to strike exists where the interruption of work in these services would jeopardize the life, the personal security or the health of a part or of the entire population.¹⁶ In the event of collective conflicts in these services and following unsuccessful mediation and reconciliation attempts, a compulsory arbitration procedure closing with a binding decision of a Court of Arbitration shall resolve the dispute. The ECSR already noted in its last conclusion with regard to Albania (2010) that this compulsory arbitration terminates collective bargaining even before recourse to a strike can be made and that it does not serve the purpose to end a strike in the above sectors which e.g. had lasted so long as to jeopardize the rights and freedoms of others or public health etc. The circumstances in which recourse to compulsory arbitration is authorised here go beyond the limits of article G of the RESC and therefore the ECSR concluded that this situation is not in conformity with article 6, §3 RESC. Current legislation still has not changed on this point. However, water supply services and electricity supply services have been recently removed from the list of services of vital importance.

Limited right to collective bargaining in practice

While national legislation recognizes the right to collective bargaining of civil servants, it seems that it is strongly limited in practice in **Bulgaria, Hungary, Lithuania, Poland** and **Turkey**. In each country this is caused by different factors and therefore these specific cases are discussed separately below.

Bulgaria: there was an adjustment to the civil servants act in 2016, however, it is not clear whether real collective bargaining is possible now.

While the **Hungarian** Constitution enshrines the right to collective bargaining, in practice real collective bargaining in the public sector does not exist. Firstly, the conclusion of collective agreements is not allowed for civil servants, police officers and military staff and secondly, the special faculties (as described above in section 1) play a major role in the right to consultation.

In **Lithuania** the labour code and its provisions regarding collective agreements are applicable to civil servants. While civil servants have a right to collective bargaining and to conclude collective agreements, in practice, questions have been raised about the content of these agreements and the rights and conditions that they deliver.

In **Poland**, members of the civil service corps and employees of state offices employed on the basis of appointment are excluded from the provisions of the labour code relating to collective agreements. In a judgment of 17 November 2015 the Polish Constitutional Court decided that this was not unconstitutional and not incompatible with ILO convention no. 98. According to the court a distinction can be made between the 'stronger' right of freedom of association and other related trade union rights, including the right to collective bargaining. Restrictions on these other trade union freedoms can, according to the Polish Constitutional court, be more far-reaching than restricting the fundamental freedom of association itself. Since the Polish trade union act provides for the possibility of consultation and expression of opinions by trade unions in the broader process of determining the conditions of employment of members of the civil service corps, the Court found no violation of the constitutional right to collective bargaining.

In the case of **Turkey**: although civil servants' unions and confederations have a right to be parties to collective agreement negotiations within the framework of Act No. 4688¹⁷, in practice for several reasons this right seems only to exist on paper. Firstly, only the confederation with the most members (in practice: a pro-government trade union) is authorized to conclude a collective agreement. Other trade unions only have an observer status at the negotiations. In practice there can also not be genuinely free collective bargaining, because civil servants still do not have a right to strike and in the event of disagreement in the process of collective bargaining they are subject to compulsory arbitration according to articles 33 and 34 Act No. 4688. In this procedure the Board of Arbitration is composed of mostly government-appointed members.

Limited right to collective bargaining at the level of content

The right to collective bargaining and the conclusions of collective agreements is only recognized in **Latvia** in the Act on remuneration of officials and employees of State and Local Government Authorities. On top of that collective bargaining on wage rates is limited by this act. It is therefore unclear whether collective bargaining is also possible on conditions other than pay. A similar problem exists in **Romania** where collective bargaining through the conclusion of collective agreements is allowed for civil servants (including police officers and military staff) but not on pay. Only when wages are set by special laws between minimum and maximum limits, concrete financial rights may be determined by collective bargaining, but only within the legal limits.

2.2.2. Police officers

Prohibition of collective bargaining

Since police officers in **Turkey** do not have a right to unionize, they don't have a right to collective bargaining and while the **Hungarian** Constitution enshrines the right to collective bargaining, it is not possible for civil servants (including police officers and military staff) to enter into collective bargaining negotiations.

2.2.3 Military staff

Prohibition of collective bargaining

Since in several of the countries in this study military staff do not have a right to unionize, an immediate consequence of this that they have no right to collective bargaining. This is the case for example in **Lithuania, Poland** and **Turkey**.

