

THE SCOPE OF ESSENTIAL SERVICES: Laws, Regulations and Practices

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*Working papers are preliminary documents circulated to stimulate
discussion and obtain comments*

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Preface

Whether they are delivered by public or private providers, services such as health, education, utilities, postal, telecommunications, transport, police and fire-fighting are considered to be public services because they are public goods that sustain the wellbeing of each citizen and help the development of society as a whole. Most ILO member States have adopted a variety of measures to ensure the continuous delivery of basic services, by declaring them essential services and/or by requiring minimum service levels that the population must receive without interruption. As set out by the ILO supervisory bodies, these measures should balance these needs with the fundamental right of workers to participate in the determination of their conditions of work in a meaningful way.

To achieve this balance of interests, the Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service, held in Geneva on 2-4 April 2014, concluded with a recommendation that the Office carry out research on the scope of essential services, with a view to fostering further dialogue by constituents within the framework of international labour standards (ILS).

Complying with this mandate and marking the ILO's Centenary, the Sectoral Policies Department is pleased to present a comprehensive sample of practices in the definition and application of essential services. This sample shows how member States have implemented the principles of the ILO Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No. 87) through legislation and jurisprudence, particularly in the public services. We hope that these pages will contribute to a constructive engagement of governments, employers and workers in this important area of work.

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Table of Contents

Preface	iii
Abbreviations.....	vii
Preface	viii
Introduction.....	9
I. Definition of Essential Services	9
1. Albania	11
2. Argentina.....	11
3. Australia	12
4. Bangladesh	13
5. Belgium	13
6. Bosnia and Hercegovina.....	14
7. Botswana	14
8. Brazil	14
9. Bulgaria	15
10. Canada.....	15
11. Cambodia.....	15
12. China	16
13. Dominican Republic.....	16
14. France	16
15. Hungary	17
16. India.....	18
17. Indonesia	22
18. Ireland.....	22
19. Italy.....	23
20. Japan.....	23
21. Jordan	24
22. Kenya.....	25
23. Republic of Korea	25
24. Latvia.....	26
25. Moldova.....	26
26. Montenegro	26
27. Myanmar	27
28. North Macedonia	28
29. Norway	29
30. Paraguay	29
31. Philippines	29
32. Poland.....	29
33. Portugal	30
34. Romania.....	30
35. Rwanda.....	31

36. Serbia.....	31
37. Seychelles.....	32
40. Slovakia.....	32
41. Solomon Islands.....	32
42. South Africa.....	32
43. Spain.....	33
44. Sri Lanka.....	34
45. St. Lucia.....	34
46. Swaziland.....	34
47. Tanzania.....	35
48. Ukraine.....	35
49. United Kingdom.....	35
50. United States of America.....	36
51. Vietnam.....	36
52. Zambia.....	37
53. Council of Europe Area.....	37
II. Establishment by Countries of Requirements for Minimum Services.....	39
1. Argentina.....	42
2. Australia.....	43
3. Belgium.....	43
4. Bulgaria.....	43
5. Canada.....	43
6. Dominican Republic.....	44
7. France.....	44
8. Germany.....	45
9. Hungary.....	45
10. Ireland.....	45
11. Latvia.....	46
12. Montenegro.....	46
13. North Macedonia.....	46
14. Paraguay.....	46
15. Poland.....	46
16. Rwanda.....	47
17. Romania.....	47
18. Serbia.....	48
19. Slovakia.....	48
20. South Africa.....	48
21. Spain.....	49
22. St. Lucia.....	50
III. Dispute Resolution Mechanisms.....	51
1. Albania.....	53
2. Argentina.....	53
3. Bangladesh.....	53
4. Côte d'Ivoire.....	53

5. Ireland.....	54
6. Italy.....	54
7. Myanmar	54
8. North Macedonia.....	54
9. Norway	55
10. Philippines.....	55
11. Serbia.....	55
12. South Africa	55
13. Spain.....	56
14. St. Lucia.....	56
15. Tanzania	56
16. United Kingdom.....	56
17. United States of America.....	56
IV. Prior Notice of Industrial Action.....	58
1. Bosnia and Hercegovina.....	58
2. Botswana	58
3. Brazil	58
4. Cambodia.....	58
5. Japan.....	58
6. Montenegro	58
7. Sri Lanka	59
V. Prohibitions and penalties imposed on industrial action in essential services	60
1. Greece.....	60
2. Republic of Korea	60
3. Spain.....	60
4. St. Lucia.....	61
Concluding remarks	62
Conventions Analyzed.....	63

Abbreviations

CEACR	Committee of Experts on the Application of Conventions and Recommendation
CFA	Committee on Freedom of Association
NLRA	National Labor Relations Board (USA)
ILC	International Labour Conference
ILS	International Labour Standards
IRLex	ILO Legal Database on Industrial Relations
ICFTU	International Confederation of Free Trade Unions
ITUC	International Trade Union Confederation
ITF	International Transport Workers' Federation
OSH	Occupational Safety and Health

Preface

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Introduction

The following paper examines the scope of essential services around the world. It is based on the ILO's industrial relations database (IRLEX) and the comments of the ILO supervisory bodies, the Committee on Freedom of Association (CFA) and the Committee of Experts on the Application of Conventions and Recommendations (CEACR). The sample covers legislation from fifty-five ILO member States and the European Community, which illustrates the wide variety of approaches to this important issue. The lists of essential services include the original numbering format in the legislation, and bullets are used in cases where the legislation does not number them.

I. Definition of Essential Services

The concept of essential services is based on Article 3 of Convention No. 87, which establishes the right of workers' organizations to organize their administration and activities and to formulate their programmes without interference by the public authorities. With the recognition of the Committee on Freedom of Association, some member States do however limit rights flowing from Article 3 to groups of workers that are considered essential services.

In the General Survey of 1973, the CEACR stated that "the recognition of the principle of freedom of association does not necessarily imply the right to strike. . . . The Committee on Freedom of Association has called attention to the abuses that might arise out of an excessively wide definition in the law of the term "essential services" and suggested that the prohibition of strikes should be confined to services which are essential in the strict sense of the term."¹

What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population.² The CFA has held that in order to determine situations in which a strike could be prohibited, the criterion which has to be met is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population.³

The vast majority of the comments of the ILO's supervisory bodies are linked to the exclusion of all or certain categories of public emergency services (PES) – especially by declaring them essential services – from all or some of the rights enshrined in C.87 and C.98.

¹ ILO, General Survey on the Application of the Conventions on Freedom of Association and on the Right to Organize and Collective Bargaining. Report III (Part 4B) of the Committee of Experts on the Application of Conventions and Recommendations to the 58th Session of the International Labour Conference (1973), para. 109.

² Freedom of Association. Compilation of decisions of the Committee on Freedom of Association, (Sixth Ed., 2018), para. 837.

³ *Id.*, para. 779.

Inter alia, in Case No 2325 (Portugal)⁴ reaffirmed in Case No 2738 (Russian Federation), the CFA recalled that the ILC intended to leave it up to each State to decide the extent to which it considered it appropriate to apply the rights envisaged in the Convention to members of the armed forces and the police, in other words, by implication, that States which have ratified the Convention are not obliged to recognize the rights set out therein for those categories of workers.⁵

Factors considered are the work conditions, environmental circumstances, probability, or even the possibility, that human life or public safety would suffer if a work stoppage interrupted the duties of these employees.⁶ In this regard, the CFA found that the refuse collection service might become essential if the strike affecting it exceeds a certain duration or extent so as to endanger the life, personal safety or health of the population.⁷

The CFA has considered, on a case-by-case basis, the following as constituting essential services:

- the hospital sector
- electricity services
- water supply services
- the telephone service
- the police and the armed forces
- the fire-fighting services
- public or private prison services
- the provision of food to pupils of school age and the cleaning of schools
- air traffic control⁸

The CFA has recognized the following services do not meet the requirements of essential services in the strict sense of the term or of to establish minimum services:

- radio and television
- department stores and pleasure parks
- the metal and mining sector
- computer services for the collection of excise duties and taxes⁹
- the government printing service and the state alcohol, salt and tobacco monopolies

⁴ Definitive Report - Report No. 335, November 2004, Para. 1257.

⁵ 145th Report, Case No. 778 (France), para. 19; 332nd Report, Case No. 2240, para. 264 and para. 1134, Definitive Report - Report No 357, June 2010

⁶ Public Service Alliance of Canada, Essential services: Frequently Asked Questions. Available at: <http://psacunion.ca/essential-services-frequently-asked-questions>.

⁷ Freedom of association. Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (Fifth Ed., 2006), para. 591.

⁸ Freedom of Association (2018), op. cit., para. 840.

⁹ Pan American Health Organization, “Disaster Management: Maintenance of Essential Services”, in *Leadership During a Pandemic: What your Municipality can do*, available at: http://www.paho.org/disasters/index.php?option=com_docman&view=download&category_slug=tools&alias=543-pandinflu-leadershipduring-tool-16&Itemid=1179&lang=en.

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- airline pilots
 - refrigeration enterprises
 - hotel services
 - automobile manufacturing
 - agricultural activities, the supply and distribution of foodstuffs
 - A mineral water bottling company¹⁰

The following is a list of definitions of essential services at the country level.

1. Albania

Section 197/5(1) of the Labour Code provides that strike cannot be declared in services of vital importance where the interruption of work would jeopardize the life, the personal security, or the health of a part or of the entire population.

Essential services are referred to as “indispensable services” and are defined in section 197/5(2) of the Code of Labour (No 7961, of 12 July 1995)¹¹ to include

- indispensable medical and hospital services;
- water supply services;
- electricity supply services;
- air traffic control services;
- services of protection from fire; and
- services at prisons.

Section 16(ë) of Law No. 9210 of 23 March 2004 on the Status of Servicemen of the Armed Forces of the Republic of Albania have the right to organize in associations, which do not have a political or trade unionist character¹².

2. Argentina

Section 24 of the Law No. 25877 on Labour Regime Reform of 2 March 2004¹³, lists the following essential services: health and hospital services; production and distribution of drinking water; electricity and gas; and air traffic control. In addition, an independent “Commission of Guarantees”, established under Decree No. 272 of 2006, may classify as essential any service which can endanger the life, safety or health of the population because of the duration and territorial extension of its interruption, or a “public service of transcendental importance”, under the criteria of the ILO’s supervisory bodies and only after exhausting existing conciliation mechanisms.

Members of the police and defence forces, the attorney general of administrative investigations and deputy prosecutors and high-ranking managers are excluded from the

¹⁰ Freedom of Association (2018), para. 842.

¹¹ <http://www.ilo.org/dyn/natlex/docs/SERIAL/41344/63433/F1167646799/ALB41344.PDF>

¹² Available In Albanian at: <http://www.mbrojtja.gov.al/images/akteligjore/statusi/1.pdf>.

¹³ Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=66678.

application of the rules on joining trade unions and concluding collective agreements based on section 3(3)(a) to (e) of Law No. 24.185 of 1992 Regulating Collective Conventions for the State Workers.¹⁴

3. Australia

Legislation does not explicitly cover essential services. The CEACR noted under C.87 that the following employers are not covered by the Fair Work Act: state public sector and local government employment in New South Wales, Queensland and South Australia; and state public sector employment in Tasmania.¹⁵

Essential services are defined at the provincial level. For example, the Essential Services Act 1988 (New South Wales) provides the following list:

- (a) the production, supply or distribution of any form of energy, power or fuel or of energy, power or fuel resources,
- (b) the public transportation of persons or the transportation of freight (including the provision of rail infrastructure for those purposes),
- (c) the provision of fire-fighting services,
- (d) the provision of public health services (including hospital or medical services),
- (e) the provision of ambulance services,
- (f) the production, supply or distribution of pharmaceutical products,
- (g) the provision of garbage, sanitary cleaning or sewerage services,
- (h) the supply or distribution of water,
- (i) the conduct of a welfare institution,
- (j) the conduct of a prison,
- (k) a service declared to be an essential service under subsection (2),
- (l) a service comprising the supply of goods or services necessary for providing any service referred to in paragraphs (a)-(k).

The Victoria Essential Services Act 1958,¹⁶ in turn, lists the following services as essential:

- (a) transport;
- (b) fuel;
- (c) light;

¹⁴Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/583/norma.htm>.

¹⁵ Observation (CEACR) - adopted 2011, published 101st ILC session (2012).

¹⁶ Available at: [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt6.nsf/DDE300B846EED9C7CA257616000A3571/C8381A89F354FE21CA25794A0074B25D/\\$FILE/58-6244a054bookmarked.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt6.nsf/DDE300B846EED9C7CA257616000A3571/C8381A89F354FE21CA25794A0074B25D/$FILE/58-6244a054bookmarked.pdf).

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- (d) power;
 - (e) water;
 - (f) sewerage;
 - (g) any service (whether of a type similar to the foregoing or not) specified from time to time by order of the Governor in Council published in the Government Gazette, which is provided by a transport, electricity or gas supplier covered by the statutes listed in the Act.

Under the Act, workers may engage in strikes in these services only after a majority of workers have supported it in a secret ballot election administered by the Victorian Electoral Commission. However, the designated Minister may declare an emergency if “any essential service is or is likely to be interrupted, dislocated or materially diminished and—

- (a) the opportunity of persons (other than those by whom the action has been taken or is likely to be taken or has been threatened to be taken) to be gainfully employed in their usual occupations; or
- (b) the health or safety of the public or any section of the public; or
- (c) the maintenance of peace and good order in Victoria is prejudiced or threatened or is likely to be prejudiced or threatened”.

In Case No 3118 regarding Australia, the CFA is asked whether New South Wales has enacted legislation imposing restrictions on free collective bargaining on wages and other matters for state public sector workers, thus violating the principles of freedom of association and collective bargaining.

4. Bangladesh

In Bangladesh, essential services are referred to as “public utility service” and defined in section 2(viii) of the Bangladesh Labour Act, 2006 (XLII of 2006)¹⁷ to mean the generation, production, manufacture, or supply of electricity, gas, oil or water to the public; any system of public conservancy or sanitation; hospitals and ambulance service; fire-fighting service; postal, telegraph or telephone service; railways, airways, road and river transport; ports; watch and ward staff and security services maintained in any establishment; oxygen acetylene; and banking. Furthermore, members of the defence force (section 1(4)(a)(j) of the Bangladesh Labour Act, 2006) and workers in industrial establishments owned and directly managed by the government (section 1(4)(a)(i) of the Bangladesh Labour Act, 2006) are excluded from its scope.

