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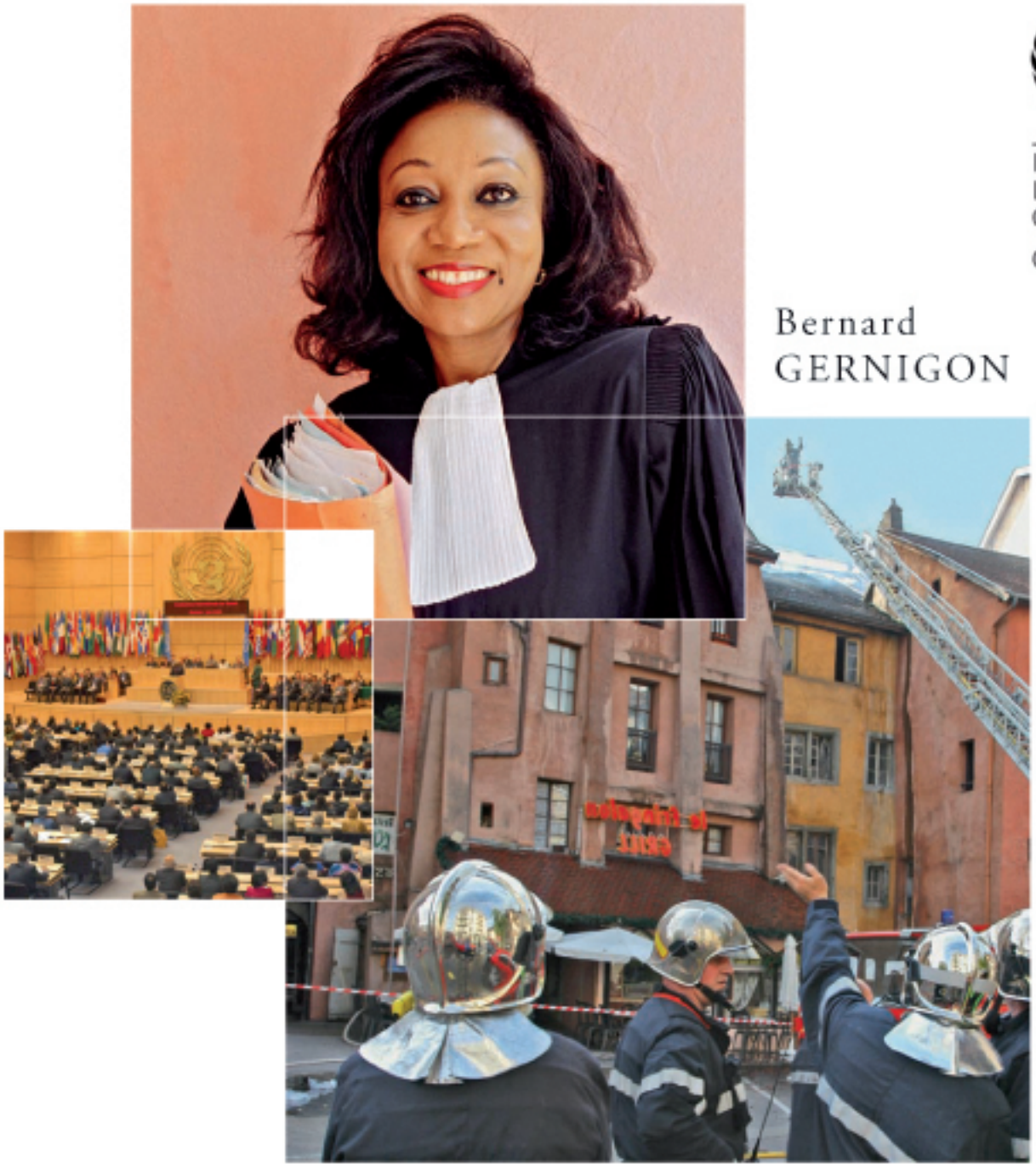

Labour relations in the public and para-public sector

Working paper No. 2

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INTERNATIONAL LABOUR STANDARDS DEPARTMENT

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Chapter 1. Introduction

The concept of the public service

It is normally accepted that the public sector includes, on the one hand, the public service, consisting of State administrations and public bodies throughout the country (at the regional and local levels) and, on the other, public enterprises, which are owned wholly or in part by the State or regional public authorities. This distinction (between the public service and public enterprises) is, however, sometimes made by using two different terms: "public sector" and "para-public sector".

Determining the manner in which the public service and public enterprises are defined at the national level is an extremely complex task, as definitions vary considerably from one country to another and are, in most cases, formulated in general terms, with the result that their exact scope is uncertain.

At the international level, the International Standard Industrial Classification of all Economic Activities includes a category entitled "Public administration and defence; compulsory social security". This category includes the exercise of public administrative functions based on executive and legislative administration by ministries and other administrative bodies or organs of central, regional and local bodies.

However, this classification does not include a general reference to public enterprises, as their activities may relate to one or more sectors that are covered elsewhere in the classification. Finally, certain sectors which may be managed by public or private bodies fall into separate categories, such as health and education.

In general, for the purposes of the present paper, the concept of the public sector is understood in its broadest sense, that is covering all public administrations, irrespective of their level, and enterprises wholly or partly owned by public bodies at whatever level.

Labour relations and the public sector

Once again, a distinction has to be made between the public service in itself and public enterprises.

Public service

The various criteria used to define the public service personnel covered by labour relations provisions include whether or not their appointment is permanent and the nature of the work performed.

Permanent nature of the job

In a number of countries (and particularly those of the French legal tradition), the labour relations legislation governing the public service is applicable to persons appointed to a permanent post in the public service. Such persons are covered by specific conditions service governing the public service. This distinction, made on the basis of whether or not the post is permanent, essentially serves to distinguish between employees to whom the rules governing the public service are applicable from those covered by the general legislation applying to workers in general. However, in practice, the situation is more complex, as functions involving permanent and effective participation in the public service

are sometimes performed by persons employed under fixed-term contracts. These are contracts which, despite their limited duration, are of an administrative nature and which are covered by public law rather than private law.

The outcome is that the demarcation line between personnel in the public service who are covered by the special rules respecting labour relations in the public service and those governed by the general legislation applicable to the private sector is fairly imprecise.

Nature of the work performed

The distinction between public service personnel governed by specific conditions of service and staff covered by the general legislation sometimes depends on the nature of the work performed and is frequently reflected in the definition of the various categories of personnel. The most evident example of this system is in Germany, where a distinction is made between public servants *(Beamte)*, state employees *(Angestellte)* and manual workers *(Arbeiter)* in the public service. Only the first of these are subject to statutory rules explicitly setting out their terms and conditions of employment, while the other two categories are governed by the general rules respecting labour relations in the private sector. Nevertheless, all three categories are covered by the legislation respecting workers' participation, through staff councils, in decisions affecting employees in the public service.

Exclusion of certain categories of personnel from the legislation covering the public service

Certain categories of personnel are sometimes explicitly excluded from the application of the legislation covering the public service: this exclusion may, for example, apply to persons exercising legislative, executive or judicial functions, such as members of parliament, ministers or magistrates. In several countries, personnel engaged in managerial, supervisory or confidential positions are also excluded from the scope of the legislation governing labour relations in the public service. This is the case, for example, in Canada and the United States, where managerial personnel and those in decision-making positions are excluded from the provisions respecting accreditation to bargaining units and exclusive representation rights. In Canada, the Public Service Labour Relations Act [1] does not include in the definition of public employee a person appointed by the Governor in Council under an Act of Parliament to a statutory position described in that Act, a person who occupies a managerial or confidential position or a person employed by the Public Service Labour Relations Board. Similarly, a person employed by the Canadian Security Intelligence Service who does not perform duties of a clerical or secretarial nature is not considered to be a public employee within the meaning of the Act.

In the United States, the definition of Federal State employee does not include a supervisor or a management official. A "management official" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency. A "supervisor" means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, lay-off, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgement. [2] Even though employees in confidential positions are not explicitly excluded, the agency concerned has decided that it would prefer employees exercising confidential functions in relation to

[1] Act adopted on 7 Nov. 2003 (Chapter 22, s. 2).

[2] Federal Service Labor Management Relations Act, s. 7103.

persons who formulate and implement managerial policies in the field of labour relations to be excluded from bargaining units.

This all shows that definitions of the scope of the special rules governing labour relations in the public service vary from one country to another in terms of the agencies, bodies and services that employ public officials, on the one hand, and in relation to the persons covered by these rules, on the other.

With regard to regional, provincial and local administration, there are also broad variations in the applicable systems. In certain countries with a tradition of centralization, one and the same regime applies to these administrations and to the central administration. In other countries with a federal or confederal system, or which are quite simply more decentralized, different systems are adopted and it may sometimes be difficult to determine the provisions that are applicable to the personnel of certain agencies or bodies.

Public enterprises

In contrast, certain specific institutions and services are excluded from the scope of the conditions of service governing the public service. Industrial, commercial, agricultural or similar public enterprises are not generally governed by the specific provisions respecting the public service and, in certain cases, they are explicitly excluded from them. These enterprises which, in practice, often operate as private sector enterprises, are mostly governed by the general industrial relations legislation, even though they are sometimes covered by special conditions of service, as is often the case in countries of the French legal tradition. However, there is a clear trend for the number of specific conditions of service to decline in view of the increasing phenomenon of the total or partial privatization of the enterprises concerned.

Chapter 2. ILO standards and principles

As early as 1919, the International Labour Organization included the principle of freedom of association in its Constitution as one of the objectives of its programme of action. The Preamble to Part XIII of the Treaty of Versailles recognizes "the principle of freedom of association" among the objectives to be promoted by the Organization. And the general principles set out in Article 427 of the Treaty include "the right of association for all lawful purposes by the employed as well as by employers". In 1944, the Declaration of Philadelphia, annexed to the Constitution, reaffirmed, as one of the fundamental principles on which the Organization is based, that freedom of expression and association are essential to sustained progress. The Declaration of Philadelphia also recognizes the solemn obligation of the Organization to further programmes which will achieve, among other objectives, the effective recognition of the right to collective bargaining. All the principles set out in the Constitution have to be respected by each member State of the Organization.

Recognition of the right to organize of workers in the public sector: Convention No. 87 [1]

In 1948, when the International Labour Conference, by an overwhelming majority, adopted the Freedom of Association and Protection of the Right to Organise Convention (No. 87), it recognized the right to organize of workers in both the private and the public sectors. Article 2 accordingly sets forth the principle that "Workers and employers, without distinction whatsoever, shall have the right to establish (…) organisations of their own choosing without previous authorisation."

The report of the discussion on freedom of association of 1947 indicated, in relation to this Article, that in order to leave no doubt of the real significance of this article, it was understood that the report of the Committee would stress the fact that freedom of association was to be guaranteed not only to employers and workers in private industry, but also to public employees, and without distinction or discrimination of any kind as to occupation, sex, colour, race, creed, nationality or political opinion.

For this reason, the law and practice report prepared by the ILO envisaged that the scope of the new instrument would include public servants and officials: "the guarantee of the right of association should apply to all employers and workers, public or private, and, therefore to public servants and officials and to workers in nationalised industries. It has been considered that it would be inequitable to draw any distinction, as regards freedom of association, between wage-earners in private industry and officials in the public services, since persons in either category should be permitted to defend their interests by becoming organised (…). However, the recognition of the right of association of public servants in no way prejudices the question of the right of such officials to strike (…)." [2]

Nevertheless, this general principle gave rise to reservations and, during the discussion of the draft text by the Conference, it was decided to insert a new article allowing governments to determine the extent to which the guarantees provided for in the Convention would apply to members of the police and the armed forces. It was noted that such an exception was necessary as most member States would not be in a position to

[1] As of 31 May 2007, Convention No. 87 had been ratified by 147 countries.

[2] ILO, *Freedom of association and industrial relations*, Report VII, International Labour Conference, 30th Session, Geneva, 1947, p. 108.

ratify a Convention under the terms of which freedom of association was accorded unreservedly to members of the armed forces and the police as governments are responsible for defending the law and maintaining public order.

The Committee of Experts on the Application of Conventions and Recommendations has had occasion to comment on the scope of this recognition of the right to organize of public officials. In its most recent General Survey on freedom of association and collective bargaining it indicated that, given the very broad wording of Article 2 of Convention No. 87, all public servants and officials should have the right to establish occupational organizations, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state-owned economic undertakings. However, an examination of the legislation of different countries shows that the terms used to refer to public servants vary a great deal. The same expressions in the legislation of different countries do not necessarily cover the same persons, while in some countries the legislation itself draws distinctions as to the status and rights of the various categories of public servant. The Committee of Experts considers that all workers in this category are covered by the Convention, whatever the terms used. [3]

Where legislation recognizes the right of public servants to organize, it does not necessarily follow that they enjoy this right for the purpose of defending their economic and social interests. In this connection, the Committee of Experts has emphasized the importance that it attaches to the need for clear recognition in the legislation of the right of public servants to associate not only for cultural and social purposes, but also for the purpose of furthering and defending their occupational and economic interests. [4] Similarly, the Committee on Freedom of Association has considered that the denial of the right of workers in the public sector to set up trade unions, where this right is enjoyed by workers in the private sector, with the result that their 'associations' do not enjoy the same advantages and privileges as 'trade unions', involves discrimination as regards government-employed workers and their organizations. According to the Committee on Freedom of Association, such a situation gives rise to the question of the compatibility of these distinctions with Article 2 of Convention No. 87, according to which workers "without distinction whatsoever" shall have the right to establish and join organizations of their own choosing without previous authorization. [5]

The Committee of Experts has also noted cases of restrictions relating to the right of public servants to join trade unions and on the activities of such organizations. For example, the free choice of public servants may be restricted when legislation forbids them to establish mixed trade unions, i.e. organizations which accept workers from other sectors, or prohibits them from joining such organizations. Provisions of this kind are often intended to prevent any form of political involvement by trade union members in the public sector or to deter them from taking strike action. The Committee of Experts considers that it is admissible for first-level organizations of public servants to be limited to that category of workers, subject to two conditions: firstly, that their organizations are not also restricted to employees of any particular ministry, department or service, and

[3] ILO, *Freedom of association and collective bargaining*, General Survey of the Reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), International Labour Conference, Report III (Part 4B), 81st Session, Geneva, 1994, para. 49.

[4] ibid., General Survey, para. 52.

[5] ILO, *Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, Geneva, 2006, para. 222.

secondly, that they may freely join federations and confederations of their own choosing, like organizations of workers in the private sector. However, provisions stipulating that different organizations must be established for each category of public servants are incompatible with the right of workers to establish and join organizations of their own choosing. [6]

With regard to the armed forces and the police, the Committee of Experts has recalled that they are the only exceptions authorized by Convention No. 87 (Article 9) and that these exceptions are justified on the basis of their responsibility for the external and internal security of the State. Although Article 9 of Convention No. 87 is quite explicit, it is not always easy in practice to determine whether workers belong to the military or to the police or are simply civilians working in military installations or in the service of the army and who should, as such, have the right to form trade unions. In the view of the Committee of Experts, since Article 9 of the Convention provides only for exceptions to the general principle, workers should be considered as civilians in case of doubt. The Committee on Freedom of Association has endorsed the opinion expressed by the Committee of Experts and considers that the members of the armed forces who can be excluded from the application of the Convention should be defined in a restrictive manner. [7] More specifically, in the cases that it has examined in this respect, the Committee on Freedom of Association has considered that civilian staff in the armed forces, firefighters, prison staff and customs officials, whose jobs are sometimes assimilated to the army or the police forces, should have the right to organize. [8]

When examining complaints concerning other categories of personnel in the public sector, the Committee on Freedom of Association has also considered that local public service employees, employees in the labour inspectorate, teachers, locally recruited personnel in embassies, port workers and hospital personnel should enjoy the right to organize. [9]

Noting that some countries draw a distinction between personnel and management in the public service with a view to limiting the right to organize of senior officials and public servants holding managerial or supervisory positions of trust, the Committee of Experts has considered that barring these public servants from the right to join trade unions which represent other workers is not necessarily incompatible with freedom of association, but on two conditions, namely that they should be entitled to establish their own organizations, and that the legislation should limit this category to persons exercising senior managerial or policy-making responsibilities. [10] The Committee on Freedom of Association has formulated the same considerations as the Committee of Experts [11] and has taken the view, in a principle which applies to both the private and the public sectors, that the expression "supervisors" should be limited to cover only those persons who genuinely represent the interests of employers. [12] In this respect, the Committee on Freedom of Association has

[6] General Survey, op. cit., para. 86.

[7] *Digest*, op. cit., para. 223.

[8] ibid., paras 227–233.

[9] ibid., paras 230, 234–238, 244 and 246.

[10] General Survey, op. cit., para. 57.

[11] Digest, op. cit., para. 247.

[12] ibid., para. 248.

specified that an excessively broad interpretation of the concept of "worker of confidence", which denies such workers their right of association, "may seriously limit trade union rights and even, in small enterprises, prevent the establishment of trade unions, which is contrary to the principle of freedom of association." [13]

In a principle relating to cases in the public sector, the Committee on Freedom of Association has considered that, as concerns persons exercising senior managerial or policy-making responsibilities, it is of the opinion that while these public servants may be barred from joining trade unions which represent other workers, such restrictions should be strictly limited to this category of workers and they should be entitled to establish their own organizations. [14]

The preliminary work leading to the adoption of Convention No. 87 clearly indicates that "[o]ne of the main objects of the guarantee of freedom of association is to enable employers and workers to combine to form associations (…) capable of determining wages and other conditions of employment by means of freely concluded collective agreements." [15] In this respect, based on Article 3 of the Convention, and more specifically on the right of workers' organizations to organize their activities, the Committee of Experts has considered that this right involves the right to collective bargaining. On this basis, it requested the Government of the Netherlands to repeal provisions which restricted the right to collective bargaining of workers employed in the national insurance and subsidized sectors (at that time, the Government of the Netherlands had not yet ratified Convention No. 98). [16]

The Committee of Experts has also considered the right to strike as an activity of workers' organizations within the meaning of Article 3 of the Convention No. 87. [17]

Promotion of collective bargaining and applicability of Convention No. 98 to the public sector [18]

In 1949, when a new instrument intended to promote collective bargaining, the Right to Organise and Collective Bargaining Convention (No. 98), was discussed by the Conference, it was decided not only to authorize the same exception in relation to the police and the armed forces, but also to provide in Article 6 of the final text that: "This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way." In adopting this Article, the Conference recognized that bargaining in the public service has special characteristics which are found in various degrees in most countries. The first reason generally given is that the State has a twofold responsibility in this sphere, since it is both employer and the legislative authority; the sometimes difficult distinction between these two roles and the virtual contradictions between them may give rise to

[13] ibid., para. 251.

[14] ibid., para. 253.

[15] *Freedom of Association and Industrial Relations*, Report VII, ILC, 1947, op. cit., p. 52.

[16] Observation, Netherlands, Convention No. 87, Committee of Experts, 1989 et seq. (up to 1994).

[17] General Survey, op. cit., para. 149. See also the principles identified by the Committee on Freedom of Association in relation to the right to strike.

[18] As of 31 May 2007, Convention No. 98 had been ratified by 156 countries.

problems. Furthermore, the State's room for manoeuvre depends very much on receipts from taxation and it is ultimately responsible to the voters for the way in which it utilizes and manages these resources in its role as employer. Lastly, according to certain legal and even socio-cultural traditions, the status of public servants is incompatible with the concept of collective bargaining. [19]

The Committee of Experts has considered in this respect that, since the concept of public servant may vary considerably under the various national legal systems, the application of Article 6 may pose some problems in practice. The Committee of Experts has adopted a restrictive approach concerning this exception by basing itself in particular on the English text of Article 6, which refers to "public servants engaged in the administration of the State" ("*fonctionnaires publics*" in French and "*los funcionarios públicos empleados en la administración del Estado*" in Spanish).

Moreover, the Committee of Experts could not allow the exclusion from the terms of the Convention of large categories of workers employed by the State merely on the grounds that they are formally placed on the same footing as certain public officials engaged in the administration of the State. The distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants employed in government ministries and other comparable bodies, as well as ancillary staff) who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention. In this connection, the Committee of Experts has emphasized that the mere fact that public servants are white-collar employees is not in itself conclusive of their qualification as employees "engaged in the administration of the State"; if this were the case, Convention No. 98 could be deprived of much of its scope. [20]

In its 1973 and 1983 General Surveys, the Committee of Experts even indicated that the exclusion from the scope of the Convention of persons who are employed by the State or in the public sector, but who do not act as agents of the public authority (even though they may be in a situation identical with that of public officials engaged in the administration of the State) is contrary to the meaning of the Convention. [21]

Collective agreements: Recommendation No. 91

The provisions of Convention No. 98 concerning the encouragement of machinery for the voluntary negotiation of collective agreements with a view to the regulation of terms and conditions of employment were supplemented by the Collective Agreements Recommendation, 1951 (No. 91). This Recommendation contains provisions on: the establishment of machinery appropriate to the conditions existing in each country to negotiate, conclude, revise and renew collective agreements; the binding effects of collective agreements; the extension, where appropriate, having regard to established collective bargaining practice, of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement; and, finally, the submission of disputes arising out of the interpretation of a

[19] General Survey, op. cit., para. 261.

[20] ibid., para. 200.

[21] ILO, *Freedom of association and collective bargaining*, General Surveys of 1973 and 1983, paras 138 and 155, respectively.

collective agreement to an appropriate procedure for settlement. Recommendation No. 91 is general in scope.

Settlement of disputes (voluntary conciliation and arbitration): Recommendation No. 92

This Recommendation, also adopted in 1951, provides that voluntary conciliation machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and workers. Where such machinery is constituted on a joint basis, it should include equal representation of employers and workers. If a dispute has been submitted to a conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lockouts and to accept the arbitration award. The Recommendation indicates that none of its provisions may be interpreted as limiting, in any way whatsoever, the right to strike. The Recommendation is general in scope.

Determination of terms and conditions of employment in the public service: Convention No. 151 [22] and Recommendation No. 159

Thirty years after the adoption of Convention No. 98, an attempt was made to make up for a shortcoming by adopting Convention No. 151, which calls on member States to "promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, [23] or of such other methods as will allow representatives of public employees to participate in the determination of these matters." This wording follows the text of Article 4 of Convention No. 98, with a difference to take into account the specific situation of public employees, namely the possibility of having recourse to methods other than collective bargaining. In so doing, the International Labour Conference made it possible to extend the rights recognized by Convention No. 98 to public employees by officially according them the right to participate in the determination of their terms and conditions of employment, with collective bargaining being specifically referred to as one of the possible means of doing so.

The Convention applies to "all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them" (Article 1, paragraph 1). The Office indicated in the preparatory work that the expression "public authorities" refers to all bodies or institutions invested with public authority or public functions. It is for each government to determine which bodies and institutes are public authorities in its country, subject to the principle that Conventions must be applied by a ratifying country in good faith. In this connection, the task of governments will no doubt be facilitated by an understanding of the principal purpose of

[22] As of 31 May 2007, Convention No. 151 had been ratified by 44 countries.

[23] In relation to the expression "public employees' organizations", it should be recalled that during the preparatory work for Convention No. 151, the Committee on the Public Service agreed that the term "public authorities" should be understood to refer to all bodies and institutions invested with public authority or public functions (see ILO, *Record of Proceedings*, Report of the Committee on the Public Service, International Labour Conference, 64th Session, Geneva, 1978, p. 25/3, para. 23).

the instrument, which is to provide guarantees to those persons not benefiting from the guarantees of Convention No. 98. [24]

The only categories of public employees who may be excluded from the scope of the Convention by national laws or regulations (in addition to the armed forces and the police, as in earlier Conventions) are: "high-level employees whose functions are normally considered as policy-making or managerial" or "employees whose duties are of a highly confidential nature". Based on the preparatory work, the Committee of Experts has considered in a relatively restrictive manner the officials who may be excluded under this provision. [25]

By considering collective bargaining as being only one of the methods envisaged, even though it is the only one to which explicit reference is made, the Convention introduces an element of flexibility in the choice of procedures. However, it should be recalled that in the preparatory work for the Convention the Office indicated that whatever the formal denomination given to the procedure, there are basically two types of procedures for effective participation, namely consultation and negotiation, broadly defined. Those procedures, in which the rights of staff representatives are limited to formulating their views or opinions in connection with the determination of their conditions of employment may be considered to be consultation procedures. Those procedures in which staff representatives and representatives of the public authorities engage in true discussions with a view to achieving an agreed or at least a jointly acceptable solution, whether embodied in and effectuated through a formal agreement or not, may be considered to be negotiation procedures. So defined, negotiation may be designed to cover a broad spectrum of procedures ranging from informal discussions and collective bargaining to co-determination and self-management. [26]

The Office added in the preparatory work that the Convention is not in conflict with systems of determination of terms and conditions of employment of certain categories of public employees by legislation, to the extent that a method is established which allows representatives of public employees to participate in such determination. [27]

The flexibility introduced by Convention No. 151 has been confirmed and recognized by the Committee of Experts, which considers that, while the principle of the autonomy of the parties to collective bargaining is valid as regards public servants, the special characteristics of the public service require some flexibility in its application. [28] Thus, in the view of the Committee of Experts, legislative provisions which allow Parliament or the competent budgetary authority to set upper and lower limits for wage negotiations or to establish an overall "budgetary package" within which the parties may negotiate monetary or standard-setting clauses (for example: reduction of working hours or other arrangements, varying wage increases according to levels of remuneration, fixing a

[24] ILO, *Freedom of association and procedures for determining conditions of employment in the public service*, International Labour Conference, 64th Session, Report V(2), Geneva, 1978, p. 10.