In the case of **Portugal**, military staff have the right to form and to join a trade union. However, the law limits their trade union rights by prohibiting trade union activities and denying them the right to

collective bargaining. Besides, the law certainly provides for the right of professional military associations to be heard, but these associations are barely consulted in practice. EUROMIL has submitted a collective complaint (199/2021) on this matter.

Limits on the content of collective bargaining

While collective bargaining through the conclusion of collective agreements is allowed for civil servants (including police officers and military staff) in **Romania**, it is not allowed on pay (see above). In **Slovenia** civil servants have a right to collective bargaining, but for military staff this is limited to the set-up of wages.

3. The right to take collective action

In most of the 32 countries covered by this report, the regulations only mention the right to strike, whereas the concept of 'collective action' is mostly unknown. Therefore this section mainly deals with the right to strike.

The right to strike is guaranteed for civil servants in most of the 32 countries covered by this report (with or without restrictions such as for example a guaranteed minimum service provision). This right is much less widely guaranteed for police officers and military staff. For police officers the following countries, for example, provide certain rights to take industrial action: **Belgium, Croatia, Montenegro, the Netherlands (casuistic case law), North Macedonia, Slovenia** and **Sweden**. Only **North Macedonia** (see section 3.4.3) and **Sweden** allow for some form of industrial action by military personnel.

In the Basic Agreement for the Public Sector in **Sweden**, the social partners agreed that, in certain sectors (including police and military), strikes and collective action are to be undertaken with extreme caution. Consequently, there is no prohibition to strike.

The ECSR recognises that, by virtue of Article 31 of the 1961 Charter (article G, RESC), the right to strike of certain categories of public servants may be restricted, including members of the police and armed forces, judges and senior civil servants. On the other hand, it takes the view that a denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter. Under Article 31, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc.

With regard to police officers, the ECSR has also held that an absolute prohibition on the right to strike can be considered in conformity with Article 6, §4 only if there are *compelling reasons* justifying it. On the other hand the imposition of restrictions as to the mode and form of such strike action can be in conformity with the Charter.¹⁸

When it comes to members of the armed forces, the ECSR finds that the margin of appreciation is greater than that afforded to states in respect of the police. Most of the member states of the Council of Europe still prohibit members of the armed forces from striking. Therefore and having regard to the specific nature of the tasks carried out by members of the armed forces, the special circumstances of members of the armed forces who operate under a system of military discipline, the potential that any industrial action could disrupt operations in a way that threatens national security, the ECSR considered in its decision on the collective complaint no. 112/2014 that there is a justification for the imposition of the absolute prohibition on the right to strike.¹⁹

On the other hand, the ECSR did not accept an absolute prohibition on the right to strike for the *Guardia di Finanza* (financial police – deemed to be a militarised police force) in the collective complaint no. 140/2016. In this case the ECSR concluded that minimum services in the event of a strike are not organised in **Italy** in the national defence and public safety sector, unlike other parts of the public sector, and that a lack of effectiveness of the collective bargaining regarding the *Guardia Di Finanza* existed.²⁰ With this decision the ECSR stated clearly that, although the margin of appreciation is greater than that afforded to states in respect of the police, a general ban cannot simply be applied. It should be noted that in the recent amendment of the Italian code of military order (introducing the right to form and join a trade union) Italy retained the ban to strike for military personnel, not taking into account the outcome of complaint no. 140/2016.

3.1 Positive developments

In its new Act on civil servants of 2013, **Albania** repealed the general ban on strike for civil servants and introduced a basic right to strike. Nevertheless this regulation still contains many exceptions (see 2.2.1).

In 2014, the Turkish Constitutional Court cancelled the general strike ban in the banking sector and in the public transport services.

Until an amendment of the Act on civil servants in 2016, civil servants in **Bulgaria** were only allowed to engage in a symbolic action and were prohibited from collectively withdrawing their labour. In its last conclusion on Bulgaria (2014) the ECSR came to the conclusion that this was not in conformity with article 6, §4 RESC. Now all civil servants have a right to strike, with the exception of the following senior civil servants: Secretary General, Secretary of the Municipality, Director General of the General Directorate, Director of the Directorate and the Head of the Inspectorate.²¹

3.2 Problems and trends

3.2.1 Civil servants

Total prohibitions on taking collective action

A total prohibition to strike for civil servants still exists in **Estonia, Germany, Poland** and **Turkey** and to a lesser extent in **Denmark**.