5. Belgium

Essential services are not defined by law but are defined by joint committees who determine in the event of a strike or lockout under section 1 of the Act Concerning Public Interest Services in Peacetime (Act of 19 August 1948).¹⁸ These Commissions must be composed of an equal number of employer and union representatives, as well as a Chairperson and a

¹⁷ Available at: <http://www.doulah.net/bdlaws/Bangladesh%20Labor%20Act,%202006.pdf>.

¹⁸ Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99814/119254/F-1715874500/BEL99814.pdf>.

Vice-Chairperson named by the King, under the Act on Collective Agreements and Joint Committees of 1968.

6. Bosnia and Hercegovina

Information is only available on the Republika Srpska, where section 11(1) of the Act on Strikes (Official Gazette of the Republika Srpska No. 110/08) defines essential services as “public interest activities” (*djelatnostima od opšteg interesa*) and “general interest activities”. Public interest activities are such the stoppage of which, due to the inherent nature of work, could endanger the lives and health of people or cause extensive damage, workers can only exercise the right to strike if they meet special conditions provided for in this law. This definition covers employers that exercise activities in electricity and water supply; rail transport; aviation and air traffic control; public radio and television services; postal services; communal activities; fire protection; health and veterinary protection; and social care for children and social protection. Furthermore, general interest activities are defined as activities of importance for the functioning of public administration and state security in accordance with the law, as well as operations necessary for complying with international agreements.

7. Botswana

The Trade Disputes Act, as amended in 2011, defines essential services as any service specified in a schedule which lists the following activities: air traffic control services; Botswana Vaccine Laboratory; electricity services; fire services; Bank of Botswana; health services; operational and maintenance services of the Railways; sewerage services; transport and telecommunications services; water services; veterinary services; teaching services; diamond sorting, cutting and selling services; and “all support services in connection therewith.” In line with its section 46(2), the Minister may declare any other service as essential if its interruption for at least seven days endangers the life, safety or health of the whole or part of the population or harms the economy.

Section 43(1)(a) states that it is a breach of contract “to deprive the public or any section of the public, either wholly or to a substantial extent, of an essential service or substantially to diminish the enjoyment of an essential service by the public or by any section of the public.”

The CEACR has repeatedly requested the government to amend the Act, indicating that, “while the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service ‘essential’.”¹⁹

8. Brazil

Section 10 of Law No. 7.783 of 28 June 1989 “Regulating the Exercise of the Right to Strike, Defining Essential Services, and Setting Out Minimum Services and Other Issues”²⁰, establishes the following activities as essential services: water supply and treatment; production and distribution of electricity, gas and fuels; medical and hospital care; distribution and marketing of pharmaceuticals and foods; funeral services; public transportation; collection and treatment of sewage and garbage; telecommunications; guard, use and control of radioactive, nuclear equipment and materials; data processing linked to essential services; air traffic control; and bank clearing. Furthermore, section 11 of Law No.

¹⁹ Observation (CEACR) - adopted 2018, published 108th ILC session (2019).

²⁰ Available in Portuguese at:
<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/7596/105991/F867164379/BRA7596.pdf>.

7.783 defines essential services as those providing urgent needs of the community, and those which if detained, put the survival, health or safety of the population in imminent danger.

9. Bulgaria

While no express definition of essential services exists in labour legislation, section 14(1) of the Law on the Settlement of Collective Disputes (SG No. 21/13.3.1990)²¹ states that during a strike the workers and the employer shall be obliged to provide a written agreement on the conditions for carrying out activities whose non-performance or interruption may cause danger for the lives and health of citizens in emergency or in need of urgent medical attention or hospitalization, the production, distribution, transmission and supply of gas, electricity and heat, adequate public utility and public transport services and the disruption of radio and television broadcasts and voice telephone services, irreparable damage to public or private property, to the environment, or to public order.

10. Canada

Essential service is defined as a “service, facility or activity of the Government of Canada that is or will be at any time, necessary for the safety and security of the public or a segment of the public.” The term public is to be given a broad meaning. It includes the general public as well as fellow employees and inmates.²² Examples of government services that may be considered essential include income and social security, border safety and security, national security, correctional services, accident safety investigations, marine safety and search and rescue. Although these government services are generally considered essential, a determination must be made on a case-by-case basis as to whether or not the duties performed are, in fact, essential.²³

Provinces have separate definitions of the essential services rendered in their jurisdictions.

11. Cambodia

Section 327 of the Royal Kram dated March 13, 1997 on the Labor Law (CS/RKM/0397/01)²⁴ defines essential services as services where, should there be a strike, “an interruption of such a service would endanger or be harmful to the life, safety, or health of all or part of the population.” Section 1(a) to (c) of Royal Kram CS/RKM/0397/01 excludes judges in the judiciary, persons appointed to a permanent post in the public service, personnel in the police, the army, and the military police, who are all governed by separate statutes. However, further information is available only for military personnel: section 12 of the Royal Kram NS/RKM/1197/005 on the promulgation of the Law on the General Statute of Military Personnel of the Royal Cambodian Armed Forces provides that military personnel may not

²¹ Available in Bulgarian at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/9841/119318/F802926046/BGR9841%20Bgr%202012.pdf>.

²² Public Service Alliance of Canada, loc. cit.

²³ Government of Canada, Essential services - Frequently Asked Questions (2015). Available at: <https://www.canada.ca/en/treasury-board-secretariat/services/labour-management/essential-services.html>.

²⁴ Available at: http://www.bigpond.com.kh/Council_of_Jurists/Travail/trv001g.htm.

assemble in order to create trade unions or professional groups or to participate as a member of a professional group that would not be in accordance with military discipline.²⁵

12. China

Industrial action is only banned in case of a national crisis resulting in the imposition of martial law.

Essential services are not defined. The only reference is section 66 of the Emergency Response Law of the People's Republic of China (Order No. 69 of President of the People's Republic of China), which states that "[w]here any unit or individual, in violation of the provisions of this Law, fails to follow the decisions or orders of the local people's government and its relevant departments or refuses to act in coordination with the measures taken thereby according to law, which constitutes a violation of the regulations for administration of public security, a penalty shall be imposed on it/him by the public security organ according to law."²⁶

While no provision exists banning the participation of police, security personnel and members of the armed forces in trade union action, the courts have held that these categories are not labourers in the sense of section 3 of the Trade Union Law and are thus banned from joining trade unions.

13. Dominican Republic

Section 404 of the Labour Code defines essential services as: communication, water supply, the distribution of gas or electricity for street lighting and household purposes, medicines, hospitals and all those having a similar nature.²⁷

14. France

No definition of essential services exists, and no general restrictions exist for essential services to engage in strike action. The CEACR observed, concerning Convention No.106, that the laws classify as such:

- (i) establishments engaged in work which cannot be interrupted owing to the nature of the needs for which they cater or the harm which any stoppage would cause to the public interest, including industries, businesses and services indispensable to the daily maintenance of health, food supplies, safety and essential consumer needs generally, such as hospitals and similar establishments, hotels, restaurants, certain wholesale and retail commercial establishments, fire-fighting services, newspaper, information and entertainment establishments, public utilities (water, gas and electricity) and transport;

²⁵ Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/93508/109344/F811412622/KHM93508%20Eng.pdf>.

²⁶ Available at:

http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content_21899265.htm.

²⁷ Available at: <https://www.ilo.org/legacy/english/dialogue/ifpdial/llg/ch5/ex4.htm>.

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- (ii) industries which for technical reasons must operate continuously if they are to maintain their efficiency, including manufacture of foodstuffs for immediate consumption, occupations in which any interruption of the work would entail the loss or deterioration of the raw materials, or industries using certain specialized techniques (ovens, blast furnaces, gas works, etc.); and
 - (iii) establishments which operate only for part of the year or which depend on natural energy or other variable circumstances (e.g. establishments using water or wind as their sole motive power, occupations which are carried on in the open air and in which work may be held up by bad weather), including certain establishments in bathing and tourist resorts or watering places.²⁸

The CEACR noted further that three types of professional categories are most affected by Sunday work: those related to the continuity of social life (for example, transport employees, staff of hotels and restaurants, shops, cultural and leisure activities); medical care (health care personnel, ambulance officers); and personal security (for example, police officers, firefighters, prison administration officers). The CEACR requested the Government to continue to provide up-to-date information on the public debate concerning Sunday work, including the views of the social partners, the conclusions and recommendations of the panel group appointed by the Government to report on this matter, and any legislative change undertaken or envisaged as a result.²⁹

While members of the National Police force have the right to form and join a trade union, members of the Gendarmerie (the military police) do not. Section 4121-4 of the Defence Code³⁰ provides that the existence of professional military groups of a union nature, as well as the joining to these groups by military personnel in active service, is incompatible with the rules of military discipline³¹.

15. Hungary

While there is no definition of essential services, Section 4(2) of the Act on Strikes (Act 7/1989)³² indirectly defines them, providing that in case of employers who perform fundamental public activities – such as, in particular, in the field of mass transportation on public roads and telecommunications, as well as suppliers of electricity, water, gas and other

²⁸ Observation (CEACR) - adopted 2009, published 99th ILC session (2010).

²⁹ Direct Request (CEACR) - adopted 2013, published 103rd ILC session (2014).

³⁰ Available at:

<https://www.legifrance.gouv.fr/affichCode.do?dateTexte=20151203&cidTexte=LEGITEXT000006071307&fastReqId=432377500&fastPos=1&oldAction=rechCodeArticle>.

³¹ These provisions of the Defence Code have been declared by the European Court of Human Rights as not being compatible with section 11 of the European Convention on Human Rights. See *ADEFDROMIL v. France* (Requête no. 32191/09) and *Matelly v. France* (Requête no 10609/10), 2 Oct. 2014.

³² Available in Hungarian at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/7607/119428/F255705128/HUN7607%20Hun.pdf>.

forms of energy – the right to strike may be exercised in a way so as not to impede the provision of services maintained at a level deemed sufficient.

16. India

16.1. Federal Level

Section 2(n)(i) of the Industrial Disputes Act, 1947 (No. 14 of 1947) defines essential services, referred to as “public utility service”, to include:

- any railway service or any transport service for the carriage of passengers or goods by air,
- any service in, or in connection with the working of, any major port or dock,
- any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends,
- any postal, telegraph or telephone service,
- any industry which supplies power, light or water to the public, and
- any system of public conservancy or sanitation.³³

In addition, the appropriate Government may notify through the Official Gazette that any industry listed in the First Schedule is a public utility service for reasons of a public emergency or public interest, for up to six months with the possibility of extension. Such First Schedule includes the following industries:

- Transport (other than railways) for the carriage of passengers or goods, by land or water;
- Banking;
- Cement;
- Coal;
- Cotton textiles;
- Food stuffs;
- Iron and Steel;
- Defence establishments;
- Service in hospitals and dispensaries;
- Fire Brigade Service;
- India Government Mints;
- India Security Press;
- Mining of copper, lead, zinc, iron ore, pyrites, phosphorite, or magnesite;
- Service in any oil field;
- Service in the Uranium Industry;
- Security Paper Mill, Hoshangabad; and
- Services in the Bank Note Press, Dewas.

Furthermore, section 2 excludes from coverage all members of the police and prison services; workers who are employed mainly in a managerial or administrative capacity;

³³ Available at: <https://indiacode.nic.in/bitstream/123456789/2169/3/A1947-14.pdf>.

hospital workers and workers in educational, scientific, research or training institutions workers; and any workers in establishments with less than ten staff.

The Essential Services Maintenance Act, 1981³⁴ defined essential services as follows:

- (i) any postal, telegraph or telephone service;
- (ii) any railway service or any other transport service for the carriage of passengers or goods by land, water or air with respect to which Parliament has power to make laws;
- (iii) any service connected with the operation or maintenance of aerodromes, or with the operation, repair or maintenance of aircraft;
- (iv) any service connected with the loading, unloading, movement or storage of goods in any port;
- (v) any service connected with the clearance of goods or passengers through the customs or with the prevention of smuggling;
- (vi) any service in any mint or security press;
- (vii) any service in any defence establishment of the Government of India;
- (viii) any service in connection with the affairs of the Union, not being a service specified in any of the foregoing sub- clauses;
- (ix) any other service connected with matters with respect to which Parliament has power to make laws and which the Central Government being of opinion that strikes therein would prejudicially affect the maintenance of any public utility service, the public safety or the maintenance of supplies and services necessary for the life of the community or would result in the infliction of grave hardship on the community, may, by notification in the Official Gazette, declare to be an essential service for the purposes of this Act;

The Act does not apply to the State of Jammu and Kashmir.

Similar laws for the maintenance of essential services have been adopted at the State level. As the reader will see below, the laws of Assam and Maharashtra contain lists of essential services which are essentially identical between them and parallel the federal list.

16.2. Assam

Section 2(1)(a) of the Essential Services Maintenance (Assam) Act (Act 41 of 1980)³⁵ defines essential service as follows:

- (i) any transport service for the carriage of passengers or goods, by land or water, with respect to which the Legislative Assembly of the State of Assam has power to make laws;
- (ii) any service connected with the production, storage, supply or distribution, as the case may be, of gas or water;
- (iii) any service connected with the maintenance of public health and sanitation, including hospitals and dispensaries;

³⁴ Act No. 40 of 1981. Available at: http://www.lawsindia.com/Industrial%20Law/A_0112.htm.

³⁵ Available at: <https://indiankanoon.org/doc/1083794/>.

-
- (iv) any public services and posts in connection with the affairs of the State, and also persons appointed to the secretarial staff of the Legislative Assembly of the State of Assam;
 - (v) any other service or employment or class thereof, connected with matters with respect to which the Legislative Assembly of the State of Assam has power to make laws and which the State Government, being of opinion that strikes therein would prejudicially affect the maintenance of any public utility service, the public safety of the maintenance of the supplies and services necessary for the life of the community or would result in the Official Gazette, declare to be an essential service for the purposes of this Act;

Section 3 of the Act permits the state Government, for six months with the possibility of extension for another six months, to prohibit strikes if it is satisfied that in the public interest it is necessary or expedient so to do, it may, by general or special Order, prohibit strikes in the State of Assam in any essential service specified in the Order.

The Government may make public rules restricting the right of members of the army and the air force to join, or associate in any way with any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations, in such manner and to such extent as may be specified. Members of the navy are excluded from joining trade unions without the express sanction of the central Government.