[25] For example, persons employed by Parliaments are within the scope of the Convention. The same applies to those engaged in managerial functions or functions involving an entirely accessory or secondary decision-making power.

[26] ILO, *Freedom of association and procedures for determining conditions of employment in the public service*, International Labour Conference, 63rd Session, Report VII(1), Geneva, 1977, p. 61.

[27] Report VII(2), 1977, op. cit., p. 61; and Report V(2), 1978, op. cit., p. 23.

[28] General Survey, op. cit., para. 263.

timetable for readjustment provisions) or those which give the financial authorities the right to participate in collective bargaining alongside the direct employer are compatible with the Convention, provided that they leave a significant role to collective bargaining. It is essential, however, that workers and their organizations be able to participate fully and meaningfully in designing this overall bargaining framework, which implies in particular that they must have access to all the financial, budgetary and other data enabling them to assess the situation on the basis of the facts.

This is not the case of legislative provisions which, on the grounds of the economic situation of a country, impose unilaterally, for example, a specific percentage increase and rule out any possibility of bargaining, in particular by prohibiting the exercise of means of pressure subject to the application of severe sanctions. The Committee of Experts is aware that collective bargaining in the public sector "calls for verification of the available resources in the various public bodies or undertakings, that such resources are dependent upon state budgets and that the period of duration of collective agreements in the public sector does not always coincide with the duration of budgetary laws – a situation which can give rise to difficulties." The Committee of Experts therefore takes full account of the serious financial and budgetary difficulties facing governments, particularly during periods of prolonged and widespread economic stagnation. However, it considers that the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants; where the circumstances rule this out, measures of this kind should be limited in time and protect the standard of living of the workers who are the most affected. In other words, a fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the parties to bargaining, on the one hand, and measures which must be taken by governments to overcome their budgetary difficulties, on the other.

Nevertheless, despite the flexibility of Convention No. 151, it is not in conformity with the Convention, in the view of the Committee of Experts, for the Parliament to modify or reject an agreement previously concluded between the public authorities and public employees' organizations.

The Committee on Freedom of Association has also acknowledged that Article 7 of Convention No. 151 allows a degree of flexibility in the choice of procedures to be used in the determination of terms and conditions of employment. It has emphasized that when national legislation opts for negotiation machinery, the State must ensure that such machinery is applied properly.

The ILO supervisory bodies have also emphasized the need to negotiate in good faith in the public service as well as in the private sector. For example, in the context of an observation to the Government of Portugal, the Committee of Experts, referring to the comments made by a trade union organization, noted that while lengthy negotiations had taken place in an attempt to narrow the gap between the positions of the two parties, the Government had refused to follow up the request for further negotiations made by the trade union of public servants, considering that it would be pointless to do so as the latter's position was incompatible with the Government's known budgetary limitations. In this connection, the Committee of Experts, in the same way as the Committee on Freedom of Association, [29] recalled that it had already considered the procedure chosen in Portuguese law to resolve disputes in the public service, namely further negotiations, to be in conformity with the Convention. The parties to the negotiations – the Government and trade union organizations – nevertheless had to maintain an attitude of good faith

[29] ILO: Report of the Committee of Experts, 61st Session, 1991, p. 463; Committee on Freedom of Association, 248th Report, Case No. 1385.

throughout this procedure, on the basis of which the Government should open further negotiations with the purpose of attempting to reach an agreement.

With reference to the representatives of public officials, the partners of the State in consultation and participation procedures, the wording of the Convention is clear; the nature of the representation may differ according to whether a system of negotiation is in use or other methods of participation. Under the terms of Article 7, public employees' organizations, that is organizations the purpose of which is to further and defend the interests of their members, intervene in negotiations, whereas in cases in which other methods are used, the wording is broader, as representatives of public employees may participate in the determination of terms and conditions of employment. In other words, negotiations have to be held between organizations, while consultations may be held either with organizations or with elected representatives. [30]

Recommendation No. 159, taking up the terms used by the Committee of Experts in the context of the application of Conventions Nos. 87 and 98, indicates in Paragraph 1 that the determination of the organizations participating in bargaining should be based on objective and pre-established criteria with regard to their representative character. Moreover, such procedures should be such as not to encourage the proliferation of organizations covering the same categories of employees.

With regard to the settlement of disputes relating to the determination of terms and conditions of employment, Convention No. 151 encourages negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner that they have the confidence of the parties concerned (Article 8). In emphasizing the importance of this Article, the Committee on Freedom of Association has recalled that, in view of the preparatory work which preceded the adoption of the Convention, it has been interpreted as giving a choice between negotiation or other procedures (such as mediation, conciliation and arbitration) in settling disputes. [31]

The preparatory work shows that the disputes covered by this provision are those arising in connection with the determination of terms and conditions of employment (conflicts of interest), and not those concerning the application of terms and conditions of employment already determined (conflicts of rights). [32]

In certain cases, when addressing the relationship between ILO Conventions, the Committee on Freedom of Association has recalled that Convention No. 151, which was adopted to complement Convention No. 98, does not in any way contradict or dilute the basic right of association guaranteed to all workers by virtue of Convention No. 87. More specifically, the Committee on Freedom of Association has acknowledged that the special nature of the functions of public servants engaged in the administration of the State and, in particular, the fact that their terms and conditions of employment may be determined otherwise than by a free collective bargaining process, is recognized by Convention No. 98. It also acknowledges that Convention No. 151, which was intended to make more specific provision for the category of public servants who were excluded from the scope of

[30] An amendment proposed by the Worker members during the second discussion with a view to reserving methods other than negotiation for public employees' organizations was finally rejected precisely because it would have prevented the participation of representatives elected directly by the personnel.

[31] *Digest*, op. cit., paras 889–891.

[32] Report VII (2), 1977, op. cit., p. 73.

Convention No. 98, recognizes that certain categories of public servants (including those in highly confidential positions) may be excluded from the more general provisions guaranteeing to public servants protection against acts of anti-union discrimination or ensuring the existence of methods of participation in the determination of their conditions of employment. In the opinion of the Committee on Freedom of Association, however, the exclusion of certain categories of workers in Conventions Nos. 98 and 151 cannot be interpreted as affecting or minimizing in any way the basic right to organize of all workers guaranteed by Convention No. 87. Nothing in either Convention No. 98 or Convention No. 151 indicates an intention to limit the scope of Convention No. 87. On the contrary, both the terms of these Conventions and the preparatory work leading to the adoption of Convention No. 98 show the opposite intention. [33]

The Committee on Freedom of Association has also drawn attention to the terms of Article 6 of Convention No. 98, which provides that: "This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way." Unlike Article 5 of Convention No. 98 (dealing with the armed forces and the police), Article 6, in providing that the Convention shall not be construed as in any way prejudicing the rights or the status of public servants, at the same time removes the possible conflict between Convention No. 98 and Convention No. 87 and expressly preserves the rights of public servants, including those guaranteed by Convention No. 87. The argument that the effect of the provisions of Convention No. 87 is limited if reference is made to Article 6 of Convention No. 98 conflicts with the express terms of that Article. Likewise, Article 1, paragraph 1, of Convention No. 151 provides that the Convention applies to all persons employed by the public authorities "to the extent that more favourable provisions in other international labour Conventions are not applicable to them". If, therefore, Convention No. 98 left intact the rights granted to public servants by Convention No. 87, it follows that Convention No. 151 has not impaired them either. [34]

The Committee on Freedom of Association has also observed that Article 4 of Convention No. 98 offers more favourable provisions to workers than Article 7 of Convention No. 151 in a branch of activity such as that of public education, where both Conventions are applicable, since it includes the concept of voluntary negotiation and the independence of the negotiating parties. In such cases, taking into account Article 1 of Convention No. 151, Article 4 of Convention No. 98 should be applicable in preference to Article 7 of Convention No. 151, which calls upon the public authorities to promote collective bargaining either by means of procedures that make such bargaining possible, or by such other methods as will allow public servants to participate in the determination of their terms and conditions of employment. [35]

Collective bargaining: Convention No. 154 [36] and Recommendation No. 163

Although substantial progress was made in the recognition of the right to collective bargaining of public employees with the adoption of Convention No. 151, States could

[33] *Digest*, op. cit., paras 1061 and 1062.

[34] ibid., para. 1063.

[35] ibid., para. 1064.

[36] As of 31 May 2007, Convention No. 154 had been ratified by 38 countries.

nevertheless still avoid collective bargaining by having recourse to other methods of participation for the determination of terms and conditions of employment.

With a view to achieving broader recognition of collective bargaining, a specific feature of Convention No. 154 and Recommendation No. 163, adopted in 1981, is that they apply to all branches of economic activity, or in other words, as specified during the preparatory work, both to the private sector and the public sector (with the exception of the armed forces and the police). [37] With regard to the public service, the Convention merely provides that special modalities of application of this Convention may be fixed by national laws or regulations or national practice (Article 1, paragraph 3). Member States ratifying the Convention can therefore no longer confine themselves to the method of consultation, as was the case with Convention No. 151. They have to promote collective bargaining for, among other purposes, determining working conditions and terms of employment (Articles 2 and 5, paragraph 1). In a certain manner, the adoption of Convention No. 154 marks international recognition that collective bargaining is the preferred method of determining terms and conditions of employment in both the public and the private sectors.

As the right of public employees to collective bargaining has been recognized in two international instruments (Conventions Nos. 151 and 154), the objections previously raised in many countries concerning the possibility of according this right in the public service have been lifted in some of them, even though it is still acknowledged that its implementation may be modified in view of the special characteristics of the sector.

In practice, Convention No. 154 was able to include the public service within its scope because its provisions are more flexible than those of Convention No. 98. In contrast with Convention No. 98, it does not call for the regulation of terms and conditions of employment by means of collective agreements. If the Conference had agreed to such a provision, it would have been impossible to extend its scope to the public service in view of the opposition of States which, while agreeing to recognize collective bargaining in the public service, are not ready to renounce the statutory conditions of service.

These elements were clearly set out in a Memorandum of the International Labour Office [38] addressed to a government following a request for clarification concerning the implementation of Convention No. 154 in the public service. The Office indicated in this respect that there is no element at all either in the Convention or in the preparatory work before its adoption from which it can be inferred that where collective bargaining culminates in a settlement between the parties such settlement must take the form and have the status of a collective agreement. While in most (if not all) countries this is the usual outcome of collective bargaining in different branches of the public service, in some countries collective bargaining in the public service results in settlements which do not have the status of a collective agreement. The conclusion may be drawn that a State ratifying the Convention may have recourse to special modalities of application in the case of the public service as provided by Article 1, paragraph 3, of the Convention. Hence, if a settlement is reached through collective bargaining within the context of the public service, this settlement may in form and nature be different from a collective agreement. In countries where, for example, the conditions of employment of public servants are governed by special laws or provisions, negotiations with a view to the amendment of these special laws or provisions need not necessarily lead to legally binding agreements, so long as account is taken in good faith of the results of the negotiations in question.

[37] ILO, *Promotion of collective bargaining*, International Labour Conference, 67th Session, Report IV(1), Geneva, 1981, p. 10.

[38] ILO, *Official Bulletin*, Vol. LXVII, Series A, No. 1, 1984, p. 29.

Convention No. 154, in the same way as all other ILO Conventions, does not contain provisions on potential conflicts between the specific interests of the parties and the general interest. Far from being an oversight, this omission was deliberate. Indeed, an amendment intended to reconcile the specific interests of the parties with the general interest was withdrawn during the discussions in view of the opposition of the Worker members, the Employer members and several Government members. [39]

On the basis of these considerations, the ILO supervisory bodies have commented on issues of a budgetary nature and on the intervention of the authorities in freely concluded agreements, as indicated in the context of Convention No. 151.

In admitting special modalities of application, Convention No. 154 allows a certain flexibility in the application of its provisions and accordingly makes it possible to take into account various national systems and budgetary procedures.

With regard to clauses in collective agreements relating to remuneration and conditions of employment which have financial implications, one of the fundamental principles is that collective agreements, once adopted, have to be complied with by the legislative and administrative authorities. Where certain conditions are met, this principle is compatible with the various budgetary systems. It can be adapted both to systems in which collective agreements resulting from negotiations are concluded before the discussion of the national budget (provided that in practice budgets respect the content of agreements) and to systems in which agreements are concluded after the adoption of budgets where the latter are formulated in sufficiently flexible terms to allow internal readjustments for the purposes of giving effect to collective agreements, or where they permit debts resulting from unforeseen expenditure arising out of collective agreements in the public service to be carried over to the following budget; or where, leaving a significant margin for negotiation, they set a ceiling for bargaining in terms of a percentage increase of the overall wage mass, after taking into account in good faith the outcome of prior consultations with trade unions. Similarly, as indicated above, it is acceptable that in the bargaining process the employer side representing the public administration seek the opinion of the Ministry of Finance or an economic or financial body that verifies the financial impact of draft collective agreements, provided that the employers and trade unions are able to express their views through consultation.

Finally, the flexibility of Convention No. 154 means that, where negotiations concern conditions of employment which imply changes to the Administrative Careers Act or the conditions of service of public servants, its outcome may include a commitment by the government authorities to submit a Bill to Parliament for the amendment of the legal texts concerned.

Principles of the Committee on Freedom of Association concerning collective bargaining in the public sector

In the many cases relating to collective bargaining in the public sector that have been submitted to it, the Committee on Freedom of Association has had occasion to examine a variety of issues, including the legal basis of this right, the categories of workers covered by the right, the representation of workers in the bargaining process, the subjects covered by collective bargaining, intervention by the authorities in this process and legislative follow-up of the outcome of bargaining.

[39] ILO, *Record of Proceedings*, Report of the Committee on Collective Bargaining, International Labour Conference, Geneva, 1981, p. 22/8.

Legal basis of the right to collective bargaining

On many occasions, the Committee on Freedom of Association has recalled that the right to collective bargaining is based on the right set forth in Article 3 of Convention No. 87 of organizations to organize their activities and to formulate their programmes which, it should be recalled, applies to workers in both the private and the public sectors. Indeed, the preliminary work for the adoption of Convention No. 87 clearly indicates that [40] "one of the main objects of the guarantee of freedom of association is to enable employers and workers to combine to form organisations independent of the public authorities and capable of determining wages and other conditions of employment by means of freely concluded collective agreements". [41] On this basis, the Committee on Freedom of Association has considered that the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom they represent. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and to formulate their programmes. [42]

In the same spirit, in a recent case relating to the public sector, [43] the Committee on Freedom of Association emphasized that one of the main objectives of workers in exercising their right to organize is to bargain collectively their terms and conditions of employment. It therefore considered that provisions which ban trade unions from engaging in collective bargaining unavoidably frustrate the main objective and activity for which such unions are set up, which is contrary to Article 3 of Convention No. 87.

However, over and above the reference to Convention No. 87, the underlying principles of collective bargaining on which the Committee on Freedom of Association bases itself are clearly Conventions Nos. 98, 151 and 154, each in the context of its scope of application. [44]

Workers covered by the right to collective bargaining

Based on the applicability of Convention No. 98 to both the private sector and to nationalized undertakings and public bodies, the Committee on Freedom of Association has considered that all public service workers other than those engaged in the administration of the State should enjoy collective bargaining rights. [45] In the view of the Committee on Freedom of Association, it is imperative that the legislation contain specific provisions clearly and explicitly recognizing the right of organizations of public employees

[40] ILO, *Freedom of association and industrial relations,* International Labour Conference, 30th Session, Report VII, Geneva, 1947, p. 52.

[41] *Digest*, op. cit., para. 882.

[42] ibid., para. 881.

[43] See, Committee on Freedom of Association, 344th Report, Case No. 2460 (United States), para. 991.

[44] *Digest*, op. cit., paras 885, 888 and 1043.

[45] ibid., paras. 885 and 886.

and officials who are not acting in the capacity of agents of the state administration to conclude collective agreements. [46]

With reference to specific categories of workers, the Committee on Freedom of Association has considered that workers of state-owned commercial or industrial enterprises should have the right to negotiate collective agreements. It has indicated that the same should apply to workers in the administration of bus services, in water, postal and telecommunications services, national banks, radio and television institutes, air flight control personnel, public hospitals and teachers, civil aviation technicians, locally recruited personnel in embassies and temporary workers. [47]

Representation of workers in the collective bargaining process

In commenting on the provisions of the Collective Agreements Recommendation, 1951 (No. 91), the Committee on Freedom of Association emphasized that it gives preference to the role of workers' organizations as one of the parties in collective bargaining and that it refers to representatives of unorganized workers only when no organization exists. [48] More specifically, the Committee on Freedom of Association has noted that the Recommendation provides that: "For the purpose of this Recommendation, the term 'collective agreements' means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other." In this respect, the Committee on Freedom of Association has emphasized that the Recommendation stresses the role of workers' organizations as one of the parties in collective bargaining. Direct negotiation between the undertaking and its employees, by-passing representative organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted. [49] For this reason, employers, including governmental authorities in the capacity of employers, should recognize for collective bargaining processes the organizations representative of the workers employed by them. [50] While the public authorities have the right to decide whether they will negotiate at the regional or national level, the workers, whether negotiating at the regional or national level, should be entitled to choose the organization which shall represent them in negotiations. [51]

Subjects covered by collective bargaining

With regard to allegations of a refusal to engage in collective bargaining on certain subjects in the public sector, the Committee on Freedom of Association has specified that

[46] ibid., para. 893.

[47] ibid., paras 894–905.

[48] ibid., para. 944.

[49] ibid., para. 945.

[50] ibid., para. 952.

[51] ibid., para. 963.

the principle of collective bargaining allows for negotiations between public servants and the government in its quality as employer and not as the executive; it concerns more specifically the terms and conditions of employment of public servants and would not necessarily include questions of public policy which might concern the citizenry more generally. [52] From this point of view, the government authorities exercise the functions of the employer of public sector employees and measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. [53]

The Committee on Freedom of Association has also recalled the view of the Fact-Finding and Conciliation Commission on Freedom of Association that "there are certain matters which clearly appertain primarily or essentially to the management and operation of government business; these can reasonably be regarded as outside the scope of negotiation". It is equally clear that certain other matters are primarily or essentially questions relating to conditions of employment and that such matters should not be regarded as falling outside the scope of collective bargaining conducted in an atmosphere of mutual good faith and trust. [54] Legislative intervention is not a substitute for free and voluntary negotiations over the terms and conditions of employment of public employees who are not engaged in the administration of the State. [55]

In this respect, while staffing levels or the departments to be affected as a result of financial difficulties may be considered to be matters which appertain primarily or essentially to the management and operation of government business and may therefore reasonably be regarded as outside the scope of negotiation, the larger spectrum of job security in general includes questions which relate primarily or essentially to conditions of employment, such as pre-dismissal rights, indemnities, etc., which should not be excluded from the scope of collective bargaining. [56]

In cases which relate more specifically to the education sector, the Committee on Freedom of Association has considered that the determination of the broad lines of educational policy is not a matter for collective bargaining between the competent authorities and teachers' organizations, although it may be normal to consult these organizations on such matters. In contrast, free collective bargaining should be allowed on the consequences for conditions of employment of decisions on educational policy. [57]

[52] See: Committee on Freedom of Association, 344th Report, Case No. 2460 (United States), para. 992.

[53] *Digest*, op. cit., para. 880.

[54] ibid., 920.

[55] See: Committee on Freedom of Association, 344th Report, Case No. 2460 (United States), para. 993.

[56] *Digest*, op. cit., para. 921.

[57] ibid., paras 922 and 923.

Intervention by the public authorities in collective bargaining

In relation to intervention by the authorities in collective bargaining, the Committee on Freedom of Association, endorsing the view of the Committee of Experts, [58] has emphasized that the reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with collective agreements entered into by, or on behalf of, that authority and that the exercise of financial powers by the public authorities in a manner that prevents or limits compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining. [59] Similarly, in the same way as the Committee of Experts, the Committee on Freedom of Association has considered that, in so far as the income of public enterprises and bodies depends on state budgets, it would not be objectionable – after wide discussion and consultation between the concerned employers' and employees' organizations in a system having the confidence of the parties – for wage ceilings to be fixed in state budgetary laws, and neither would it be a matter for criticism that the Ministry of Finance prepare a report prior to the commencement of collective bargaining with a view to ensuring respect for such ceilings. [60]

It is however necessary to avoid confusion between the requirement of a preliminary opinion issued by the financial authorities (and not by the public body that is the employer) on draft collective agreements in the public sector and on the financial implications involved. The Committee on Freedom of Association is aware that collective bargaining in the public sector calls for verification of the available resources in the various public bodies or undertakings, that such resources are dependent on state budgets and that the period of duration of collective agreements in the public sector does not always coincide with the duration of the State Budgetary Law – a situation which may give rise to difficulties. The body issuing the above opinion could also formulate recommendations in line with government economic policy or seek to ensure that the collective bargaining process does not give rise to any discrimination in the working conditions of the employees in different public institutions or undertakings. Provision should therefore be made for a mechanism which ensures that, in the collective bargaining process in the public sector, both trade union organizations and the employers and their associations are consulted and can express their points of view to the authority responsible for assessing the financial consequences of draft collective agreements. Nevertheless, notwithstanding any opinion submitted by the financial authorities, the parties to collective bargaining should be able to conclude an agreement freely. [61]

[58] ibid., para. 1033.

[59] ibid., paras 1033 and 1034.

[60] ibid., para. 1036.

[61] ibid., para. 1037.

In general terms, the requirement of Cabinet approval for negotiated agreements and of conformity with the policy and guidelines unilaterally set for the public sector are not in full conformity with the principles of freedom of association, which apply to all workers covered by Convention No. 98. [62]

With regard to the negotiation process, the Committee on Freedom of Association has emphasized the need to ensure that "sufficient advance notice is given to public sector trade union organizations when they are convened for collective bargaining, so as to allow them a reasonable period of time to negotiate their conditions of employment, especially in view of the fact that there are strict time-limits for submitting bills to Parliament". [63]

The Committee on Freedom of Association has also maintained that emphasis should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service [64] and that priority should be given to collective bargaining as a means of determining the employment conditions of public servants, rather than adopting legislation to restrain wages in the public sector in a context of economic stabilization. It accordingly deplored that, despite its previous calls to the Government to refrain from intervening in the collective bargaining process, it had once again failed to give priority to collective bargaining as a means of negotiating a change in the employment conditions of public servants, and that the legislative authority had felt compelled to adopt the Public Sector Reduced Work-week and Compensation Management Act, particularly in view of the fact that this Act followed immediately the previous legislative intervention which had frozen public sector wages for one year. [65]

Finally, the Committee on Freedom of Association considered that a system in which public employees may only present "appropriate written representations" that are non-negotiable with regard to conditions of employment, which may be determined exclusively by the authorities, is not in conformity with Conventions Nos. 98, 151 and 154. [66]

Legislative follow-up of the outcome of collective bargaining

With regard to the need for the outcome of bargaining to be extended by legislative measures, in a case relating to Spain, in which the subjects of negotiation included "all matters that relate (…) to the working conditions of public servants whose terms of office have to be regulated by standards having force of law", the Committee on Freedom of Association considered that these provisions were in conformity with ILO Conventions on collective bargaining.

[62] ibid., para. 1014.

[63] See: Committee on Freedom of Association, 310th Report, Case No. 1946 (Chile), para. 270.

[64] *Digest*, op. cit., para. 886.

[65] ibid., paras. 1040 and 1041.

[66] ibid., para. 1043.

The right to strike: Position of the Committee of Experts and principles of the Committee on Freedom of Association

Based on the discussions during the formulation of Convention No. 87 by the International Labour Conference, the ILO's supervisory bodies have considered that the recognition of the principle of freedom of association for public servants does not necessarily include the right to strike, and that they may therefore be prohibited to strike. However, the notion of public servants has to be defined with a view to determining the categories of workers who may be denied the right to strike.

Categories of public servants who may be denied the right to strike

In the view of the Committee on Freedom of Association and the Committee of Experts, the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State. [67] In practice, in the cases that it has examined, the Committee on Freedom of Association has defined the categories of public employees who may not be considered as exercising authority in the name of the State. These include public employees in state-owned commercial or industrial enterprises, in public establishments or enterprises, in banks and teaching. [68] In contrast, officials working in the administration of justice and the judiciary, customs officers and principals and vice-principals in educational establishments may be considered as exercising authority in the name of the State and their right to strike may therefore be restricted or prohibited. [69]

In certain cases, it may be difficult to determine whether or not an official exercises functions of authority in the name of the State and there are groups of employees who do not clearly fall into either category. It is often a question of degree. In these borderline cases, the Committee of Experts considers that one solution might be not to impose a total prohibition of strikes, but rather to provide for the maintenance by a defined and limited category of staff of a negotiated minimum service when a total and prolonged stoppage might result in serious consequences for the public. [70]

Workers in essential services

In addition to the situation of the public servants described above, the Committee on Freedom of Association and the Committee of Experts acknowledge that strikes may be limited or even prohibited in essential services, defined as services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (a definition included by the Committee of Experts in its 1983 General Survey and taken up shortly thereafter by the Committee on Freedom of Association).

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. Such services may be

[67] ibid., para. 574 ; and General Survey, op. cit., para. 158.

[68] *Digest*, op. cit., paras 577 and 587.

[69] ibid., paras 578, 579 and 588.