In **Estonia** strikes are prohibited for civil servants in governmental authorities and other state bodies and local governments.

The ECSR has stated several times in its conclusions that the denial of the right to strike to civil servants as a whole, regardless of whether they exercise public authority, constitutes an excessive restriction to the right to strike. In its last national report the **German** government did not react on these conclusions of non-conformity. A case is currently before the European Court of Human Rights and German trade unions and the European Trade Union Confederation have made third-party interventions to contest this prohibition.²²

Legislation in **Poland** currently prohibits strike action by persons employed in state authorities, central and local government administrations, courts and public prosecutor's offices. This provision entails a general strike ban for civil servants.²³ However, a complaint of the trade union of civil servants regarding this prohibition is pending with the Constitutional Court.²⁴

In **Turkey**, it is forbidden for all civil servants (not just those who exercise public authority in the strict sense) to organise, to declare and to decide to strike and to make propaganda on it.²⁵ This is despite the *Enerji Yapı-Yol Sen Judgment* (2009) of the European Court on Human Rights, in which the court held that a ban applied to all public servants was too wide a restriction and therefore Turkey violated art. 11 ECHR. However, the Turkish Constitutional Court decided in a judgment of 6 January 2015²⁶ that civil servants can go on a strike following a trade union decision and cannot be punished for that. This judgment was based on article 90 of the Turkish Constitution, which prioritizes international conventions over domestic law. However, a decision of the Constitutional Court does not annul a rule in Turkish domestic law, it only gives a decision of violation of rights upon individual application. Therefore, because there has been no change in the law, civil servants' unions still do not have the freedom to strike. In addition to this general strike ban for civil servants, strikes are also prohibited in a wide range of sectors.²⁷ There is a further restriction in right of the Council of Ministers to postpone a strike if it deems it of a nature that it could damage the public health or national security. In practice it appears that this provision is frequently used in cases where it is difficult to believe that public health or national security are in danger.

In **Denmark**, a very limited number of civil servants remains unilaterally appointed with a specific status. This group of civil servants does not enjoy the right to strike which appears to be in contravention of article 11 ECHR. There is no indication that the government intends to modify this matter.

Prohibition to strike in certain public services

According to the ECSR, simply prohibiting all employees from striking in electricity and water supply services, even though essential, could not be considered proportionate to the requirements of these sectors, and therefore necessary in a democratic society. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4. In **Albania** these sectors were removed from the list of services of vital importance, but still remain part of the extensive list of essential services²⁸. Therefore a strike ban still exists.

Limitations to the right to strike

In the case of **Hungary**, the ECSR has noted in several successive conclusions that the right to strike in the civil service is restricted by special regulations (referred to in section 3 (2) of strike Act 1989) in a way that is not in conformity with article 6, §4 RESC. These special regulations are fixed in an agreement, dated 1994, between the government and the trade unions.²⁹ Since then, the agreement has not changed in these areas. While this agreement appears to be outdated (not all of the original signatory trade unions still exist today) and not functioning, the agreement is still in force. Therefore it is not clear whether in practice all civil servants can strike and if all trade unions can initiate a strike.

In **Ireland**, only authorised trade unions, which are trade unions holding a negotiation license, their officials and members are granted immunity from prosecution for inducements to break contracts of employment and from prosecution when taking part in peaceful picketing. While the ECSR already concluded in 2014 that this is not in conformity with article 6, §4 RESC, this restriction still applies.

In **Romania**, a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union's members. The ECSR has stated several times (conclusions 2002, 2004, 2006, 2010, 2014 and 2018) that this is not in conformity with article 6, §4 RESC.

In **Spain**, the government may impose arbitration to end a strike in exceptional circumstances, namely when it considers that there is a threat to the rights and freedoms of others because a strike had gone on for too long, the parties' positions were irreconcilable and too much damage was being done to the national economy. The ECSR concluded that this was not in conformity with article 6, §4 RESC. The legislation has not changed to date.

Minimum services

In the case of **North Macedonia**, civil servants have a basic right to strike, but a minimum level of service is required as set by the relevant minister to ensure uninterrupted execution of functions of the bodies of the state administration. The ECSR noted in its last conclusion on North Macedonia (2018) that the sectors in which the right to strike may be restricted are extensive and asked the next report to demonstrate that the restrictions satisfy the conditions laid down in Article G of the Charter. In its report of 2022, the government of North Macedonia gave no arguments to justify this. A similar situation exists in **Albania**, where a strike in the public sector cannot be exercised if there is a failure in providing a minimum service.