16.3. Maharashtra

Section 4.(1) of the Maharashtra Essential Services Maintenance Act, 2011³⁶ specifies essential services as follows:

- (i) Any transport service for the carriage of passengers or goods, by land or water, with respect to which the State Legislature has power to make laws;
- (ii) any service connected with the supply of gas or milk or water or electricity with respect to which the State Legislature has power to make laws ;
- (iii) any service connected with the maintenance of public health and sanitation including hospitals and dispensaries ;
- (iv) any public service, post and employment in connection with the affairs of the State and also persons appointed to the secretarial staff of both Houses of the State Legislature, and the officers and servants of the High Court ;
- (v) any service or post in connection with the affairs of the local authorities;
- (vi) any other service, post, employment or class thereof, connected with matters in respect of which the State Legislature has power to make laws and when the State Government is of opinion that strike in such service, post, employment or class thereof would prejudicially affect the public safety or the maintenance of the supplies or services essential to the life of the community or would result in the infliction of grave hardships on the community, and which the State Government by notification in the Official Gazette, declares to be an essential service for the purpose of this Act.

The state Government, may by general or special order, prohibit strikes in such essential service from such date as may be specified, if it is satisfied that it is necessary or expedient to do so in the public interest.

³⁶ Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=93735.

16.4 Uttar Pradesh

The state of Uttar Pradesh adopted in 1966 a more expansive list of essential services:

- (i) any public service in connexion with the affairs of the State of Uttar Pradesh;
- (ii) any service under an educational institution recognised by the Director of Education, or by the Board of High School and Intermediate Education, Uttar Pradesh, or service under a University incorporated by or under an Uttar Pradesh Act including any affiliated college, associated college, autonomous college, constituent college or Institute of any such University;
- (iii) any service under a local authority ;
- (iv) any service in connection with the U.P. State Co-operative Land Development Bank or any other State Level Co-operative Society, mentioned in clause (a-4) of Section 2 of the Uttar Pradesh Co-operative Societies Act, 1965, or its member cooperative societies, registered under the said Act;
- (v) any service in connection with any Government Company, in which not less than fifty-one per cent, paid-up share capital is held by the State Government, or other statutory body (by whatever name called) established or constituted by or under any Uttar Pradesh Act;
- (vi) any other service connected with matters with respect to which State Legislature has power to make laws and which the State Government, being of opinion that strikes therein would prejudicially affect the maintenance of any public utility service, the public safety or the maintenance of supplies and services necessary for the life of the community or would result in the infliction of great hardship on the community, may, by notification declare to be essential service for the purpose of the Act.³⁷

16.5. Jammu and Kashmir

This State defined in 2001 essential services in a general way, including all employment under the Government and any employment or class of employment, if the Government determines that it “is essential for securing the defence of the State, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies or services necessary to the life of the community”.³⁸

In the latter case, the Government must notify in the Government Gazette if the law will extend to such employees. The effect of this declaration is broader than a prohibition of strikes, including the prohibition to abandon the place of employment without authorisation, even if faced with increased physical danger, as well as a duty to obey any order issued in the course of employment. The ordinance also prohibits affected employers from closing the establishment without consent.

³⁷ The U.P. Essential Services Maintenance Act, 1966, U.P. Act No. 30 of 1966, Sec. 2, as amended by U.P. Act No. 16 of 1982 and U.P Act No. 24 of 1983. Available at: <http://www.bareactslive.com/ALL/up689.htm>.

³⁸ The Essential Services (Maintenance) Ordinance, Ordinance No. 9 of 2001. Available at: <http://www.bareactslive.com/JK/JK125.HTM>.

17. Indonesia

Section 139 of Law No. 13/2003 Concerning Manpower states that strikes in enterprises that serve the public interest and/or enterprise whose type of activities, when interrupted by a strike, will lead to endangerment of human lives and the disruption of public interest shall be arranged in such way as not to disrupt the public interest or endanger lives.³⁹ The explanatory note to this section provides that such enterprises include hospitals, fire departments, guarding railway crossings, controllers of sluices, controllers of air and sea traffic.

Section 5 of the Decision of the Minister of Manpower and Transmigration No. KEP.232/MEN/2003 concerning the Legal Consequences of Illegal Strikes⁴⁰, strikes carried out at enterprises that serve the public interests and / or companies whose types of activities endanger the safety of human life if interrupted will be illegal if performed by qualified workers who were on duty at the time of the strike.

18. Ireland

Section 30 of the Industrial Relations Act, 1990, Code of Practice on Dispute Procedures (Declaration) Order, 1992 (S.I. No. 1/1992) provides that essential services "include those whose cessation or interruption could endanger life, or cause major damage to the national economy, or widespread hardship to the Community and particularly: health services, energy supplies, including gas and electricity, water and sewage services, fire, ambulance and rescue services and certain elements of public transport."⁴¹

The 1991 Code of Practice on dispute settlement in essential services⁴² recognizes that the primary responsibility for dealing with industrial relations issues and the resolution of disputes rests with employers, employer organizations and trade unions. The Code of Practice seeks to ensure that employers and trade unions agree on appropriate and practical arrangements for resolving disputes on collective and individual issues, observe the terms of these agreements and refrain from any actions that would infringe them.

While managements have primary responsibility for providing minimum levels of service, this Code of Practice recognizes the joint obligation of employers and trade unions to put in place agreed contingency plans and other arrangements to deal with any emergency that may arise during an industrial dispute. Employers and trade unions should co-operate with the introduction of such plans and contingency arrangements. In particular, employers and trade unions in each essential service should co-operate in making arrangements concerning the maintenance of plant and equipment, all matters concerning health, safety and security, special operational problems that exist in continuous process industries, the provision of urgent medical services and supplies, and the provision of emergency services required on

³⁹ Available at: <http://www.ilo.org/dyn/natlex/docs/SERIAL/64764/56412/F811830039/IDN64764%20New.pdf>.

⁴⁰ Available at: <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/71308/71802/F1060309168/IDN71308.pdf>.

⁴¹ Available at: <http://www.irishstatutebook.ie/eli/1992/si/1/made/en/print>.

⁴² Available at: https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/cop2/.

humanitarian grounds. The parties should seek the assistance of the Labour Relations Commission if they encounter problems in making such arrangements.

19. Italy

Section 1(1) of Law No. 146/90 defines public essential services (*servizi pubblici essenziali*) as those designed to ensure the exercise of the constitutionally protected rights of persons, namely the rights to life, health, freedom and security of persons, freedom of movement, social assistance and security, education and freedom of communication, regardless of the legal nature of the work relationship even if carried out through public procurement or contracts.⁴³ Paragraph 2 of this section elaborates which services fall under those described in paragraph 1, as follows:

- health;
- public hygiene;
- civil protection;
- collection and disposal of municipal waste and special, toxic and harmful wastes;
- customs, limited to control over animals and perishable goods;
- the supply of energy, energy products, natural resources and primary goods needs, as well as the management and maintenance of the related systems, limited to what concerns their safety;
- the administration of justice, with particular reference to measures restricting personal freedom and those precautionary and urgent, as well as criminal proceedings with defendants in detention status;
- environmental protection services and cultural heritage supervision;
- urban and suburban public transport by road, rail, air, airport and maritime limited to connection with the islands;
- services of disbursement of the related amounts also made through the service banking;
- public education, with particular reference to nursery schools, kindergartens and elementary schools, as well as the performance of the final exams, and university education, with particular reference to examinations that conclude the education cycles;
- postal services, telecommunications and public broadcasting information.

Legislative Decree No. 66 of 15 March 2010 prohibits members of the armed forces from joining trade unions and exercising the right to strike.

20. Japan

Section 8(1) of the Labour Relations Adjustments Act provides that public welfare undertakings shall mean the following undertakings, which provide services essential to the daily life of the general public, such as transportation undertakings, mail, correspondence delivery or telecommunications undertakings, undertakings for supplying water, electricity

⁴³ Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/9824/118406/F2119090520/ITL9824%20Itl.pdf>

or gas, medical treatment or public health undertakings.⁴⁴ Paragraph 2 of this section permits the prime minister, with the approval of the Diet, to designate any other undertaking as a public welfare undertaking, for no more than one year, if a stoppage will seriously affect the national economy or seriously endanger the daily life of the public.

Section 108-2(2) of the National Public Service Law (Law No. 120 of October 21, 1947) prohibits police officers as well as managers and supervisory staff in the public sector, section 52(2) of the Local Public Servants' Law (Law No. 261 of 1950) officials working in the Japan Coast Guard or in penal facilities to join trade unions. Section 64 of the Self-Defense Forces Act. Act No. 165 of 1954 prohibits members of the self-defense forces to join unions. Section 2(1) of the Labour Union Act (Act No. 174 of 1 June 1949) bars fire fighters from joining unions.

21. Jordan

Article 3 of Regulation No. 8 of 1998 on Conditions and Procedures of Strikes and Lock-outs defines essential services, referred to as public utility services indicated as all public facilities services, including:

- the services of the post and wired and wireless communications,
- water,
- electricity,
- transportation,
- hospitals,
- bakeries and
- pharmaceutical industries.⁴⁵

They can also include any section related to the maintenance of the establishment or the safety of the employees during work, or any other service that the Council of Ministries decides to consider as a service of public interest, based on the recommendation of the Minister of Labour, once the decision is published in the official gazette.

Managerial and supervisory staff are excluded from the general permission to form and join trade unions and to engage in industrial action as regulated in section 3(a) of the Labour Code (No. 8 of 1996)⁴⁶.

⁴⁴ Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/27191/111920/F-2088015431/JPN27191%20Eng2.pdf>.

⁴⁵ Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/70511/84924/F731662098/JOR70511.pdf>.

⁴⁶ Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/45676/84920/F-1672011876/JOR45676%20Eng.pdf>.

22. Kenya

Section 78(1)(f) of the Labour Relations Act, 20 July 1947, prohibits taking part in a strike or lock-out or in any conduct in contemplation of a strike or lock-out if the employer and employees are engaged in an essential service.

Section 81(1) defines essential service as a service the interruption of which would probably endanger the life of a person or health of the population or any part of the population. The Fourth Schedule to the Labour Relations Act identifies as essential services the following:

- water supply services,
- hospital services,
- air traffic control services and civil aviation telecommunications services,
- fire services of the government or public institutions,
- post authority
- local government authorities, and
- ferry services.

Paragraph 2 permits the minister of labour to amend the list of essential services contained and to declare any other service an “essential service” if a strike or lockout is so prolonged as to endanger the life, person or health of the population or any part of the population.

Members of the in the armed forces, or in any reserve force thereof, Kenya police, the administrative police force, the Kenya prisons service and the national youth service, or in any reserve force or service thereof do not fall under the are not permitted to form or join trade unions or to engage in industrial action under the Labour Relations Act (section 3(a) and (b) of the Labour Relations Act).

23. Republic of Korea

Section 71(2) of the Trade Union and Labor Relations Adjustment Act (Law No. 5310)⁴⁸ defines essential public service as each service whose stoppage and discontinuance may endanger daily lives of the general public, or may undermine the national economy considerably, and whose replacement presents a hardship, such as:

- railroad and inter-city railroad services,
- aviation services,
- water, electricity, gas supply, oil refinery and supply services,
- hospital and blood supply services,
- services related to the bank of Korea, and
- telecommunication services.

Section 42-2 of the Trade Union and Labor Relations Adjustment Act states that the term “minimum services to be maintained” in this Act refers to those services among essential

⁴⁷ Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/78265/83537/F-735885320/KEN78265%202012.pdf>.

⁴⁸ Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/46398/98328/F1771693212/KOR46398%202014.pdf>.

public services, which, if suspended or discontinued, could remarkably endanger the lives, health, physical safety or daily life of the public and are prescribed by the Presidential Decree. No act of stopping, discontinuing or obstructing the proper maintenance and operation of the minimum services to be maintained shall be carried out as legitimate industrial action.

Public officials who engage in corrections, investigation and other similar jobs and public officials who exercise the right to direct and supervise other public officials or engage in generally managing other public officials' affairs are barred from forming and joining trade unions or engaging in industrial action.⁴⁹

24. Latvia

Section 17(2) of the Act on Strikes of 23 April 1998⁵⁰ includes under essential services as:

- services necessary to the public medical treatment and first aid services,
- public transport services,
- drinking water supplies services,
- electricity and gas production and supplies services,
- communication services,
- air traffic control services and the services which provide air traffic control services with meteorological information,
- services related to the safety of movement of all forms of transport,
- waste and waste water collection and treatment services,
- radioactive substances and waste storage, utilization and control services and
- civil defence services.

State security officials, border guards and members of the armed forces are prohibited to form and join trade unions and to engage in industrial action

25. Moldova

The law does not define essential services. Members of the police and armed forces are prohibited to form and to join trade unions and the right to strike.⁵¹

26. Montenegro

Section 19 of the Strikes Act, 2015 refers to essential services as public interest activities as activities where the interruption of working process because of the nature of the business could jeopardize the life and health of people or general interest of the citizens, such as:

⁴⁹ Section 6(2)(1) of the Act on the Establishment and Operation, etc. of Public Officials' Trade Unions (Act No. 7380).

⁵⁰ Available at: <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/51157/65137/E98LVA01.htm>.

⁵¹ Section 40(1)(g) of the Law No. 170 of 19 July 2007 on the Status of Security and Intelligence Officers. Available in Moldovan (Romanian) at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99878/119457/F1794661559/MDA99878%20Mda.pdf>.

- production and distribution of essential food products (flour, milk, oil, sugar and food for children),
- production, transmission, distribution and supply of electricity,
- passenger transport (road, railway and air transport),
- the postal services (universal postal services),
- Public Electronic Communication, in accordance with the law,
- informative programs of public broadcasting service,
- public communal services/activities (production and supply of water, garbage collection, production, distribution and supply of heat, funeral services, and similar),
- production, distribution and supply of oil, coal and gas,
- fire protection,
- health and veterinary care,
- preschool and elementary education,
- social and child protection, and
- the execution of duties from ratified international treaties.⁵²

Furthermore, public interest activities are also services in the area of secondary and high education and the defense and safety of the Republic (section 20 of the Strikes Act).

Sections 53 and 66 of the Constitution of the Republic of Montenegro allow for the right to strike to be restricted for persons employed in the army, the police, state authorities and public service, in order to protect the public interest. Section 18 of the Strikes Act, in turn, specifies that employees in the defence forces of Montenegro, the police and state bodies, because the protection of public interest can only organize a strike in a manner that will not jeopardize national security, safety of persons and property, public interest of citizens or the functioning of public authorities, in accordance with the law.

