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## Abstract

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The right to strike is a fundamental human right guaranteed by human rights conventions. In particular, the International Covenant on Economic Social and Cultural Rights that has been ratified by the State of Palestine, stipulates in its article 8, which addresses trade union rights, that: “1. The States Parties to the present Covenant undertake to ensure: [...] (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.”

While ILO conventions do not explicitly mention the right to strike, the Committee on Freedom of Association has laid down principles on the right to strike, which it has recognized as a general right arising from article 3 of ILO convention 87, i.e. workers’ organizations’ right to organize their activities, as strike actions are an essential means for rendering this right effective. The Committee has found no objections to legislations, which deny the right to strike to groups of workers in armed forces and the police, based on article 9 of ILO Convention 87, which leaves it to national law to determine to which extent the guarantees provided for in the Convention applies to them. As for others, restrictions may only be imposed for public servants and workers in essential services in the strict sense of the term. Strikes may also be prohibited in cases of acute national emergency.

Based on the principles led down by the Committee on Freedom of Association and the Committee of Experts, the concept of public servants as relating to their exclusion from the right to strike can be narrowed down to public service employees, who exercise authority in the name of the State. As for essential services, the ILO Committee of Experts has defined them as services “the interruption of which would endanger the life, personal safety or health of the whole or part of the population”. In borderline cases, and as an alternative to prohibiting a wide category of workers in “essential services” from exercising their right to strike, a minimum service may be introduced. Finally, as agreed by both Committees, when public servants are not granted the right to strike, there should be compensatory guarantees, i.e. they should enjoy sufficient guarantees to protect their interests, including appropriate, impartial and prompt conciliation and arbitration procedures to ensure that all parties may participate at all stages and in which arbitration decisions are binding on both parties and are fully and promptly applied.

Palestinian legislation guarantees the right to strike. The amended basic law of the year 2003 stipulates in its article 25 that “The right to conduct a strike shall be exercised within the limits of the law”.

The Palestinian labor law no 7 of the year 2000 guaranteed the right to strike in its articles 66 and 67, but excluded public sector workers from its scope of application.

The legislator was late in issuing a law concerning the right to strike of public sector workers. There was a legal gap until the issuance of the law by decree no 5 of the year 2008, which guaranteed their right to strike and defined the modalities for exercising this right. It stipulated that article 67 of the Palestinian labor law shall be applicable. Thus, public sector workers were able to exercise their right to strike provided that they submit a written notification four weeks in advance, signed by 51% of the workers in the concerned workplaces. The law by decree of 2008 also introduced the possibility for the Cabinet or any other party affected by a strike to appeal against it with the High Court of Justice if the strike action violates the dispositions of the law or “causes severe damage to public interest”. The law by decree of 2008 was replaced by the law by decree no 11 of the year 2017 organizing the right to strike in the public service, which for the first time excluded specific categories of public sector workers from exercising their right to strike, namely members of Palestinian security forces, and several categories of civil employees: health sector employees, except administrators, employees of the Presidency, employees of the Cabinet, employees of the diplomatic corps, employees of the General commission for radio and television, judges and prosecutors. Other dispositions remained the same.

It should be noted that the legislator adopted a numeral standard for conferring a collective status to the abstention from working. However, the condition of gathering signatures from at least 51% of the workers for the strike notification in public facilities is difficult to implement in facilities that employ a large number of employees, for instance when this concerns teachers employed by the Ministry of Education. We thus propose that the legislator adopts an organic standard (organization of a strike by a union). In this case, organization of strikes and their announcement would be a prerogative of workers' organizations.

Article 6 of the law by decree, which allows the Cabinet or any other party affected by a strike to submit an appeal to the High Court of Justice to stop a strike action, can also be considered as problematic, since its formulation is flexible and broad. The article does not identify specific cases for submitting an appeal, which leads to restricting the exercise of the right to strike by public sector employees.

Concerning the manner the Palestinian judiciary has been dealing with the issue of strikes, it did not address the matter itself as most cases were dismissed following an agreement between employees and the concerned administration. Thus, three cases concerning strike actions announced by the Federation of Health Professions Unions, the Union of Public Employees and the Palestinian Teachers' Union were dismissed in 2008 by the High Court after an agreement was reached between parties and the strike action was canceled. In two cases, the High Court of Justice issued a decision and declared the strike actions illegal, because the unions calling for these strikes had failed to respect the procedures stipulated in the law, namely submitting a strike notification four weeks before the planned strike, signed by 51% of the employees in the concerned sector. These decisions of the High Court concerned a strike announced by the Palestinian Physicians' Association in 2011 and another by the Palestinian Teachers' Union in 2013.

In conclusion, while the right to strike is a fundamental right guaranteed by international conventions and Palestinian legislation, the law by decree no 11 of the year 2017 that organizes this right has introduced restrictions on its exercise, in violation of Palestinian basic law and international standards and principles. This concerns on one hand the quota of workers required to engage in a strike action, and the prohibition of wide categories of civil public service employees from exercising the right to strike, particularly in the health sector, without guaranteeing them appropriate compensatory guarantees, such as conciliation and arbitration procedures.

Recommendations to the executive authority are to review the law by decree of the year 2017 concerning the exercise of the right to strike, develop mechanisms for collective bargaining in the public sector and guarantee this right either through legislation or collective agreements, which requires first and foremost the effective recognition of the right to organize of public sector employees as stipulated in international conventions

As for recommendations to trade unions representing public sector workers, the first is to respect the current procedures for declaring a strike action stipulated in the law by decree organizing the exercise of the right to strike, in order to avoid strike actions being stopped by judicial decision for violations of dispositions of the law. The second recommendation is to work with human rights organizations and other trade unions to develop propositions for amending the law on strikes in the public sector and obtain that the right to organize and collective bargaining for civil public sector employees is fully guaranteed in Palestinian legislation.

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