[70] General Survey, op. cit., para. 158.

provided both by public bodies or services or by the private sector. Moreover, the 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. [71] The Committee of Experts also considers that account must be taken of the special circumstances existing in the various member States, since the interruption of certain services which in some countries might at worst cause economic hardship could prove disastrous in other countries and rapidly lead to conditions which might endanger the life, personal safety or health of the whole or part of the population. A strike in the port or maritime transport services, for example, might more rapidly cause serious disruption for an island which is heavily dependent on such services to provide basic supplies to its population than it would for a country on a continent. [72]

The Committee on Freedom of Association has specifically defined the services that it understands to be essential in the cases that it has examined. The following may therefore be considered essential services: the police, the armed forces, fire-fighting services, prison services, the hospital sector, electricity services, water supply services, telephone services, air traffic control and the provision of food to pupils of school age. [73] However, within essential services, certain categories of employees, such as hospital labourers and gardeners, should not be deprived of the right to strike. [74]

In contrast, the Committee on Freedom of Association considers in general that the following do not constitute essential services in the strict sense of the term: radio and television, the petroleum sector, banking, ports, transport generally, airline pilots, the production, transport and distribution of fuel, refuse collection services, the Mint, the government printing service and the state alcohol, salt and tobacco monopolies, the education sector and postal services. [75] The refuse collection service is a borderline case and might become essential if the strike affecting it exceeds a certain duration or extent. [76]

Compensatory guarantees in the event of the prohibition of strikes

Employees in the public service or in essential services who are covered by a prohibition of their right to strike are deprived of a right that the Committee on Freedom of Association considers to be a fundamental right of workers and of their organizations, in so far as it is utilized as a means of defending their economic interests. [77] For this reason, the supervisory bodies consider 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

[71] *Digest*, op. cit., para. 582.

[72] General Survey, op. cit., para. 160.

[73] *Digest*, op. cit., para. 585.

[74] ibid., para. 593.

[75] ibid., para. 587.

[76] ibid., para. 591.

[77] ibid., para. 520.

regard to disputes affecting such undertakings and services. [78] The Committee on Freedom of Association has specified the nature of such guarantees: 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. [79]

Accordingly, in mediation and arbitration proceedings it is essential that all the members of the bodies entrusted with such functions should not only be strictly impartial but, if the confidence of both sides, on which the successful outcome even of compulsory arbitration really depends, is to be gained and maintained, they should also appear to be impartial both to the employers and to the workers concerned. [80] Similarly, in the view of the Committee of Experts, such machinery should be seen to be reliable by the parties concerned and should provide sufficient guarantees of impartiality and rapidity. Arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely. [81]

Minimum service

As indicated above, both the Committee on Freedom of Association and the Committee of Experts are of the view that, in borderline cases, rather than prohibiting strikes completely, the authorities could have recourse to the imposition of a negotiated minimum service. The Committee on Freedom of Association has considered in this respect 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. [82]

Beyond these borderline cases, the Committee on Freedom of Association has indicated the cases in which in its view the imposition of a minimum service could be considered to be acceptable. These are, firstly, cases in which the objective of minimum services is to guarantee the safety of persons and equipment and the prevention of accidents (minimum safety service). [83] Where the objective is to maintain a certain continuity of production or activities in the enterprise or establishment affected by the strike, the establishment of minimum services in the case of strike action should only be possible in essential services in the strict sense of the term, services which are not essential but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population and, finally, in public services of fundamental importance.[84]

[78] ibid., para 595

[79] ibid., para. 596.

[80] ibid., para. 598.

[81] General Survey, op. cit., para. 164.

[82] *Digest*, op. cit., para. 607.

[83] ibid., paras 604 and 605.

[84] ibid., para. 606.

In the specific cases that it has examined relating to this issue, the Committee on Freedom of Association has indicated examples in which it considers that a minimum service could be established: the ferry service, ports, underground railways, rail transport, transport in general, postal services, the refuse collection service, the Mint, banking services and the petroleum sector, education and animal health services. [85]

Moreover, to be acceptable, 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, and workers' organizations should be able to participate in defining such a service in the same way as employers and the public authorities. [86] Such participation not only allows 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. [87] In general, it is important that the provisions regarding the minimum service to be maintained in the event of a strike are established clearly, applied strictly and made know to those concerned in due time. [88] The Committee of Experts has advised that negotiations on the definition and organization of the minimum service should not be held during a labour dispute, so that all the parties can examine the matter with the necessary objectivity and detachment. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions. [89]

In the case of disagreement between the parties as to the extent of the minimum service to be provided in the event of a strike, the dispute should be settled by an independent body and not by the ministry of labour or the enterprise concerned. Similarly, a definitive ruling on whether the level of minimum services is indispensable or not, made in full knowledge of the facts, can be pronounced only by the judicial authorities. [90]

Requisitioning orders and the hiring of workers during a strike

As a consequence of their position on the need to recognize the right to strike and the limitation of prohibitions of that right to cases of acute national crisis, public servants exercising authority in the name of the State and essential services in the strict sense of the term, the ILO supervisory bodies only allow recourse to requisitioning in the circumstances described above. The Committee on Freedom of Association considers that, outside these cases, the use of the military, requisitioning orders and the hiring of workers to break a strike constitutes a serious violation of freedom of association. [91] In the view of

[85] ibid., paras 615–626.

[86] ibid., para. 610.

[87] ibid., para. 612.

[88] ibid., para. 611.

[89] General Survey, op. cit., para. 161.

[90] *Digest*, op. cit., paras 613 and 614.

[91] ibid., paras 632 and 635.

the Committee of Experts, the difficulty is even more serious if strikers do not, as of right, find their job waiting for them at the end of the dispute. [92]

More specifically, the use of the armed forces or of another group of persons to perform duties which have been suspended as a result of a labour dispute can, if the strike is lawful, be justified only by the need to ensure the operation of services or industries whose suspension would lead to an acute crisis. [93] Recourse to the use of labour drawn from outside the undertaking to replace the strikers entails a risk of derogation from the right to strike, which may affect the free exercise of trade union rights. [94]

[92] General Survey, op. cit., para. 175.

[93] *Digest*, op. cit., para. 636.

[94] ibid., para. 633.

Chapter 3. Other international standards

Standards adopted in the context of the United Nations

The International Covenant on Economic, Social and Cultural Rights does not explicitly refer to the right to collective bargaining. However, this right is implicitly covered by Article 8, paragraph 1(c), which recognizes the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others. Moreover, under the terms of Article 8, paragraph 1(d), of the International Covenant on Economic, Social and Cultural Rights, the States Parties undertake to ensure, among others, the "right to strike, provided that it is exercised in conformity with the laws of the particular country." Even though this instrument refers to the exercise of the right to strike in accordance with the laws of each country, the Committee on Economic, Social and Cultural Rights, the body responsible for supervising the application of the Covenant, has expressed concern on several occasions with regard to the undue restrictions placed on the right to strike and has often recommended States Parties to take the necessary measures to ensure the full exercise of the right to strike or to reduce the limitations imposed thereon.

However, the scope of these provisions is limited by the second paragraph, which allows the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. Moreover, this also has to be understood in the context of Article 8, paragraph 3, which reads:

Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Regional standards

The Americas (OAS, MERCOSUR, NAFTA)

The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, adopted in the framework of the Organization of American States, does not contain specific references to collective bargaining. The Protocol merely indicates that the States Parties shall permit trade unions, federations and confederations to function freely (Article 8, paragraph 1(a)). However, the same Article recognizes the right to strike, on the understanding that, under the terms of Article 8, paragraph 2, the exercise of this right may be subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others. Nevertheless, members of the armed forces and the police and of other essential public services shall be subject to limitations and restrictions established by law.

The economic integration groups in the Americas have recognized the right to collective bargaining and the right to strike. Under the terms of Article 10 of the MERCOSUR Social-Labour Declaration, employers and their organizations and the organizations or representatives of workers shall have the right to conclude collective agreements and accords to determine conditions of work, in accordance with national law and practice. Similarly, under Article 11 of the Declaration, all workers and trade union

organizations are guaranteed the exercise of the right to strike in accordance with the national provisions in force. Machinery for the prevention and resolution of disputes and the regulation of this right may not prevent its exercise in practice.

In the framework of the North American Free Trade Agreement (NAFTA), the objective of the Agreement on Labor Cooperation is to promote to the maximum extent possible the labour principles set out in Annex, which include the protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment and the protection of the right of workers to strike in order to defend their collective interests.

Europe (Council of Europe, European Union)

But it is in Europe, in the context of the Council of Europe, that the protection of the right to collective bargaining and the right to strike is the furthest developed at the regional level in view of the abundant case law of the European Committee of Social Rights, the body that supervises the application of the European Social Charter adopted in 1961 and revised in 1996. Under the terms of Article 6 of the Charter, with a view to ensuring the effective exercise of the right to bargain collectively, "the Parties undertake:

(1) to promote joint consultation between workers and employers;

(2) to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

(3) to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and

(4) recognise 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."

In the first place, the European Committee of Social Rights has considered, in relation to this Article, that consultation must take place on several levels, namely national, regional/sectoral, and in the private and public sectors (including the civil service). [1]

The European Committee has paid particular attention to the issue of civil servants in relation to Article 6, paragraph 2, respecting collective bargaining. It has pointed out that, while it is impossible to draw up proper collective agreements for civil servants subject to regulations, this Article nevertheless entails the obligation to arrange for the participation of those concerned, through the intermediary of their representatives, in the drafting of the regulations which are to apply to them. [2]

The European Committee of Social Rights has examined the situation of several Member States in which the government has intervened or was authorized to intervene where it considered that the entry into force of a new collective agreement would result in

[1] Council of Europe, European Committee of Social Rights, *Digest of the case law*, 2006, p. 68.

[2] Council of Europe, *The right to organise and to bargain collectively: Protection within the European Social Charter*, Human Rights Social Charter monographs No. 5, Strasbourg, 1996, para. 164.

an excessive increase in public expenditure. It has considered in this respect that certain restrictions on the right to collective bargaining of employees in the public sector could be in conformity with the Charter, but that where a general agreement had been concluded and adopted by the authorities, any unilateral intervention relating to the content of the agreement could only be justified under Article G. By virtue of Article G, the only restrictions or limitations that are admissible are those prescribed by law and which are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. [3]

With regard to conciliation and voluntary arbitration, the European Committee has considered that these procedures should be instituted to facilitate the resolution of conflicts of interest which may arise between the public administration and its employees. However, compulsory arbitration is a violation of this provision of the Charter. [4]

In relation to the right of workers to strike, set out in Article 6, paragraph 4, the European Committee of Social Rights considers that prohibiting all public officials from exercising this right is not in conformity with this provision. They must be entitled to withdraw their labour and allowing them only to declare symbolic strikes is not sufficient. However, the European Committee admits that the right to strike of certain categories of public officials may be restricted. These restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to public order, national security, public health or morals. Accordingly, restrictions imposed on members of the police, the judiciary, the fire brigade, the prison service and senior civil servants are considered to be in compliance with the Charter. In the case of public officials not exercising public authority, only a restriction may be justified, but not an absolute prohibition. These restrictions on the right to strike have to be examined in relation to the functions performed and not the administration concerned. For example, in the view of the European Committee, civilians employed by the Ministry of Defence should benefit from the right to strike, since it poses no threat to national security. This position of the European Committee has given rise to comments on the application of the Charter in several countries that are not considered to be giving effect to the European Social Charter as they prohibit the right to strike for all public officials or for categories that are considered to be too broad.

The European Committee of Social Rights also recognizes that the full or partial restrictions imposed on the right to strike of certain workers may be deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes by all workers, even in sectors essential to the life of the community, without distinction as to their functions, is not deemed appropriate to the specific requirements of each sector, or therefore necessary in a democratic society. At most, the introduction of a minimum service requirement might be considered in conformity with Article 6, paragraph 4. It is for the national authorities (executive, legislative and judicial) to ensure that the conditions established for the imposition of restrictions on the right to strike are strictly complied with. For this reason, the European Committee systematically asks governments, where strikes are prohibited in a sector considered to be essential, whether the prohibition applies to all workers irrespective of their function.

[3] ibid., para. 157 (Conclusion relating to Spain).

[4] European Committee of Social Rights, *Digest of the case law*, op. cit., pp. 69 and 70.

In the more limited context of the European Union, the Charter of Fundamental Rights of 2000 provides that workers and employers, or their respective organizations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action (Article 28). This provision does not contain explicit restrictions with regard to the right of public officials.

However, the Community Charter of the Fundamental Social Rights of Workers of 1989, Articles 11 to 13 of which cover freedom of association and collective bargaining, refer back to national laws with regard to the situation of the armed forces, the police and the civil service (Article 14).

Chapter 4. National situations

With a view to examining the characteristics of labour relations in the public sector at the national level, a number of countries have been selected on the basis of various criteria: the structure of the State (federal or unitary); geographical location by continent; the structure of the public service (based on the prevalence of statutory conditions of service or the use of contracts); and the legislation applicable in the public sector (general or specific legislation).

For each country, after a general review of the main characteristics of the public sector and the labour relations legislation, an examination will be made of problems relating to the right to organize, consultations, collective bargaining, labour disputes and strikes.

It is sometimes difficult to draw a distinction between consultation and collective bargaining, as the differences between these two notions are sometimes minor. For this reason, only cases in which the legislation clearly establishes that a process is consultative will be addressed as issues relating to consultation.

Argentina

Principal characteristics of the public service

At the end of the 1980s, a reform process began which accelerated in 1989 with the enactment of the State Reform Act (No. 23696) and the Economic Emergency Act (No. 23697). The role of the State was redefined by these two Acts, particularly through the State withdrawing from its role as an enterprise providing public services (especially in the fields of communications, major infrastructure works and the production and distribution of energy) and focusing on formulating public policy, regulating services and supervising the implementation of those regulations. Furthermore, services were transferred from the national government to the provinces, particularly in the case of education and health.

As a consequence, federal public employment was greatly reduced in view of the privatization of enterprises, the concession of public services and decentralization. The number of employees in the national administration fell over a ten-year period following the implementation of the reform from 776,332 to 435,081, while the number of employees in public administration in the provinces increased from 1,097,764 to 1,324,613. During the first five years of the reform, 31,210 employees in the health sector and 88 116 in education were transferred from the Federal State to the provinces. [1]

Legislation applicable to labour relations

Labour relations in the public service are covered by the system of collective bargaining for State employees (Act No. 24185 of 11 November 1992). This Act covers collective bargaining between the public administration and its employees, with the exception of certain very high-level positions, such as the President, the Vice-President

[1] See: José Alberto Bonifacio and Graciela Falivene, *Análisis comparado de las relaciones laborales en la administración pública latinoamericana*, CLAD, 2002.

and the Attorney-General of the Nation, the State Attorney for Administrative Inquiries and her or his deputies, ministers, secretaries and sub-secretaries of State, senior officials and Cabinet advisers, diplomatic personnel and directors of state and decentralized national bodies. Members of the military and armed security forces, the gendarmerie, the navy, the federal police and the prison service are also excluded from the scope of the Act.

Teachers are covered by special conditions of service under the terms of Act No. 23929, of 10 April 1991, respecting collective bargaining by education workers. As a result of the decentralization of the health sector, the labour relations system of public health care workers is based at the provincial level. In sectors that have been privatized, the system that applies is the general legal system for collective labour agreements established by Act No. 14250 of 20 October 1953, as amended, among others, by Act No. 25877 of 2 March 2004.

Trade union rights

Since 1945, there has been a single legal framework for workers' trade union associations, currently governed by Act No. 23551 and Decree No. 467/88, which apply to workers in the State and public sector and to those in the private sector.

The general legal system recognizes exclusive rights and duties to associations granted special legal personality *(personaría gremial)*. These associations enjoy the right to the exclusive representation of all workers in the category, whether or not they are members.

An unusual feature of the national public administration is that the coexistence is permitted in the same personnel and geographical categories of more than one association with special legal personality.

Consultations

In 1986, as a result of the ratification of ILO Convention No. 151, the national executive established the Public Sector Participatory Commission on Wage Policy and other Conditions of Employment (Decree No. 1598/86) composed, on the one hand, of representatives of the Ministries of the Economy and of Labour and of the Secretariat of the Public Service and, on the other, of representatives of the two national organizations representing public employees, the Union of Civil Personnel of the Nation and the Association of State Workers. This experience only lasted two years and was not really successful. It gave way to a more elaborate system of bargaining.

Collective bargaining

Between 1973 and 1975, a collective bargaining system had already been introduced in five sectors of the public administration (the National Cereal Board, the National Commercial Exchange, the National Customs Service, the General Directorate of Taxes and the National Refuse Service). These services were included in the collective bargaining system in view of their special characteristics in terms of the type of activities performed or their employment system. Following the suspension of these bargaining systems during the military regime, public employees were finally granted the right to collective bargaining in 1992 by Act No. 29185. Similar provisions were adopted in certain provinces, although fewer than half of them recognize collective bargaining by employees in the public administration. However, it was not until six years after the adoption of the Act that the first collective agreement applicable to the public sector as a whole was concluded.

The implementation of collective bargaining in practice required the modification of the legal framework applicable to public employees, who were covered by new legislation in 1998 (the Framework Act regulating national public employment, No. 25164). It was understood that the rights and guarantees accorded by this Act to employees in the public administration constituted minimum standards that had to be respected in collective agreements. Employees in the public administration are currently covered by the second general collective labour agreement concluded between the administration and the trade unions, approved by Decree No. 214/2006. [2] In its introductory section, the collective agreement recognizes the contribution of ILO Conventions Nos. 151 and 154 to the democratization of labour relations and the recognition of the right to collective bargaining of State employees.

The general collective agreement may be supplemented by sectoral collective agreements, on the understanding that the general collective agreement is the higher source of law and that, in any dispute relating to the law, the general collective agreement prevails.

In accordance with the law, in the context of collective bargaining, the representation of the State is composed of representatives of the Ministries of the Economy, Public Works and Services and the Secretariat of the Public Service (as a minimum, at the level of Sub-Secretary of State), and employees are represented by unions accorded special legal personality at the national level. For a specific sector, the organizations participating in collective bargaining are those that are representative in the sector and the national organizations that include the sector concerned in their coverage.

All matters relating to employment may be covered by collective bargaining, with the exception of the organic structure of the national public administration, the executive powers of the State and the recognition of the principle of compatibility *(adecuación)* as a basis for pay and training in administrative careers. With regard to remuneration and other matters with economic implications, agreements have to be in conformity with the budgetary legislation.

With a view to carrying out negotiations, a bargaining commission is established at the request of one of the parties. The latter are under the obligation to bargain in good faith, which involves attendance at meetings, the designation of appropriate representatives, the exchange of the necessary information and the commitment to conclude agreements which take into account the various circumstances of the case.

Under the terms of clause 1, the general collective agreement concluded in 2006 [3] applies to all employees covered by the Act and engaged in an employment relationship with the public administration, as well as employees of the many decentralized bodies referred to in the annex to the agreement. The general collective agreement establishes a Standing Labour Relations Commission (COPAR) composed of three titular and three substitute members representing the State as employer and the same number of representatives of the unions. The functions and mandate of the Commission are to interpret the collective agreement, supervise the coherence of sectoral collective agreements with the general collective agreement, intervene in the settlement of controversies and disputes and in collective disputes relating to interests, and to assess the

[2] See: M. Cremonte, "El Nuevo Convenio Colectivo de Trabajo en la Administración Pública Nacional: La opción por la autonomía", in *Derecho del Trabajo*, July, 2006.

[3] See: Fernando García Pulles, "Serie de Legislación Comentada: Convenio Colectivo de Trabajo General para la Administración Pública Nacional", in *Lexis Nexis*, 2006.

application of the collective agreement every six months and propose potential improvements.

The decisions of the Commission have to be adopted unanimously in writing and are binding, unless otherwise determined by administrative decision issued by the executive within 30 days. Where its decisions have economic and financial implications, the prior intervention of the two Secretaries of State competent for budgetary matters is envisaged so that they can assess the feasibility of implementing the decisions.

Although the general legislation applicable to teachers permits collective bargaining at the provincial level, certain provinces have not adopted the relevant legislation. In view of the decentralization of education, in many cases there is no legislative framework at the provincial level allowing for collective bargaining. Labour relations in the sector therefore tend to be unilateral, with the employer adopting decisions in the form of regulations, often as a result of claims put forward by trade unions. For example, teachers in the province of Buenos Aires are governed by the Teachers' Statute (provincial Act No. 10579). Teachers are therefore subject to a system that is principally statutory, even though negotiations take place before decisions are adopted by the administration. In view of this situation, the unions are claiming access to collective bargaining as a means of concluding agreements.

The main features of the Act respecting collective bargaining by teachers (Act No. 23929 of 1991) are the same as those applying to State employees in general. It explicitly excludes from collective bargaining the constitutional powers of the State in relation to education and the organic structure of the education system.

Labour disputes

The general collective labour agreement for the national public administration establishes a voluntary system for the settlement of collective labour disputes between the State as the employer and its employees. The proceedings are in written form and their underlying principles are that they are voluntary, expeditious, equitable, bilateral, based on the hearing of the parties and impartial. Three types of procedure are envisaged: the settlement of the dispute by the parties themselves in the COPAR, mediation and arbitration.

In the context of the settlement of the dispute by the parties themselves, any party to the collective labour agreement may request the intervention of the COPAR, which acts autonomously with a view to achieving reconciliation within a maximum period of 15 days. In the event of failure, the parties may request mediation and/or arbitration. In a mediation procedure, COPAR convenes the mediator(s), who have ten working days to complete the procedure. During the hearings, which the parties have to attend, the mediator acts as a moderator with a view to reaching agreement. If the parties accept the outcome of the mediation procedure, it is set out in writing and becomes binding. In the absence of agreement at the end of the mediation procedure, the parties may opt for arbitration or go to the courts. Both of the parties have to explicitly express their wish to have recourse to arbitration. In that case, the arbitration award has to be issued within a period determined by the parties or within a maximum period of ten days. It has to be reasoned and is binding. It is only possible to appeal against the award where it is *ultra vires* or in the case of a procedural flaw or non-conformity with legislative or constitutional provisions.

Strikes

Article 14bis of the National Constitution establishes the right to strike without distinction between the private sector and the public sector. However, the exercise of the right to strike in services that are essential to the community is subject to restrictions established by regulations which require the exhaustion of the conciliation procedure, five days' notice and the guarantee of minimum services (Decree No. 2184 of 17 October 1990).

Under the terms of Act No. 25877, as supplemented by Decree No. 843/00, health and hospital services, the production and distribution of drinking water, electricity and gas, and air traffic control are considered to be essential. An activity not included in this list may be classified as an essential service on an exceptional basis by an independent commission following a conciliation procedure in cases where, by reason of the length and territorial scope of the interruption of the activity, it could endanger the life, health or safety of the whole or part of the population, or where it is a public service of essential importance in accordance with the ILO's criteria.

In March 2006, Decree No. 272/2006 was adopted establishing a commission known as the "Guarantees Commission", which has the role of advising and issuing opinions on matters related to the classification of essential services referred to it by the executive. Matters may also be referred to the Guarantees Commission at the request of the parties in the context of a collective dispute, and not only automatically by the Ministry of Labour. The Commission is composed of five members of recognized professional expertise in the field of industrial relations, labour law or constitutional law.

The application of the legislation, including the classification of certain services as essential, has sometimes given rise to problems and the submission of complaints to the ILO Committee on Freedom of Association, including in a municipal refuse collection service, aviation, the judiciary of a province (for the employees), public education in another province and in the education sector in general. It should be noted that the inclusion of education among essential services has been considered unconstitutional by the courts.

Canada

Principal characteristics of the public sector

As shown in the table below, the number of persons employed in government and in the health and social services has increased slightly over the past five years at both the federal and the provincial and local levels. In contrast, the staff of public enterprises has fallen, except at the local level.

Employment in the public sector

	2002	2003	2004	2005	2006
	Employment (persons)				
Public sector	2 843 465	2 908 107	2 940 859	2 979 727	3 038 846
Government	2 579 564	2 640 867	2 675 900	2 716 265	2 776 124
Federal general government [1]	359 477	366 428	366 654	370 606	386 629
Provincial and territorial general government	332 986	346 320	344 792	346 109	348 312
Health and social service institutions, provincial and territorial	714 988	738 525	744 570	755 715	769 070
Universities, colleges, vocational and trade institutions, provincial and territorial	284 685	296 380	303 494	310 754	317 966
Local general government	344 580	361 865	373 332	380 285	390 650
Local school boards	542 848	531 348	543 058	552 796	563 496
Government business enterprises	263 901	267 240	264 958	263 461	262 723
Federal government business enterprises	88 429	88 366	87 911	87 502	87 138
Provincial and territorial government business enterprises	125 185	127 292	123 988	121 243	119 028
Local government business enterprises	50 287	51 582	53 060	54 717	56 558

Notes: Employment data are not full-time equivalent and do not distinguish between full-time and part-time employees. Include employees both in and outside Canada. Data as at 31 December. [1] Federal general government data include reservists and full-time military personnel.

Source: Statistics Canada, CANSIM.

Last modified: 23 March 2007.

Legislation applicable to labour relations

Under the Canadian Constitution, labour legislation is primarily a provincial responsibility. However, in addition to the federal public service, the federal government administers labour affairs in various sectors, such as transport (railways, buses, aviation …), telecommunications (such as radio, television broadcasting, telephone and cable systems), banks, works that have been declared by Parliament to be "for the general advantage of Canada" and in most federal crown corporations and agencies.