The assessment of whether the organization of the strike endangers national security, safety of persons and property, the general interest of the citizens and the functioning of public authorities is to be provided by the competent government authority for national security, within 24 hours from the announcement of the strike. If the competent government authority for national security has made an assessment that the activities referred to in paragraph 2 of this section would endanger national security, safety of persons and property, public interest of citizens or the functioning of public authorities, the strike cannot be organized.

27. Myanmar

Essential services are defined in section 2(f) of the Settlement of Labour Disputes Law (Pyidaungsu Hluttaw Law No. 5/2012) to mean the following services, whose interruption are liable to endanger the life, health or security of the public:

- water supply services,
- electricity services,
- fire services,
- health services, and

⁵² Official Gazette No. 11/2015. Available In Montenegrin (Serbo-Croatian) at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99883/119472/F1194705536/MGO99882%20Mgo.pdf>.

-
- telecommunication services⁵³

In addition, “a non-essential service can become an essential service if the strike affecting it exceeds a certain duration so as to give rise to damage which are irreversible or out of all proportion to the occupational interest of those involved in the dispute.”⁵⁴

The Settlement of Labour Disputes Law (section 2(g)) defines "public utility service" to include the following:

- transportation business,
- port business and port cargo handling business,
- postal, telex or fax business,
- business relating to information and communication technology,
- petroleum or petroleum products distribution business for the public,
- human excrement (“night soil”) disposal or sanitation business,
- business of production, transmission and distribution of electricity or fuel energy to the public,
- business of public financial service, and
- any business which the Government may classify from time to time as a public utility service.⁵⁵

Under Section 41(a) of the Labour Organization Law, 2011 (No. 7 of 2011),⁵⁶ a non-essential service under the Settlement of Labour Disputes Law may become an essential service if the strike affecting it exceeds a certain duration so as to give rise to damage which are irreversible or not proportional to the occupational interest of those involved in the dispute.

Defense Services personnel, members of the Myanmar Police Force or member of the armed organizations under the control of the Defence Services are not considered workers in the sense of the Labour Organization Law and the Settlement of Labour Disputes Law and are, therefore, barred from forming and joining trade unions and from industrial action.

28. North Macedonia

Section 18 of the Law on the Peaceful Settlement of Labour Disputes (Official Gazette of the Republic of Macedonia No. 87/2007)⁵⁷ refers to essential services as activities of common interest or activities where discontinuation of work may jeopardize life and health of people or inflict major damage, such as electricity supply, water supply, traffic, radio and

⁵³ Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90651.

⁵⁴ Section 41(a), Labour Organization Law, official version. Available at: <http://www.mol.gov.mm/en/wp-content/uploads/downloads/2012/05/Labour-Org-Law-ENG.pdf>.

⁵⁵ Section 2(e) of the Labour Organization Law contains identical text. Available in: <http://www.mol.gov.mm/en/wp-content/uploads/downloads/2012/05/Labour-Org-Law-ENG.pdf>.

⁵⁶ Available at: <http://www.altsean.org/Docs/Laws/Labor%20Organization%20Law.pdf>.

⁵⁷ Available in Macedonian (Bulgarian) at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/76733/119485/F-685965307/MKD76733%20Mkd%202014.pdf>.

television founded by the Republic of Macedonia or the local self-government units, postal services, utility services, manufacturing of basic nutritional products, health and veterinary medical care, education, care for children, social protection, the Police and the Army.

29. Norway

The law does not define essential services. Police officers were granted the right to strike in 1995 with the entry into force of the new Police Act. Section 22(5) of the Public Service Disputes Act prohibits senior civil servants and other civil servants from engaging in work stoppages.

30. Paraguay

Section 362 of the Labor Code⁵⁸ mentions workers in water supply, electricity and hospitals as examples of essential (using the Spanish word for “indispensable”) service workers.

Members of the armed forces and police are excluded from the provisions of the Labour Code.

31. Philippines

Section 278(g) of the Labor Code of the Philippines implicitly defines essential services in the context of strikes and lockouts, as an industry indispensable to the national interest. The Secretary of Labor and Employment may determine the need for compulsory arbitration where there exists a labor dispute causing or likely to cause a strike or lockout in such an activity.⁵⁹

Based on its section 4, Executive Order No. 180, which provides guidelines for the exercise of the right to organize of government employees and creates a public-sector labor-management council, does not apply to the members of the Armed Forces of the Philippines, including police officers, fire fighters and jail guards.

Section 202 of the Constitution⁶⁰ provides further that upon proclamation of a state of emergency or war, derogations from human and minority rights, including the right to strike, guaranteed by the Constitution shall be permitted only to the extent deemed necessary.

32. Poland

Sections 19(1) and 21(1) of the Act of 23 May 1991 on the Settlement of Collective Labour Disputes, Text No. 236, define essential services in the context of strikes as positions,

⁵⁸ Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/100254/120206/F168027669/LEY%205407%20PARAGUAY.pdf>.

⁵⁹ Available at: https://www.dole.gov.ph/files/Department%20Advisory%20No_%202001-2015.pdf.

⁶⁰ Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74694/119555/F838981147/SRB74694%20Eng.pdf>.

equipment and installations where the interruption of work constitutes a hazard to human lives or health or to security of the State, shall be prohibited.⁶¹

Section 239(1) of the Labour Codes⁶² sees Police and security forces officers not as workers (employees) to be covered by the Labour Code Chapter XII, which regulates collective labour agreements.

33. Portugal

The CEACR recalled that the police and the armed forces, although they enjoy the right to organize in Portugal, as they are essential services in the strict sense of the term (that is services the interruption of which would endanger the life, personal safety or health of the whole or part of the population), may have their right to strike restricted or even prohibited.⁶³

34. Romania

Section 43(2) of the Constitution defines essential services implicitly by allowing laws to regulate the guarantees necessary to ensure the essential services for the society.⁶⁴ Sections 203 to 206 of the Law on Social Dialogue⁶⁵ prohibits workers from the following sectors from going on strike:

- staff from air transport,
- naval and other armed forces,
- merchant navy personnel boarding ships flying the Romanian flag,
- healthcare, social assistance and telecommunications sectors,
- public radio and television,
- railways,
- public transport providers,
- municipal health services supplying the population with gas, electricity, heat and water
- employed in national energy system units, operational units in the nuclear energy sector, or which involve continuous fire.

Based on section 204 of the Law on Social Dialogue, merchant navy personnel boarding ships flying the Romanian flag may declare strike only with the rules established by international conventions ratified by the Romanian state.

⁶¹ Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/22401/91766/F-1456565262/POL22401%20Eng.pdf>.

⁶² Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/45181/91758/F1623906595/The-Labour-Code%20consolidated%201997.pdf>.

⁶³ Direct Request (CEACR) - adopted 2008, published 98th ILC session (2009)

⁶⁴ Available at: http://www.cdep.ro/pdfs/constitutie_en.pdf.

⁶⁵ IRLEX, Romania, sec. 1.4.9. Available at:

https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3.P1100_SUBCODE_CODE.P1100_YEAR:ROM.,2015.

Section 4 of the Law on Social Dialogue does not permit persons who hold public office under the law, magistrates, military personnel of the ministry of defense, ministry of interior, the Romanian intelligence service, protection and guard service, the foreign intelligence service and the special telecommunications service, units and/or subunits that are subordinate or coordinate to constitute and/or join a trade union.

35. Rwanda

Section 1(5) of Law No. 13/2009 of 27 May 2009 regulating labor in Rwanda defines essential services, referred to as indispensable services, which cannot be interrupted regardless of whether it is provided by a public or private entity. Such services should safeguard people's basic rights and freedoms such as the rights to life, health, freedom and security, freedom of circulation, and freedom of communication and information.

Section 9 of Ministerial Order No. 04 of 13 July 2010, in turn, provides that essential services where strike or lock-out is prohibited shall include services and works aimed at providing security of people and their property, including military services, police and armed security guards, as well as services and works that are involved in guarding prisons and police cells and in guarding one or many people using arms.

36. Serbia

Section 9 of the Act on Strikes, 1996⁶⁶ provides that in case of activities of public interest or in the activity whose interruption of work, due to the nature of work, might jeopardize the life or the health of people, or cause large-scale damage, employees must meet specific conditions spelled out in the Law in order to engage in strikes. Such activities include:

- electrical power industry,
- water resource management,
- transportation,
- postal services,
- information (radio and television),
- communal activities,
- production of basic food products,
- health and veterinary care, and
- education, social care of children, and social welfare.

Members of the armed forces and of the security agency do not have right to form trade unions or the right to strike.⁶⁷

⁶⁶ Available in Serbian at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99921/119559/F-712105949/SRB99921%20Srb.pdf>.

⁶⁷ Section 20(3) of the Act on the Security Information Agency, 2002. Available in Serbian at: <http://www.ilo.ch/dyn/natlex/docs/ELECTRONIC/99923/119561/F1512278528/SRB99923%20Srb.pdf>.

37. Seychelles

Section 52 of the Industrial Relations Act⁶⁸ defines "essential service" to include the following:

- the generation, supply or distribution of electricity;
- any hospital or medical services;
- the supply or a distribution of water;
- the sewerage service;
- port and marine services;
- civil aviation;
- the fire brigade;
- telecommunication;
- a service declared by the Minister by notice in the Gazette to be an essential service.

40. Slovakia

Section 17(9) of the Collective Bargaining Act, Act No. 2/1991 defines essential activities and essential services [nevyhnutné činnosti a nevyhnutné služby] as such activities and services which in case of their interruption or stoppage shall endanger the life and health of employees or other persons and shall cause damage to machines, equipment and apparatuses whose nature and purpose do not allow to interrupt or stop their operation during the strike.⁶⁹

41. Solomon Islands

The CEACR⁷⁰ noted in 2013 that section 13(1)(f) of the Labour Act (Cap. 73) includes a list of essential services: water, electricity, fire, health, hospital, sanitary, port services, telecommunications, air traffic, air transportation, immigration, meteorology, customs, broadcasting, and the post office.⁷¹

42. South Africa

Section 213 of the Labour Relations Act, 2015⁷² defines essential service as a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population and includes the Parliamentary service and the South African Police Services. Section 70(1) of the Labour Relations Act establishes an Essential Services Committee decide on dispute regarding whether or not a service is an essential service and

⁶⁸ Available at: <https://www.ilo.org/legacy/english/dialogue/ifpdial/llg/ch5/ex4.htm>.

⁶⁹ Available in Slovakian at: <http://www.zakonypreludi.sk/zz/1991-2>.

⁷⁰ Direct Request (CEACR) - adopted 2011, published 101st ILC session (2012), regarding the Weekly Rest (Industry) Convention, 1921 (No. 14).

⁷¹ Direct Request (CEACR) - adopted 2013, published 103rd ILC session (2014)

⁷² Available at: <http://www.labour.gov.za/DOL/legislation/acts/labour-relations/labour-relations-act/?searchterm=labour>.

whether or not an employee or employer is engaged in a service designated as an essential service.

The Essential Services Committee, established by section 70 of the Labour Relations Act, 2015, may only determine a service as essential where, in terms of Section 213 of the Labour Relations Act, 2015, it can be shown that an interruption of that service would present a clear and imminent threat that would “endanger the life, personal safety or health of the whole or any part of the population”.⁷³

The Committee monitors the following processes:

- the implementation and observance of essential service determinations;
- minimum service agreements;
- maintenance services agreements and determinations;
- the promotion of effective dispute resolution in essential services; and
- the development of guidelines for the negotiation of minimum services agreements.

It shall decide whether the whole or a part of any service is an essential service, on its own initiative or at the reasonable request of any interested party.

43. Spain

Article 28 of the Spanish Constitution, as amended in 2011, establishes the right to strike and allows the State to implement laws to guarantee the maintenance of essential services. The Royal Decree-Law No. 17/1977⁷⁴ established that the Government, “at the proposal of the Ministry of Labor, taking into account the duration or consequences of the strike, the positions of the parties and the serious damage to the national economy,” may establish mandatory arbitration. In addition, the Decree establishes that “[w]hen the strike is declared in companies responsible for the provision of any kind of public services or of recognized and unappealable need and circumstances of special gravity, the Government Authority may agree on the necessary measures to ensure the operation of the services. The Government may also adopt appropriate intervention measures for this purpose.”

In 1990, the Constitutional Court determined that the classification of a service as essential must prioritize the protection of persons rather than enterprises. The Government must evaluate each situation on its merits, taking into account the territorial and personal scope, the expected duration of the strike and other concurrent circumstances, which allow the government to know “the specific needs of the service and the nature of the constitutionally protected rights or goods which it affects.”⁷⁵ The basic principle is that a strike must respect a reasonably proportionate sacrifice for the strikers and the users, allowing for minimum services but not the normal levels.

⁷³ Available at: <http://www.ccma.org.za/Advice/Essential-Services-Committee>.

⁷⁴ Available at: <https://www.boe.es/buscar/pdf/1977/BOE-A-1977-6061-consolidado.pdf>. Part of the text, which was invalidated by the Constitutional Court in 1981 (see section V), has been removed from the quote in this paragraph.

⁷⁵ Decision 43/119, 25 march 1990. Available at: <http://hj.tribunalconstitucional.es/HJ/es-ES/Resolucion/Show/SENTENCIA/1990/43>.

While members of the police force can freely join organizations, based on section 1(3) and (4) of the Organic Law on Freedom of Association, No. 11 of August 1985 (unofficial translation) 1985,⁷⁶ members of the armed forces and judges, magistrates and prosecutors are not allowed to join a trade union while they are on active duty.

44. Sri Lanka

Section 48 of the Industrial Disputes Act (No. 43 of 1950) defines essential industry as any industry which the Minister declares to be essential to the life of the community, issuing an Order published in the Gazette.

Section 20 of the Trade Union Ordinance, 1935⁷⁷ does not recognize as trade union any association or combination consisting of judicial officers, members of the armed Forces, police officers, prison officers or members of any corps established under the Agricultural Corps Ordinance, regardless of any statement in its regulations.