In the case of **Montenegro**, a state authority shall assess within 24 hours from the announcement of a strike in the public sector whether it would endanger national security, security of persons and property, the general interest of citizens and functioning of government authorities. If the strike is authorised, employees performing activities of public interest may strike, if minimum services are provided to ensure the security of people and property, the indispensable prerequisites for citizens' lives and work and protection of the national security and the operation of government authorities. The list of activities of public interest is again very extensive.³⁰

In the case of **Serbia**, the strike Act provides in restrictions on the right to strike in a wide range of sectors³¹ where a minimum service is required. Employers have the power to unilaterally determine

the minimum service required after only consulting the trade unions. The ECSR concluded that these restrictions are too extensive and go beyond the limits permitted by article G RESC (Conclusions 2018).

Restrictions on the right to call a strike

According to the ECSR, the decision to call a strike may be reserved to a trade union provided that forming a trade union is not subject to excessive formalities. In the case of **Croatia** the time frame for registering a trade union can still take up to 30 days. Therefore the non-conformity (See Conclusions XXI-3) with article 6, §4 remains. In the case of **France**, only 'representative trade unions' have the right to call a strike. In its last conclusion on France (2014), the ECSR found this not to be in conformity with art. 6, §4 RESC.

No law regulating collective action/strikes

The **Dutch** Constitution nor the Dutch statutory law mentions a right to strike. All strike law is the result of case law and therefore not limited to a specific form of collective action. Consequently a strike is allowed and is determined by case law. Nevertheless this case law tends to be very casuistic. A definition of essential services does not exist. The same applies to police officers.

This also counts for **Belgium** where no legal definition of the right to strike is granted by regulation. However, both countries resolved this issue by recognising direct application to article 6, §4 RESC. The Belgian Supreme Court however decided in a judgment of 23 March 2022 that this article does not have direct application which puts the legal recognition of the right to strike in general at stake.³²

3.2.2 Police officers

Total prohibition of strike action

Of the 32 countries in this study, most apply a ban on strike action by police officers but the ECSR has ruled on multiple occasions that an absolute prohibition on the right to strike for police officers can only be considered in conformity with Article 6, §4 RESC if there are *compelling reasons* justifying it. An important illustration of this is the decision of the ECSR on the collective complaint no. 83/2012 (EUROCOOP v. **Ireland**). The ECSR observed that the Irish government did not demonstrate the existence of a concrete pressing social need that could justify that the legitimate purpose of maintaining national security could not be achieved by establishing restrictions on the exercise of the right to strike rather than by imposing an absolute prohibition.³³ Also, in its last conclusion with regard to the **Czech Republic**, the ECSR came to the conclusion that the country did not give any justification under article 31 of the RESC to justify the total prohibition to strike for police officers.

On the other hand, the European Court on Human Rights did accept an absolute prohibition on the right to strike of the police in **Spain** in the case ER.N.E. v. Spain on the grounds that the specific nature of their activities justify a very large margin of appreciation.³⁴

Restrictions on the right to strike: continuity of certain services

Police officers in **Croatia** face a range of restrictions³⁵ on the right to strike while police officers in **North Macedonia** any action may not disrupt the regular performance of the police tasks. The Police Act lists a very extensive range of services that must be guaranteed. In addition, in case of a complex security situation, disruption of public order and peace in a wider scope, natural disasters and other disasters or threat to the life and health of people and property in a wider scope, more than 10% of the total number of police officers of the Ministry cannot participate in a strike at the same time and the strike cannot last longer than three days. Taking all these elements together, the existence of a basic right to strike of police officers can be questioned. A similar situation can be found in **Slovenia** where a list of tasks must always be guaranteed during a strike.³⁶

In **Belgium**, the exercise of the police officers' right to strike is subject to certain conditions³⁷. The Minister of the Interior may, after consultation with the Minister of Justice, order federal and local

police officers who exercise or wish to exercise the right to strike to continue to work during the period on assignments that are necessary to guarantee a minimum service to the authorities and the population.

In **Montenegro**, the Act on Internal Affairs allows for the right to strike of police officers but within specific conditions. A minimum service needs to be guaranteed at all times and agreed between the Ministry and the representative unions. A police officer participating in a strike may not exercise police powers, may not carry means of coercion, may not in any way disturb the unity of command and subordination and may not interfere with or influence police work. Additionally, legislation requires that a strike be organised in a way that will not endanger national security, safety of persons and property, the general interest of the citizens, as well as the functioning of the authorities.

