



The Right to Strike Struck Down?

A Global Survey of Recent Trends

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Introduction

The right to strike is under attack. Incidences of strikes being suspended, sanctioned or prohibited by new laws are reported in a growing number of countries. Workers and their unions are fighting on various fronts to obtain, protect and defend their right to strike. On the international level, the International Labour Organisation (ILO) is at the core of this fight. At the 2012 International Labour Conference (ILC), the Employers' Group challenged the existence of an internationally recognised right to strike protected by ILO Convention No. 87. The controversy that followed has effectively weakened the most established international mechanism for bringing violations of the right to strike to the attention of a global audience. This motivated the Friedrich-Ebert-Stiftung (FES) to conduct a global survey to assess to what extent this non-resolved controversy at international level corresponds with challenges to the right to strike at national level. The intention of the survey was to identify trends and patterns of violations of the right to strike in countries across the globe, with a particular focus on the past 5 years (from 2012 to 2016). The survey identifies and measures the extent of violations, i.e. restrictions beyond the limits established by the ILO supervisory bodies, in the existing legal frameworks as well as in practice.¹ This briefing paper provides some of the

initial key findings of the survey, which indicate a clear trend towards increasing violations of the right to strike.

Main Survey Findings

The overall survey findings show that 41 new violations in law and/or case-law have been registered over the last five years in 21 of the 69 countries covered. These countries are Argentina, Australia, Bangladesh, Belgium, Canada (Saskatchewan, Ontario and Quebec), DR Congo, Ecuador, Egypt, Estonia, Fiji, Guatemala, Indonesia (Jakarta), Italy, Mauritania, Niger, Romania, South Africa, Spain, Turkey, Vietnam and Zimbabwe.

These 41 recent cases of violations, however, are to be understood in a context of widespread existing cases of violations (129) of the right to strike in law and/or case-law in the selected areas of violations (Figure 1). This figure indicates that (a) the right to strike is severely curtailed in a vast number of countries surveyed, and often has been for a long time already; (b) there is a noticeable trend that restrictions that violate ILO principles and jurisprudence in the right to strike are being introduced in countries across regions, independent of their economic development status.

While a general prohibition of the right to strike is absent in the legal framework in the surveyed countries,

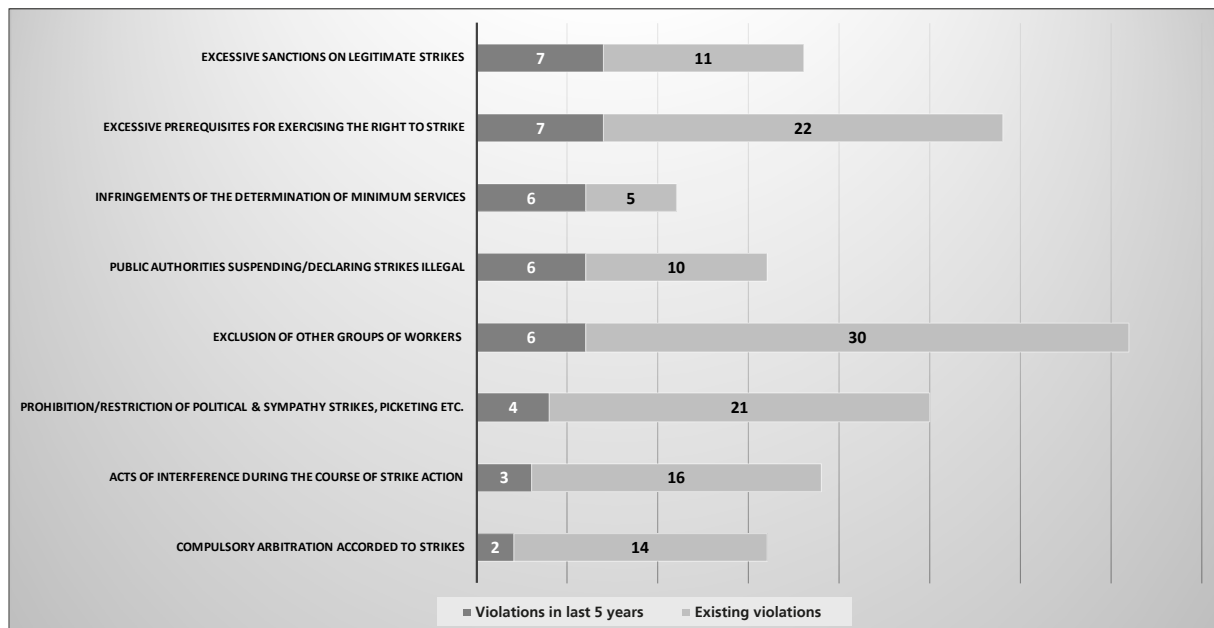
1. The survey questionnaire adopted the list of violations of the right to strike constructed by David Kucera and Dora Sari as applied in the Labor Rights Indicator Project of the Global Labour University and the Center for Global Workers' Rights at Penn State University (<http://labour-rights-indicators.la.psu.edu/>). The framework for the analysis of the survey results, that is the reported violations, is based on Gernigon et al.'s paper »ILO principles concerning the right to strike« (1998).