45. St. Lucia

The Eighth Schedule of the Labour Code, 2006,⁷⁸ lists the following services as “essential services”:

- Any undertaking which generates and supplies electricity to the public
- Telephone Services
- Hospital Services
- Any service undertaking the supply of water to the public
- Public Health Services
- Sanitation Services
- Air Traffic Control and Aeronautical Control Services

46. Swaziland

Section 73 of the Industrial Relations Act, 1996⁷⁹ lists the following essential services, rendered by whomsoever, and whether rendered to the Government or to any person:

- water services,
- electricity services,
- fire services,
- health and sanitary services,
- telephone, telegraph and broadcasting services, and

⁷⁶ Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1985-16660>.

⁷⁷ Both laws are available at: <http://www.labourdept.gov.lk>.

⁷⁸ Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90251&p_country=LCA&p_count=76&p_classification=01&p_classcount=19

⁷⁹ Available at: <https://www.ilo.org/legacy/english/dialogue/ifpdial/IIg/ch5/ex4.htm>.

-
- any service in a civil capacity in respect of the Government of Swaziland.

The Minister may amend the list of essential services, after obtaining approval from both Houses of Parliament in a Resolution published in the Gazette.

47. Tanzania

Section 77 of the Employment and Labour Relations Act, 2004⁸⁰ lists as essential services:

- water and sanitation,
- electricity,
- health services and associated laboratory services,
- fire-fighting services,
- air traffic control and civil aviation telecommunications,
- any transport services required for the provision of these services.

In addition to these services, the Essential Services Committee may designate a service as essential if the interruption of that service endangers the personal safety or health of the population or any part of it. In an Observation submitted to the Government in 2015 regarding Convention No. 87, the CEACR noted that the Essential Services Committee had not made any decisions about classifying any additional services as essential.⁸¹

Its section 2 excludes temporary or permanent members of the police force, the prisons service, the national service and the defence forces from the application of the Employment and Labour Relations Act, 2004. The CEACR has requested the Government to provide information on the types of workers included in the national service and to take the necessary measures to ensure to prison staff the rights enshrined in Convention No. 98.⁸²

48. Ukraine

Section 24 of Law of Ukraine No. 137/98-VR of 3/3/1998⁸³ forbids strikes that pose a threat to life and health, the environment or prevent spontaneous prevent evil, accidents, disasters, epidemics and episodic diseases or response.

49. United Kingdom

The United Kingdom has no written constitution. There is no legislative right to strike, and therefore no specific definition of essential service. However, the Trade union Act 2016

⁸⁰ Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/68319/104204/F-894240970/TZA68319.pdf>.

⁸¹ Observation (CEACR) - adopted 2015, published 105th ILC session (2016).

⁸² Observation (CEACR) - adopted 2012, published 102nd ILC session (2013).

⁸³ Available in Ukrainian at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50886/120197/F237435667/UKR50886%20Ukr.pdf>.

defines as “important public service”, where industrial actions require support of 40% of the workers entitled to vote, the following:

- health services;
- education of those aged under 17;
- fire services;
- transport services;
- decommissioning of nuclear installations and management of radioactive waste and spent fuel; and
- border security.

Members of the police force are not allowed to form or join trade unions (section 48 of the Police Act, 1996).⁸⁴

50. United States of America

According to section 176 of the Labor Management Relations Act, 1947,⁸⁵ an essential service is an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, where a strike will imperil the national health or safety, if permitted to occur or to continue.

A complaint before the CFA alleged that New York state law bars all strikes in the public sector, imposes excessive penalties on illegal strikes and severely restricts the right to bargain collectively of transport workers in the public sector through compulsory arbitration.⁸⁶ The CFA urged the government to take all necessary measures to effectively enforce a decision of the New York State Supreme Court sustaining an arbitration award in favour of the workers issued by the Public Employment Relations Board and requested the Government to take steps aimed at bringing the state legislation, through the amendment of the relevant provisions of the law into conformity with freedom of association principles so that only public servants exercising authority in the name of the state and workers of essential services in the strict sense of the term may be restricted in their right to strike.⁸⁷

51. Vietnam

Section 221(1) of the Labour Code (10/2012/QH13)⁸⁸ prohibits strikes in undertakings that are essential for the national economy and in which strikes may threaten the national security, defence, public health and public order. The list of such undertakings shall be provided by the Government.

⁸⁴ Available at: <http://www.legislation.gov.uk/ukpga/1996/16>.

⁸⁵ Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/31133/107648/F1913878195/USA31133.pdf>.

⁸⁶ Case No. 2741 (United States).

⁸⁷ Report in which the CEACR requests to be kept informed of development - Report No 362, November 2011, para. 775.

⁸⁸ Available at: <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf>.

Section 221 also defines essential services as services in the national security, defence, public health and public order. The list of such undertakings is provided by the Government in Section 2 of Decree No. 41/2013, which includes:

- high capacity power production;
- power transmission and regulation of the national power system;
- oil and gas exploration and exploitation and gas production and supply;
- aviation and maritime safety;
- provision of telecommunications network infrastructure; and
- clean water supply, water drainage, and environmental health in centrally run cities.

Also, section 240 of the Labour Code provides that other legal documents shall contain specific regulations for civil servants, public employees, and other persons working in the people's army, people's police, or other social organizations, and members of cooperatives.

52. Zambia

Section 107 of the Industrial and Labour Relations Act, 1993 (No. 27 of 1993)⁸⁹ defines "essential service" as:

- any service relating to the generation, supply or distribution of electricity;
- any hospital or medical service;
- any service relating to the supply and distribution of water; any sewerage service;
- any fire brigade;
- any service for the maintenance of safe and sound conditions in a mine of underground working and drainage, shafts and shaft installations, or machinery and plant;
- such other service which the Minister may, in consultation with the Tripartite Consultative Labour Council, prescribe by statutory instrument as an essential service.

53. Council of Europe Area

Article G of Part III of the European Social Charter of the Council of Europe⁹⁰ establishes that any restriction or limitation on the right to strike in essential public services must:

- i. Be prescribed by law. Any restriction must be founded in domestic law, and the law must be sufficiently precise, accessible and predictable;
- ii. Pursue a legitimate aim. This is one of the five aims specified by Article G (ensuring respect for the rights and freedoms of others or safeguarding public interest, national security, public health or morals). In general terms, a ban on strikes in sectors considered essential to the life of the community is deemed to pursue a legitimate

⁸⁹ Available at: <https://www.ilo.org/legacy/english/dialogue/ifpdial/llg/ch5/ex4.htm>.

⁹⁰ Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048b059>.

aim, to the extent that a work stoppage could imperil public interest, national security or public health.

- iii. Be necessary in a democratic society. The concept of necessity presupposes that the restriction corresponds to a social imperative and is proportionate to the legitimate aim pursued. The test of proportionality involves weighing the prejudice to the individual or group against the prejudice to the “state”.⁹¹

The Commission of the European Communities define essential services as such services of general interest covering both market and non-market services which the public authorities class as being of general interest and which are subject to specific public-service obligations.

The term "services of general economic interest" refers to services of an economic nature which EU countries or the Union have subjected to specific public-service obligations by virtue of a general-interest criterion. The concept covers in particular certain services provided by the big network industries such as transport, postal services, energy and communications.

The term “public service”, in turn, sometimes refers to a service that is provided to the general public, or to which a particular role has been assigned in the general interest. It may also refer to the ownership or status of the entity providing the service. The term “public-service obligations” generally refers to specific requirements that the public authorities impose on the service provider in order to ensure that certain public-interest objectives are met – for instance, in the areas of air, rail, road transport and energy.⁹²

In Europe, services considered essential are:

- transport,
- public broadcasting,
- water, gas and electricity supply,
- prison administration,
- the justice system,
- national security services,
- medical care and emergency services.⁹³

⁹¹ Council of Europe, op. cit., para. 45.

⁹² Council of Europe, *The right to strike in essential services: economic implications*, Report of the Committee on Economic Affairs and Development Doc. 10546, 11 May 2005, para. 41.

Available at:

<http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10894&lang=EN>.

⁹³ Id., para. 44.

II. Establishment by Countries of Requirements for Minimum Services

Frequently, the CEACR recalled under Convention No. 87 that restrictions on strike action can only be justified in respect of essential services, public servants exercising authority in the name of the State and in cases of acute national crisis. It further recalled that essential services are only those the interruption of which would endanger the life, personal safety or health of whole or part of the population. In an observation regarding Turkey, the CEACR noted that sections 29 and 30 of Act No. 2822 prohibit strike action in activities and services, including property saving, funeral and mortuary, exploration, production and refining of gas and petroleum, banking and public notaries, sanitation, educational and training or day nursery and old-age retirement homes, and cemeteries. In this respect, the CEACR stated that, in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, the authorities could establish a system of negotiated minimum service in other services which are of public utility rather than impose an outright ban on strikes, which would be limited to essential services in the strict sense of the term.⁹⁴

The starting point for the definition of minimum service is the *de facto* denial of the right to strike. On the one hand, the requirement to provide minimum services could be seen as a limitation of the right to strike, since the employees appointed to perform them cannot join strikes, and the effective fulfilment of the services reduces the strike's effect. On the other hand, the requirement to ensure minimum services could be seen as an enabler to exercise the right the strike in essential services. The CFA shares this view, stating that a minimum service could be appropriate as a possible alternative in situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users' basic needs are met or that facilities operate safely or without interruption.⁹⁵

It has to be borne in mind that the purpose of minimum services is not to guarantee the normal working of a company or a public service, but only the continuity of the part of the activity which is indispensable in order to satisfy the rights and freedoms. Hence, the sacrifice imposed on the strikers and service users must be proportional.⁹⁶

A minimum service may be set up in the event of a strike, the extent and duration of which might be such as to result in an acute national crisis endangering the normal living conditions of the population. Such a minimum service should be confined to operations that are strictly necessary to avoid endangering the life or normal living conditions of the whole or part of the population; in addition, workers' organizations should be able to participate in

⁹⁴ Observation (CEACR) - adopted 2000, published 89th ILC session (2001), citing CEACR, General Survey on Freedom of Association and Collective Bargaining (Geneva: ILO, 1994), paras. 159-160. Available at: [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1994-81-4B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1994-81-4B).pdf).

⁹⁵ Freedom of Association (2018), op. cit., para. 867.

⁹⁶ Francisca Ferrando Garcia, Spanish Law on Strikes in Essential Services, pp. 1-2. Available at: <http://www.dirittodellavoro.it/public/current/miscellanea/atti/israele/0039-s-1.pdf>.

defining such a service in the same way as employers and the public authorities.⁹⁷ The involvement of the social partners does not only allow a careful exchange of viewpoints on what in a given situation can be considered to be the minimum services that are strictly necessary, but also contributes to guaranteeing that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organizations that a strike has come to nothing because of over-generous and unilaterally fixed minimum services.⁹⁸

The Committee has pointed out that it is important that the provisions regarding the minimum service to be maintained in the event of a strike in an essential service are established clearly, applied strictly and made known to those concerned in due time.⁹⁹

A definitive ruling on whether the level of minimum services was indispensable or not – made in full knowledge of the facts – can be pronounced only by the judicial authorities, in so far as it depends, in particular, upon a thorough knowledge of the structure and functioning of the enterprises and establishments concerned and of the real impact of the strike action.¹⁰⁰

The CFA has declined to characterize the following activities as essential services in the strict sense of the term, but considered that a government may need to require the maintenance of minimum services:

Ports

The services provided by ports themselves do not constitute essential services, although they are an important public service in which a minimum service could be required in case of a strike.¹⁰¹

Banking services

A minimum negotiated service could be maintained in the event of a strike so as to ensure that the basic needs of the users of these services are satisfied.¹⁰²

Transport Generally

In a case where the cessation of a ferry service had led to difficulties and inconveniences that the population living on islands along the coast could be subjected to, an agreement may be concluded on minimum services to be maintained in the event of a strike¹⁰³

⁹⁷ Freedom of Association (2018), op. cit., para. 873.

⁹⁸ Freedom of Association (2018), op. cit., para. 881.

⁹⁹ Freedom of Association (2018), op. cit., para. 880.

¹⁰⁰ Freedom of Association (2018), op. cit., para. 885.

¹⁰¹ Freedom of Association (2018), op. cit., para. 888.

¹⁰² Freedom of Association (2018), op. cit., para. 895.

¹⁰³ Freedom of Association (2018), op. cit., para. 886.

Petroleum Sector Including the Production, Transport and Distribution of Fuel

A minimum negotiated service could be maintained in the event of a strike so as to ensure that the basic needs of the users of these services are satisfied.¹⁰⁴

Railway Services Including Metropolitan Transport

Respect for the obligation to maintain a minimum service in the rail and of the underground railway's activities to meet the minimal needs of the local communities is not an infringement of the principles of freedom of association.¹⁰⁵ In Italy, on days when strikes are held Trenitalia guarantees minimum transport services provided as a result of agreements with trade unions and as considered appropriate by the Commission responsible for guaranteeing the implementation of Law 146/1990.¹⁰⁶ In 2014, the UK Government considered requiring a minimum service to be provided by London Underground workers, like current rules around fire service and police strikes.¹⁰⁷

Postal Services

The maintenance of a minimum service could be foreseen in the postal services.¹⁰⁸

Refuse Collection Services

The imposition of a minimum service is permissible in the refuse collection service.¹⁰⁹

The Mint

A minimum negotiated service could be maintained in the event of a strike so as to ensure that the basic needs of the users of these services are satisfied.¹¹⁰

Education Sector

Minimum services may be established in the education sector, in full consultation with the social partners, in cases of strikes of long duration.¹¹¹

Veterinary Health

¹⁰⁴ Freedom of Association (2018), op. cit., para. 897.

¹⁰⁵ Freedom of Association (2018), op. cit., paras. 889 and 891-893.

¹⁰⁶ Trenitalia, "Essential services in the event of strike (Law no.146 of June 12, 1990)". Available at: https://www.trenitalia.com/en/purchase/info_contacts/in_case_of_strike.html.

¹⁰⁷ The Guardian, "David Cameron considering move to curb impact of London tube strikes", 5 February 2014. Available at: <https://www.theguardian.com/uk-news/2014/feb/05/david-cameron-essential-services-impact-london-tube-strikes>.

¹⁰⁸ Freedom of Association (2018), op. cit., para. 894.

¹⁰⁹ Freedom of Association (2018), op. cit., para. 847.

¹¹⁰ Freedom of Association (2018), op. cit., para. 895.

¹¹¹ Freedom of Association (2018), op. cit., paras. 898-899.