Public service

At the Federal level, the Public Service Labour Relations Act entered into force on 1 April 2005. Various laws exist at the provincial level: the Public Service Employee Relations Act (Alberta), the Public Service Labour Relations Act (British Columbia), the Civil Service Act (Manitoba), the Public Service Labour Relations Act (New Brunswick), the Public Service Collective Bargaining Act (Newfoundland and Labrador), the Civil Service Collective Bargaining Act (Nova Scotia), the Crown Employees Collective Bargaining Act (Ontario), the Civil Service Act (Prince Edward Island), the Public Service Act and the Act respecting the process of negotiation of collective agreements in the public and para-public sector in Quebec and the Public Service Act (Saskatchewan).

Public sector

In some cases, specific laws cover the health and education sectors at the provincial level. Examples include the Health Sector Partnerships Agreement Act and the Health and Social Services Delivery Improvement Act in British Columbia, the Nursing Homes Act in

New Brunswick, the Hospital Labour Disputes Arbitration Act in Ontario and the Act to ensure that essential services are maintained in the health and social services sector in Quebec. In the education sector, the legislation includes the Alberta School Act, the Public Education Labour Relations Act in British Columbia, the Teachers' Collective Bargaining Act in Newfoundland and Labrador and in Nova Scotia, and the Act respecting collective bargaining in the sectors of education, social affairs and government agencies in Quebec.

Trade union rights

Under Federal legislation, workers in public and private services enjoy the right to organize. However, there are certain restrictions at the provincial level. In Alberta, the law authorizes the Board of Governors to determine the categories of university personnel who may or may not establish a trade union. In Ontario, the rights of school principals and vice-principals are restricted.

Problems also exist in relation to the explicit reference to a trade union by name in the legislation, thereby establishing a situation of trade union monopoly. This is the case in the public service in Prince Edward Island and in the education sector in Nova Scotia and Ontario.

Consultations

Under the terms of the Public Service Labour Relations Act (section 8), each deputy head must, in consultation with the bargaining agents representing employees in the portion of the federal public administration for which he or she is deputy head, establish a consultation committee consisting of representatives of the deputy head and the bargaining agents for the purpose of exchanging information and obtaining views and advice on issues relating to the workplace that affect those employees. These issues may include, among other things, harassment at the workplace and the disclosure of information concerning wrongdoing in the public service and the protection from reprisal of employees who disclose such information. The employer and a bargaining agent may engage in co-development of workplace improvements, which may take place under the auspices of the National Joint Council or any other body they may agree on. Co-development of workplace improvements means the consultation between the parties on workplace issues and their participation in the identification of workplace problems and the development and analysis of solutions to those problems, with a view to adopting mutually agreed to solutions.

Consultation processes also exist in the context of the determination of procedures for hiring and dismissal. The Public Service Employment Act (section 14) provides that the Public Service Commission shall consult with the employer or any employee organization certified as a bargaining agent with respect to policies respecting the manner of making and revoking appointments or with respect to the principles governing lay-offs or priorities for appointment.

Collective bargaining

At the federal level, collective bargaining is recognized as the means of determining the terms and conditions of employment of public employees. The bargaining system is based on the determination of terms and conditions of employment in units considered "appropriate for collective bargaining" and on the certification of the majority trade union as bargaining agent in each bargaining unit (Division 5 of the Public Service Labour Relations Act). The Public Service Labour Relations Board determines the group of employees that constitutes a unit appropriate for bargaining and certifies trade unions as bargaining agents. For this purpose, specific procedures are envisaged in the Public

Service Labour Relations Act, including the possibility of directing that a vote be taken to ensure that the majority of the employees concerned wish to be represented by the organization seeking certification.

The bargaining agent or the employer may, by notice in writing, require the other to commence bargaining with a view to entering into, renewing or revising a collective agreement. This notice may be given at any time if no collective agreement or arbitration award is in force or within four months before it ceases to be in force. The parties must then, within 20 days, meet and commence to bargain effectively in good faith and make every effort to enter into a collective agreement.

A collective agreement may not, directly or indirectly, alter or eliminate any existing term or condition of employment or establish any new term or condition of employment if doing so would require the enactment or amendment of a Federal Act, except for the purpose of appropriating money required for the implementation of the term or condition, or the term or condition is one that has been or may be established under the Public Service Employment Act, the Public Service Superannuation Act or the Government Employees Compensation Act. Subject to the appropriation by or under the authority of Parliament of money that may be required by the employer, the parties must implement the provisions of a collective agreement within the period specified in the collective agreement for that purpose or within 90 days after the date it is signed.

Until very recently, collective bargaining was not considered as being protected under the Charter of Rights and Freedoms. However, in a ruling dated 8 June 2007, [4] the Supreme Court found that the freedom of association guaranteed by the Charter includes the collective bargaining process. On these grounds, it found to be unconstitutional certain provisions of the Health and Social Services Delivery Improvement Act of British Columbia which restricted collective bargaining in the health sector. This decision constitutes a change in the case law of the Supreme Court and an important development in the protection of collective bargaining in the public sector.

Labour disputes

The Public Service Labour Relations Act establishes the Public Service Labour Relations Board, which has the mandate to provide adjudication services, mediation services and compensation analysis and research services. The members of the Board, appointed by the Governor in Council, are selected, with the exception of the Chairperson or a Vice-Chairperson, from among eligible persons whose names are included on a list prepared by the Chairperson after consultation with the employer and the bargaining agents.

The bargaining agent must notify the Board of the process it has chosen (either arbitration or conciliation) for the resolution of disputes to which it may be a party, on the understanding that the organization may request a change in the process initially chosen.

Arbitration is applied where the process for the resolution of a dispute applicable to the bargaining unit is arbitration and the parties have bargained in good faith with a view to entering into a collective agreement, but are unable to reach agreement on a term or condition of employment that may be included in an arbitral award. Either party may, by notice in writing, request arbitration in respect of such a term or condition of employment. The Chairperson then establishes an arbitration board for arbitration of the matters in

[4] See: *Health Services and Support Facilities Subsector Bargaining Association* v. *British Columbia*, 2007 CSC 27.

dispute, although he or she may delay until satisfied that the party making the request has bargained sufficiently and seriously with respect to the matters in dispute. As soon as possible, the arbitration board must endeavour to assist the parties to the dispute in entering into or revising a collective agreement. In order to do so, it has to take a number of factors into account: the necessity of attracting competent persons to, and retaining them in the public service; the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors; the need to maintain appropriate relationships between different classification levels within an occupation and between occupations in the public service; the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and the state of the Canadian economy and the Government's fiscal circumstances.

The arbitration award may not alter or eliminate any existing term or condition of employment, or establish any new term or condition of employment, if, among other conditions: doing so would require the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating money required for the implementation of the term or condition; or the term or condition relates to standards, procedures or processes governing the appointment, appraisal, promotion, deployment, rejection on probation or lay-off; or would affect the organization of employees of the public service or the assignment of duties to, and the classification of positions and persons employed in the public sector. The arbitral award may not deal with a term or condition of employment that was not the subject of negotiation between the parties during the period before arbitration was requested. The arbitral award binds the employer, the bargaining agent and the employees in the bargaining unit. It is also binding on every deputy head responsible for any portion of the public administration that employs employees in the bargaining unit, to the extent that it deals with matters referred to in the Financial Administration Act. As in the case of a collective agreement, subject to the appropriation by or under the authority of Parliament of any money that may be required by the employer, the parties must implement the provisions of the arbitral award within 90 days after the day on which it becomes binding on them or within any longer period that the parties may agree to or that the board, on the application of either party, may set.

Whenever the process selected for the resolution of disputes is conciliation and the parties have negotiated in good faith but are unable to reach agreement on a term or condition of employment, either party may, by notice in writing, request conciliation in respect of any term or condition of employment that may be included in a collective agreement. The Chairperson of the Labour Relations Board then recommends to the Minister that a public interest commission be established for conciliation of the matters in dispute. The Chairperson may act on her or his own initiative if she or he considers that establishing such a commission might assist the parties in reaching agreement and that they are unlikely to reach agreement otherwise. The commission must endeavour as soon as possible to assist the parties in entering into or revising a collective agreement. The factors that have to be taken into consideration are the same as in the case of arbitration. The recommendations of the public interest commission are binding on the parties if they have so agreed in writing. If the Minister is of the opinion that it is in the public interest that the employees be given the opportunity to accept or reject the offer of the employer last received in respect of all matters remaining in dispute, she or he may direct that a vote be held by secret ballot among all the employees of the bargaining unit. The direction that a vote be held, or the holding of that vote, does not prevent the declaration or authorization of a strike if it is not otherwise prohibited, nor does it prevent the participation in a strike by an employee if the employee is not otherwise prohibited from doing so. If a majority of the employees participating in the vote accept the employer's last offer, the parties are

bound by that offer and must, without delay, enter into a collective agreement that incorporates the terms of the offer.

Strikes

Provisions relating to labour disputes and strikes exist at the federal level and at the level of each province. The table below summarizes the different situations at the federal and provincial levels by occupation.

Dispute resolution process in the public and para-public sectors in Canada

	Public servants	**Hospital employees**	**Teachers in public schools and college and university professors**	**Employees in Crown corporations**
Federal	Union choice of arbitration or strike [1]	Union choice of arbitration or strike [1] Strike/lock-out [1] in Yukon	Strike/lock-out for some schools in the NWT and schools run by band councils on Indian reserves	Strike/lock-out [1] for most Crown corporations
Alberta	Strike/lock-out ban; arbitration at the request of either or both parties [2]	Strike/lock-out ban; arbitration at the request of either or both parties, or the Minister [2]	PS [3, 4] – Strike/lock-out C – Binding arbitration U [5] – Negotiating procedures agreed by the parties	Same as for public servants
British Columbia	Strike/lock-out [1]	Strike/lock-out [1]	PS [1, 4] – Provincial level (incl. "cost provisions"): strike/lock-out; local level: either party may refer dispute to provincial bargaining C and U – Strike/lock-out	Strike/lock-out [1]
Prince Edward Island	Arbitration at the request of either party or on the Minister's own initiative [2]	Strike ban; after conciliation, mandatory arbitration	PS [4] – Arbitration at the request of either party or on the Minister's own initiative [2] U - Strike/lock-out	Same as for public servants
Manitoba	Arbitration at the request of either party [1]	Strike/lock-out [1] City of Winnipeg paramedics : same as for municipal firefighters	PS [4] – Strike/lock-out ban; arbitration proceedings may be initiated by either party. U - Strike/lock-out	Strike/lock-out
New Brunswick	Strike/lock-out[1,2]	Strike/lock-out [1, 2]	PS [4] - Strike/lock-out [2] U - Strike/lock-out	Strike/lock-out
Nova Scotia	Strike/lock-out ban; arbitration at the request of either or both parties	Strike/lock-out	PS [4] – Provincial level (including salaries): strike/lock-out; local level: strike/lock-out ban; arbitration at the request of either party U - Strike	Strike/lock-out
Ontario	Strike/lock-out [1]	Strike/lock-out ban; arbitration after parties are notified that conciliation was unsuccessful [2] Land ambulance workers employed by municipalities: strike/lock-out[1]	PS [4] – Strike/lock-out C – Strike/lock-out U – Strike/lock-out	Strike/lock-out. Some designated Crown corporations are covered by the collective bargaining legislation applying to civil servants

	Public servants	Hospital employees	Teachers in public schools and college and university professors	Employees in Crown corporations
Quebec	Strike/lock-out [1], Except peace officers. [7] In the latter case, a union/employer committee makes recommendations to the government for approval by decree.	Strike/lock-out [1, 8]	PS [1, 4] - Strike/lock-out [8] C - Strike/lock-out [8] U - Strike/lock-out	Strike/lock-out [9, 10]
Saskatchewan	Strike/lock-out	Strike/lock-out	PS[4] – Union choice of arbitration at the request of either party or strike U - Strike/lock-out	Strike/lock-out
Newfoundland and Labrador	Strike/lock-out [1, 11]	Strike/lock-out [1, 11]	PS[4] - Strike/lock-out U - Strike/lock-out	Strike/lock-out [12]
Northwest Territories and Nunavut	Strike [1]	Strike [1]	PS [4] - Grève	Strike [1]
Yukon	Union choice of arbitration at the request of either party or strike [1]	See Federal	PS [4] – Union choice of arbitration at the request of either party or strike	Employees in Crown corporations

Source: Labour Law Analysis; International and Intergovernmental Labour Affairs Labour Branch; Human Resources and Skills Development Canada, 1 Jan. 2006. [1] Employees are prohibited from participating in a strike when they are required to provide essential services under the applicable labour relations legislation. [2] In interest arbitration cases, an arbitrator, an arbitration body, or a selector (in final offer selection cases) must take into account specific criteria when making an award, including economic factors. [3] The government may order emergency procedures and impose binding arbitration in circumstances involving unreasonable hardship to persons who are not parties to the dispute. [4] PS – public primary and secondary school; C – public colleges; U - universities. [5] Compulsory binding arbitration to settle any collective bargaining dispute with a graduate students association, or with an academic staff association at a university established after 18 March 2004. [6] Notes 1 and 3 apply to the New Brunswick Power Corporation and note 3 applies to the New Brunswick Liquor Corporation. [7] The employees of the general directorate responsible for civic protection are also forbidden to strike. [8] Strikes and lockouts are prohibited in respect of matters defined as pertaining to clauses negotiated at the local or regional level or subject to local arrangements. [9] The Quebec legislation specifies that certain government agencies' policy on remuneration and conditions of employment must be approved by the Treasury Board (this applies for example to Hydro Quebec, the Sureté de Québec (Quebec's provincial police) and Crown corporations responsible for lotteries and the sale of liquor). [10] The government of Quebec may order the parties to maintain essential services in a variety of "public services". [11] The House of Assembly may impose arbitration.

As the table shows, the situations vary, ranging between recognition of the right to strike and the prohibition of strikes accompanied by compulsory arbitration procedures.

In general terms, strikes form part of the collective bargaining process and may not be called while a collective agreement is in force or without complying with the various stages (particularly the conciliation procedure) in the process of calling strikes. Only the bargaining agent may declare or authorize a strike.

The federal legislation provides that, to obtain approval to declare or authorize a strike, a secret ballot must be held of all the public employees concerned.

At the federal level, in the case of essential services, defined as a service, facility or activity that is or will be necessary for the safety or security of the public or a segment of the public, the employer has the exclusive right to determine the level at which an essential service is to be provided to the public, or a segment of the public, including the extent to which and the frequency with which the service is to be provided. If the employer has given to the bargaining agent notice in writing that the employer considers that employees in the bargaining unit occupy positions that are necessary for the employer to provide

essential services, the employer and the bargaining agent must make every reasonable effort to enter into an essential services agreement as soon as possible. If no agreement is reached, either of the parties may apply to the Public Service Labour Relations Board to determine the matter, in which case the Board makes an order.

Emergency legislation is sometimes adopted to bring an end to collective disputes in the public and para-public sector. The list drawn up by the Department of Human Resources and Social Development enumerates 30 at the federal level since 1950, most frequently in the railways, ports and postal services, with the most recent being adopted in 1999. At the provincial level, the Ministry also lists 102 since 1950.

In 2005, emergency legislation was adopted in two provinces for this purpose.

In British Columbia, in October 2005, the Teachers' Collective Agreement Act came into force to settle a dispute between a union, the British Columbia Teachers' Federation, and an employers' organization, the British Columbia Public School Employers' Association. Under the terms of the Act, the parties may vary, by agreement, the collective agreement constituted by the Act, although a provision of the collective agreement that creates an obligation for the government must not be varied unless the Minister of Finance approves the variation.

In Quebec, the Act respecting conditions of employment in the public sector was adopted and approved in December 2005. The objective of the Act is to ensure the continuity of public services and provide for the conditions of employment of employees of public sector bodies.

The adoption of these Acts gave rise to complaints to the Committee on Freedom of Association. [5]

Orders are sometimes issued suspending or prohibiting strikes in the case of specific disputes. In Alberta, the general collective bargaining legislation gives the Lieutenant Governor in Council the power to order emergency procedures if, in his/her opinion, an emergency exists or may occur in circumstances involving damage to health or property as a consequence of cessation or reduction of services, or unreasonable hardship to persons who are not parties to the dispute. Nine orders have been made in this respect, mainly in the education and health sectors. In New Brunswick, measures of this type have been adopted in the context of disputes in the police force. In Quebec, a provision that has been in force since 1982 gives the government the power to suspend the right to strike in public services when it is of the opinion that essential services provided for or actually rendered where a strike is apprehended or in progress are insufficient, and this situation is endangering public health or safety. This power has been used on three occasions in the transport sector and in the city of Montreal. In Newfoundland and Labrador, the House of Assembly has made use of its power to suspend the right to strike where it would be injurious to the health or safety of the public in the case of a strike in a hospital.

The strikes (work stoppages involving one or more workers) recorded in 2005 and 2006 are as follows:

[5] See: ILO, Committee on Freedom of Association, 343rd Report, Case No. 2405, paras 318–338; and 344th Report, Case No. 2467, paras 461– 587.

Public administration

	Years	Work stoppages	Workers involved	Person-days not worked
New Brunswick	2005	0	0	0
	2006	1	78	550
Quebec	2005	5	39 321	574 190
	2006	2	1 623	2 180
Ontario	2005	1	17	960
	2006	4	617	9 150
Saskatchewan	2005	1	1 525	31 370
	2006	1	1 800	6 860
British Columbia	2005	1	120	1 920
	2006	2	673	12 510
Federal Administration	2005	0	0	0
	2006	1	3	50
Total Canada	2005	8	40 983	608 440
	2006	11	4 794	31 300

Education, health and social services

	Years	Work stoppages	Workers involved	Person-days not worked
Newfoundland and Labrador	2005	0	0	0
	2006	2	225	530
Prince Edward Island	2005	0	0	0
	2006	1	375	4 880
Novia Scotia	2005	1	1 400	21 000
	2006	1	94	70
New Brunswick	2005	7	317	9 210
	2006	0	0	0
Quebec	2005	33	36 693	17 2630
	2006	3	38	1 120
Ontario	2005	12	1 235	18 060
	2006	8	10 598	151 940
Manitoba	2005	1	100	3 500
	2006	2	113	1 130
Saskatchewan	2005	2	41	580
	2006	1	15	350
Alberta	2005	1	165	660
	2006	0	0	0
British Columbia	2005	8	41 272	430 320
	2006	0	0	0
Federal administration	2005	0	0	0
	2006	1	20	980
Total Canada	2005	65	81 223	655 960
	2006	19	11 478	161 000

Public services

	Years	Work stoppages	Workers involved	Person-days not worked
Ontario	2005	1	850	60260
	2006	0	0	0

Source: Department of Human Resources and Social Development, Chronological *Perspective on Work Stoppages*.

Finland

Principal characteristics of the public sector

In 2005, the central Government employed a total of 124,000 persons (5.6 per cent of the national labour force), of whom 103,000 were public employees and over 20,000 were engaged under a normal employment contract. Of this total, around 7,100 were employed by State enterprises. The number of central public personnel has fallen considerably since 1988, when it totalled 215,000. A large part of this decrease is due to the transformation of government agencies and departments into state enterprises, state limited liability companies and municipal companies.

The most numerous categories of personnel financed by the state budget are in defence and universities.

Local governments employed 431,000 workers, or around 20 per cent of the total labour force. Over 80 per cent of them work in the health, education and social services sectors. The number of local government personnel has more than doubled over the past 30 years, particularly in view of the increased provision of social and welfare services. The 431 municipalities in the country and the 200 joint municipal authorities are independent employers. [6]

The changes that have occurred in society over recent decades have resulted in significant reforms in the public sector, which have led to a diversification of the administration. Traditional administrative functions and public economic services and activities have adopted the organizational models and modes of operation that are most suited to them.

Legislation applicable to labour relations

The legal status of public employees is set out in the Act respecting State civil servants, while contract staff are covered by the Employment Contracts Act. With regard to collective bargaining, these categories of personnel are covered, on the one hand, by the Act respecting collective agreements for the civil service and, on the other, the Collective Agreements Act. In the case of local administrations, an Act respecting municipal employees' collective agreements is in force.

Trade union rights

The new national Constitution, adopted in 2000, recognizes the right to organize of workers in the private and public sectors. The general legislation does not make a

[6] Source: Ministry of Finance, *The Finnish public sector as employer*.

distinction between workers in the two sectors. The Act respecting State civil servants confirms, in section 12, that an authority cannot prohibit an employee from joining an association or pressurize the employee to join or leave an association. The unionization rate is very high in the public sector, with 80 per cent of those employed in the sector being members of a union.

Consultations

In 1988, an Act was adopted on codetermination in government departments and institutions, the purpose of which is to offer personnel the possibility of influencing decision-making affecting their terms and conditions of employment with a view to promoting efficiency and savings in the administrations concerned. Joint bodies have been established for this purpose.

Collective bargaining

Collective negotiations have existed in the public sector since 1943, although the State and the local authorities remained free to determine the pay and working conditions of their employees. In 1970, with the adoption of the Act respecting collective agreements for the civil service and the Act respecting municipal employees' collective agreements, the system came to be based on contractual freedom. Agreements may cover pay (wages and benefits in kind), as well as other conditions of employment (working hours, holidays, sickness, maternity, mission expenses, leave of absence, part-time work …). The 1988 Act on codetermination broadened the fields covered by collective bargaining to include, in particular, transfers, technological change, cessation of activity, changes affecting the size, type and structure of the personnel, equal rights programmes, staff development and training. However, the legislation excludes certain subjects from bargaining, such as the qualifications required for a specific position, reasons for promotion, the responsibility of civil servants, discipline, bonuses, the remuneration of diplomatic personnel based on their posting, pensions, official housing, certain forms of leave without pay and indemnities related to death.

Bargaining procedures were established in a framework agreement concluded between the Ministry of Finance as the public employer and the representative trade unions.

In general, terms and conditions of employment in the public sector are determined by collective agreement. The agreements are normally valid for one or two years. The national collective agreement for government employees is concluded between the Office for the Government as Employer, operating under the Ministry of Finance, on the one hand, and the three union bargaining agents, on the other. Specific collective agreements may be concluded for certain sectors of the administration.

A new pay system for the central administration has been in operation since 2005. It is based on collective bargaining at the level of the various government agencies, although within the framework of the general principles established by national agreement. The basic salary is determined in relation to the requirements of the job, although a personal component, of a maximum level of 50 per cent of the basic salary, depends on the competence and performance of the employee.

In the case of personnel employed at the local level, collective agreements are concluded between the Commission for Local Authority Employers and the bargaining agents representing the personnel. Five different sectors participate in these negotiations. For example, educational and medical personnel have their own contractual provisions that take into account the special nature of their work.

Agreements can also be concluded at the local level. In November 2002, an agreement was reached at the central level that the parties concerned would take the necessary measures to conclude collective agreements covering local agencies with a view to the introduction of a new pay system based on the difficulty of the work, personal performance and qualifications. Local bargaining has therefore increased in recent years, particularly in view of the new pay structures.

The various government agencies and unions also conclude their own collective agreements: there are around 100 agency-level agreements in existence for public servants, and around 70 for other categories of personnel.

The Ministry of Finance sets guidelines for government representatives in the negotiations. The agreement concluded at the central level (the national collective agreement for government employees and contract employees) establishes the overall framework for costs and contains provisions on the terms of service of central government employees as a whole, as well as bargaining and revision clauses. It enters into force when it has been approved by the Government. If it involves additional expenditure, it has to be submitted for approval by the Parliamentary Finance Committee. Agreements relating to a specific government agency or a sector of an agency, which principally relate to specific issues concerning pay and working time, are approved by the Ministry of Finance.

With a view to covering negotiations in services governed by private law but owned or managed by local authorities, the municipalities, in common with the enterprises responsible for these services, have established the Association of Social Services Employers and Businesses, which engages in negotiations with the most representative workers' organizations.

Labour disputes

Under the terms of the Act on mediation in labour disputes, no work stoppage may be commenced or extended unless the office of the national conciliators and the other party have been given notice at least two weeks before the planned commencement of the stoppage. The Ministry of Social Affairs may postpone the commencement of the stoppage for a maximum of 14 days, which may be extended for a further seven days for special reasons, so as to have sufficient time where the dispute affects the essential functions of society or prejudices the general interest to a considerable extent. The conciliator helps to resolve the dispute through negotiation and, where negotiation fails, may propose a draft settlement to the parties for their approval.

The basic agreement for local employees establishes a specific system which envisages successive interventions at four levels for the settlement of disputes (negotiation with the direct employer, the local administration, the central level and then settlement through the Labour Court).

Under the terms of a 1974 Act, the labour court hears disputes relating to collective agreements in the private sector and the public sector (both central and local), particularly where the disputes relate to the validity, duration, content or scope of an agreement or the interpretation of a specific clause of the agreement.

Strikes

While a collective agreement is in force, any strike relating to the terms and conditions of employment established by the agreement is prohibited.

A public employee may participate in a strike provided that the obligation of social peace corresponding to the period of validity of the collective agreement that is in force has ended, the strike relates to issues on which an agreement could be concluded, the public employees concerned cease working completely and their union has decided to call the strike. Sympathy strikes, work to rule and go slow strikes are prohibited. Employers have a right to lock-out covered by the same restrictions.

Contractual employees have identical rights to those of workers in the private sector and may have recourse to the various forms of collective action, including strikes.

Despite the broad consensus on incomes policies, the country has experienced certain episodes of strikes, sometimes unlawful, which have generally been resolved through negotiation. For example, a very widespread strike was organized in the spring of 1986. After a work stoppage lasting seven weeks, an agreement between all the parties was concluded envisaging major pay increases.

