

1. WHICH NATIONAL RULES DO APPLY TO STRIKES (CONSTITUTIONAL LAW, LABOUR LAW, ETC.)?

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| ITALY | <ul style="list-style-type: none"> ▪ The right to strike is guaranteed by the Italian Constitution under Art. 40, but has to be co-ordinated with the other rights mentioned by Constitution |
| DENMARK | <ul style="list-style-type: none"> ▪ In Denmark this area of labour law is regulated by the social partners in the form of collective agreements which are legally binding both for the parties (organisations) who have concluded them and for the members of the organisations. The settlement of industrial disputes is based on a distinction between disputes of interest and disputes of right. Disputes of interest concern fields, which are not covered by any collective agreement. ▪ The Danish Parliament has passed an act on conciliation in industrial disputes, popularly called the Official Conciliator's Act. If notice has been given of a strike or other industrial action, the conciliator may order a postponement of the action as long as negotiations are still going on. Disputes of rights concern disagreement regarding questions regulated by a collective agreement. In such cases the labour market organisations have agreed to settle all such disputes through negotiation. |
| FINLAND | <ul style="list-style-type: none"> ▪ Rules regarding strike (mainly as employees right to participate) are set out in labour law: 1) Act on conciliation of industrial disputes (Laki työriitojen sovittelusta 7,8 and 10 §); 2) Act on collective contract regarding civil servant salaries (Virkaehtolaki 8); 3) Act on unemployment benefits (Työttömyysturvalaki 6 §); 4) Act on social welfare (Sosiaalihuoltolaki 34 §). ▪ Finnish labour law is based upon the principle of universal binding force of collective agreements. These agreements are of two types: (a) branch based where they cover all workers within a branch, irrespective of their profession or (b) profession-based which covers all members of certain professions, irrespective of their branch. Collective agreements may provide specific regulation regarding employees' right to strike. |
| SWEDEN | <ul style="list-style-type: none"> ▪ Force majeure is not a defined statutory term under Swedish law. However, the concept of force majeure is generally recognised. ▪ In relation to financial transactions, the statutory provisions of interest are embodied in the Swedish Sale of Goods Act enacted in 1991. ▪ It is difficult to describe exactly which specified circumstances will be treated as "force majeure-circumstances" under Swedish law. According to the preparatory work to the Sale of Goods Act now in force, natural catastrophes, accidents, such as fires or explosions, and labour disputes could be considered as 'force majeure-circumstances'. |
| PORTUGAL | <ul style="list-style-type: none"> ▪ The Constitution of the Portuguese Republic 1976 ("Constituição da República Portuguesa") establishes in art 57 the right of strikes as a fundamental right. ▪ The Law 65/77 of 26 August, amended by the Law 30/92 of 20 October and by the Constitutional Court Judgment 868/96 of 4 July, regulates the exercise of this right. ▪ In a broad outline, it should be mentioned that: (i) the employer must receive five days prior notice of such event; and (ii) the employer is limited in the choice of measures to minimise the effects of the strike on his activity. Accordingly, the employer is not allowed to substitute the workers on strike with temporary external workers. |
| GREECE | <ul style="list-style-type: none"> ▪ The right to strike is a fundamental right protected by Article 23 para. 2 of the Constitution, according to which: <i>'Strike constitutes a right which may be exercised by trade unions that are duly established with a view to protecting and promoting the economic and the labor interests in general of the employees [...]. The right to strike is subject to the specific restrictions laid down by the law governing it [...].'</i> |
| THE NETHERLANDS | <ul style="list-style-type: none"> ▪ In The Netherlands the courts determine the lawfulness of collective actions of workers, such as strikes. There is no legislation on the right of strike, other than via the European Social Charter, article 6, paragraph 4 of the ESC. |
| SPAIN | <p>The right to strike is guaranteed by the following laws:</p> <ul style="list-style-type: none"> ▪ Constitutional Law (Article 28) whereto the strike is considered a fundamental and unsuppressible right for workers; ▪ Real Decreto Legislativo 1/1995 (Article 4) amending the Statute of Labourers; ▪ Real Decreto-Ley 17/1977, concerning relations between employer and employee; ▪ Ley Orgánica 4/1981 (Article 23) regarding the possibility that the Government has to forbid strikes in case of extraordinary circumstances. <p>According to Article 1105 of the Spanish Civil Code, a subject does not have to respond of the obligations, which became impossible to be realised due to unexpected or unavoidable circumstances.</p> |
| FRANCE | <ul style="list-style-type: none"> ▪ The right of strike is a fundamental right according to France's Constitution. The right of strike is subject to article 7 of the Constitution of 1946: "[translation] the right of strike is to be exercised as presented by the laws that rules it". ▪ Therefore, the conditions attached to the exercise of the right to strike are provided for by French labour law, under articles L. 521-1 and following of the Labour Code (Code du travail) (collective conflict and the strike regime). |
| GERMANY | <ul style="list-style-type: none"> ▪ According to the leading opinion the right to strike is set out in the German Constitution. There are also regulations on strike in various labour and other laws. (ArbGG; BetrVG; BPersVG; SGB III; AÜG). There is also case law on strike concerning the question of the legality of a strike, on the question whether a strike constitutes force majeure as well as on the legal consequences of legal/illegal strikes. |