The decision adopted by a government to require a minimum service in the Animal Health Division, in the face of an outbreak of a highly contagious disease, does not violate the principles of freedom of association.¹¹²

Upon request, the ILO suggested to a member state the following draft provision for minimum service:

- (1) Where the parties so agree, strikes may be authorized in any workplace subject to the maintenance of a minimum service.
- (2) Where the workplace is part of an essential service -
 - (a) the minimum service shall be such as to ensure that the life, health and personal safety of the population is adequately safeguarded;
 - (b) the parties shall seek to reach agreement on the number and kind of posts that need to be filled in the event of a strike and the persons who will be required to remain at work for this purpose;
 - (c) if the parties fail to reach agreement under (b), either party may apply to the Tribunal for a determination of the issue;
 - (d) the Minister may apply to the Tribunal for a determination that the minimum service agreed upon is not sufficient to ensure the life, health or personal safety of the whole or part of the population and either to determine what minimum service is so required or to enjoin a strike.¹¹³

1. Argentina

Under Decree No. 272 of 10 March 2006, the party that wishes to exercise direct action in the determination of working conditions in an essential service must notify the other party and the government at least 48 hours before launching such action, the modalities and the participating staff. Within 24 hours of the notice, the parties must agree on minimum services; if they do not agree, the Ministry of Labour will make such determination. In either case, the minimum services must not be more than 50% of the usual services rendered. If these services are agreed, the agreement must indicate how these services will be rendered, including the staff involved, the hours, specific tasks and equipment. If they cannot agree within the deadline, the Ministry will determine these aspects.

Individual workers who refuse to render the minimum services may also be sanctioned under applicable laws.

¹¹² Freedom of Association (2018), op. cit., para. 900.

¹¹³ ILO, "Minimum services" in *Labour Legislation Guidelines*, Chapter 5, "Substantive provisions of Labour Legislation: the right to strike", <https://www.ilo.org/legacy/english/dialogue/ifpdial/llg/ch5/ex5.htm>.

2. Australia

In the services listed under the provincial laws, the Minister will have the power to determine the minimum services that will be delivered, in which manner and by whom, but should not pay them “at not less than award rates”.

3. Belgium

The Belgian social partners have adopted the practice of establishing minimum services in essential services in the private and public sectors by mutual agreement. In the public radio and police, these are established by decree, while in the postal services they are established by the union status, under the names “vital needs” or “urgent works.”¹¹⁴

4. Bulgaria

As no express definition of essential services exists in labour legislation, section 14(1) of the Law on the Settlement of Collective Disputes (SG No. 21/13.3.1990)¹¹⁵ states that during a strike the workers and the employer shall be obliged to provide a written agreement on the conditions for carrying out activities whose non-performance or interruption may cause danger for the lives and health of citizens in emergency or in need of urgent medical attention or hospitalization, the production, distribution, transmission and supply of gas, electricity and heat, adequate public utility and public transport services and the disruption of radio and television broadcasts and voice telephone services, irreparable damage to public or private property or to the environment, public order. The written agreement must be concluded at least 3 days prior to the beginning of the strike (section 14(2) of the Law on the Settlement of Collective Disputes). Based on section 16 of the Law on the Settlement of Collective Disputes, strikes are not permitted during natural disasters and related urgent and emergency rescue and reconstruction works.

5. Canada

In Canada, the employers can identify any service, facility or activity they believe is essential and the level of service that they must provide. Unions cannot dispute this determination, but it can be the subject of discussions between the parties. Furthermore, an employer must demonstrate that it will maintain the required minimum level of service with the least amount of people; review the organization and all positions involved in supporting that activity; identify which duties and specific positions that are essential; and assign the lowest number of workers needed to maintain such minimum services.¹¹⁶ Prior to each new round of collective bargaining, the employer shall perform a review of the essential positions previously identified for that bargaining unit and provide the bargaining agent with any revisions, updates or changes to the list.

¹¹⁴ French National Assembly, Rapport d'information déposé par la délégation de l'Assemblée Nationale pour l'Union Européenne sur le service minimum dans les services publics en Europe (Paris, 2003), pp. 47-48.

¹¹⁵ Available in Bulgarian at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/9841/119318/F802926046/BGR9841%20Bgr%202012.pdf>.

¹¹⁶ Public Service Alliance of Canada, loc. cit.

Once the employer has prepared a list of designated positions in a bargaining unit, accompanied by the corresponding justification, department and location of work, it must inform the bargaining agent. Following this first notice, the bargaining agent may provide feedback to the employer during a 60-day consultation period. After this period concludes, the employer must provide the final list of designated positions to the bargaining agent within 30 days. However, the employer may designate a new position or revoke a designation at any time. (sec. 119 et seq. Federal Public Sector Labour Relations Act (S.C. 2003, c. 22, s. 2).¹¹⁷

Once the Treasury Board Secretariat has supplied the bargaining agent with the final list of designated positions, departments and agencies must inform the employee by letter (hard copy or electronically) that the position he/she occupies has been determined to provide an essential service and he/she is prohibited from participating in a strike.¹¹⁸

Under the Economic Action Plan 2013 Act, No. 2, the employer has the exclusive right to determine that a service is essential if “it is or will be necessary for the safety or security of the public or a segment of the public”, as well as the numbers of positions that will be required to provide that service. Bargaining agents should be notified and consulted as part of this process.¹¹⁹ The legislation further stipulates that no one shall impede or attempt to impede access to the workplace by employees who occupy designated positions.¹²⁰ However, an action to classify more than 80% of employees as essential will trigger an arbitration procedure.

6. Dominican Republic

Section 403 of the Labour Code, 1992, prohibits strikes or walkouts are allowed involving the essential services, those whose interruption are liable to endanger the life, health or security of the people in any segment of the population. Nevertheless, the workers as well as the employers of this type of service have the right to proceed to an agreement according to the procedure set forth on section 680 of this code. This section mandates the parties to select an arbitrator within three days after their last meeting with a mediator and inform the local representative of the Ministry of Labour; if not, the President of the local Labour Court has the power of selecting an arbitrator.

Under Article 403, conflicts solely around the issue of minimum wages must be brought before the National Committee on Wages.

7. France

The Law only regulates minimum services to be ensured during strikes in the air navigation service. Section 2 of Law No. 84-1286 of 31 December 1984 on Certain Aviation Workers and on the Exercise of the Right to Strike in the Air Navigation Services in the Case of a Concerted Work Stoppage in the Air Navigation Services,¹²¹ based on a State Council

¹¹⁷ Available at: <http://laws-lois.justice.gc.ca/eng/acts/P-33.3/page-8.html#h-35>.

¹¹⁸ Government of Canada, loc. cit.

¹¹⁹ S.C. 2013, c. 40. Available at: <https://www.canlii.org/en/ca/laws/astat/sc-2013-c-40/latest/sc-2013-c-40.html>.

¹²⁰ Government of Canada, loc. cit., 2015.

¹²¹ Available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000692948>.

implementing decree, provides for the following to be ensured: continuous government action and implementation of national defence missions; preservation of national vital interests or needs around its international commitments, including the right to fly over the territory; tasks necessary to safeguard people and property; maintaining connections to avoid the isolation of Corsica, the departments and territories overseas and Mayotte; and safeguarding the facilities and equipment of these services.

8. Germany

Reacting to a decision of the Federal Administrative Court and given the still large numbers of civil servants (Beamte) not exercising authority in the name of the State who are forbidden to engage in strikes, the CEACR submitted in 2015 an Observation to Germany reiterating that the teachers, postal workers and railway employees, irrespective of their status, do not have duties and responsibilities that amount to an exercise of the authority in the name of the State, and that they should therefore be allowed to strike, although a minimum service could be established. Given the still large numbers of civil servants (Beamte) not exercising authority in the name of the State affected by the strike ban, the CEACR requested the Government: (i) to refrain in the future from imposing disciplinary sanctions against civil servants who do not exercise authority in the name of the State and participate in peaceful strikes; and (ii) to engage in a comprehensive national dialogue with representative organizations in the public service with a view to exploring possible ways of bringing the legislation into conformity with the Convention. The CEACR also requested the Government to provide information on any ruling handed down by the Federal Constitutional Court on the subject.¹²²

9. Hungary

While the Strikes Act does not provide for a specific notice period before undertaking a strike in certain essential public services, section 4(2) of the Strikes Act requires social partners to negotiate and agree on the minimum services required prior to carrying out a strike if there are regulatory guidelines already in place. Strikes may not be initiated until the agreement is reached, this is implied in section 4(3) of the Strikes Act as the extent and conditions of such as strike have to be agreed on by the parties prior to the strike taking place.

10. Ireland

Section 20 of the Code of Practice provides that while the primary responsibility for providing minimum levels of services rests with managements, trade unions share the duty to establish agreed contingency plans and other arrangements to deal with any emergency that may arise during an industrial dispute. In particular, employers and trade unions in each undertaking providing an essential service should co-operate in making arrangements concerning the maintenance of plant and equipment, all matters concerning health, safety and security, special operational problems which exist in continuous process industries, the provision of urgent medical services and suppliers, the provision of emergency services required on humanitarian grounds. Section 21 of the Code of Practice recommends that parties encountering problems in making such arrangements seek the assistance of the Labour Relations Commission.

¹²² Regarding C.87 and C.98: Observation (CEACR) - adopted 2014, published 104th ILC session (2015).

11. Latvia

Section 17(1) of the of the Act on Strikes obliges the employer and the strike committee to ensure that during a strike, the minimum amount of the work is continued in the services, undertakings (companies), organizations and institutions necessary to public, the discontinuation of which would cause a threat to national security or the safety, health or life of the entire population, certain groups of inhabitants or particular individuals. Paragraph 3 of this section provides that not later than three days prior to the commencement of a strike, the employer and the strike committee shall agree in writing and designate from those employees who will participate in the strike a certain number of employees who will perform the work referred to in Paragraph one of this Section during the strike, as well as specify the amount of practical work of the employees referred to and give specific orders. If an employee refuses to perform the practical work and follow the orders referred to in Paragraph three of this Section, the aim of which is to ensure the functioning of the relevant service necessary to the public or the minimum necessary work to be performed during strike provided for by the contract of employment or collective agreement shall be regarded as a violation of the work procedures, and the employee shall be held liable in accordance with the procedures prescribed by law (section 17(4) of the Act on Strikes).

Section 21 of the Act on Strikes lays down that if the parties to the collective dispute do not ensure the implementation of the provisions of Section 17 of this Law, the State Labour Inspection shall give a binding order thereto for continuing the minimum amount of work in the services necessary to the public and determine the number of employees who are to perform the task referred to.

12. Montenegro

Section 20 of the Strikes Act provides that if the duration and extent of a strike could jeopardize the realization of the educational program for the current school year or the health of people, or otherwise cause large-scale damage, employees' right to strike can be required to adhere to a minimum working process assigned by the Arbitral Council for the determination of minimum services.

13. North Macedonia

During strikes in the army, section 48 of the Defence Law provides that workers on strike are obliged to stay on their jobs and pursue activities necessary for achieving the essential functions of the Army. The strike must be announced at least ten days prior to its commencement, and no more than 10 per cent of staff can participate.

14. Paraguay

According to section 372(c) of the Labour Code, a strike is illegal when workers in essential public services do not ensure essential minimum services for the public. Section 362 provides that workers in essential public services to the community, such as water supply, electricity and hospitals should ensure, in case of a strike, the essential minimum supply for the population. Hospitals must maintain first aid services and all services necessary to avoid endangering lives. Furthermore, employees who participate in an illegal strike and refuse to serve in such an essential activity may be dismissed under section 377.

15. Poland

Based on Section 21(1) of the Act of 23 May 1991 on the Settlement of Collective Labour Disputes during the strike, the manager of the establishment shall not be hampered

in the performance of duties and exercising their rights in relation to employees who do not take part in the strike as well as, to the extent that is necessary, to ensure the protection of the property of the establishment and the continued operation of the structures, equipment and installations, the interruption of which could constitute a threat to human life or health or to the resumption of the normal activity of the establishment.

16. Rwanda

Under Section 10 of Ministerial Order No. 04 of 13 July 2010,¹²³ covered workers or employers shall inform relevant authorities in the area, ten (10) days before the commencement of a strike or lock-out and cite which essential services shall not stop, give a clear program and schedule of complete strike, carry out necessary activities and the rotation of people carrying out these services. The notified authority shall make a decision on the program of the essential services that shall not stop within seventy-two (72) hours after receipt of the notification letter. Where the notified official cannot agree with the workers and employers wishing to carry out a strike or a lock out on the given programs, the interested party addresses the issue to the National Labour Council that shall make a decision on it within a period not exceeding seven (7) days after receipt of the request.

17. Romania

Section 66(1) of Act No. 168/1999 on the Settlement of Labour Disputes requires that in case of strikes in units of public transport, one third of the unit's normal activity must be ensured. Under Convention No. 87, the CEACR requested the Government to amend the Act so as to allow for the minimum services in this sector to be negotiated by the social partners concerned rather than set by the legislation; in the absence of agreement between the parties, minimum services should be determined by an independent body.¹²⁴ In 2009, the Government reported to the European Commission that such a requirement extends to "sanitary and health units, in telecommunications, public radio and television, in railway units – including railway guards, in the units providing transport and sanitation for localities, as well as in gas supply for people and in electricity, heat and water supply."¹²⁵

Section 205 of the Law on Social Dialogue provides that healthcare, social assistance and telecommunications sectors, public radio and television, railways, public transport providers and municipal health services supplying the population with gas, electricity, heat and water, a strike is allowed provided that strike organizers provide minimum services, but not less than a third of normal activity. Finally, section 206 states that employees employed in national energy system units, operational units in the nuclear energy sector, or with continuous fire, may declare strike on the condition that at least a third of activity is guaranteed, so as not to endanger the lives and health of people and to operate facilities safely.

¹²³ "Arrêté ministériel n° 04 du 13 juillet 2010 déterminant les services indispensables et les modalités d'exercice du droit de grève dans ces services". Available at: <http://www.ilo.org/dyn/natlex/docs/SERIAL/93639/109544/F-1680483388/RWA-93639.pdf>.

¹²⁴ Observation (CEACR) - adopted 2010, published 100th ILC session (2011).

¹²⁵ Council of Europe, 9th National Report on the implementation of the European Social Charter (revised) submitted by the Government of Romania (Brussels: European Commission, 2009), p. 34.