France

Principal characteristics of the public sector

The public service

The French public service, in the strict sense of the term, includes all employees engaged in permanent positions in the State, the territorial communities (communes, intercommunal structures, departments and regions) and the public hospital sector. Most of these employees are titularized, in which case their terms and conditions of employment are principally government by specific conditions of service, while others are engaged under employment contracts.

In France, there are three major public services:

– the State public service, which at the end of 2004 employed 2.5 million public employees (including teachers at all levels - primary, secondary and higher - who are State employees) (51 per cent of the total);

– the territorial public service, which at the end of 2004 employed 1.6 million persons (30 per cent of the total); and

– the public hospital service, which had around one million employees at the end of 2004 (19 per cent of the total). [7]

Public enterprises

According to INSEE data (register of enterprises with a majority State holding), at the end of 2005 there were 1,143 public enterprises in France with 864,200 employees, the majority of whom were engaged in the fields of energy (particularly electricity and gas), transport (railways and urban transport) and services (especially the postal services).

Over recent years, these enterprises have undergone significant change related to modifications in their status and partial privatization. In several of these enterprises (particularly France Telecom, the Post and the *Caisse des dépôts et consignations*), these

[7] INSEE, *Tableaux de l'économie française*, 2006 edition.

developments have resulted in the parallel employment of two categories of personnel: public employees governed by the General Conditions of Service of the Public Service, and those engaged under private law contracts, who are covered by the Labour Code.

Legislation applicable to labour relations

In the public service, the rules respecting labour relations are determined by the General Conditions of Service of the Public Service, which contain four titles:

– Rights and duties of public employees (Act No. 83-634 of 13 July 1983);

– Statutory provisions respecting the State public service (Act No. 84-16 of 11 January 1984);

– Statutory provisions respecting the territorial public service (Act No. 84-53 of 26 January 1984); and

– Statutory provisions respecting the public hospital service (Act No. 86-33 of 9 January 1986).

The first Title, which is common to all three components of the public service, applies to civilian public employees, with the exception of employees of Parliamentary assemblies and the judiciary. In public services and establishments of an industrial and commercial nature, it only applies to employees who have the status of public employee.

Under the terms of section 4 of the Act of 13 July 1983, public employees have a statutory and regulatory status in relation to the Administration. This provision is based on the notion that the public service is motivated by the general interest and that the Administration must therefore be able to modify unilaterally the situation of its employees.

Labour relations in certain public enterprises are covered by special conditions of service. This is the case in particular in the energy sector, where the electricity and gas companies are governed by national conditions of service for their personnel. These conditions of service contain provisions, for example covering the nature of labour relations, which closely reflect the rules applied in the public service. The transformation in 2004 of *Eléctricité de France* into a limited liability company and the transfer of part of its capital to the private sector have not yet changed the status of its employees.

Trade union rights

In the same way as all other employees, public employees and employees in public enterprises benefit from the social rights set out in the Preamble to the National Constitution, and particularly freedom of association. However, as exceptions to the rule, *Préfets* and *Sous-préfets* do not enjoy the right to organize and career members of the armed services do not benefit from the right to organize or freedom of association.

Unionization rates in the public sector, even though they have declined in recent years, are still higher than in the private sector (around 20 per cent, compared with under 10 per cent). The trade union movement in the public sector is characterized by a very high level of dispersion between a number of unions that is greater than in the private sector; this situation has its origins in the existence of independent unions covering single categories of personnel.

Despite their relatively low numbers, the unions retain a significant capacity for mobilization, as demonstrated by the elections to consultative occupational bodies and participation in the work stoppages called by these organizations.

Consultations

The Preamble to the National Constitution provides that all workers shall, through their representatives, participate in the collective determination of their terms and conditions of employment. This principle applies to the public service. The question therefore arises as to its compatibility with the overriding power of the Administration as guaranteed by the General Conditions of Service of the Public Service. [8]

The primacy of the public authorities has been broadly tempered by the establishment of consultative bodies on which the representatives of public employees sit and which cover "the organization and functioning of public services, the formulation of statutory rules and the examination of individual decisions relating to careers".

The rules governing consultative bodies are established by the conditions of service of the three public services. The various bodies that exist are competent in different areas. The higher councils are the peak bodies (one for each public service) and are national bodies for concerted dialogue on issues of a general nature concerning each of the three public services. They have to be consulted so that they can give their views on draft laws and decrees affecting the employees that they cover.

For each set of public employees, there are also one or more joint administrative commissions, which are consulted on the individual management of careers (promotions, transfers, discipline, etc.) of the employees concerned. In parallel, joint technical committees and establishment technical committees are competent with regard to problems relating to the organization and functioning of the services, recruitment, working methods and techniques, training policies and criteria for the distribution of bonuses. In the public hospital service, establishment technical committees also have to be consulted concerning budgets, investment programmes and cooperation with other hospitals.

In most cases, these various commissions are joint bodies (composed of representatives of the administration and the unions). The distribution between the various unions is based on elections in the case of joint administrative commissions and the higher councils are established taking into account the election results for the administrative commissions as a whole, on the understanding that the major representative federations at the national level are in any case represented, irrespective of the election results.

Collective bargaining

There was no collective bargaining in the public service until 1961, when a protocol agreement was concluded on remuneration, hours of work and trade union rights in the public service. The practice of annual wage negotiations was introduced in 1970. It was made official in 1983 in the General Conditions of Service of the Public Service and it remains the only officially recognized subject for bargaining since, under the General Conditions of Service, the union organizations representing public employees are entitled to engage in bargaining at the national level prior to the determination of changes in remuneration and to discuss with the authorities responsible for management at the various levels issues relating to the conditions and organization of work.

[8] See: Jacques Fournier, *Livre blanc sur le dialogue social dans la fonction publique: Rapport au ministre de la fonction publique et de la réforme de l'Etat*, La Documentation Française, 2002.

However, the official nature of wage bargaining has not sufficed to ensure its success, as negotiations frequently end up without any agreement being reached. These difficulties are due to several reasons: the schedule of negotiations is not fixed and is in practice determined by the goodwill of the Government; their coordination with the budgetary calendar is not ensured, particularly where negotiations begin after the budget has been voted by Parliament; wage agreements, in the same way as all agreements concluded in the public service, are not legally binding on the Government, even though it normally gives effect to them; and the authorities are supposed to comply with the European Union Stability and Growth Pact, which imposes a strategy of the containment of public expenditure.

A 1989 circular on the renewal of public services affirmed that "bargaining should be opened to new subjects and decentralized to all levels". Since then, negotiations have been engaged on various subjects and have led to the conclusion of protocol agreements, particularly in the fields of end of a career leave and the integration of precarious employees by the three public services; further training, safety and health and the employment of workers with disabilities by the State public service; training for the territorial public service; and working conditions, training, night work and social dialogue in the public hospital service.

At the local level, the practice of bargaining is still more recent and therefore not well developed.

In the absence of any legal framework, the administration decides whether to engage in bargaining on a particular subject. The current legislation only establishes an obligation to bargain in one particular case, namely a strike notice in the public services. And even then, this provision would not appear to be applied regularly. Moreover, the agreements concluded do not yet have legal value in their own right and are only binding on the signatories in moral and political terms. For agreements to be applied in practice, it is therefore necessary for the competent public authorities to take additional measures, in the form of decrees or ministerial orders, or decisions by territorial communities. It would appear that in most cases the administration adopts the necessary measures to give effect to agreements. There may, however, be delays in their implementation.

Despite these limitations, collective bargaining has developed in the public service. In 2006, two important protocol agreements were signed in the State public service, one on the improvement of careers and the development of social action, and the other on vocational training.

The development of collective bargaining in the public service has therefore resulted in a discrepancy between law and practice. The Council of State has accordingly recalled that agreements concluded between the public authorities and unions cannot have the effect of changing the legal status of employees, which means that unions cannot make use of them in the context of disputes with the administration.

A change in the situation has, however, been observed in the context of the public hospital service, where local bargaining is now recognized by law in the form of a "social project" negotiated between the management of the establishment and the representative trade unions (Act respecting social modernization of 17 January 2002). The coverage of social projects includes training, the improvement of working conditions, the management of social insurance and employment prospects, qualifications and acquired professional benefits.

The situation is different in public enterprises, where enterprise agreements have been recognized by law since 1982 as a means of supplementing statutory provisions or specifying the manner in which they are to be given effect. This development has been confirmed in enterprises in which the conditions of service have been modified and which recognize bargaining with trade unions, such as *France Télécom* and the Post. Nevertheless, the Council of State has confirmed that, in the case of personnel who are recognized as public employees, the agreements cannot modify the statutory rules applicable to them. [9]

In the case of categories of personnel who are not subject to specific legislative conditions of service or regulations, their conditions of employment and work and social benefits may be determined by collective labour agreements under the conditions established by the Labour Code. Moreover, the employer is under the obligation to engage in bargaining with the representative unions at the enterprise level on the procedures for the exercise of the right to organize (time off to participate in trade union meetings, conditions governing the suspension of the employment contracts of permanent union officials, conditions and limits on time off for union leaders, the collection of contributions).

Similarly, in the electricity and gas industries, occupational agreements may supplement statutory provisions, under conditions that are more favourable to employees, or determine the modalities for their application within the limits set out by the national conditions of service of the employees concerned. The rules established by the Labour Code in relation to collective labour agreements are applicable in these cases.

In public bodies and social security institutions, measures relating to elements of remuneration must, before any decision is taken, be transmitted to the Minister concerned, who submits them, for opinion, to the Inter-ministerial Public Sector Wage Audit Commission, which is chaired by the Minister of Finance. In addition to annual wage increases, the Commission examines the draft texts of agreements and conditions of service establishing permanent rules for staff remuneration (Decree No. 53-707 of 9 August 1953, section 6). The Commission does not supervise the whole of the public sector, but only 94 entities with over ten employees, including the Post, the National Railway Company, the Independent Parisian Transport Board, the Bank of France, the Social Security, *Eléctricité de France* and *Gaz de France*, which have the largest number of employees.

Labour disputes

No machinery for the settlement of collective labour disputes is envisaged in the Conditions of Service of the Public Service. In comparison, in public enterprises and public industrial and commercial establishments covered by special conditions of service, collective disputes may be referred to conciliation procedures, for which the machinery is established by a protocol agreed upon by the management, the representative unions and the minister with responsibility for the enterprise. The three parties intervene in the procedure, which is chaired by the minister. In cases where the dispute concerns remuneration, representatives of the Ministries of Labour, Finance and the Economy have to be present. If specific machinery is not established by protocol, disputes may be referred to the conciliation machinery established by the general legislation.

[9] "Conseil d'État": Ruling of 8 Feb. 1999, "Association syndicale des cadres supérieurs et ingénieurs aux Télécommunications – Fédération syndicale SUD des PTT".

Strikes

The right to strike is recognized in the Preamble to the National Constitution, which provides that it shall be exercised within the framework of the laws governing it.

The General Conditions of Service of the Public Service use the same terms as the Constitution and therefore recognize the right to strike of public employees, while specifying that it is to be exercised within the framework of the laws governing it. Strikes in the public services are covered by a section of the Labour Code which applies to personnel of the State, the regions, departments and communes with over 10,000 inhabitants, and to the personnel of public or private enterprises, bodies and establishments responsible for the management of a public service.

Certain categories of employees do not have the right to strike, namely the personnel of Republican security companies, the police, the prison administration, the communication service of the Ministry of the Interior and magistrates.

In cases where employees who are allowed to do so have recourse to the right to strike, the most representative trade union organization or organizations at the national level or in the occupational category or enterprise, body or service concerned has to give notice of the strike five working days before it begins. The strike notice must specify the reasons for the strike, indicate the place, date and hour of the beginning of the strike and its envisaged duration. During the period of the strike notice, the parties are under the obligation to bargain, even though this provision is not always applied in practice. It is prohibited to have recourse to go slows or staggered strikes. Failure to comply with these provisions may lead to sanctions against strikers.

When examining cases relating to the right to strike of public employees, the Council of State has considered that, in the absence of applicable legislation, it is for the head of the service to regulate the right to strike of public employees and to organize the necessary conciliation between this right and the continuity of the public service, which is also considered to be a constitutional principle. [10] The courts may, however, ascertain that the limits applied to the right to strike by heads of services are proportionate to the need to safeguard public order. While heads of services may prohibit the right to strike of certain employees in positions of authority and envisage a minimum service, they cannot take measures that are too general and have the effect of rendering the exercise of the right to strike impossible in practice. [11]

In accordance with the case law of the Council of State, two major categories of public employees may be ordered to remain at their posts in the event of a strike: employees in positions of authority who are involved in Government action and officials ensuring the functioning of services that are indispensable for Government action, the physical security of the population and the conservation of installations or plant. The limitations on the right to strike, and particularly the establishment of a minimum service, are imposed by regulation under the supervision of the administrative courts. Any strike day, whatever the duration of the period for which the service is withdrawn, results in the deduction of 1/30th of the monthly remuneration of State employees and those of public administrative establishments.

[10] "Conseil d'État": Arrêt Dehaene, 7 July 1950.

[11] "Conseil d'État": Arrêt Rosenblatt, et al., 30 Nov. 1998.

In practice, throughout the ministerial departments of the State public service, there were 1,116,000 strike days in 2005, around half of which were in education. This number is much greater than in 2004 (374,000), although without attaining the very high level of 2003 (3,660,000), which may partly be explained by the protests against pension reform. Six strikes were of an inter-ministerial nature in 2005. [12]

Japan

Principal characteristics of the public sector

Public service

Most public employees in Japan are engaged in local administrations. Accordingly, in 2006, the number of national public employees was 945,000 (or 23.3 per cent of the total), compared with the public employees of local authorities, who numbered 3,117,000 (76.7 per cent of the total).

Since 1997, the Government has been engaged in preparing an important reform of the public service. For this purpose, a Research Council on the Public Service System has been established, on which the unions of public employees are represented. In December 2001, the Government adopted the general principles of the reform. A consultation body was subsequently established between the unions and the Government. In accordance with an agreement between the Government and the unions concluded in May 2006, a special research committee on the public service, workers in the public service and industrial relations was set up by Government Ordinance, issued under the Administrative Reform Promotion Law. The Committee is composed of 17 members, three of whom are trade union representatives. It met on five occasions during the course of 2006. Consultations on the administrative reform are still continuing.

In the context of this reform, the Government has set the objectives of dividing by two, between 2005 and 2015, the proportion of public expenditure accounted for by personnel costs in relation to the Gross National Product and of reducing the total number of public employees by 5 per cent between 2005 and 2010.

Public enterprises

Since the end of the 1980s, Japan has experienced significant changes in terms of the privatization of public services (for example, the railways were privatized in 1987 and Japan Post, a public corporation established in April 2003, is due to be privatized in October 2007). Since April 2001, the management of a significant number of public enterprises (museums, research institutes …) has been entrusted to Independent Administrative Institutions (IAIs), which are structurally independent of the State and are mandated to improve the quality of the service. There are two different categories of independent administrative institutions based on the nature of the activity and whether the cessation of their activity would prejudice social stability or the national economy: non-specified institutions, the employees of which are not in the public sector, and specified institutions, in which the employees enjoy the status of public employee.

On 1 January 2002, a total of 16,564 persons worked in Independent Administrative Institutions. This number has increased considerably since, and in 2006 a total of 122,000 employees changed status in relation to labour law (71,000 are in specified IAIs and

[12] INSEE, *La France en faits et chiffres: Tableaux de l'économie française*, 2006.

51,000 in non-specified IAIs), while the status of 118,000 employees in national universities also changed.

Legislation applicable to labour relations

Labour relations in the public service are governed by two different laws, one covering the national public service and the other the local public service.

In 2003, a Law was adopted on labour relations in local public enterprises and specified independent administrative institutions which takes into account the changes in the status of these enterprises in the public service.

Trade union rights

At both the national and the local levels, public employees enjoy the right to organize, with the exception of the police, the fire defence services, prisons, the Maritime Safety Agency and the Self-Defence Forces. There are restrictions on public employees with managerial responsibilities and similar categories who may not establish common organizations that also cover other public employees. At the local level, the trade union registration system requires the establishment of separate trade unions in each municipality. However, according to the Government, based on a report by the Advisory Board on the Public Service Personnel System of 1973, the issue of whether or not an organization is registered does not affect its capacity for action, nor does it give rise to any fundamental discrimination between the two situations.

Consultations

In the context of preparing the reform of the public service, the unions were consulted in commissions established for this purpose. The functioning of these commissions has given rise to different interpretations by the two parties with, at various times, the unions considering that their views on the reform were not sufficiently taken into account and the Government believing that the discussions were frank and sincere.

Collective bargaining

Public service

Collective bargaining is provided for in section 5 of the National Public Service Law and section 55 of the Local Public Service Law. However, the term “bargaining” is contested by RENGO, the principal trade union confederation in the country, which considers that it consists of a system of consultation and not a real system of negotiation, as the organizations do not have the right to conclude collective agreements.

In practice, in view of the specific status of public employees and the public nature of their functions, and in order to guarantee the common interests of the population as a whole, the pay, working time and other working conditions of national public employees in the non-operational sector are covered by the legislative and budgetary powers conferred upon the Diet.

The national system is based on a body, the National Personnel Authority, which is a neutral third-party agency established with a view to compensating for the restrictions on the fundamental labour rights of public employees. The National Personnel Authority carries out comparative studies of pay in the public and private sectors and hears the organizations of public employees before submitting its recommendations to the

Government on the adjustment of the pay and other working conditions of public employees. Accordingly, the Authority held 213 and 212 official meetings with the organizations of employees in 2004 and 2005, respectively. This system does not preclude direct meetings between the unions and the Government. In 2004, a total of 41 meetings of this type were held, four of which were with the Minister of State. The recommendations of the National Personnel Authority were implemented by the Government in both 2004 and 2005.

The recommendations made by the Authority may go beyond annual measures relating to pay and working conditions. In 2005, it proposed a drastic reform of the pay system, particularly by proposing to give priority to the duties and responsibilities of the employee rather than seniority, and to the performance of each employee, while advocating that salaries in the private sector should be taken into account at the local level. The Government also decided to follow the recommendations made by the Authority in full on this point.

It should be noted that even organizations of public officials that are not registered may engage in the collective bargaining process. The report of the Advisory Board on the Public Service Personnel System indicated in 1973 that, when an unregistered organization of public employees requests the authorities to bargain, the authorities may not reject the request if there are no reasonable grounds for doing so.

Public employees in the operational sector have the right to collective bargaining, through which they may conclude collective agreements.

At the local level, the pay and conditions of employment of public employees are subject to the budgetary authority of local assemblies. Local governments have to take appropriate measures to ensure that pay and other working conditions are adapted to the prevailing social conditions and that salaries are determined taking into account the cost of living, pay and working conditions of national public employees, other local public bodies and the private sector.

Independent and neutral local staff committees fulfil the same functions at the local level as the National Personnel Authority at the national level. Prior to the review of pay in accordance with the ordinance issued by the local assembly, these committees make recommendations with a view to ensuring that wage scales are adapted to the prevailing social conditions.

Unions representing office and administrative employees may negotiate fundamental terms and conditions of employment, which are the subject of a written agreement. However, these agreements are not binding, as they are not recognized in law.

Moreover, the scope of collective bargaining is limited, as it excludes issues relating to administration and management, although conditions of work which could be affected by administrative or managerial measures are subject to negotiation.

Since 1997, a constantly increasing number of agreements have only been partially applied or not applied at all due to the decisions of local authorities not to take these agreements into account in view of economic and social circumstances or a critical budgetary situation. The Supreme Court has considered that even where a pay review is not undertaken in accordance with a recommendation of the competent staff committee, this must not be interpreted as meaning that the staff committee is not fulfilling its compensatory functions where this situation is due to inevitable reasons relating to the budgetary situation.

Public enterprises

The right to collective bargaining is guaranteed for the employees of national public enterprises and Independent Administrative Institutions, including the right to conclude collective agreements.

Under the terms of the Local Public Enterprise Labour Relations Law (article 8), the issues covered by collective bargaining include: (1) pay, working time, rest periods, leave; (2) promotions, transfers, dismissals, seniority and disciplinary measures; (3) occupational safety, health and accidents; and (4) other working conditions. Problems relating to the administration and management of public enterprises are excluded from collective bargaining.

Following the privatization of the postal services, around 60 per cent of the employees who were in the national public service in 2001 will have the right to conclude collective agreements.

In the health sector, in its meetings with directors of institutions, the Ministry has given instructions to promote collective bargaining in accordance with the legislation and the "bargaining procedures" agreed upon between the Ministry of Health and the National Hospital Workers' Union. As of 1 April 2004, national hospitals and care homes (154 establishments employing over 40,000 employees), with the exception of highly specialized medical centres, became specified Independent Administrative Institutions and are now therefore governed by the labour relations law applicable to this sector. By virtue of the Law issuing general rules for specified Independent Administrative Institutions, the issues of pay, hours of work and other working conditions are determined by the establishments. An agreement has been concluded on the methods and procedures for collective bargaining between the National Hospital Organization and the National Hospital Workers' Union. During the course of 2004, collective bargaining between hospitals and branches of the National Hospital Workers' Union were held on 88 occasions in 77 different hospitals. At the national level, 18 meetings for the purpose of collective bargaining were organized between the National Hospital Organization and the National Hospital Workers' Union.

Strikes

Strikes by employees in the national and local public service and in public enterprises are prohibited and appropriate disciplinary measures are applied under the terms of the law to those who participate in a strike despite this prohibition. Furthermore, the act of inciting other public employees to commit an illegal act is punishable by penal sanctions, including a sentence of imprisonment which, under the terms of the National Public Service Law and the Local Public Service Law, may not exceed three years or a maximum fine of ¥100,000. Over the past 20 years, no sentences of imprisonment have been imposed for participation in strikes.

Employees in non-specified Independent Administrative Institutions enjoy the right to strike, in the same way as employees of national universities, which have now become companies.

In public services that have been privatized (electricity, railways, telecommunications, water, and soon the postal services), the right to strike may be exercised subject to the provision of ten days' strike notice.

New Zealand

Principal characteristics of the public sector

Following a significant decline in the 1990s, related to the policy pursued by the Conservative government, the level of employment in the public sector once again started to rise from the beginning of the new millennium.

At the end of 2005, a total of 328,080 positions were filled in the public sector, or 18.9 per cent of total employment in the country (with around 42 000 in the Public Service Departments). This number rose by 3.2 per cent in 2005 and has increased by 19 per cent since December 2000. [13]

The public sector is composed of the State sector and local government. It includes the Public Service Departments, which are composed essentially of ministerial departments and a number of agencies, such as Archives New Zealand, the Customs Service, the Commission of State Services, Statistics New Zealand and the National Library, as well as the crown entities and enterprises which operate in various sectors, such as electricity, railways, meteorology, postal services, aeronautics, etc.

At the beginning of the 1980s, the Government owned an important segment of the economic infrastructure, including banks, post and telecommunications, electricity, a maritime company, transport, etc. It was decided as a first stage to "corporatize" these activities, that is to attribute to crown enterprises manifestly commercial objectives and then to sell off part of them to the private sector.

A significant programme of reforms was introduced for the crown services, under the aegis of "Development Goals", the principal aim of which was to introduce a system of professional State services serving the government and meeting the needs of New Zealanders.

The Commission of State Services is the Government's lead adviser on the public management system and works with government agencies to support the delivery of quality services to the population. The Commission on State Services is one of three central agencies, with the Department of the Prime Minister and the Cabinet and the Treasury, responsible for providing leadership, coordination and monitoring across the entire public sector.

Legislation applicable to labour relations

State employees are governed by the State Sector Act adopted in 1988. The Crown Entities Act, 2004, extended the mandate of the Commission of State Services to these bodies, at least on certain issues. The Employment Relations Act of 2000, as amended in 2004, is general in scope and therefore covers the public sector.

Trade union rights

Workers in both the public and the private sector have the right to establish and join organizations of their own choosing. However, the law prohibits uniformed members of the armed services from the right to organize. Union membership is voluntary and no one may be required to become a member of a union or an unregistered workers' organization

[13] Source: Public Service Association, 2005.

(such as a staff association). In order to benefit from the rights granted to them by law, unions have to be registered. In the first place, they have to be registered as societies, and then they have to submit an application to the Registrar of Unions to be registered as a union. They have to fulfil two requirements: their rules have to be democratic and they have to be able to demonstrate that they are independent of any employer (sections 13 and 14 of the Employment Relations Act).

Consultations

The Partnership for Quality Agreement signed in 2000 between the Government and the principal union in the public sector, the Public Service Association (PSA), [14] established an institution, the Public Service Tripartite Forum, composed of the Minister of State Services, the State Services Commissioner, several chief executives of State administrations and bodies, and the PSA. The functions of the Forum are more consultative than executive and it meets regularly (every six to eight weeks) to advise the Minister on the progress achieved in implementing partnership approaches in the various bodies and administrations. The Forum also gives its views on other issues relating to the public sector, including remuneration systems and structures. Partnership forums have also been established in various bodies and agencies through agreements between the union and the management at both the national and local levels, for example in the health sector.

With regard more specifically to remuneration, the State Services Commission, the Treasury and the PSA have established a system for the identification of wage claims and priorities in the public service. The system includes two phases. The first consists of compiling and analysing, through a process involving ministers, departments and unions, data on wage demands and constraints, while the second consists of setting priorities within these data. These general data are therefore applied at the level of each department in the context of the budget preparation.

Collective bargaining

The object of the Employment Relations Act adopted in 2000 is to build productive employment relationships by improving trust and confidence between employers and employees, promoting collective bargaining procedures in which workers choose the union which represents them, while also providing that individuals may negotiate their own salaries and conditions of employment individually when they choose not to be members of a union.