3.4.3 Military staff

Total prohibition on strike action

The majority of the 32 countries in this study apply a total prohibition on strike action by military staff.

Distinction active military staff – administrative staff

Some countries make a distinction between active military staff and administrative staff.

In its last conclusion with regard to **Bulgaria** (2014) – and before in 2006 and 2010 – the ESCR stated that the Bulgarian prohibition to strike for civilian personnel of the Ministry of Defence was not in conformity with article 6, §4 RESC. This prohibition existed in the 1995 Defence Act and is maintained in the current Defence Act (2009).

In **Croatia**, civil servants and employees in the armed forces may not organize a strike in the event of a state of war or in a state of imminent threat to the independence, unity or existence of the State, which is directly related to preparedness measures or to the combat readiness of the armed forces or which threatens the vital functions of the armed forces.

In **Slovenia**, military personnel do not have a right to strike during their performance of military service but employees carrying out administrative and expert assignments in the defence field have a right to strike under the conditions defined by the Public Employees Act and have to ensure a minimum level of service during a strike. The right to strike of both categories of military staff is suspended if there is an increased risk of attack on the state, if there is an immediate threat of war or in circumstances in which the security and defence of the state are at risk. A Constitutional Court ruling of 10 March 2016 found that no unequal treatment exists between police officers and civil servants, whose right to strike is only restricted, military personnel, who do not have a right to strike. The Court concluded that they do not have comparable positions, since their positions differ from the perspective of constitutional law.³⁸

Right to participate in other forms of collective action

While strike law is not regulated in general in statutory law in the **Netherlands**, specific legislation exists for military staff. Military personnel in active service do not have a right to strike. But in principle they do have the right to participate in other forms of collective action, unless participation in such action is likely to disturb or disrupt the operational capacity of the armed forces.

Restricted right to strike

In **North Macedonia** the right to strike in the Armed Forces may be exercised only in conditions in which the combat readiness of the Armed Forces and the life and health of the members of the Armed Forces are not endangered. For preventing certain consequences on the combat readiness of the Armed Forces as well as the lives and health of the members of the Armed Forces during the strike, the Minister of Defence and the Chief of General Staff are obligated to maintain the vital functions of

the Armed Forces. During the strike, the participants are obligated to stay at their positions and accomplish activities necessary for maintaining the vital functions of the Armed Forces. The strike must be announced 10 days before its start. The strike may not include more than 10% of the total number of employees of the Armed Forces and may not last longer than 3 days.

Conclusion

In general, the Nordic countries provide some of the best examples of where the broadest rights to organise, negotiate and take collective action are applied across the public services and more generally across Western Europe those rights are probably better developed and protected than in some Central and Eastern European countries. In **Hungary** there are major restrictions on the right to organise and the right to enter into full collective negotiations in the public sector and there are concerns about the situations in **Poland, Albania** and **Bulgaria**, for example, where the right to organise, the right to collective bargaining and the right to collective action is either not guaranteed or subjected to major limitations. **Turkey** remains the country where public sector workers face the most restrictions and bans on these basic rights.

As far as the right to organise is concerned: **Albania, Greece, Cyprus** and **Turkey** should be looked at with major concern with regard to police officers. The right to organise seems to be very limited. For military staff the group of countries becomes even larger: it also includes the **Albania, Croatia, Cyprus, Czech Republic** (including the Security and Intelligence Service)³⁹, **Estonia, France, Ireland, Latvia** (including state security institutions), **Lithuania, Poland, Romania, Spain** and **Turkey**.

With regard to the right to collective bargaining, it seems worth to mention that concerns exist about **Albania, Bulgaria, Hungary, Lithuania, Poland, Romania** and **Turkey**. Specifically for military staff specific concerns exist for **Lithuania, Portugal, Poland Slovenia** and **Turkey**.

The right to collective action is the most difficult one to assess as many countries still limit this right for civil servants either directly or by listing a large number of minimal services. Police officers and certainly military staff are very often excluded from this right but as the ECSR has highlighted an outright ban is difficult to justify.

In general, one could conclude that the most worrying situations are to be found in **Albania, Poland, Hungary and Turkey** which does not mean that violations of basic rights are not taking place elsewhere.