18. Serbia

Section 11 of the Law on Strikes, 1996 mandates that the notice of a strike in an essential service to the employer, founder, competent state body or competent local self-government body, no later than 10 days prior to the commencement of the strike, include both the decision to go on strike and a statement regarding how the minimum work process will be maintained.

In a Direct Request addressed to the Government in 2015, the CEACR noted that, according to section 10 of the Act on Strikes, in the case of strikes involving “activities in the general interest”, the employer has the power to determine unilaterally the minimum services after having consulted with the union, and that, if such services are not determined within a five-day period prior to a strike, the competent public authority or the local self-government body takes the necessary decisions. The CEACR requested that “any disagreement on minimum services should be resolved, not by the government authorities, but by a joint or independent body which has the confidence of the parties, is responsible for examining rapidly and without formalities the difficulties raised and is empowered to issue enforceable decisions. In its previous direct request, the Committee noted the Government’s indications that a working group established to prepare amendments to the Act on strikes was working on the issue and would take into particular consideration the issue of minimum services.”¹²⁶

19. Slovakia

Section 17(8) and (9) of the Collective Bargaining Act provides that in essential services, a respective trade union body shall notify an employer in writing at least three working days prior commencement the strike about the date of commencement of the strike, the reasons and objectives of the strike, a list with names of representatives of the respective trade union body, authorized to represent participants in the strike. A respective trade union body shall provide an employer with the information relating to strike, which it is aware of and which shall help an employer to introduce work plans at least two working days before the commencement of strike to ensure essential activities and essential services during the strike; essential activities and essential services are such activities and services which in case of their interruption or stoppage shall endanger the life and health of employees or other persons and shall cause damage to machines, equipment and apparatuses the nature and purpose of which do not allow to interrupt or stop their operation during the strike.

20. South Africa

Section 70 of the Labour Relations Act provides for the establishment of the Essential Services Committee to “promote effective dispute resolution in essential services. Section 73 of the Labour Relations Act charges the Essential Services Committee to decide whether or not the employer and a registered trade union or trade unions representing employees in the essential service should conclude a collective agreement that provides for the maintenance of minimum services in that service; and the terms of such a collective agreement.

Section 72(1) of the Labour Relations Act, in turn, provides that a panel of the essential services committee may issue an order directing the parties to negotiate a minimum services agreement as contemplated in this section within a period specified in the order; if an agreement is not negotiated within the specified period, permitting either party to refer the matter to conciliation at the Commission or a bargaining council having jurisdiction. If the

¹²⁶ Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016)

parties fail to conclude a collective agreement providing for the maintenance of minimum services or if a collective agreement is not ratified, a panel appointed by the essential services committee may determine the minimum services that must be maintained in an essential service.

The provisions of section 74, which establishes a dispute settlement mechanisms in essential services, do not apply if a panel appointed by the essential services committee (a) ratifies a collective agreement that provides for the maintenance of minimum services in a service designated as an essential service, or (b) determines such a minimum service which is binding on the employer and the employees involved in that service the agreed or determined minimum services are to be regarded as an essential service in respect of the employer and its employees. A minimum service determination is valid until varied or revoked by the essential services committee; and may not be varied or revoked for a period of 12 months after it has been made.¹²⁷

Furthermore, section 75 of the Labour Relations Act introduces the concept of maintenance services, which is a service if the interruption of that service has the effect of material physical destruction to any working area, plant or machinery. If there is no collective agreement relating to the provision of a maintenance service, an employer may apply in writing to the essential services committee for a determination that the whole or a part of the employer's business or service is a maintenance service."

21. Spain

As indicated in Section 2, the Constitutional Court has concluded that it is not necessary to perform minimum services in every strike involving essential services, but only when the constitutional rights and freedoms - such as rights to life, health, and safety, freedom of movement - could be endangered because of the duration, and territorial or personnel scope of a specific strike. Therefore, the necessity to establish minimum services as well as the scope of them is determined by the circumstances of each strike.

Based on sections 6 and 7 of Royal Decree-Law 17/1977, of March 4, 1977 on Labour Relations,¹²⁸ the strike committee must ensure that there will be the services necessary for the safety of persons and things, maintenance of premises, machinery, equipment, raw materials and any other attention that was required for the subsequent resumption of tasks of the company. The designation of workers to carry out such services rests with the employer. When a strike is declared in companies that provide public services of any genre or recognized and pressing need, and particularly serious circumstances exist, the governing authority may take the necessary measures to ensure the functioning of the services. The government also may adopt appropriate intervention measures for this purpose.

Section 6(5) and (7) of the Royal Decree-Law further provides that during a strike, employers may not replace the strikers with workers who were not linked to the company prior to the strike, except in case of breach of the obligations contained in paragraph number seven in this section. Also, the strike committee must ensure the provision of services necessary for the safety of persons and things, maintenance of premises, machinery, equipment, raw materials and any other attention required for the subsequent resumption of tasks of the enterprise. The designation of workers to carry out such services must correspond with the employer.

¹²⁷ Available at: <http://www.ccma.org.za/Advice/Essential-Services-Committee>.

¹²⁸ Available at: <https://www.boe.es/buscar/pdf/1977/BOE-A-1977-6061-consolidado.pdf>.

Since the Decree of minimum services cannot specify the workers who will be responsible for them, the government Authority has to delegate the designation of workers. The DLRT is silent in relation to the power to designate the workers.

Under Article 6 of the Royal Decree, the employer designates workers to perform minimum services, which the Decree defines as “services necessary for the safety of people and things, maintenance of premises, machinery, facilities, raw materials and any other attention that is necessary for the subsequent resumption of the company's tasks.” However, the employer must not exercise this power arbitrarily. The Strike Committee, which represents workers during the strike, must guarantee these services. The Constitutional Court and the Supreme Court have validated the authority to delegate this task to either the employer, or to an agreement of the parties.¹²⁹

22. St. Lucia

Section 398 of the Labour Code, 2006,¹³⁰ provides for minimum services to be rendered to the public if an industrial action takes place or is contemplated in an essential service, in order to prevent danger to the economy, health or safety of the country. The Labour Minister is responsible for taking “all lawful measures including the expenditure of public funds [out of the Consolidated Fund] for the preservation, maintenance and continuity of any essential service”, and for otherwise giving effect to this provision.

¹²⁹ Decision of the Social Chamber of the Supreme Court No. 2687/2009, 8 April 2010; Decision of the Constitutional Court No. 192/1980, 8 April 1981. Available at: <http://www.poderjudicial.es/search/TS/openDocument/767c0aec63bbcd8a/20100520>, and https://www.boe.es/diario_boe/txt.php?id=BOE-T-1981-9433.

¹³⁰ Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90251&p_country=LCA&p_count=76&p_classification=01&p_classcount=19

III. Dispute Resolution Mechanisms

The CFA has acknowledged that the right to strike derived from Article 3 of C.87 can be restricted or prohibited in the public service or in essential services “in the strict sense of the term”, meaning when a strike in these services could cause serious hardship to the national community, and provided that the limitations are accompanied by certain compensatory guarantees.¹³¹

The CFA stressed that even if the final decision to suspend or revoke a trade union’s legal status is made by an independent judicial body, such measure should not be adopted as a sanction for not complying with a minimum service requirement.¹³² Similarly, civil requisitions should only be used if the affected party has not respected minimum services requirements established in accordance with the principles of freedom of association.¹³³

The CFA has urged that where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services.¹³⁴ Consequently, restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented.¹³⁵

If compulsory arbitration prevents strike action, it is contrary to the right of trade unions to organize freely their activities and could only be justified in the public service or in essential services in the strict sense of the term.¹³⁶ Compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is offered at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population.¹³⁷

It is essential that all the members of the mediation and arbitration bodies should not only be strictly impartial but, if the confidence of both sides is to be gained and maintained (which determines the successful outcome of any arbitration, even compulsory arbitration), they should also appear to be impartial both to the employers and to the workers concerned.¹³⁸

¹³¹ Freedom of Association (2018), op. cit., para. 827.

¹³² Freedom of Association (2018), op. cit., para. 905.

¹³³ Freedom of Association (2018), op. cit., para. 906.

¹³⁴ Freedom of Association (2018), op. cit., para. 853.

¹³⁵ Freedom of Association (2018), op. cit., para. 856.

¹³⁶ Freedom of Association (2018), op. cit., para. 818.

¹³⁷ Freedom of Association (2018), op. cit., para. 816.

¹³⁸ Freedom of Association (2018), op. cit., para. 858.

This also applies in regard to the legal requirement that a minimum service must be maintained in the event of a strike in essential public services, and that any disagreement as to the number and duties of the workers concerned shall be settled by the labour authority, the CFA is of the opinion that the legislation should provide for any such disagreement to be settled by an independent body and not by the ministry of labour or the ministry or public enterprise concerned.¹³⁹

The CFA takes no position as to the desirability of conciliation over mediation as both are means to assist the parties in voluntarily reaching an agreement. Nor has the Committee expressed a preference for separating conciliation and arbitration systems or establishing a combined mediation-arbitration system, as long as the members of the bodies entrusted with such functions are impartial and are seen to be impartial.¹⁴⁰

Employees deprived of the right to strike because they perform essential services must provide appropriate guarantees to safeguard their interests; deny the right of employers or managers to lock workers out; provide joint conciliation procedures and where, and only where, conciliation fails, provide a joint arbitration machinery.¹⁴¹

As early as 1947, the ILO's Industrial Committee on inland transport adopted a resolution that called for employers and workers to "with due regard to their responsibility to society . . . utilize to the full extent all existing facilities for the expeditious and effective settlement of dispute before considering recourse to a lockout or a strike."¹⁴² However, the Office refrained on that year to submit any proposals on compulsory conciliation or arbitration because "there would be little prospect of reaching agreement even as to the principle".¹⁴³

The CEACR draws a clear distinction in regards to the right to strike between public servants who are not exercising authority in the name of the State and workers who are not working in essential services in the strict sense of the term, stressing that persons working in essential services benefit from sufficient compensatory guarantees.¹⁴⁴

The CFA cautioned that by linking restrictions on strike action to interference with trade and commerce, a broad range of legitimate strike action could be impeded. While the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service "essential", and thus the right to strike should be maintained.¹⁴⁵ Also, within essential services, certain

¹³⁹ Freedom of Association (2018), op. cit., para. 884.

¹⁴⁰ Freedom of Association (2018), op. cit., para. 863.

¹⁴¹ Freedom of Association (2018), op. cit., para. 860.

¹⁴² ILO, "Freedom of Association and Industrial Relations", Report VII to the 30th session of the International Labour Conference (1947), p. 40. Available at: https://labordoc.ilo.org/view/delivery/41ILO_INST/1246516470002676.

¹⁴³ Id., p. 120.

¹⁴⁴ Observation (CEACR) - adopted 2009, published 99th ILC session (2010).

¹⁴⁵ Freedom of Association (2018), op. cit., para. 848.

categories of employees, such as hospital laborers and gardeners, should not be deprived of the right to strike.¹⁴⁶

1. Albania

Collective conflicts in essential services are solved definitely and in an obligatory way, in accordance with section 196 of the Labour Code. This Article mandates a procedure of mediation and conciliation, by a Court of Arbitration consisting of arbitrators chosen by the parties. If the parties fail to agree, the arbitrators are assigned by the Minister of Labor and Social Affairs, within five days of the request of one of the parties.

2. Argentina

Decree No. 272 of 10 March 2006 establishes that the party that wishes to exercise direct action in the determination of working conditions in an essential service must notify the other party and the government at least 48 hours before launching such action, the modalities and the participating staff. Essential services under this Law include those listed above and any other services that, if interrupted, could cause an acute national crisis that would “endanger the normal conditions or existence of the population.”

Act No. 14.786 of 1958, in turn, establishes a mandatory conciliation mechanism before initiating industrial action, limited to 15 days but susceptible to extension if the parties and the conciliator consider it useful. During this period, the Ministry has the power to restore the situation as it existed before the act or incident that provoked the conflict. Under decree No. 272, a party that does not follow the required mediation procedure can be fined under Act No. 14.786, 23.551 and 25.212; also, non-complying employers may be forced to pay lost wages.

3. Bangladesh

Section 211(4) of the Bangladesh Labour Act, 2006 lays down that the Government, for any of the public utility services, by order in writing, may prohibit a strike or lock-out at any time before or after the commencement of the strike or lock-out. According to paragraph 5 of this section, in any case in which the Government prohibits a strike or lock-out, it shall refer the dispute to the Labour court. This court is vested with the same powers as a civil court, including to hold hearings and issue judgments, which can be appealed to the labour appellate tribunal.

4. Côte d'Ivoire

Section 82.11 of the Labour Code of Côte d'Ivoire, 1995, provides that the President of the Republic may, where she or he considers that the strike or lock-out is liable to be prejudicial to public order or the general interest, refer the dispute to the arbitration board composed of a magistrate and two arbitrators (1) if the strike affects an essential service the interruption of which is liable to endanger the life, health or safety of the whole or part of the population; (2) in the event of an acute national crisis.¹⁴⁷

¹⁴⁶ Freedom of Association (2018), op. cit., para. 849.

¹⁴⁷ Available at: <https://www.ilo.org/legacy/english/dialogue/ifpdial/llg/ch5/ex4.htm>.

5. Ireland

Sections 31 to 33 of the Code of Practice emphasize on dispute settlement in essential services, encouraging those in essential services to either agree to arbitration settlements, postpone disputes and provide for settlement in the future by an agreed body, or accept recommendations or awards with provision to review the situation five years later. All of the options are to be adopted without resorting to industrial action, including strikes. Parties are encouraged to take all measures to avoid industrial disputes and are encouraged to consult with the Irish Congress of Trade Unions and the Federation of Irish Employers (or other bodies) about the situation. Section 20 of the Code of Practice.

6. Italy

Section 2(2) of Law No. 146/90 provides that collective agreements applicable to essential services must provide a cooling off period, which is mandatory for both parties, to be undertaken before strike proceedings are to begin in accordance with section 2(1) of Law No. 146/90. Section 2(5) of Law No. 146/90 provides that the notice period to them shall not be less than ten days, in order to allow the administration or undertaking to prepare for these measures, to facilitate attempts to settle the conflict, and to allow for planning of alternative services.

Section 4 of Law No. 2 of 25 May 1980¹⁴⁸ requires that the Minister for Transport to be informed by the strike organizers at least five days before the date fixed for the commencement of the strike action to maintain international connections for the times prescribed by ICAO from the date start of the strike action or replacement.