The survey questionnaire, which was fielded between 1 March and 21 April 2016 in four languages (Arabic, French, English and Spanish) was completed by 85 national respondents in 59 countries (Argentina, Australia, Bangladesh, Barbados, Belgium, Bosnia and Herzegovina, Bulgaria, Burundi, Cambodia, Cameroun, Canada, China, Colombia, DR Congo, Cote d'Ivoire, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Fiji, Germany,

Ghana, Greece, Guatemala, India, Indonesia, Ireland, Italy, Japan, Kenya, Madagascar, Malaysia, Mauritania, Mexico, Nepal, Niger, Nigeria, Norway, Palestine, Philippines, Poland, Portugal, Romania, Senegal, Slovakia, South Africa, Spain, Sudan, Swaziland, Tanzania, Trinidad and Tobago, Turkey, Uganda, UK, USA, Vietnam, Zambia and Zimbabwe) and one regional respondent covering another 10 Latin American countries (Bolivia, Chile, Costa Rica, Dominican Republic, El Salvador, Haiti, Honduras, Nicaragua, Panama and Paraguay), bringing the total number of countries covered by this survey to 69, with a third being OECD countries. Trade unions make up the majority (84 percent) of respondents and the remainder are experts from labour-related institutions, academics and labour practitioners.



Figure 1: Number of Cases and Types of Violations of the Right to Strike in Law and/or Case-law



overall findings point to a general trend in which governments justify numerous violations of the right to strike under the guise of ›public order‹, ›public security‹, ›threat of terrorism‹, ›national interest‹ and ›economic crisis‹, among others. In addition, job insecurity marked by threats of dislocation and increasing precarisation of work, experiences of arbitrary dismissals, and extensive use of non-standard workers to replace striking workers have undermined the effective exercising of the right to strike further. A closer look at selected dimensions of violations provides valuable insights into the ways the right to strike is being restricted in different countries.

1. Legal Exclusions of Groups of Workers from the Right to Strike. Despite ILO principles which over the years have narrowed down the categories of workers that can be excluded from the right to strike, many groups of workers continue to be denied this right. They are excluded in law and/or case-law due to the application of rather broad and vague categories of ›essential services‹, ›civil servants‹ or ›strategic or vital establishments‹. The survey shows that of the 36 countries where said violations have been reported, 6

(Bangladesh, Ecuador, Egypt, Estonia, Turkey and Vietnam) have enacted such exclusions in the last five years. Relatedly, **infringements of the determination of minimum services** in law and/or case-law have recently been enacted in 6 countries (Argentina, Canada, Italy, Mauritania, Romania, Turkey). Here too, the definition of essential services has been expanded to include more services on which minimum services during strikes could apply. The prevalence of violations involving workers in public services suggests that these workers are at the frontline of the attack on the right to strike, at least as far as the legal framework is concerned.

Infringements of the determination of minimum services in Canada

Saskatchewan Health Authorities designate 75–100 percent of employees in hospitals and long-term care facilities as essential.

Groups of workers excluded from the right to strike in law and/or case-law in various countries in the last 5 years:

Civil servants and workers in sectors deemed important to national economy; public sector workers entering the public sector for the first time; firefighters; workers in urban public transportation; domestic workers; home-based workers and agriculture workers employed in establishments with a minimum of 50 workers.

2. Excessive prerequisites required for exercising the right to strike are the second most common violation as 7 more countries have joined the 22 countries where excessive prerequisites existed prior to 2012 (Canada / Saskatchewan, DR Congo, Fiji, Indonesia / Jakarta, Mauritania, Turkey and Zimbabwe). Excessive prerequisites cited by respondents included legal provisions and/or case-law rulings estab-

lishing cumbersome and long procedures, which go far beyond conditions established by ILO supervisory bodies. In practice, such prerequisites become even more excessive due to delays from public authorities, including inability to provide labour inspectors during voting procedures foreseen in the law. All these have the effect of denying workers the right to strike or forcing them to go on strikes which, as the survey shows, can easily be declared illegal.

3. The exercise of the right to strike has been further undermined by the enactment of legal provisions and/or case-law rulings which empower **public authorities to suspend or declare a strike illegal**. Whereas said violations

Excessive prerequisites for the right to strike in Mexico

Exercising the right to strike requires that the union applies to the labour authority, which implies a trial before a tripartite tribunal where the state is judge and jury. The unions must prove that the reason for strike is the systematic violation of rights under the Constitution, which is practically impossible.