Bargaining is based on the principle of good faith (sections 32 and 33 of the Employment Relations Act). It applies to all of the partners (unions, employers and employees) and brings with it certain consequences, such as the need for the parties to meet from time to time and to respond to proposals made by each other. However, the parties are not under the obligation to reach an agreement.

Collective agreements may cover one or more employers. For example, in the health sector, priority has been given to multi-employer collective agreements at the regional level. This is a type of negotiation that the Public Service Association (PSA) would like to develop in other sectors, such as education, transport and justice.

[14] According to the most recent statistics (June 2006), 60 per cent of employees in the public service were unionized and 76 per cent of the latter were members of the PSA.

With the emergence of the Partnership for Quality and the agreement concluded for this purpose between the competent authorities and the PSA, the traditional model of collective agreements which were confined to determining working conditions and remuneration has developed towards a new model encompassing a broader perspective with a view to improving work and management and achieving better results and services provided to the population.

The PSA nevertheless complains that, despite this new context, many employers in the public service are not willing to negotiate issues relating to remuneration both in terms of pay levels and the definition of remuneration systems. It calls in this respect for the Public Service Departments to be treated in the same way as other components of the public sector, such as health and education, where these matters are freely negotiated.

In practice, according to State Services Commission data, [15] there was little change in the data relating to the coverage of collective bargaining in the public service over the five years following the adoption of the Employment Relations Act. In 2000, some 48 per cent of employees in the public service were covered by collective agreements, 9.4 per cent were covered by collective agreements which had expired and 42.6 per cent were covered individual contracts. In June 2005, these figures were 49 per cent, 6 per cent and 45 per cent, respectively. It was only in 2006 that the proportion covered by collective bargaining increased significantly, rising to 56 per cent.

Labour disputes

The new institutions established by the Employment Relations Act promote the resolution of problems in an informal manner and at the appropriate level as soon as possible after a dispute arises. A mediation service has been established in the Department of Labour. Employers and employees may contact mediators for assistance whenever they feel the need. The intervention of mediators may range from mere consultation to the provision of assistance to the two parties to negotiate an agreement.

The Act also establishes an Employment Relations Authority, which can hear problems that have not been resolved through mediation in a rapid, informal and non-conflictual manner.

The Employment Court hears and determines matters referred to it by the Employment Relations Authority or appeals against awards made by the Authority.

Strikes

The Employment Relations Act recognizes the right to strike and lockout. Nevertheless, the Act contains provisions limiting the situations and periods when strikes and lockouts can lawfully take place. They must be called in support of bargaining for a collective agreement (covering one or more employers) and when at least 40 days have passed since the bargaining was initiated (section 86 of the Employment Relations Act). Participation in a strike or lockout is also lawful where one of the parties believes that it is justified on the grounds of safety and health (section 84). Where the industrial action concerns a workplace in an essential service included in the list of essential services (section 90 and Schedule 1 of the Act), 28 days' notice has to be given. When the notice has been received, the chief executive of the body or agency concerned must ensure that

[15] State Services Commission: *Yearly Human Resources Capability Survey of Public Service Departments and Selected State Organisations*, June 2000, June 2005 and June 2006.

mediation services are provided as soon as possible to avoid the need for the strike or lockout (section 92).

Where there is a strike, the employer may suspend non-striking employees where it is not possible to provide the work normally performed by them as a result of the strike (section 88).

An employer may also, when the employees concerned agree to perform the work, use persons already employed by the employer to perform the work of striking employees. An employer may also employ another person to perform the work if there are reasonable grounds for believing that it is necessary for the work to be performed for reasons of safety or health (section 97). This is the case, for example, of strikes in the hospital sector.

Statistics compiled in recent years show a significant increase in strikes in the health sector. In 2006, a total of 11,562 workdays were lost in the sector due to strikes compared with only 1,750 in 2000. [16] This increase would appear to be confirmed over the first few months of 2007.

Philippines

Principal characteristics of the public sector

The statistical data available for recent years show a slight, although not constant rise in the number of persons employed in the public sector, as shown by the following table (in thousands of persons).

	2006	2005	2004
Public administration, defence, compulsory social security	1 513	1 481	1 491
Education	1 012	978	938
Health and social services	364	375	361

Source: Bureau of Labor and Employment Statistics, Department of Labor and Employment.

The civil service in the Philippines includes government branches, subdivisions and instrumentalities, including government-owned or controlled corporations with original charters. Local government units, such as provinces, municipalities and barangays, which are subdivisions of the State, are also part of the State system. Positions in the civil service are classified as “competitive” or “non-competitive”.

The public service is managed by a body established by the National Constitution of 1987, the Civil Service Commission (CSC), which is the central personnel agency of the Government. In the context of a programme for the renovation of the public service launched in 1994 with a view to satisfying citizens-clients, the CSC introduced a number of innovations and projects with a view to improving the services provided to the population.

[16] Source: Statistics New Zealand.

Legislation applicable to labour relations

The civil service is governed by the Administrative Code (Executive Order No. 292) and the Civil Service Act (Republic Act No. 2260), which when it was enacted in 1959 constituted the first complete legislation on the public administration in the Philippines. It was supplemented by the Civil Service Decree of the Philippines (Presidential Decree No. 807 of 1975), which also covers the Civil Service Commission. Employees in the public health sector are covered by a Magna Carta of Public Health Workers (Republic Act No. 7305 of 1992).

Trade union rights

The right to organize of public employees is recognized in three separate articles of the National Constitution. Article III, the Bill of Rights, recognizes in section 8 the right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to the law. Article IX-B on Constitutional Commissions provides in section 2(5) that the right to self-organization shall not be denied to government employees and Article XIII on Social Justice and Human Rights guarantees the rights of all workers to self-organization. In addition to this constitutional recognition, the Administrative Code provides (Chapter 6, section 38) that all government employees can form, join or assist employees' organizations of their own choosing for the furtherance and protection of their interests. They can also form, in conjunction with appropriate government authorities, labour-management committees, work councils and other forms of workers' participation schemes to achieve the same objectives.

Executive Order No. 180 provides guidelines for the exercise of the right to organize of government employees. High-level employees whose functions are normally considered as policy-making or managerial or whose duties are of a highly confidential nature may not join unions of rank-and-file employees. The same applies to employees engaged in security-related activities, such as members of the armed forces, the police, firefighters and prison guards. These employees may however form their own associations, which have to be registered with the Security Commission.

Registration results in the official existence of unions, which allows them to benefit from the rights and privileges accorded by Executive Order No. 180. Registration is carried out jointly by the Bureau of Labour Relations of the Department of Labor and Employment and the Civil Service Commission. For an application for registration to be valid, it had to be signed by at least 10 per cent of the employees in the organizational unit that the union is seeking to represent, a figure that was raised to 30 per cent in 2004. The Civil Service Commission has promoted the registration of public employees' unions with a view to the development of responsible unionism. It was after the return of democracy in 1996 that unionism started to be consolidated, particularly to defend the security of employment that public employees feared was threatened in the context of the reorganization of the public service. Nevertheless, the trade union movement is still in a minority. In November 2006, there were 1,531 unions in the public sector, with 291,343 members, or a little over 19 per cent of the total employees in the public service.

Consultations

As the scope of collective bargaining is limited, public employees' unions nevertheless have the possibility to make proposals to the authorities on issues that are not covered by bargaining with a view to improving terms and conditions of employment. In the health sector, it is explicitly provided in the Magna Carta of Public Health Workers that health workers' organizations shall be consulted on the formulation of national policies

governing their social security. Consultative councils of health workers have been established at the national, regional and local levels.

Collective bargaining

Recognized in the Constitution (Article XIII, section 3), the right to collective bargaining also applies to the public service, although it is subject to a number of restrictions related in particular to the legislative and budgetary powers of the State.

When a union has been registered, where it has the support of the majority of the employees in the unit that it covers, it may apply for accreditation by the Civil Service Commission as the sole and exclusive agent for the negotiation of terms and conditions of employment, except those that are fixed by law. To be accredited, the union has to file a petition for accreditation signed by the majority of the employees of the negotiating unit and certification from the Bureau of Labor Relations that the organization seeking accreditation is the only registered organization in the negotiating unit and that no other employees' organization is seeking registration. Where more than one organization is registered in a particular unit and claims to represent the majority of employees, each of the organizations concerned or the management may file a petition with the Bureau of Labour Relations for a certification election.

The status of an accredited employees' organization union may be challenged one year after accreditation where it has not maintained the support of the majority of employees concerned or if it has failed to submit a proposal for a Collective National Agreement (CNA) leading to the conclusion of an agreement within two years following accreditation.

The terms and conditions of employment may be negotiated and agreed upon between the management of the accredited union in the form of a CNA of a maximum duration of three years, except where they are fixed by law. Negotiable matters include the schedule of vacations, the assignment of pregnant women, protection and safety, facilities for persons with disabilities, first aid medical services, medical examinations and recreational, social, athletic and cultural activities. However, the negotiable matters do not include those which require the allocation of funds or which are covered by management prerogatives. These include salaries, allowances, pensions, travel expenses and appointments, promotions, transfers, reclassifications and disciplinary penalties.

Once a CNA has been concluded, it has to be submitted for ratification by the employees concerned and has to be approved by a majority of them. Finally, it is filed for registration by the Civil Service Commission, which issues a certificate of registration of the Agreement.

The following table shows the number of organizations registered and accredited and the number of agreements concluded in the four sectors of the public service (national, local, government corporations and State universities and colleges) since 1987, the date of the adoption of the Constitution and Executive Order No. 180, implementing the right to organize in the public sector.

Year	Reg.	Acc.	CNA	Reg.	Acc.	CNA	Reg.	Acc.	CNA	Reg.	Acc.	CNA	Reg.	Acc.	CNA
	National			Local			Government corporation			State universities and colleges			Total		
1987	8						16			5			29	0	0
1988	16			11			15	1		8			50	1	0
1989	19	8		23	4		9	4		6	2		57	18	0
1990	20	9		16	6		5	2		9	3		50	20	0
1991	20	7		14	3		7	4		5	1		46	15	0
1992	31	6		10	2		9	1		8			58	9	0
1993	26	4	1	9	5		7	5		6			48	14	1
1994	19	11		12	5		9	5	1		3		40	24	1
1995	17	10		18	4		10	7		7	7		52	28	0
1996	16	10	1	14	2	1	6	6	1	5		1	41	18	4
1997	11	5		15	6		9	7		2	2		37	20	0
1998	26	8	3	19	7	1	8	6		8	3		61	24	4
1999	28	6	1	17	7	1	1	3	1	18	6		64	22	3
2000	19	16	1	23	6	3	7	3	2	18	5	2	67	30	8
2001	87	23	9	125	24	7	17	5	8	26	4	1	255	56	25
2002	84	27	14	77	37	7	15	3	5	30	12	4	206	79	30
2003	57	9	5	58	27	5	7	4	4	12	12	4	134	52	18
2004	45	7	5	36	29	3	8	8	4	9	10	4	98	54	16
2005	10	7	5	19	14	7	4	2	1	2	1	3	35	24	16
Total	559	173	45	516	188	35	169	76	27	184	71	19	1 428	508	126

Source: Civil Service Commission, www.csc.gov.ph/unionism.

Settlement of disputes

The Civil Service Commission can supply conciliation, mediation and arbitration services to prevent and resolve disputes between employees and management. These services are provided upon request of the management or employees' organization, or in any situation which requires immediate intervention to protect the public interest.

There is also a Public Sector Labor Management Council (PSLMC) composed of the Chairman of the Civil Service Commission (Chairman), the Secretary of Labor (Vice-Chairman) and the Secretaries of Justice, Finance and Budget and Management. In addition, the elected representatives of the four sectors of the public service sit on the Council. The PSLMC has exclusive jurisdiction over disputes which arise in collective negotiations or where a deadlock results from negotiation, and over questions resulting from the interpretation of collective negotiation agreements (CNAs), disputes arising from unfair labour practices committed by the employer or management or the employees' organization, and the determination of whether a mass action amounts to a strike. The Council exercises jurisdiction where the following requisites are present: there is a dispute; it remains unresolved; all available remedies under existing laws, rules and procedures have been exhausted; either or both of the parties have referred the dispute to the Council; and the Civil Service Commission Personnel Relations Office has certified that the dispute remains unresolved or irreconcilable.

Strikes

The National Constitution (Article XIII, section 3) guarantees the right of public employees to peaceful concerted activities, which include dialogue, formal and informal petitions, peaceful assembly short of strike action and the wearing of ribbons and badges. However, they are prohibited from the right to strike, as confirmed on several occasions by the Supreme Court (see, for example, rulings G.R. Nos 95445 and 95590 concerning teaching and 175 SCRA 686 concerning employees in the social security system).

In addition to the prohibition of strikes in the public sector, including in Government owned or controlled corporations with original charters, the Secretary of Labor and Employment, under section 263(g) of the Labour Code, may decide to refer a dispute to the National Labour Relations Commission for compulsory arbitration when, in his opinion, there exists a labour dispute causing or likely to cause a strike or lock-out in an industry indispensable to the national interest. Recourse to a strike or lock-out can accordingly be prevented or, where the action has already commenced, the employees or the employer are under the obligation to resume operations.

Senegal

Principal characteristics of the public sector

In recent years, the Government has engaged in the massive recruitment of public employees (15,000 in three waves of 5,000 since 2003), which resulted in an increase in numbers of 6.39 per cent in 2004, when the total number of public employees was 71,694 (or 2.8 per cent of employed active workers), compared with 67,114 in 2003 and 65,650 in 2002. [17]

In 1996, a major reform was launched with a view to undertaking a significant decentralization of administrative structures. In this context, a new territorial community structure was created – the region. The management of administrative structures was accordingly transferred in part to the level of the territories. In particular, the social services, including health and education, have gradually been transferred to the regional and local authorities.

In parallel, Senegal, which had one of the most developed public sectors in Africa, commenced in 1987, and accelerated in 1995, a programme of denationalization which progressively disengaged the State from the para-public sector through the total or partial sale of shares or assets to the private sector. The enterprises concerned covered the principal agricultural, industrial and commercial sectors in the country, such as oilseed, cotton, electricity and tourism.

Legislation applicable to labour relations

Public employees are governed by the General Conditions of Service of the Public Service (Act No. 61-33 of 15 June 1961). The General Conditions of Service cover employees who, appointed to a permanent position, have been titularized at a grade in the administrative personnel. The General Conditions of Service do not apply to magistrates or

[17] Agence nationale de la statistique et de la démographie, *Situation économique et sociale du Sénégal*, 2005 edition.

members of the armed forces. The public service is therefore based on a pre-established career system structured by conditions of service and regulations.

There is also a Code respecting territorial communities which governs the regions, communes and rural communities (Act No. 96-06 of 22 March 1996). The Ministry responsible for local communities makes available to territorial communities the officials and other employees that they need. These detached officials continue to be governed by the conditions of service of their original service, while other local community employees are covered by the Labour Code.

State personnel hired on a contractual basis are also covered by the Labour Code, although in addition they are governed by Decree No. 74-347 of 12 April 1974, as amended, establishing the special regime applicable to public employees who are not public officials. Special provisions have been adopted for teachers (Decree No. 2004-1650 for contractual secondary school teachers and Decree No. 99-908 for primary school teachers).

Trade union rights

Under the terms of Article 25 of the National Constitution, adopted on 7 January 2001, the right to establish trade union associations is recognized for all workers. It is specifically recognized for public employees by the General Conditions of Service of the Public Service. In particular, organizations of public employees may appeal against regulations affecting the conditions of service of staff and against individual decisions that are prejudicial to the collective interests of public employees (section 7 of the Conditions of Service).

Consultations

Various bodies may be consulted in the context of the formulation of economic and social policy, including the Council of the Republic on economic and social matters. The Council is competent in the fields of economic, social, cultural and institutional development and it has to be consulted for its opinion on draft programme laws of an economic and social nature. The National Social Dialogue Committee has also been created as a tripartite body covering the public, para-public and private sectors. The National Social Dialogue Committee is responsible for examining general conditions of employment, among which those respecting wages, labour productivity and social protection may be modified in relation to model economic indicators.

More specifically, there is a joint body for the public service, namely the Higher Council of the Public Service, in which State employees may be associated in the development of staff rules and policy and their implementation through their trade union representatives. Based on the French administrative model, there are also joint administrative commissions covering the individual careers of employees and joint technical committees with the principal responsibility of contributing to the practical improvement of working conditions. However, all these bodies are limited to issuing opinions that are not in any way binding on the administrative authority, which exercises the power of decision.

National consultation and dialogue may be organized for a specific sector, as in the case of public health in 2007 following the signature of a protocol agreement between the Government and the unions.

Collective bargaining

On 22 November 2002, the National Charter for Social Dialogue was concluded for a maximum period of five years and applies to the public, para-public and private sectors. It covers employers within the meaning of the Labour Code and the General Conditions of Service of the Public Service. Signed by the representatives of the State, employers' organizations and trade unions, it is intended to strengthen social dialogue machinery (collective bargaining, conciliation and consultations in a bipartite or tripartite context) so that negotiations can be held with the full participation of the State, in its capacity as both employer and the guarantor of the general interest. The Charter also establishes the permanent machinery for social dialogue, namely the National Social Dialogue Committee.

Within this framework, protocol agreements have been signed between the Government and the unions, among others in the education sector: agreement of April 2005 on teaching and research allowances, concluded by the Ministers of Education, the Public Service, Labour, Employment and Occupational Organizations, and of the Budget, on the one hand, and 14 teachers' unions grouped together in a federation, on the other. Another agreement was concluded by the Government and two teachers' unions, also in April 2005, on teachers employed under contract. In the health sector, a protocol agreement was concluded between the Government and the unions on 2 May 2007 covering, among other matters, the payment of benefits for a total amount of 2 billion CFA francs and the recruitment of personnel.

Although progress has therefore been achieved in collective bargaining in the public sector, it is nevertheless subject to significant limitations related to the powers of the Council of Ministers and the Parliament in the determination of remuneration (for example, in setting the value of the index point).

Labour disputes

The National Social Dialogue Committee has several functions related to the settlement of labour disputes. It has to promote dispute prevention through the implementation of an alarm mechanism based on preventive bargaining. It also has to ensure compliance with the National Charter for Social Dialogue concluded in 2002 for the implementation of collective bargaining, mediation and arbitration machinery and it examines all disputes arising out of the application of the Charter.

It may also refer issues to the Council of the Republic in relation to economic and social matters for the purposes of mediation or the proposal of solutions in the event of social disputes.

Strikes

Article 25(4) of the National Constitution recognizes the right to strike, which has to be exercised in accordance with the laws governing it and may not jeopardize the freedom to work nor endanger the enterprise. The General Conditions of Service of the Public Service also recognize the right to strike of public employees, with the exception of public officials covered by specific conditions of service which deny them this right. This is the case, for example, of employees of the national parks, of the statistical services, the police, the customs, civil administrators (high-level officials), magistrates and inspectors-general.

Public employees may not engage in collective work stoppages until the expiry of a period of one month following the provision to the competent authority by the representative organization(s) of written notice indicating the reasons and duration of the

planned strike. In no case may the exercise of the right to strike be accompanied by the occupation of the workplace or its immediate surroundings, subject to disciplinary and penal sanctions.

The right to requisition workers is a recognized prerogative of the administration which may, where necessary, requisition employees of private enterprises and public establishments engaged in activities that are indispensable for the continuity or maintenance of public order, the security of property and persons and the satisfaction of any need in the public interest. The right of requisitioning is set out in section 7 of the General Conditions of Service of the Public Service and section L276 of the Labour Code, which provides that "the competent administrative authority may at any time proceed to requisition such workers in private enterprises and public services and establishments who are engaged in positions that are indispensable for the continuity of public services and the satisfaction of the essential needs of the nation." Requisition measures may also be taken in the general administration and in local communities, as well as in such varied sectors as telecommunications, urban transport, railways, aviation, ports, postal services, radio and television and electricity.

In practice, strikes do occur in the public sector, and particularly in education. Important strikes were called in 1998 during the privatization of the National Electricity Company, particularly as the Privatization Act did not comply with a protocol agreement concluded in 1997 between the Government and the unions providing that a minimum of 51 per cent of the capital was to be retained by the State. [18] Subsequently, an agreement concluded between the management of the company and the unions provided for the reinstatement of workers dismissed during the strike or the payment of compensation for those who did not wish to be reinstated. [19]

Very recently, in April 2007, the unions organized 72-hour strikes spread over a period of three weeks to call for compliance with the agreements concluded in 2003 and 2006 and to protest against the failure to provide financial assistance for housing and to pay a research and documentation allowance at all levels in the education sector. Negotiations have been opened with the Government on these claims.

South Africa

Principal characteristics of the public sector

At the end of March 2006, the public service employed 1,045,412 persons (excluding the armed forces), compared with 1,043,698 at the end of 2004. The size of the public service is almost constant, with only around 1 per cent variation over the past five years. Some 62 per cent of public employees are in the social services sector (health, social development and education) and 20 per cent in justice. The public administration is the largest employer in the country, with around 20 per cent of the workforce in the formal economy, and some 10 per cent of all jobs. [20]

[18] See, in this respect, Committee on Freedom of Association, 318th Report, Case No. 1994, paras 431–462.

[19] 324th Report, Case No. 1994, paras 83 and 84.

[20] Source: Public Service Commission, *State of the Public Service Report 2007*.

Provincial administrations are responsible for managing the careers of the employees in their administrations within the context of the uniform standards applicable to the public service.

At the end of the 1990s, the Government launched a vast reform of the public service based on the "Batho Pele" (People First) principles. This restructuring of the public sector, accompanied by wage conflict, privatization programmes and threats to the employment of public service employees, gave rise to important strikes in 1999. Finally, the restructuring of the public service led to the conclusion of a framework agreement between the Government and the trade unions in the context of the Public Service Co-ordinating Bargaining Council (resolution No. 7 of 2002).

In May 2006, the Government approved recommendations for the development of a single public service which would merge the three separate and independent administrative levels (national, provincial and local). However, the unions are still reticent concerning this integration.

Since the instauration of democracy, the Government has established public entities to allow flexibility in terms and conditions of service and operational autonomy.

An independent Public Service Commission, which is accountable to the National Assembly and, in respect of its activities in a province, to the legislative assembly of that province, is entrusted with the maintenance of an effective and efficient public administration and a high standard of professional ethics in the public service. In particular, it advises national and provincial organs of the State regarding practices in the public sector.

State-owned enterprises mainly operate in key sectors of the economy, such as telecommunications, energy, military supplies and transport. Important privatization programmes have been carried out, mainly at the municipal level, in services such as water and electricity.

Legislation applicable to labour relations

The Public Service Act, 1994, covers persons employed in the public service and regulates their terms and conditions of service. The Act applies to national departments and provincial administrations, but excludes education, the police (who are covered by specific legislation), [21] municipalities and public and para-public agencies.

The Labour Relations Act (No. 66 of 1995), as amended, applies to workers in both the private and the public sectors. Part D of the Act is specifically devoted to Bargaining Councils in the Public Service.

Trade union rights

The National Constitution (Act No. 108 of 1996), in section 23, recognizes the right of everyone to form and join a trade union, with the exception of persons employed in the National Intelligence Agency and the Secret Service. This right, together with the right to form a federation of trade unions, is developed in greater detail in the Labour Relations Act (section 4). The High Court has found that members of the National Defence Force

[21] The Employment of Educators Act and the South African Police Services Act.

have the right to join a trade union, even though they are not covered by the Labour Relations Act.

There is a high level of unionization in the public service (90 per cent of public employees are members of organizations participating in collective bargaining processes), which may explain the conclusion of an agency shop agreement between the unions and the administration. Another characteristic of unionization is the high level of multiple union membership, as over 20 per cent of public employees are members of more than one union. This is probably related to the recent emergence of organizations offering individual services, which have found their place alongside the traditional organizations with stronger ideological and political traditions.

Consultations

In 1994, the National Economic Development and Labour Council (NEDLAC) was established as a body competent in economic and labour matters and composed, among others, of representatives of employers' and workers' organizations and of the State. NEDLAC provides its opinion to Parliament on draft legislation relating to matters on which it is competent. For example, in 2007 a working group set up by NEDLAC has been examining Government plans for the unification of the public service with a view to resolving the problems that this reform causes for the unions.

With regard more specifically to the public service, the system established by the Labour Relations Act is more a system of bargaining than of consultation. However, on the basis of a framework agreement concluded in 2002 between the Government and the unions, joint ministerial and inter-ministerial structures have been established at the national and provincial levels to address questions related to the transformation and restructuring of the public service.

Collective bargaining

In contrast with the bargaining councils in the private sector, which are the outcome of a voluntary process, the Labour Relations Act (section 35) establishes the Public Service Co-ordinating Bargaining Council (PSCBC) for the public service as a whole. [22] The PSCBC may perform all the functions of a bargaining council as envisaged in the law in respect of those matters that are regulated by uniform rules, norms and standards that apply across the public service, or terms and conditions of service that apply to two or more sectors.

The representatives of the State as the employer in the PSCBC, who are 35 in number, are lead by the Chief Negotiator of the Department of Public Service and Administration (DPSA). The Chief Negotiator receives a mandate from a committee bringing together the Ministers heading the most important departments and the Government then continues to control the bargaining process. The representatives of provincial administrations are members of the labour relations forum, which is regularly convened by the Chief Negotiator to prepare for collective bargaining. However, the Parliament does not intervene directly in the bargaining procedure.