Labour legislation does not extensively regulate arbitration, and this form of dispute resolution is generally only available in respect of determining which services should be deemed 'essential' and thus requiring a minimum service, if the parties to the dispute request arbitration.

7. Myanmar

Specific provisions regarding the procedures before the relevant Arbitration Body apply to essential services or public utility services (sections 27 and 28 of the Settlement of Labour Disputes Law). Notably, if "either party is not satisfied with the decision of the Arbitration Body – except for a decision in respect of essential services – the parties may either apply "to the Arbitration Council for its decision within seven days ... from the date of receipt of the decision of the Arbitration Body" or carry out a lock-out or strike in accordance with the relevant law (section 34 of the Settlement of Labour Disputes Act).

8. North Macedonia

Section 18 of the Law on the Peaceful Settlement of Labour Disputes provides that in case of dispute or strike in activities of common interest or activities where the discontinuation of work may jeopardize the life and health of people or inflict major damage, the parties in dispute shall accede to peaceful settlement of the collective dispute immediately. The process will conclude within ten days after the motion for peaceful settlement of the dispute was filed. In case of strike in the essential services, the strike shall

¹⁴⁸ Available at:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99283/118439/F-1751623398/ITA99283%20Itl.pdf>.

be suspended for the duration of the procedure for peaceful settlement of the dispute. In the Army, a strike cannot last longer than three days.

9. Norway

If a strike or lockout can endanger the life or health of the population, or a vital national economic interest, the Government may send the conflict to compulsory arbitration by the National Wages Board.¹⁴⁹ Under section 26a of the Public Service Disputes Act 1958, “[i]f mediation has been undertaken in a dispute involving civil servants who have no right to resort to stoppage of work, and the mediation has failed, the mediator who has conducted the mediation proceedings shall, within three days after the end of the mediation, notify the Chairman of the National Wages Board. The Board adjudicates the dispute with binding effect for the parties concerned.” Disputes involving senior civil servants and other classes of civil servants are also resolved through compulsory arbitration.

10. Philippines

Section 278(g) of the Labor Code of the Philippines¹⁵⁰ prescribes the power the Secretary of Labor and Employment to impose compulsory arbitration where a labor dispute causes or is likely to cause a strike or lockout in an industry indispensable to the national interest.

11. Serbia

Section 12 of the Law on Strikes, 1996, obliges the parties to a dispute in an essential service to try to resolve the dispute by mutual agreement from the day of strike announcement until the beginning of the strike, and to offer a proposition for the dispute settlement.

12. South Africa

Section 74 of the Labour Relations Act provides that any party to a dispute that is precluded from participating in a strike or a lockout because that party is engaged in an essential service may refer the dispute in writing to a council, if the parties to the dispute fall within the registered scope of that council; or the Commission, if no council has jurisdiction. If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration by the council or the Commission. Any arbitration award in terms of subsection (4) made in respect of the State and that has financial implications for the State becomes binding. Furthermore, under section 75(5) of the Labour Relations Act,

¹⁴⁹ Norwegian Ministry of Labour and Social Affairs, “Compulsory Arbitration and Settlements by the National Wages Board”, 30 December 2013. Available at: <https://www.regjeringen.no/en/topics/labour/the-working-environment-and-safety/innsikt/wage-settlements-and-compulsory-arbitrat/compulsory-arbitration-and-settlements-b/id85995/>. However, the practice has declined since 2000. S. Holden, A new model for wage formation in Iceland (University of Oslo, 2019), p. 13.

¹⁵⁰ Available at: <https://www.dole.gov.ph/files/Department%20Advisory%20No.%202001-2015.pdf>.

the parties may refer a dispute regarding minimum services directly to the CCMA for arbitration.¹⁵¹

13. Spain

The Government may decide on the resumption of work activities in the period determined by a maximum period of two months or definitively, by establishing binding arbitration, if proposed by the Ministry of Labor, taking into account the duration or the consequences of the strike, the positions of the parties and the serious damage to the national economy.

14. St. Lucia

Section 391 provides that either one of the parties must refer disputes in essential services to the Minister, but the Minister may also investigate on her/his own, “or take such steps as appear expedient to the Minister to promote a settlement.” This settlement may be negotiated under an existing agreement. If such agreement does not exist, or if there is already industrial action, or if the parties are not successful within 14 days, the Minister will refer the dispute for settlement to the Tribunal.

Section 392 of the Labour Code, in turn, forbids persons from taking part in industrial action “in connection with a trade dispute in an essential service — (a) during the period when the dispute is before the Tribunal; or (b) where the Minister has referred the matter for settlement”, or before the expiration of thirty-one days following the report of the dispute.

15. Tanzania

Section 78 of the Employment and Labour Relations Act establishes that any party to a dispute of interest in an essential service may refer the dispute to the Commission for mediation, unless a collective agreement provides otherwise; if the mediation fails, any party to the dispute may refer the dispute to arbitration by the Commission. In addition, Section 76 allows strikes or lockouts in essential services if there is a collective agreement providing for minimum services during a strike or lockout, which has been approved by the Essential Services Committee.

16. United Kingdom

There is no specific power granted by legislation to allow the restriction or prohibition of otherwise lawful strike action. It is worth noting that the Civil Contingencies Act 2004, which grants general government powers to make emergency regulations in situations of crisis, specifically provides that such action may not prohibit or enable the prohibition of participation in, or any activity in connection with, a strike or other industrial action.

17. United States of America

Sections 176 *et seq.* of the Labor Management Relations Act, 1947 (LMRA),¹⁵² authorize the president to appoint a board of inquiry to inquire into the issues involved in a

¹⁵¹ See, Decision of the Supreme Court of Appeal of South Africa No. 2011-229, 31 November 2011. Available at: https://www.justice.gov.za/sca/judgments/sca_2011/sca2011-229.pdf

¹⁵² Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/31133/107648/F1913878195/USA31133.pdf>.

strike in the essential services and to deliver a written report in the time she or he prescribes. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President will file a copy of such report with the Service and shall make its contents available to the public. Upon receiving a report from a board of inquiry, the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or its continuation, and it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate, if the court finds that (1) such threatened or actual strike or lock-out affects all or a substantial part of an industry engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and that (2) the strike will imperil the national health or safety.

IV. Prior Notice of Industrial Action

1. Bosnia and Hercegovina

Section 13 of the Act on Strikes lays down that in for public interest activities referred to in section 11 of the Act on Strikes, the unions must notify the employer of the strike no later than ten days before initiating the strike, by submitting a written decision to go on strike. Information on general interest activities is not available.

2. Botswana

Section 40(3) of the Trade Disputes Act (Cap 48:02) of Botswana prohibits an employer for a period of 14 days from making use of replacement labour during the course of industrial action, where there is no agreement on the provision of minimum services. Where an agreement has been reached on the provision of minimum services, the prohibition against the use of replacement labour is absolute, that is: it applies to the entire duration of the industrial action.¹⁵³

3. Brazil

The right to strike is not limited, but section 13 of Law No. 7783 requires that employers or the relevant employers' organization serve notice 72 hours before initiating a collective interruption of services in essential services, and must also notify users and other employers. In other cases, the period is 48 hours.

4. Cambodia

For strikes in essential services, the prior notice mentioned in section 324 of the Kram CS/RKM/0397/01 – seven working days – shall be extended to a minimum of fifteen working days.

5. Japan

If a party concerned in a public welfare undertaking resorts to an act of dispute in Japan, section 37(1) of Labour Relations Adjustments Act requires the party to notify the Labour Relations Commission and the Minister of Health, Labour and Welfare or the prefectural governor at least 10 days prior to the day on which the act of dispute is to be commenced.

6. Montenegro

Section 12 of the Strikes Act provides that a decision to declare a strike in essential services, public utilities and public services must be submitted to the competent representative organization of employers, the founder and the public administrative body, or the competent municipality body, not later than 10 days prior to the day set for the beginning of the strike.

¹⁵³ Botswana Land Boards and Local Authorities Workers Union and Others v Director of Public Service Management and Another 2012, 1 Blr 76 Ic.

Available at: <http://www.elaws.gov.bw/displaylrpage.php?id=4693&dsp=2>.

7. Sri Lanka

Section 32 of the Industrial Disputes Act provides that no worker shall commence, or continue, or participate in, or do any act in furtherance of, any strike in connection with any industrial dispute in any essential industry, unless written notice of intention to commence the strike had, at least twenty-one days before the date of the commencement of the strike, has been given in the prescribed manner and form by such workman or on his behalf to his employer. Regulation 5 of the Industrial Dispute Regulations, 1958¹⁵⁴ states that every notice of intention by a worker to commence a strike in connection with an industrial dispute in an essential industry shall include a “Notice of intention to commence a strike in an essential industry” that is attached to the Regulations.

¹⁵⁴ Available at: <http://www.labourdept.gov.lk>.

V. Prohibitions and penalties imposed on industrial action in essential services

1. Greece

The Government has discontinued the issuance of “Civil Mobilization Orders” (requisition of workers’ services) of indefinite duration to put an end to a legal strike of seafarers on passenger and cargo vessels, which do not constitute essential service. In Case No 2506, the CFA held that that over the previous 32 years the Government had resorted to civil mobilization orders in order to end strikes in various sectors. The CEACR, noting that the new law still allows for the requisition of services in case of danger to public health, which could therefore continue to be used as grounds for suspending strikes in the future, recalls that the responsibility for suspending a strike on the grounds of national security or public health should not lie with the Government, but with an independent body which has the confidence of the parties concerned and requested the Government to take the necessary measures to ensure that any general suspension or termination of strike is decided in accordance with this principle. It requests the Government to keep it informed of developments in this regard.¹⁵⁵

Concerning Convention No. 98, the CEACR noted the information provided by the ITUC concerning several civil mobilization orders issued in 2013 with respect to the maritime sector, public transport and secondary education state schoolteachers, as well as the detailed replies provided by the Government concerning the risks for the safety and health of island citizens arising from the extended period of the strikes which led it to issue the mobilization orders for the maritime sector, as well as the considerations in relation to the other strikes.¹⁵⁶

2. Republic of Korea

According to section 43(1) and (2) of the Trade Union and Labor Relations Adjustment Act no employer shall hire persons who are not related to their business operations, or use replacements during a period of industrial action so as to continue works which have been stopped by industrial actions. However, this does not apply to an employer of essential public services who hires persons unrelated to the business concerned or use replacements, or contract or subcontract out the work only during a period of industrial action. The proportion of the replacement workers cannot exceed 50/100 of strike participants of the business or workplace concerned.

3. Spain

Sections 7 and 10 of the Royal Decree-Law provides that rotating strikes, carried out by workers providing services in strategic sectors in order to interrupt the production process, the efficiency or regulation and, in general, any form of alteration in the collective working regime other than a strike, are considered unlawful or abusive acts.

When the strike is declared in companies responsible for the provision of public services of any genre or recognized and pressing need and particularly serious circumstances exist, the governing authority may decide on the necessary measures to ensure the

¹⁵⁵ CEACR, Report in which the CEACR requests to be kept informed of development - Report No 346, June 2007, para. 1080.

¹⁵⁶ Observation (CEACR) - adopted 2014, published 104th ILC session (2015).

functioning of the services. The government also may adopt for this purpose appropriate intervention measures.

4. *St. Lucia*

Section 394 of the Labour Code bars persons from wilfully taking part in industrial action in an essential service, “knowing or having reasonable cause to believe that the probable consequences of his or her so doing, either alone or in combination with others, will be to endanger human life or cause serious bodily injury, or to expose valuable property, whether immovable or movable, to destruction or serious damage”, under penalty of a fine of up to EC\$10,000. It also prohibits inciting or encouraging such action, with the same standard of evidence of causality, under penalty of a fine of up to EC\$5,000.

Concluding remarks

It is one of the ironies of collective bargaining that, in the words of Professor Halton Cheadle, member of the CEACR, “its very object, industrial peace, should depend on the threat of conflict.”¹⁵⁷

The examples listed above illustrate the wide diversity of approaches that ILO member states have adopted to address the challenges posed by industrial disputes in the essential services, and how the ILO’s supervisory bodies have defined their scope. As they show, the threat of conflict as a means for resolving disputes is more limited for these services than for other branches of the economy, as they are subject to closer government restrictions as their functionality touches upon and ensures the functioning of the state. However, as has also been shown, mechanisms – supported by the guidance provided by the ILO’s supervisory organs - exist to manage the balancing act between these necessary restrictions and the individual workers’ fundamental labour rights.

To exercise these rights, mediation, arbitration and the requirement to conclude collective agreements for essential services compel the parties to negotiate and allow them to stop just short of the threat of conflict. Foremost, however, the requirement to provide minimum services allow the parties to exercise industrial action while guaranteeing basic services. It protects employers and the functioning of the state are protected against negative consequences through the assurance of minimum service, while workers are guaranteed corresponding rights – an equalization of the playing field to bring about industrial and thus sustainable peace.

¹⁵⁷ Available at: <http://accountabilitynow.org.za/strikes-essential-services/>.

Conventions Analyzed

1. Social Dialogue

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) – C.87
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – C.98
- Workers' Representatives Convention, 1971 (No. 135) – C.135
- Tripartite consultation (International Labour Standards) Convention, 1976 (No. 144) – C.144
- Labour relations (public service) Convention, 1978 (No. 151) – C.151
- Collective Bargaining Convention, 1981 (No. 154) – C.154

2. Instruments Dealing Generally with OSH

- Occupational Safety and Health Convention, 1981 (No. 155) – C.155
- Protocol of 2002 to the Occupational Safety and Health Convention, 1981 – 2002 Protocol
- Occupational Health Services Convention, 1985 (No. 161) – C.161
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) – 2006 Promotional Framework

3. Conventions Dealing with Specific OSH Risks

- Radiation Protection Convention, 1960 (No. 115) – C.115
- Occupational Cancer Convention, 1974 (No. 139) – C.139
- Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) – C.148
- Asbestos Convention, 1986 (No. 162) – C.162
- Chemicals Convention, 1990 (No. 170) – C.170
- Prevention of Major Industrial Accidents Convention, 1993 (No. 174) – C.174

4. Conventions Dealing with Specific Branches

- Hygiene (Commerce and Offices) Convention, 1964 (No. 120) – C.120
- Safety and Health in Construction Convention, 1988 (No. 167) – C.167
- Safety and Health in Mines Convention, 1995 (No. 176) – C.176