Suspension of Strikes

In Belgium, employers have recourse to the courts of justice, by way of unilateral application, to put an end to the strike. The rulings sometimes take the form of a »general police regulation« which is not within the competence of the judiciary.

have existed in several countries for some time, over the last five years such restrictive measures have been enacted in 6 countries (Argentina, Australia, Canada/Ontario, Spain, Turkey and Vietnam). The practical impact has been particularly worrying with countries such as Turkey reporting suspension of three strikes (in glass, mining and metal sectors covering about 30,000

workers) by the Council of Ministers in the last five years. Relatedly, **acts of interference during the course of the strike** have become more prominent, with respective legal provisions and/or case-law rulings reported in 3 countries (Belgium, South Africa and Turkey) and cases of interference in practice observed in an additional 6 countries (DR Congo, Egypt, Mauritania, Mexico, Romania and Vietnam). Interferences such as back-to-work-orders and/or replacement of striking workers, unilateral application for injunction orders, or police supervision of strikes have a serious repressive effect on the right to strike.

4. Excessive sanctions in case of legitimate strikes have become more common in the last five years, with Canada/ Saskatchewan, Guatemala, Mauritania, Niger and Turkey introducing new legislation; Argentina and Egypt handing down court rulings; and DR Congo, Germany, Indonesia and Madagascar adopting practices which violate international principles. The imposition

of sanctions against individual workers (dismissal, fines, and criminal sanctions) and trade unions (cancellation of union's recognition certificate and suspension of collection of union dues) for strikes declared illegal ex post is being described as a major abuse of power which has a strong repressive effect on the effective exercise of the right to strike. This is true especially in light of the survey finding that more than one-third of countries have empowered public authorities to suspend or declare strikes illegal. The arbitrary imposition of excessive sanctions has been further facilitated by the lack

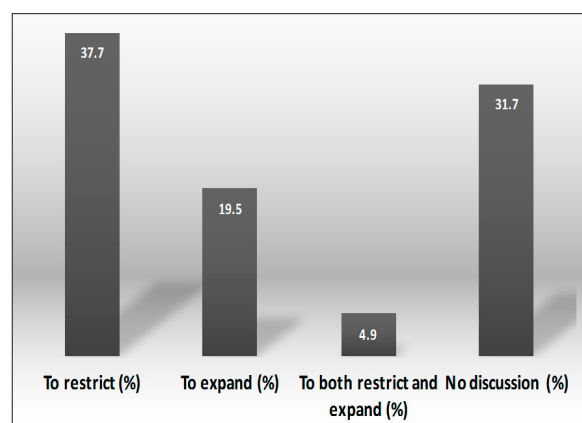
and/or ineffective mechanisms which could guarantee due process and/or justice regarding violations.

5. Violations in law and/or case-law have been accompanied, and perhaps reinforced, by a **public discourse which favours the restriction** of the right to strike (Figure 2). Championed by governments and employers alike, arguments to restrict this right are framed around competitiveness, access to markets, global financial crisis and »national security and interest«. Underlying themes of such debates have been »freedom to work« versus the »right to strike« and equating the »right to strike« with the »right to lock-out«.

Excessive sanction for striking workers in Egypt

The Legislative Decree 34 (2011), issued by the Supreme Council of the Armed Forces, criminalizes violating »the freedom to work«. The first article of the decree mandates that any individual who behaves in a manner that leads to the hindrance or obstruction of work at any state institution, public or private facility shall receive a prison sentence and a fine ranging between US\$ 2,200 and US\$ 5,600. Although the decree is valid only in emergency situations, it has been taken as a reference for court rulings recently. A Cairo court decreed on 28 April 2015 that all government employees participating in strikes and sit-ins would be retired from their positions.

Figure 2: Trends in the Right to Strike Discourse



Conclusions

Strike action is recognised internationally as a fundamental right of workers and their organisations. While recognising the right to strike, the ILO supervisory bodies have laid down a body of principles which, among others, set the limits within which the right to strike may be exercised. The history of restrictions of the right to strike beyond the limits established by the ILO supervisory bodies is not new. Today, however, the right to strike has become a precarious right. The list of legal, administrative and practical restrictions and the number of countries where they are applied is growing. While restrictions which violate the right to strike do not always take the form of outright repression by security forces, the spectrum of legal instruments at hand for employers and the state to effectively restrict the right to strike is manifold and includes more subtle and refined measures. In many cases, bureaucratic procedures and requirements add up to making it virtually impossible to legally go on strike. Far from neutral, such legal and bureaucratic instruments are used as political means to suppress strike action. The erosion of the right to strike that results from these restrictions needs to be seen as part and parcel of a broader global trend of securitizing politics and society, with fundamental rights (freedom of speech, assembly and association) at stake in many countries.

This survey intended to capture whether the right to strike has faced further restrictions and violations recently and what methods are commonly used. The results

indicate that there have indeed been additional restrictions and violations. While the controversy at the ILO and the attempt to challenge and block the proper functioning of the supervisory mechanism is neither immediate cause nor effect of these trends, it does potentially have serious repercussions for the national level: it may undermine the reception of ILO »jurisprudence« by supranational and national courts (Hofmann and Schuster 2016: 11–12), calling into question the benchmarks for national legislation and practice on the right to strike. At national level, a paralysis of the supervisory mechanism with regard to the right to strike threatens to remove one of the few instruments available to workers to challenge the violations of international norms by national governments or employers and pressure them to respect and protect these norms.

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