With regard to the representation of employees, the constitution of the PSCBC sets a minimum threshold requirement of 50,000 members (or around 5 per cent of the total

[22] On the history of social dialogue in the public service in South Africa and the functioning of the PSCBC, see Shamira Huluman: *The practice of social dialogue in the South African public service*, PSCBC, 2005.

employees in the public service) to be represented, which allows eight union organizations or groups of organizations to sit on the PSCBC.

Since its establishment in October 1997, the PSCBC has played an important role in the restructuring of the public service and the elimination of the discrimination that originated under the Apartheid regime. In total, it has adopted 80 resolutions corresponding to the agreements concluded. These agreements cover such varied subjects as wages, pensions, training, housing, medical assistance, disciplinary and appeal procedures and, for example, the establishment of an agency shop system. The importance of the subjects covered in these resolutions, which are applicable to the public service as a whole, reinforce the centralized nature of bargaining by limiting the competence of sectoral and provincial bargaining councils.

Nevertheless, the Labour Relations Act provides that bargaining councils have to be established for sectors designated in the public service (section 37). These sectors are designated by the PSCBC, which may also amalgamate or disestablish bargaining councils. If the parties in the sector cannot agree to a constitution for the bargaining council for a designated sector, the Registrar has to determine its constitution. A bargaining council has exclusive jurisdiction in respect of matters that are specific to that sector and in respect of which the State as employer has the requisite authority to conclude collective agreements. Any jurisdictional dispute between bargaining councils, at the request of either of the parties, is referred to the Commission for Conciliation, Mediation and Arbitration for settlement by conciliation, or possibly arbitration.

A bargaining council may monitor and enforce compliance with its collective agreements or a collective agreement concluded by the parties to the council (section 33A).

Collective agreements have to provide for a procedure of conciliation and then arbitration to resolve any dispute about their interpretation or application (section 24). There are four sectoral bargaining councils in the public sector: the Education Labour Relations Council (covering 350,000 persons employed under the terms of the Employment of Educators Act), the General Public Service Sectoral Bargaining Council (covering 250,000 employees who are not covered by a specific bargaining council, including civilian personnel in the National Defence Force and non-teaching staff in the education services), the Public Health and Welfare Sectoral Bargaining Council (240,000 employees in national and regional health and welfare departments) and the Safety and Security Sectoral Bargaining Council (covering the police and the corresponding ministry, or 125,000 employees). There is a specific council for local government.

The provincial chambers of the PSCBC act as bargaining councils (36 in total) for matters for which the provinces are competent. However, taking into account the centralized nature of bargaining, agreements concluded in the provincial chambers have to be approved by the PSCBC.

More generally, the State may be a party to any bargaining council if it is an employer in the sector in respect of which it is established. In this case, any reference to a registered employers' organization includes a reference to the State as a party (section 27). This provision allows the State to participate in bargaining in sectors in which it is a party through public enterprises.

Labour disputes

In 1998, the PSCBC adopted its own system for the resolution of individual and collective labour disputes in a collective agreement that was subsequently amended in 2002. Collective disputes referred to the PSCBC mainly relate to the interpretation and application of collective agreements. An attempt has to be made to resolve the dispute

through conciliation within 30 days. However, no maximum period is set for the arbitration procedure. The bargaining council for the police has established a conciliation and arbitration procedure which is set in motion the same day with a view to achieving a rapid settlement to disputes.

Strikes

The right to strike is recognized in general terms by the National Constitution with a view to collective bargaining (section 23) for workers in the public and private sectors. Employers, including the State as the employer, have the corresponding recourse to lockouts.

However, these rights are limited if there is a self-limitation clause in the collective agreement in force or if the agreement envisages referral to arbitration, as well as in essential services or maintenance services.

The right to strike may be exercised if the issue in dispute has been referred to a bargaining council and remains unresolved after a period of 30 days, which may be extended by agreement between the parties. Seven days' notice of the commencement of the strike has to be given to the employer where the State is the employer.

If the strike is lawful, there is no breach of contract (section 67(2) of the Labour Relations Act).

The Minister of Labour, in consultation with the Minister for the Public Service and Administration, must establish an essential services committee composed of persons who have knowledge and experience of labour law and labour relations (section 70). [23] The functions of the committee are to conduct investigations as to whether or not the whole or part of any service is an essential service, and then to decide whether or not to designate it as such, and to determine disputes as to whether or not the whole or part of any service is an essential service. An essential service is defined as a service the interruption of which endangers the life, personal safety or health of the whole or any part of the nation. Two essential services are designated directly in the Act, namely the Parliamentary services and the police (section 71(10)).

The essential services committee may ratify any collective agreement that provides for the maintenance of minimum services in a service designated as an essential service.

In the event of a dispute in an essential service, the dispute may be referred to a council or to the Commission for Conciliation, Mediation and Arbitration (a tripartite commission chaired by an independent person), which has to attempt to resolve the dispute through conciliation. If the dispute remains unresolved, any party to the dispute may request that it be resolved through arbitration by the council or the Commission. Any arbitration award made in respect of the State and that has financial implications for the State becomes binding 14 days after the date of the award, unless a Minister has tabled the award in Parliament within that period, or 14 days after the date of tabling the award, unless Parliament has passed a resolution that the award is not binding. In this latter case, the dispute must be referred back to the Commission for further conciliation between the parties. If that fails, any party to the dispute may request the Commission to arbitrate. If Parliament is not in session on the expiry of the periods envisaged for the award to take effect, they will run from the beginning of the next session of Parliament.

[23] See Bobby Mgijima, *Best practice in social dialogue in public service emergency services in South Africa*, ILO, 1993.

Based on the provisions of the Labour Relations Act, the essential services committee has designated a number of services as being essential: municipal police services, municipal health services, municipal security services, water supply and distribution, the security services of the Department of Water Affairs and Forestry, electricity production, transmission and distribution, fire fighting, the payment of pensions after one month's delay, the operation of the courts and prison services, blood transfusion services, the computer services of the National Treasury (personnel, pensions, hospitals), as well as services provided by civilian personnel in support of the armed forces. Certain services supplied by the private sector, although financed by public funds, have also been designated as essential, particularly in the medical and paramedical sector. Furthermore, certain health services have been designated as essential in part.

Agreements determining the minimum services to be provided in these essential services have been concluded in sectoral bargaining councils.

Secondary strikes are authorized, provided that a certain number of conditions are met, including that the initial strike is lawful and that the nature and extent of the secondary strike is reasonable in relation to the possible direct or indirect effect that it may have on the primary employer (section 66).

Over and above the recognition of the right to strike with a view to collective bargaining, the Act establishes the right to take part in protest action to promote or defend the socio-economic interests of workers, except in essential services, provided that 14 days' notice is given (section 77).

The number of strikes in the public service has been relatively low over recent years and the industrial action organized on the occasion of wage negotiations in 1997, 1999 and 2004 only lasted a maximum of two days. Strikes were organized in municipal administrations in 2005 in support of wage claims. In contrast, the salary negotiations in 2007 appear to be giving rise to a severe dispute between the Government and the unions. An unlimited strike has been organized since 1 June 2007 by 19 unions, including those covering workers in essential services, such as nurses and the police.

Spain

Principal characteristics of the public sector

The public service

The structure of the public administration has undergone profound changes since the country returned to democracy in the 1970s. The most notable feature has been the regionalization of the country, which has resulted in the existence of three levels of government, each with its own administration: the State, the autonomous communities (regions) and local authorities. The transfer of power from the central to the regional level has been constant and has resulted in an important increase in the number of public employees at the regional level, with a consequent decrease in State employees at the central level. As of 30 June 2006, the number of employees of the central administration, including the armed forces, social security and public bodies with special status was 550,136 (22.4 per cent of the public service as a whole), while the administrations of the autonomous communities employed 1,227,708 persons (49.9 per cent of the total), local administrations employed 586,921 officials (23.8 per cent of the total) and the universities, which constitute a specific category of the administration, had 95 819 employees (3.9 per cent of the total).

During the course of the 1990s, changes have been made to the legal status of public enterprises, which have undergone an important process of privatization. A significant example in this respect is the State Post and Telegraph Company, which was added to the Commercial Register in 2001 and is therefore no longer included in the State public service. Nevertheless, its staff (54,252 employees as of 30 June 2006) is now divided into two categories: those who still benefit from the status of public employee and those who are governed by the general labour legislation.

Legislation applicable to labour relations

The public service employs two categories of personnel: public employees, who are covered by specific conditions of service, and non-statutory personnel, who are subject to the general labour legislation. Nevertheless, the latter, in the same way as statutory employees, are also governed by new Framework Conditions of Service for Public Employees adopted by Parliament on 29 March 2007. These Conditions of Service were developed on the basis of a preliminary expert report and an agreement concluded in March 2006 between the Ministry of Public Administration and two federations of public employees affiliated to the largest national confederations: the Workers' Commissions and the General Union of Workers. It covers all of the approximately 2,400,000 public employees at all levels of the administration. While founded on the constitutional principle that the general system of public employment is based on public employees, the Conditions of Service recognize and integrate the growing role played in all administrations by staff engaged under the terms of general labour law to perform specific tasks.

The Conditions of Service apply to the three administrative levels (State, autonomous communities and local authorities), to public bodies related to administrations and to public universities. The Framework Conditions of Service respect the fields in which the autonomous communities exercise legislative competence and the autonomy of local administrations. They establish flexible principles and guidance and therefore allow the competent bodies at each level to adopt decisions determining the structure of public employment in each administration. While setting a series of rules for all statutory employees, they also recognize the possibility for autonomous communities to determine specific elements adapted to their own needs.

Teachers and health-care personnel (the Framework Conditions of Service for Health Services Personnel of 14 December 2003) are governed by specific legislation issued by the State and the autonomous communities, as well as the Framework Conditions of Service for Public Employees. Public employees in the State Post and Telegraph Company are covered by the company's internal rules, which are supplemented by the Framework Conditions of Service.

Employees of public enterprises are covered by the general legislation, with the exception of those who, despite the change in the status of their enterprise, have remained public employees.

Trade union rights

The Constitution (Article 28(1)) recognizes the right of workers to organize, but explicitly provides that this right may be restricted or prohibited for members of the armed forces and institutions subject to military discipline and that special modalities for its exercise by public employees shall be determined by the law. In accordance with the Framework Act on trade unions of 1985, all workers have the right to organize freely,

whether they are covered by a labour contract or a statutory employment relationship in the service of public administrations. However, members of the armed forces, as well as judges, magistrates and public attorneys, are excluded from this right. Special provisions apply to the State police and, in certain cases, to the police forces of the autonomous communities, the members of which may only organize in specific organizations, which may not be affiliated with trade unions covering other sectors.

Consultations

In each electoral unit determined by the administration, in agreement with the trade union organizations, staff delegates and staff committees are elected for a period of four years, which may be renewed. Their functions include issuing reports at the request of the administration on total or partial relocation or on the revision of arrangements for the organization of work and working methods, providing their views on working time arrangements and on systems of holiday leave and collaborating with the administration to develop measures necessary for the maintenance or improvement of productivity.

Collective bargaining

Under the terms of the Framework Conditions of Service for Public Employees, persons employed by the administration have the right to collective bargaining, to representation and to institutional participation for the determination of their terms and conditions of employment. In this context, collective bargaining is understood as the right to negotiate for the determination of their terms and conditions of employment.

Collective bargaining for non-statutory public employees is governed by the labour legislation. However, collective bargaining of the terms and conditions of employment of public employees is covered by the Conditions of Service and is subject to the principles that it must be lawful, its outcomes are covered by the budget and that it is compulsory, undertaken in good faith and is in the public domain and is transparent. For this purpose, bargaining "tables" *(mesas)* are established consisting of representatives of the public administration, on the one hand, and those of the most representative unions, on the other (those with 10 per cent of the staff representatives in the field covered by the bargaining table). In particular, a general bargaining "table" is established for the general State administration, for each autonomous community and for each local authority. The functions of these general bargaining tables are to negotiate the common terms and conditions of employment of the public employees whom they cover. With the agreement of these general bargaining tables, sectoral tables may be established to cover the specific terms and conditions of employment in a particular sector.

At all these bargaining tables, each party is obliged to negotiate in good faith and to provide the information required for bargaining. For a bargaining table to be validly constituted, the participating trade unions have to represent as a minimum the majority of the members of the representative bodies in each field. Trade union representation is reviewed every two years on the basis of the certificates issued by the Office of the Public Registrar.

In the general bargaining tables, compulsory subjects for negotiation include the implementation of pay increases for the staff, as determined by the Budget Act, the determination of supplementary compensation, the rules setting out general criteria governing access to employment, careers, job classification and human resources planning, the rules establishing the general criteria and procedures for job appraisal, supplementary social benefit plans, general criteria for the determination of social benefits and pensions, proposals relating to trade union rights and participation, general criteria for social action, the prevention of occupational risks, working conditions and remuneration requiring

provisions with the rank of law, general criteria relating to vacancies, working time arrangements, schedules, working hours, holidays, functional and geographical mobility and the strategic planning of human resources (insofar as the working conditions of public employees are affected).

With regard to the remuneration of personnel, increases are limited to the general increase for the overall payroll set by the general State budget. In practice, through its budgetary laws, the State maintains the competence in the new Conditions of Service to exercise control over staff costs, which are an essential component of public expenditure. This approach is in conformity with the long-standing case law of the Constitutional Court. Nevertheless, these rules do not prevent greater autonomy in the determination of supplementary remuneration, which may legitimately vary in the various administrations. There is consequently a margin for decision-making so that the remuneration system established by laws on the public service of the general State administration and of the autonomous communities can adapt pay systems.

The parties can conclude agreements and "accords" in the bargaining tables for the determination of the terms and conditions of employment of public employees. Agreements are applied directly to the personnel concerned, whereas "accords", which address matters relating to Government bodies, have to be explicitly and formally approved by such bodies. Where "accords" address matters relating to the law, the Government body with the legislative initiative has to submit draft legislation to Parliament or the assemblies of the autonomous communities in accordance with the accord within the period established by the parties. If the accord is not approved by the legislative body, the subjects covered are renegotiated within a period of one month if the majority of one of the parties so requests.

Joint commissions are established to monitor agreements and accords, and the implementation of an accord is guaranteed except where, on an exceptional basis and for a serious reason relating to the public interest deriving from a substantial alteration in economic circumstances, the executive bodies of public administrations suspend or modify the implementation of agreements or accords that have already been concluded to the extent that is strictly necessary to safeguard the public interest. In such cases, the public administrations concerned have to inform the trade unions of the reasons for such suspension or modification.

In the case of health service personnel, their specific Framework Conditions of Service, adopted in 2003, confirm their right to collective bargaining.

In 2005 in the public administration (at all levels), a total of 451 collective agreements were concluded covering 147,408 employees, including 64 agreements in the education sector covering 263,570 employees and 206 agreements in the health and social services covering 216,654 employees. [24]

Labour disputes

Irrespective of the mandates determined by the parties for joint commissions in relation to the monitoring of agreements and accords, public administrations and unions may decide to establish, formulate and develop systems outside the courts for the settlement of collective disputes. The disputes concerned may arise in relation to collective bargaining and the application and interpretation of agreements and accords (with the exception of those that have to be approved by law). These systems may include mediation

[24] "Ministerio de Trabajo y Asuntos Sociales", *Anuario Estadístico 2005*.

and arbitration machinery. Mediation is compulsory when one of the parties requests it and the solutions proposed by the mediator may be freely accepted or rejected by the parties. With regard to the arbitration procedure, the parties may decide on a voluntary basis to submit the dispute to a third party for resolution, in which case they undertake to accept the content of the arbitration award. In cases in which the required formalities established by the law are not observed or the award covers matters not submitted for arbitration, or where there is a violation of the legislation in force, an appeal may be made against the award.

Strikes

The Framework Conditions of Service for Public Employees reflect the wording used in the Constitution (Article 28(2)). The right to strike is recognized, but the maintenance of services essential to the community has to be guaranteed. The Royal Legislative Decree of 4 March 1977 provides that, where the strike affects enterprises responsible for any public service, ten days' notice has to be given and the authorities have the power to take the necessary measures to ensure the operation of services (in the case of health services, the Framework Conditions of Service for statutory personnel in these services provide that the maintenance of services essential to the health of the population must be guaranteed). As a result, when strike notice is given, the authorities examine the situation and decide whether a minimum service has to be established. The Constitutional Court has considered in this respect that: the competent government authority is the sole entity empowered to decide; allowing consultation or negotiation is a completely different matter from requiring it; and, while prior negotiation is not excluded, it is not indispensable, however desirable it may be, for the administrative decision to be valid under the Constitution (ruling 52/86 of 14 April 1986). It is not therefore indispensable to consult trade unions for the determination of minimum services. These matters are often challenged by the unions and have given rise to several complaints to the ILO Committee on Freedom of Association. [25]

In practice, there were 143 strikes in 2005 in the public sector (76 in public enterprises, 16 in the central administration, four in social security, 28 in autonomous administrations, 14 in local administrations and five affecting several levels of the administration). The overall participation in the strikes was 93,800 workers, resulting in 265,900 days not being worked. [26]

United Kingdom

Principal characteristics of the public sector

In 2005, public sector employment amounted to 20.4 per cent of total employment in the country. Between 1991 and 1998, employment in the public sector fell every year, with an overall reduction of 816,000 jobs over that period. Since 1998, it has increased each year, reaching the level of 5,846,000 in June 2005. The long-term trend is for the number of employees of the central government to grow more rapidly than those in local

[25] See, for example: in the health sector, Committee on Freedom of Association, 248th Report, Case No. 1374, and; in the education sector, 268th Report, Case No. 1466.

[26] "Ministerio de Trabajo y Asuntos Sociales", *Anuario Estadístico 2005*.

government (since June 1998, they have increased by 21.4 per cent and 8.1 per cent, respectively). [27]

The public sector may be divided into two major categories:

– the civil service, where the employees (civil servants) work in central departments and agencies; and

– public services, which employ other public servants, including those in local communities, education, the health sector, transport, universities and public enterprises.

Local government, which employed over 2,900,000 persons in June 2005, is responsible for a significant number of public services, such as education, social services, road maintenance, the police, fire fighting and environmental protection.

Certain public services have been privatized in part or in whole. This is the case, among others, of telecommunications, energy and transport.

Civil servants are servants of the Crown (that is, in practice, the Government of the United Kingdom, the Scottish Executive and the National Assembly for Wales). They constitute around 10.7 per cent of all public sector employees and their number was 570,000 in June 2005 (the same as in 2004, except that it included for the first time around 12,000 public sector employees who had previously worked for local government in the Magistrates' Court Service and who are now civil servants). [28]

The civil service reforms undertaken since the beginning of the 1980s have given departments and agencies greater autonomy. The same applies in public services, and particularly the health sector.

Legislation applicable to labour relations

Various codes contain the texts relating to the civil service, including the Civil Service Code, the most recent version of which dates from June 2006, and the Civil Service Management Code. With the exception of certain specific cases (especially the police), public services are covered by the general legislation, and particularly the Employment Act 2002 and the Employment Relations Act 2004.

Since it was introduced in 1993, the Civil Service Management Code has set out regulations and instructions to departments and agencies regarding the terms and conditions of service of civil servants and the authorities delegated under the Civil Service (Management Functions) Act 1992 to Ministers and office holders in charge of departments. The Code does not itself set out terms and conditions of service, but establishes a framework within which the departments are required to exercise their powers. The recognized civil servants' unions were consulted on the content of the Code. On 1 April 1996, a revised Civil Service Management Code was issued which provided for terms and conditions for the most part to be determined by departments and not centrally. Ministers and office holders in charge of departments have been given authority to prescribe qualifications for appointment and to determine a wide range of terms and conditions of employment for their own staff, including remuneration and allowances

[27] Office for National Statistics, *Public Sector Employment Trends 2005*.

[28] ibid.

(with the exception of the Senior Civil Service), holidays, hours of work, part-time and other working arrangements, performance and promotion, the retirement age and redeployment.

Trade union rights

The trade union rights of public sector employees are governed by the legislation applicable to unions in general. The unionization rate is high and above that of the private sector (it is estimated at two-thirds in the public service).

Consultations

In the public sector in general, unions are regularly associated with the process of developing reforms and any texts relating to the public services. More particularly, in the civil service, there are numerous and frequent contacts between the unions and department management.

Collective bargaining

In general, collective bargaining is not covered by legal provisions and collective agreements are not legally binding. There is no official process for the registration and legal notification of collective agreements.

Departments and agencies are under the obligation to define clearly the terms and conditions of service of their staff and to make them available to the staff. They must observe any legal constraints upon them as employers, consulting as necessary with their staff and the recognized trade unions.

Historically, collective bargaining has been the most widely used means of determining the terms and conditions of employment of public sector employees over the second half of the twentieth century. In this context, departments and agencies have to develop arrangements for the remuneration of their staff which are appropriate to their business needs, are consistent with the Government's policies on the civil service and public sector pay and observe public sector spending controls.

However, since the beginning of the 1980s, the coverage of collective bargaining has been more limited. In practice, it has been replaced by the system of review bodies, which are composed of independent experts and now cover over one quarter of public sector employees. This system covers such varied sectors as doctors and dentists employed by the National Health Service, nursing and other health professionals, the armed forces, the prison service, school teachers and senior civil servants. Each review body is established as a public body supported by the department concerned. It makes independent recommendations on remuneration following an examination of the proposals and information presented by the parties concerned (Government, employers and unions). The existence of a review body does not necessarily prevent the practice of collective bargaining, but the review body has to make its recommendations before a negotiated agreement is implemented. For example, in 2003, an agreement on the harmonization of the pay structure in the National Health Service was concluded on a provisional basis between the unions, employers in the Service and the Government before the review body examined the situation and recommended the implementation of the negotiated agreement.

In more general terms, the National Health Service and Community Care Act 1990 paved the way for the creation of Trusts for National Health Service units. This gave autonomous powers to the Trusts to discharge their functions, and particularly the freedom to employ staff on such terms and conditions as they think fit. Trusts may therefore

develop their own terms and conditions of employment, but must not offer conditions lower than those negotiated nationally for the same work. The involvement of employees in the decision-making process is left to each Trust to define.

Labour disputes

The Civil Service Arbitration Agreement has been in existence in one form or another since 1925, as modified from time to time by supplementary agreements. The agreement that is currently in force, concluded between the Council of Civil Service Unions and the Cabinet Office, establishes the procedures that are applicable where both parties agree to seek resolution of a dispute by referring it to the Civil Service Arbitration Tribunal. These arrangements are based on the following principles: (1) any dispute, except one involving staff as individuals, may be referred to the Tribunal, but normally the agreement applies only to disputes over remuneration, excluding pensions, allowances, hours of work or leave; (2) the official side may vary according to the level of delegation, but the parties to the dispute must have the requisite authority; and (3) access to arbitration is granted only with the acceptance of both parties (there is no unilateral access and no legal right to arbitration).

The arrangements obtained through arbitration are not binding, although the expectation is that each side will honour the outcome "unless alternative arrangements have been agreed beforehand". Since the full delegation of powers in relation to pay and conditions of service in April 1996, departments and agencies have been at liberty to amend the Arbitration Agreement, if they so wish, in their own field of competence.

In the health sector, the Trusts set up in the National Health Service may establish their own system of conciliation and agreements to settle disputes relating to the terms and conditions of service of their employees.

Strikes

Under the terms of the general legislation that is applicable in this field to most public employees (with the exception of members of the police and the army, who do not have the right to strike), when workers organize a strike or other industrial action, they are in breach of their contract of employment or contract for services. Under common law, it is unlawful to induce a person to break a contract. This means that, without special protection, unions or union officials calling a strike would face the possibility of legal action. In order to stop this happening, the "statutory immunities" were introduced into the legislation. They have the effect that unions and individuals can organize industrial action without fear of being sued in the courts, provided that they comply with a number of conditions. In particular, before calling industrial action, a union first has to obtain the majority support of its members through a properly conducted ballot and has to provide at least seven days' notice to the employer. Immunity also only applies if the action is called in furtherance of a trade dispute. Where immunity does not apply, employers and others (such as customers and suppliers) who are damaged or likely to be damaged may take civil proceedings in the courts against the responsible union or individual.

In practice, strikes are rare in the civil service, undoubtedly due to the regular consultation of unions on matters of concern to them. In March 2000, a National Partnership Agreement was concluded between the Government and the unions in the civil service setting out the commitments on both sides.

Important protest action has nevertheless been organized in the public sector in the broad sense in recent years, particularly in the fire services in 2002–03 and by nurses in

2003 with a view to obtaining pay increases, and in local government to protest against pension reform (March 2006).

In general terms, a total of 60 work stoppages were recorded in the public sector in 2005 (13 of which were in the public administration, 22 in education and one in the health sector), resulting in 99,000 working days being lost, compared with 78 work stoppages and 742,000 working days lost in 2004. [29]

United States

Principal characteristics of the public sector

Over recent years, the number of federal public employees has increased at a relatively constant rate (with the exception of 2006), as shown by the table below, which provides figures for the number of employees in the month of September each year (in thousands). [30]

	2000	2001	2002	2003	2004	2005	2006
Executive branch agencies	1 579	1 588	1 635	1 675	1 683	1 686	1 680
Independent agencies	183	184	184	173	173	174	172
Total	1 762	1 772	1 819	1 848	1 856	1 860	1 852

Source: US Office of Personnel Management.

Public sector employment includes employment at the federal level, the state level and the local level in a decentralized and varied system that has its origins in the United States Constitution, under which the national Government only exercises the powers conferred upon it by the Constitution. All other powers are reserved for the states or the people itself. The states in turn may delegate their powers to local administrative bodies, such as towns, counties and municipalities.