Notes and references

- 1 The countries included in the research are the 27 member states of the European Union plus the candidate countries Albania, Montenegro, North Macedonia, Serbia and Turkey. This was on the basis that the research was carried out as part of the European Commission funded project – “Trade union rights and implementation of the Transparent and Predictable Working Conditions Directive in public services”.
- 2 Exemption for military personnel and civil servants employed by the Ministry of Defence.
- 3 Exemption for professional military personnel of the Serbian Army.
- 4 Countries not accepting the procedure of collective complaints: Albania, Austria, Denmark, Estonia, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Montenegro, North Macedonia, Poland, Romania, Serbia, Spain and Turkey.
- 5 <https://www.resmigazete.gov.tr/eskiler/2015/01/20150127-10.pdf>
- 6 ECSR 22nd January 2019, decision on the merits, Complaint no. 140/2016, CGIL v. Italy, §83.
- 7 The ban covers: Public servants employed in General Secretariat for Turkish Grand National Assembly, General Secretariat for Office of President, and General Secretariat for National Security Council; Chairmen and members of higher judicial organs, judges, prosecutors and those considered to be members of this profession; With respect to the establishments and institutions included in the scope this Law those people who are undersecretaries, chairmen, general directors, presidents and assistants to presidents of departments, members of board of directors, directors of supervisory units of central organizations and chairmen of boards, legal consultants, top directors of regions, districts and sub-district organizations and other public servants with equal or higher ranking, mayors and vice-mayors; Chairman and members of the Higher Education Council and chairman and members of the Higher Education Supervisory Council, rectors of universities and higher technology institutes, deans of faculties, principals of institutes and junior colleges and their assistants; Directors of civil administration; Members of the Armed forces; Civil officials and public servants employed in the permanent staffs of Ministry of National Defence and Turkish Armed Forces (Command of Gendarmerie and Command of Coastal Security included); Employees of National Intelligence Organization; Central supervision staff of the establishments and institutions include in the scope this Law; Security services personnel and other personnel employed in other services in the security organization; Public servants employed in establishments for execution of sentences
- 8 Art. 67 Employment and industrial relations Act.
- 9 Art. 67 (3) Employment and industrial relations Act: Not more than three in the case of a corporate employer employing not more than two hundred persons and not more than seven in the case of a corporate employer employing more than two hundred employees.
- 10 ECSR 21st May 2002, decision on the merits, complaint no. 11/2001, CESP v. Portugal, §25-27; ECSR 27th January 2016, decision on the merits, complaint no. 101/2013, CESP v. France, § 62-63.
- 11 Art. 82 Act on State Police, <https://www.legislationline.org/documents/action/popup/id/4296>.
- 12 ECSR conclusions 2010 on article 5.
- 13 ECSR 12th September 2017, Decision on the merits, Collective complaint 112/2014, EUROMIL v. Ireland, §47.
- 14 The ECSR already concluded in its conclusions XXI-3 (2019) that the Czech Republic was not in conformity with article 5 RESC because of the prohibition for the Security and Intelligence Service to join a trade union and to form any type of association to protect their economic interests. A same prohibition exists for the civil national security services in Hungary (§333 (1) Act XLII of 2015 on the service relationship of the professional staff of law enforcement organisations)
- 15 ECHR 2nd October 2014, no. 10609/10, Matelly v. France, §75.
- 16 The following services are considered to be of vital importance: a) indispensable medical and hospital services; repealed; repealed; d) air traffic control services; e) indispensable services of protection from fire; f) services at prisons. Water supply services and electricity supply services are more recently removed from this list.
- 17 Following the Demir&Baykara v. Turkey judgment of the European Court on Human Rights, which implied a violation of article 11 ECHR, the Turkish Act No. 4688 on Public servant’s Unions and collective bargaining was amended in 2012.
- 18 EUROCOPI v. Ireland, Complaint No. 83/2012, §203-204 and §211.
- 19 EUROMIL v. Ireland, Complaint No. 112/2014, §115-118.
- 20 ECSR 22nd January 2019, decision on the merits, Complaint no. 140/2016, CGIL v. Italy, §152.
- 21 Art. 47 Act on civil servants 27 August 1999, <https://lex.bg/laws/ldoc/2134673408>.

22 Humpert a.o., <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2259433/18%22%5D%2C%22itemid%22:%5B%22001-196446%22%5D%7D>).

