

## Towards an EU-wide right to politically strike: A constitutional perspective<sup>1</sup>

### ABSTRACT

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee, assesses the status of political strikes in the EU. While workers' strikes generally seek to pressure an employer, "political strikes" are aimed at the government. Even though such political strikes are often organised to defend and protect workers' interests, they can also have exclusively political objectives. Such "purely political" strikes are generally not protected as part of the right to strike under relevant international human rights law or the Member States national legislation.

Strikes are typically a tool used by unions in order to put pressure on employers to enter into a collective bargaining process, or to make concessions in the negotiation of a collective bargaining agreement. "Political strikes" are addressed, instead, at the government, in order to protest certain policies or to influence a legislative agenda. Such "political strikes" seek to obtain changes that depend on the government or parliament, and not on any individual employer. They often take the form of general strikes.

Political strikes may relate to policy issues that affect the economic and social interests of workers. They also may relate to issues unrelated to workers' interests: these are "purely political strikes" in the typology proposed in the study.

There exist important variations as regards the regime of political strikes across the 27 Member States of the European Union (EU). In five Member States, strikes pursuing political objectives are explicitly disallowed: the workers going on strike for political motives may be sanctioned, and they run the risk of being dismissed. In contrast, most Member States do not include an explicit prohibition of political strikes, but the exclusion of purely political strikes follows from the definition of the right to strike in legislation or in case-law. 17 Member States define strikes in domestic legislation in a way that, in effect, excludes strikes that are "purely political", since strikes are defined as related to trade disputes opposing workers to employers: in three of these Member States, strikes are explicitly linked to the negotiation of collective agreements, while in 14 other Member States, the exclusion of "purely political strikes" follows from a slightly broader definition of strikes as relating to the protection and promotion of workers social and economic interests, though not necessarily in the context of a collective bargaining process. Finally, in the remaining five Member States, political strikes are explicitly

<sup>1</sup> Full study in English: [https://www.europarl.europa.eu/RegData/etudes/STUD/2024/757656/IPOL\\_STU\(2024\)757656\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2024/757656/IPOL_STU(2024)757656_EN.pdf)



allowed, generally as a result of court cases having considered them to be lawful. This classification of Member States remains delicate, however: in the absence of clear legislation or established case-law in certain Member States, the way how courts might respond to the consequences of political strikes remains speculative.

The scope of the right to collective action under Article 28 of the Charter of Fundamental Rights of the European Union (EU Charter of Fundamental Rights, Charter) is not clear from the wording itself. Providing greater clarity would be useful, particularly to ensure that the right to strike will not be narrowly interpreted by courts and that economic freedoms, such as the freedom to provide services and freedom of establishment, will not systematically take priority in cases of conflict. This potential risk is exemplified by the Viking and Laval cases of 2007. Specifically, where the right to strike would be exercised in protest of certain governmental policies, domestic courts may need to be provided with better guidance where such exercise would interfere with the economic freedoms protected under the internal market.

Replacing Article 28 of the EU Charter of Fundamental Rights under the broader framework of international human rights law and the relevant instruments of the International Labour Organization may help to provide such clarity. A close look at the sources cited in the Explanation to Article 28 of the Charter, along with other relevant sources, suggests that while the right to strike extends to strikes that protest governmental policies impacting workers' economic and social interests, it does not extend to "purely political" strikes, unrelated to such interests.

Three sources are examined in detail. First, under Article 6(4) of the European Social Charter (ESC), the States parties have pledged, "[w]ith a view to ensuring the effective exercise of the right to bargain collectively", to recognise the "the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into." While this wording seems to limit the recognition of the right to strike to situations where workers are attempting to exert pressure on an employer in the context of a collective bargaining process, the European Committee of Social Rights (ECSR) took the view that the right to strike is guaranteed under the European Social Charter as long as it is used to defend the economic or social interests of workers, whether or not in connection with a process of collective bargaining. It is however doubtful whether this extends the right to strike to "political strikes" in protest of the action of the government or to seek a legislative reform, since the ECSR limits its reading of the ambit of collective action under Article 6(4) to disputes between workers and employers; as regards "purely political strikes", entirely unrelated to the interests of workers, they are almost certainly excluded.

Secondly, under Article 11 of the European Convention on Human Rights, each individual is guaranteed "the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests". Since 2002, the European Court of Human Rights has incorporated the right to strike as part of the freedom to form and to join trade unions (since, according to the Court, "strike action, which enables a trade union to make its voice heard, constitutes an important aspect in the protection of trade union members' interests"). While this protection seems to cover protest strikes aimed at the government (or broadly defined "political strikes"), it appears that "purely political strikes", unrelated to "the protection of trade union members' interests", are excluded.

While these two first sources are cited in the Explanation accompanying Article 28 of the Charter of Fundamental Rights of the European Union, other sources also should be taken into account. Article 8(1)(d) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) protects the right to strike (and so does, implicitly, Article 22 of the International Covenant on Civil and Political Rights (ICCPR)). The right of everyone to form and join trade unions is stipulated in the ICESCR, however, "for the promotion and protection of his economic and social interests". This again, while it does allow to extend the protection of this provision to political strikes protesting governmental policies, would seem to exclude the protection of "purely political" strikes.

A similar conclusion can be drawn from the 1948 ILO Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise and the 1949 ILO Convention (No. 98) concerning the Right to Organise and to Collective Bargaining. The ILO supervisory bodies have taken the view that, under ILO Convention (No.

87) concerning Freedom of Association and Protection of the Right to Organize, 1948, "strikes relating to the Government's economic and social policies, including general strikes, are legitimate"; however, they have not extended their protection to "purely political" strikes as such.

It follows that, in the current state of EU constitutional law, Article 28 of the Charter of Fundamental Rights of the European Union, read in the light of international human rights and labour law, protects the right to political strikes (or "protest strikes"), to the extent that such strikes target issues pertaining to the economic and social interests of workers (going beyond their narrow "occupational interests"); it does not however protect the right to strike that is "purely political", that is, unrelated to workers' economic and social interests.

This reading is not necessarily consensual, however, and (taking into account also the diversity of approaches across Member States) there remains a lack of clarity as to the extent of the protection afforded under Article 28 of the Charter of Fundamental Rights. While Article 153(5) TFEU excludes the adoption of harmonisation measures concerning the exercise of the right to strike across the Member States, the national authorities remain bound to respect the right to strike, as stipulated in Article 28 of the Charter of Fundamental Rights, in the scope of application of EU law. Yet, the lack of a common understanding of the scope of the right to strike under this provision of the Charter may have a chilling effect on the exercise by workers of the right to strike, when they resort to strike in order to protest governmental action: in the current state of EU law, they are uncertain whether or not they would be protected under EU law, since the link between the issue that they target and their economic and social interests may at times be tenuous. Moreover, the divergent approaches across the Member States may cause a risk of fragmentation in the internal market: restrictions to economic freedoms (as illustrated in Viking and Laval cases) may or may not be considered permissible when the exercise of the right to strike by workers leads to such restrictions, depending on how domestic courts interpret that right. More guidance could therefore, and perhaps should, be provided to domestic authorities, as regards the reading of Article 28 of the Charter of Fundamental Rights.

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