23 Art. 19 (3) Act on the settlement of collective labour disputes 23th May 1991, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/22401/119493/F763579769/D20180399Lj.pdf>.

24 <https://ipo.trybunal.gov.pl/ipo/view/sprawa.xhtml?&pokaz=dokumenty&sygnatura=K%2023/14>

25 Art. 27 of Act No. 657.

26 <https://www.resmigazete.gov.tr/eskiler/2015/01/20150127-10.pdf>

27 Life and property saving works; funeral works and cemeteries; city water, electricity, natural gas, oil production, liquidation and distribution and petrochemical works starting from naphtha or natural gas; workplaces directly operated by the Ministry of National Defence, the Gendarmerie General Command, and the Coast Guard Command; fire brigades and hospitals run by public institutions. (The strike ban on the banking sector and public transport services was cancelled by the Constitutional Court in 2014.)

28 Essential services: transport, public television, water, gas and electricity supply, prison administration, administration of justice system, national defence services, emergency medical services, services for the food supply or services for the air traffic control.

29 According to this agreement the right to call a strike is restricted to trade unions which are parties to this agreement and a strike can only be initiated by a trade union with approval of a majority of the staff concerned. In addition, the right to strike does not apply to civil servants exercising employer's rights which concern fundamentally the existence of the public service relationship.

30 Production and distribution of basic food products (flour, milk, oil, sugar and food for children); the production, transmission, distribution and supply of electricity; passenger transport (road, rail and air transport); the postal services (universal postal service); Public Electronic Communications, in accordance with the law; informative programs of public broadcasting service; public utilities/activities (water production and supply, garbage collection, production, distribution and supply of heat, funeral services and other); production, distribution and supply of oil, coal and gas; fire protection; health and veterinary care; pre-school and primary education; social and child protection; the fulfillment of the obligations under the ratified international treaties.

31 Sectors of public interest: the electricity generating industry; water management; transport, media (radio and television); postal services; public and municipal services; production of staple foodstuffs; healthcare and veterinary services; education; childcare; social security and social protection; essential activities for national defence and security; the performance of Serbia's international obligations and activities; or activities of which the interruption may, bearing in mind the very nature of the activity, jeopardise people's lives or health or cause extensive damage (for example, in the chemical, steel, ferrous or nonferrous metallurgy industries).

32 Belgian Supreme Court 23rd March 2022, ECLI:BE:CASS:2002:CONC.20220323.2F.4, <https://juportal.be/content/ECLI:BE:CASS:2022:CONC.20220323.2F.4/FR?HiLi=eNpLtDKwqq4FAAZPAf4=>.

33 ECSR 2nd December 2013, decision on the merits, collective complaint no. 83/2012, EUROCOOP v. Ireland, §209.

34 ECHR 21st April 2015, no. 45892/09, ER.N.E. v. Spain, §39-43.

35 The right strike for police officers in Croatia is limited in the case of a state of war or an imminent threat to the independence and unity of the state; armed rebellion, uprising and other forms of violent endangerment of the democratic constitutional order of the Republic of Croatia or fundamental freedoms and rights of man and citizens; declared natural disasters or direct dangers of their occurrence in the territory of two or more counties or in the entire territory of the Republic of Croatia; or other disasters and accidents that interfere with the normal course of life and endanger the safety of people and property.

36 Protecting people's lives, personal safety and property; preventing, detecting and investigating criminal offences; detecting and apprehending criminal offenders and other wanted persons, and handing them over to the competent authorities; protecting particular individuals, authorities, buildings, premises and the environs of state authorities; maintaining public order; controlling and directing traffic on public roads; conducting state border control; performing tasks defined by the regulations on foreigners.

37 1) A 12 days prior notice of the strike by a recognized trade union organization and 2) The negotiation committee is informed immediately after information. The committee discusses with the competent authority the pending issue.

38 <https://www.us-rs.si/decision/?lang=en&q=strike&caselid=&df=&dt=&af=&at=&pri=1&vd=&vo=1&vv=&vs=&ui=&va=&page=1&sort=&order=&id=112657>.

39 The ECSR already concluded in its conclusions XXI-3 (2019) that the Czech Republic was not in conformity with article 5 RESC because of the prohibition for the Security and Intelligence Service to join a trade union and

to form any type of association to protect their economic interests. A same prohibition exists for the civil national security services in Hungary (§333 (1) Act XLII of 2015 on the service relationship of the professional staff of law enforcement organisations)