The most recent global data available show that in 2004 there were 2,734,000 federal employees (of whom 790,000 were in the Postal Service), 5,041,000 state employees and 13,719,000 local employees, or a total of 21,494,000 public employees. The most numerous were employees in primary and secondary education (7,541,000), higher education (2,380,000), hospitals (1,146,000) and the police (1,120,000). [31]

Legislation applicable to labour relations

The regulation of labour relations respects the sharing of power as set out in the Constitution between the Federal Government and the states. Bills have sometimes been submitted to Congress to allow the Federal administration to monitor collective bargaining at the state level, but none of them have ever obtained a majority in either chamber and have not therefore been enacted.

[29] Office for National Statistics, *Labour market trends 2005*.

[30] These data do not include certain agencies, such as the Postal Service and Congress.

[31] US Census Bureau, *Statistical Abstracts 2007*, Table 451.

The legal basis for the labour relations of Federal employees is the Federal Service Labor Management Relations Statute (US Code, Title 5).

The Civil Service Reform Act, 1978, established a new independent body, the Federal Labor Relations Authority (FLRA).

In the transport sector, the first legislation in this area was the Railway Labor Act, 1926. The scope of the Act was then extended to other transport sectors, such as airlines and urban transport companies.

Private law enterprises providing a public service are covered by the legislation applicable to the private sector: the National Labor Relations Act, 1935 (known as the "Wagner Act"), the Taft-Hartley Act, 1947, and the Landrum-Griffin Act, 1959, which sets out a Bill of Rights for unions and amends the Taft-Hartley Act.

The employers excluded from the scope of the Wagner Act are the Federal Government, any wholly owned Government corporation, the Federal Reserve Bank, any state or political subdivision thereof, or any person subject to the Railway Labor Act.

At the state level, specific legislation governs the labour relations of public employees. Specific laws often cover labour relations between public education authorities and teachers' unions.

Trade union rights

The First Amendment to the Bill of Rights provides that Congress shall make no law abridging the right of the people peaceably to assemble. This right, extended to the States by the Fourteenth Amendment to the Constitution, has been interpreted as according public employees the right to freedom of association, including the right to organize.

The Federal Service Labor Management Relations Statute (FSLMRS) provides that labor organizations and collective bargaining in the civil service are in the public interest (US Code, section 7101). Under the terms of the Statute, each employee shall have the right to form or join any labor organization, or to refrain from such activity (US Code, section 7102). However, the following are excluded from this right: an alien or non-citizen of the United States who occupies a position outside the United States; a member of the uniformed services; a supervisor or a management official; an officer or employee in the Foreign Service employed in the Department of State, the Agency for International Development or the Departments of Agriculture or of Commerce (US Code, section 7103). The exclusions from the law also include various agencies engaged in police and intelligence activities, as well as the Federal Labour Relations Authority (FLRA). [32]

The constitutional right of public employees to form and join unions is protected by the courts. The "doctrine of privilege", according to which employment in the public service is not a right, but a privilege accorded at the pleasure of the State, which may impose upon officials any requirement that it sees fit to protect its sovereignty, has been set aside by the courts. According to the Supreme Court, [33] to restrict the rights of public employees under the First and Fourteenth Amendments, the interest of the State must be

[32] See in this respect, Committee on Freedom of Association, 343rd Report, Case No. 2292, paras 705–798, concerning the collective bargaining rights of federal airport security agents.

[33] *Pickering* v. *Board of Education*, 1968.

significantly greater than its interest in limiting similar rights of any member of the general public. [34]

The States also recognize the right to organize of public employees. As the First Amendment guarantees freedom of association and the Federal Constitution prevails over State laws, they are not free to restrict or deny the right to form and join unions.

The Bureau of Labor Statistics of the Department of Labor estimates that in 2005, of the 15.7 million employees who were union members, 7.4 million worked in a federal, state or municipal administration, or 36.5 per cent of employees in the public sector (in contrast, 7.8 per cent of the workforce in the private sector were unionized at that time).

Consultations

Under the FSLMRS if, in connection with any agency, no labour organization has been accorded exclusive recognition on an agency basis, a labour organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the FLRA, shall be granted consultation rights by the FLRA. The organization then has to be informed of any substantive change in conditions of employment proposed by the agency and be permitted reasonable time to present its views and recommendations regarding the changes. The agency has to consider those views or recommendations before taking final action on the matter, which it has to report to the organization in a written statement (US Code, section 7113).

Moreover, a labour organization that holds exclusive recognition for 3,500 or more employees may be granted consultation rights by an agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. An organization having consultation rights has to be informed of any substantive change in conditions of employment proposed by the agency and be permitted reasonable time to present its views and recommendations regarding the changes, which have to be considered by the agency before it takes final action on the matter. The agency also has to provide the labour organization with a written statement of the reasons for taking the final action (US Code, section 7117, and FLRA Regulations, section 2426).

In general, in the absence of the right to collective bargaining, public sector employees may address through the legislative process the issues that collective bargaining typically addresses. A federal appeals court found that the prohibition on collective bargaining by public employees in North Carolina does not extend to a union's advocacy of a particular point of view. [35] Thus, according to information provided by the Government to the Committee on Freedom of Association, public sector employees are not prevented from engaging in collective activities to address through the legislative process issues such as compensation, benefits, conditions and other incidents of employment.

Collective bargaining

Although certain labour organizations have been in existence since the nineteenth century, it was not until the 1960s that a union was officially recognized by a federal

[34] R.C. Kearney, *Labour relations in the public sector*, Third edition, Marcel Decker, 2001.

[35] See: *Hickory Fire Fighters Association* v. *City of Hickory*, 656 F. 2d 917 (4th Cir. 1981).

employer. The courts have found that public employees have no constitutional right to oblige their employers to engage in bargaining, unless a statute compels them to do so. No law formally recognized the right to collective bargaining of federal employees before the adoption of the Civil Service Reform Act, 1978.

Under the FSLMRS, any agency shall accord exclusive recognition to a labour organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in the unit concerned (US Code, section 7111). Bargaining units are determined by the FLRA on the basis of a clear and identifiable community of interest among the employees (US Code, section 7112).

An organization that has been accorded exclusive recognition is entitled to negotiate collective agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labour organization membership. The agency and the organization have to meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. The duty to negotiate in good faith includes the obligation to approach the negotiations with a sincere resolve to reach a collective bargaining agreement, to be represented at the negotiations by duly authorized representatives, to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays, and to furnish data necessary for the discussion, understanding and negotiation. The refusal of one of the parties to negotiate in good faith is considered an unfair labour practice (US Code, section 7116).

An agreement that is concluded is submitted to the head of the agency, who has to approve it within 30 days if it is in accordance with the legislation (US Code, section 7114). If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive bargaining representative subject to the provisions of the applicable legislation.

The law reserves a number of issues as “management rights”, which are not therefore subject to negotiation (US Code, section 7106). These include the mission, budget, organization, number of employees and internal security practices of the agency, as well as internal management matters (hiring, assignment, direction, laying off, retention, disciplinary action, etc.).

Bargaining covers measures relating to the personnel and conditions of employment, with the exception of matters specifically provided for by Federal statute, such as remuneration and social benefits (US Code, section 7102). However, even for matters that are not negotiable, an agency may negotiate the procedures which it will observe in exercising authority and arrangements for employees adversely affected by the exercise of authority. It may also negotiate, if it so wishes, the numbers, types and grades of employees or positions assigned to any subdivision, and the technology, methods and means of performing work (US Code, section 7106).

In the event of disagreement between an agency and a union on whether the duty to bargain extends to any specific matter, the law provides for the possibility of appealing to the FLRA within 15 days and determines the time-limits for responding to the appeal and for the subsequent procedure.

At the federal level, unions of Postal Service employees have identical collective bargaining rights to those in the private sector, with the exception of the provisions relating to trade union security and the right to strike.

In November 2006, the Committee on Freedom of Association examined a case concerning the denial of collective bargaining rights to 56 000 federal airport baggage

screeners as a result of an order issued by the Transport Security Administration, in accordance with the authority accorded to it under the Aviation and Transportation Act. In this regard, the Committee on Freedom of Association requested the Government to review carefully the matters covered in the terms and conditions of employment of the employees concerned which are not directly related to national security issues and to engage in collective bargaining on those matters with their freely chosen representative. [36]

States which recognize the right of their employees to collective bargaining include: Alaska, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington and the District of Columbia. In a recent ruling (May 2007), the Supreme Court of Missouri held that public sector employees have a constitutional right to engage in collective bargaining with their government employers, thereby overturning case law dating back 60 years.

However, certain States prohibit collective bargaining by public employees. [37] This is the case in Arizona, North Carolina, South Carolina, Mississippi, Utah and Virginia. In other States, collective bargaining is only recognized for very limited groups of employees: Kentucky (firefighters and the police), Tennessee (teachers), Texas (firefighters and the police, if the population of the municipality so approves by referendum) and Wyoming (firefighters).

Many States which do not have statutes on collective bargaining in the public sector nevertheless follow the policy of authorizing public employers to conclude collective agreements with representatives of the employees:

Arkansas: in *City of Fort Smith* v. *Arkansas State Council*, the Arkansas Supreme Court held that a municipality cannot be compelled to bargain collectively with its employees, reasoning that the fixing of wages, hours and other conditions of employment is a legislative responsibility which cannot be delegated or bargained away. However, the Court, *in dicta*, appeared to differentiate that situation from those cases where the municipality voluntarily engages in collective bargaining with its employees' representative. Accordingly, the Office of the State Attorney General has interpreted the above case as permitting, but not requiring, a public employer to bargain collectively with its employees. The scope of permissible collective bargaining, however, is restricted by the legislature's authority to fix wages, hours and other matters relating to working conditions.

Louisiana: a public employer may enter into a collective bargaining agreement with its employees in the absence of express statutory authorization, provided the agreement does not violate any specific statutory or constitutional provision. However, a public employer cannot be compelled to bargain with its employees.

West Virginia: in *Local 598, Council 58, AFSCME* v. *City of Huntington*, the West Virginia Supreme Court held that a municipality may enter into a binding collective bargaining agreement in the absence of statutory authorization.

[36] See: Committee on Freedom of Association, 343rd Report, Case No. 2292, paras 705–798.

[37] See: Committee on Freedom of Association, 284th and 291st Reports, Case No. 1557, paras 58–813 and 247 to 285, respectively.

The Committee on Freedom of Association has recently examined a case concerning North Carolina.[38] The North Carolina General Statute (NCGS), sections 95–98, declares any agreement or contract between the government of any city, town, county, other municipality or the State of North Carolina and "any labour union, trade union or labour organization, as bargaining agent for any public employees" to be illegal and null and void. The validity of these provisions has been upheld by the courts on the grounds that there is nothing in the Constitution, including in the right to associate freely recognized in the First Amendment, that compels a party to enter into a contract with another party. Moreover, according to one court, the prohibition of public sector bargaining agreements is an entirely appropriate way of balancing the citizenry's competing interests by failing to grant any one interest group special status and access to the decision-making process. The courts concluded that States are free to decide through the people's democratically elected representatives whether to enter into agreements. [39] The Committee on Freedom of Association requested the Government to promote the establishment of a collective bargaining framework in the public sector in North Carolina and to take steps aimed at bringing the State legislation, in particular through the repeal of sections 95–98 of the NCGS, into conformity with the principles of freedom of association.

Following the examination of the case by the Committee on Freedom of Association, the North Carolina House Judiciary Committee approved a Bill repealing the prohibition on collective bargaining by state and local employees.

Labour disputes

In the event of an impasse in a collective bargaining process, the Federal Mediation and Conciliation Service provides services and assistance to the parties in the public sector at both the federal and the state level. If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse, either party may request the Federal Services Impasses Panel to consider the matter or the parties may agree to adopt a procedure for binding arbitration, for which the procedure has to be approved by the Panel. The Panel, which is an entity within the FLRA, is composed of a Chairperson and at least six other members selected on the basis of their fitness to perform the duties and functions involved. The Panel has to investigate promptly any impasse presented to it and recommend to the parties procedures for the resolution of the impasse or assist them in resolving the impasse. If the parties do not arrive at a settlement after the assistance provided by the Panel, it may proceed to hold hearings and take whatever action is necessary to resolve the impasse. Notice of any final action of the Panel has to be served promptly upon the parties, and the action is binding on the parties during the term of the agreement, unless the parties agree otherwise (US Code, section 7119).

The Federal Mediation and Conciliation Service publishes statistics each year on its mediation activities during the collective bargaining process. For the public sector, the data for the four previous years are as follows:

	2003	2004	2005	2006
State and municipal government units	1 218	1 077	1 086	1 319
Federal sector	510	397	256	291

[38] See: Committee on Freedom of Association, 344th Report, Case No. 2460, paras 940–999.

[39] See: *Atkins* v. *City of Charlotte*, 296F. Supp. 1068 (WDNC1969) and *Winston-Salem/Forsyth County Unit, NC Association of Educators* v. *Phillips*, 381 F. Supp. 644 (MDNC 1974).

Number of cases of collective bargaining in which there has been recourse to mediation: Federal Mediation and Conciliation Service, Mediation Services Program Data, 2006.

Strikes

The Taft-Hartley Act, 1947, prohibits the right to strike of federal employees and imposes severe penalties on any person in breach of this prohibition: immediate dismissal and prohibition of re-engagement for three years. Before recruitment, federal public employees have to sign a commitment not to participate in strikes against the Government or any agency thereof (Standard Form 61). Public employees who participate in a strike in violation of the FSLMRS are no longer protected by the Act as they are no longer included in the definition of "employee" (US Code, section 7103). The same applies to labour organizations, which are no longer considered as such if they participate in the conduct of a strike against the Government or any agency thereof or impose a duty or obligation to conduct, assist or participate in such a strike. One of the objectives of the Civil Service Reform Act, 1978, was to avoid strike action by federal employees by establishing procedures for the settlement of disputes arising during the course of collective bargaining.

Participation in a strike, work stoppage or slowdown constitutes an unfair labour practice. The same applies to condoning any such activity or failing to take action to prevent or stop such activity (US Code, section 7116). Where a violation of this provision by a labor organization is found, the Federal Labor Relations Authority (FLRA) shall revoke its exclusive recognition status, which shall then immediately cease, and take any other appropriate disciplinary action (US Code, section 7120).

A significant number of States prohibit strikes by their public employees and impose fines or similar penalties on strikers. This is the case, among others, in the following States: Arkansas, Connecticut, Delaware, Florida, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, New York, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington.

The absence of the right to strike sometimes leads to the imposition of compulsory arbitration, for example in the education sector in Connecticut, where the arbitrator is guided in her or his decision by a certain number of criteria set out in the Teacher Negotiation Act, 1979 (financial capability of the school district, cost of living, salaries and other conditions of employment prevailing in the labour market).

In States where public employees are authorized to strike, prior conditions have to be respected: the certification of a bargaining unit, the exhaustion of dispute settlement procedures, the expiry of current collective agreements and the giving of notice to the employer. Many of these States prohibit strikes by certain categories of public employees whose work is considered essential to society: the police and firefighters are included most frequently in these categories. Teachers in state schools are also among the professions in which the right to strike is prohibited.

Even though federal employees and many employees in state and local authorities do not have the right to strike, legal prohibitions have not always prevented strikes from being called. The most notable example was undoubtedly the strike called in 1981 by 13,000 air traffic controllers (federal employees), which was illegal and resulted in 11,350 dismissals, heavy penalties and the withdrawal of the union's recognition. New York City transportation has also been affected by three major strikes (in 1966 for two weeks, in 1980 for 11 days and at the end of 2005 for three days). These strikes were illegal. The two most recent were in breach of the terms of a law that entered into force on 1 September 1967, known as the Taylor Law, which prohibits public employees in the State from going

on strike and establishes alternative means of settling disputes. Hefty financial penalties were imposed on the union. Other major strikes were called in November 2005 against the Southeastern Pennsylvania Transportation Authority (for one week) and in March and April 2006 at the University of Miami by security personnel (for two months). Reference should also be made to the long strike by teachers in Colchester, Vermont, in 2005 during the renewal of the collective agreement, although in 99 per cent of cases agreements in the teaching sector in this State are renewed without strikes.

In 2006, there were eight work stoppages in local government involving over 1,000 employees:

	Number of employees involved	Days idle
Santa Cruz County Government (California)	1 600	1 600
Denver Regional Transportation District (Colorado)	1 700	8 500
Contra Costa County (California)	6 000	6 000
Gary School District (Indiana)	1 400	14 000
City of Los Angeles (California)	7 500	15 000
New Brunswick University Hospital (New Jersey)	1 200	24 000
Detroit School District (Michigan)	9 500	104 500
Sacramento County (California)	3 900	39 000
Total	32 800	212 600

Source: Bureau of Labor Statistics: Work stoppages involving 1,000 employees or more in 2006.

The Railway Labor Act also prohibits strikes by employees of the railways or airlines, except in strictly defined circumstances.

Chapter 5. Major trends in labour relations in the public and para-public sector

It might appear to be a delicate exercise, solely on the basis of a study covering a dozen countries, to attempt to draw general conclusions on developments in the public sector throughout the world, and more particularly on the labour relations situation within the sector. Nevertheless, it would seem that, over and above the still significant differences between national situations, and also taking into account the situation of countries that are not covered by the current study but for which information is available, common characteristics may be identified.

A trend towards new methods of administration

In terms of the number of employees, although certain statistics may at first sight appear contradictory, the data appear to show a certain stabilization or very limited growth in the public service, even if in some cases there has been a certain decline. The few examples that may exist of a significant increase in public employees (New Zealand, in the present study, and to a lesser extent the United Kingdom) [1] correspond to situations in which there have been changes in policy direction, generally following periods during which public services had been drastically cut. This phenomenon may be explained by various factors that are found almost everywhere: the desire to limit the increase in public deficits and, by the same token, to contain public expenditure; the necessity, in this context, to rationalize the organization and administrative methods of the public service by improving staff productivity; the increased geographical decentralization of public authorities and services, particularly in countries hitherto characterized by a strong tradition of centralization; the transformation of central administrations into agencies with varying degrees of autonomy, depending on the country, but in all cases enjoying greater managerial independence; and total or partial denationalization programmes which have at the very least greatly decreased, or even reduced to zero, the number of employees with public service status in the enterprises concerned.

However, more than the overall number of employees in the public service, it is undoubtedly the changes in the personnel structure in the public administration and its internal methods of management that have been the most significant phenomena. To fulfil its functions, the State more commonly has recourse to contractual staff, often recruited on a temporary basis. In most cases, these employees are not covered by statutory rules and are therefore governed by the general labour legislation. The para-public sector, including structures transferred from the administration, and even sometimes the administration itself, have also adopted managerial methods that are increasingly similar to those in the private sector.

This approach to management, more closely focussed on results and the achievement of objectives, has also naturally been applied in the context of labour relations, resulting in a situation in which an increasing number of those employed directly or indirectly by the State are governed by the general legal provisions relating to labour law and industrial relations. It has consequently been possible to refer to the penetration of labour law into

[1] With the exception of Senegal, where the significant increase in employees in the public service corresponds to the introduction of a new regional administrative level, without a corresponding decrease in the size of the national public service yet being experienced.

public employment, [2] or the privatization of public employment in Italy. This is clearly the case of workers in public enterprises and autonomous public agencies, most of whom are covered by the normal collective bargaining system. However, this situation is also found in countries where the public authorities have agreed to introduce, to a greater or lesser extent, elements of the codetermination of terms and conditions of employment. The same applies in countries where the public service system is traditionally of a statutory nature (such as Japan), but where the increasing autonomy of agencies has involved the transfer of certain categories of public sector employees to a system that is similar to the private sector under which they sometimes benefit from collective rights that they were previously denied, or which at the very least were applicable to them in only a restricted manner. The most complete form of this transformation is found in countries where the legislation applies without distinction to the public and the private sector (for example, in South Africa and New Zealand, of the countries covered by this study), even though specific rules sometimes continue to exist, particularly to take into account problems related to the budgetary powers of parliaments.

The union movement remains important

Despite the difficulties encountered over recent decades by the trade union movement, particularly in terms of membership, it would appear that the fall in membership noted in many cases in the private sector is less significant in the public sector. As a result, organizations of public servants and public sector employees often occupy a significant position in national inter-occupational confederations and exercise a strong influence over their claims. This relative resistance of the public sector to the weakening of trade union strength is undoubtedly related to the greater protection that they enjoy against acts of anti-union discrimination than in private enterprises, even though this protection is most frequently due to greater stability of employment in general and to stronger legislative provisions. The change in the practices of the State as employer towards an approach that is less protective and less naturally generous towards its employees has also undoubtedly resulted in increased awareness of the need for sufficiently strong collective representation with a view, if not to resisting, at least to controlling and humanizing the changes. Finally, the increasing autonomy of agencies and, as a consequence, the higher levels of responsibility of their managers, have resulted in a more personal level of representation of employers and, accordingly, greater transparency in labour relations and a more immediate awareness of their outcome. This has undoubtedly contributed to encouraging a favourable perception of trade union action by public employees.

The trend towards co-determination of terms and conditions of work

The changes that have occurred in the public sector have undeniably had significant consequences on collective labour relations. The phenomenon of the progressive abandonment of the unilateral determination of terms and conditions of employment by the State as employer seems to be becoming generalized almost throughout the world, even though the forms taken by this trend and its extent vary widely according to the country.

In a past that is not so distant in certain cases, and which in some countries has not yet evolved, particularly in Asia, there was a confusion between the State as employer and the

[2] See: Mario Ackerman, “La relación del empleo público y el derecho del trabajo”, in *Tratado de Derecho de Trabajo*.

sovereign State, whose powers could not be shared. Public employees, who were at the same time subject to the State and privileged to enjoy working conditions that were generally more advantageous (employment stability, career progression, social and retirement benefits, equality of treatment between men and women), did not participate at either the individual or the collective level in the determination of these conditions of employment. A first breach in the omnipotence of the State was the progressive recognition of trade union rights in the public service, which is today clearly the dominant trend throughout the world, even though restrictions still exist here and there in comparison with the situation of workers in the private sector. The strengthening of unions then inevitably resulted in their participation in the decision-making process in the field of labour relations.

The development of international labour standards since the immediate post-war years has been particularly significant in this respect. [3] At first, public employees were granted the right to organize (Convention No. 87). However, a significant number of them, namely public servants engaged in the administration of the State, were denied protection against anti-union discrimination and the right to collective bargaining (Convention No. 98). This shortcoming was resolved 30 years later by a standard promoting bargaining procedures and other methods for the determination of terms and conditions of employment in the public service, with the exception of certain categories of high-level employees or those whose duties are of a highly confidential nature (Convention No. 151). Finally, the last stage was reached with the promotion of collective bargaining in the public service as a whole (with the exception, as usual, of the armed forces and the police) in the same way as in the private sector. The State could no longer confine itself to consultations, but had to engage in collective bargaining, with the only restriction being that it could fix "special modalities of application" of the Convention for the public service (Convention No. 154).

The panorama of labour relations in the public and para-public sector in the various States of the world today reflects the various stages of this development, depending on the degree of flexibility introduced in the process of determining terms and conditions of employment. The systems used are therefore very diverse in their nature and the participation of workers and their organizations may range from the least developed, such as irregular and informal consultations, right up to full collective bargaining procedures, with intermediary stages such as the intervention of independent third-party bodies, after hearing the unions, formal consultations in standing dialogue or collective bargaining bodies, the institutional framework of which is imposed and determined by the law.

There is now little doubt that the underlying trend is the movement of labour relations in the public and para-public sector towards a system of collective bargaining approximating that used in the private sector. Admittedly, this system is not yet prevalent in the public sector in most countries of the world, with many countries still basing their labour relations on an essentially consultative approach, including countries with a strong and longstanding trade union tradition: Germany (for the *Beamte*), the United States (public employees in certain states and for certain subjects), France (for the many subjects not covered by agreements) and Japan (in the case of public servants). However, when national situations are examined, it can be seen that the scope of collective bargaining between unions and administrations or public and para-public bodies is tending to broaden, irrespective of the political orientation of the governments concerned. Either the State is tending to withdraw from the economic and social life of the country, and many employees are therefore governed by the general provisions of labour law, particularly with regard to

[3] See: Geraldo von Potobsky, "La negociación colectiva en la administración pública central y descentralizada", in *Revista Española de Derecho del Trabajo*, 1989.

collective labour relations, or the State maintains a determining or significant role and, with a view to preventing collective disputes in such cases, it is necessary to have recourse to methods of the co-determination of terms and conditions of employment.

In recent years, the number of countries using collective bargaining to determine terms and conditions of employment in the public sector appears to have increased (for example, Greece and Lithuania have adopted legislation in this respect). Others have extended and deepened their system of collective bargaining (Argentina, New Zealand, Spain). In Colombia, in a ruling of November 2005, [4] the Constitutional Court found that "the legislator shall regulate the procedure, in due time and in dialogue, in so far as possible, with the organizations of public employees, governing the right of such employees to engage in collective bargaining."

Limits to the co-determination of terms and conditions of employment

As authorized by international labour standards, and particularly Convention No. 154, the collective bargaining procedures applied in the public sector are often subject to adaptations in comparison with the system in the private sector. Indeed, it is difficult to classify countries according to whether they have adopted a consultation procedure or a negotiation system. Consultations sometimes lead to the conclusion of a protocol, which is given effect by legislative measures or regulations, and negotiations often result in the conclusion of an agreement that has to be formalized by a law or decree to be given effect in practice. Irrespective of whether a State gives preference to one approach or the other, it is nevertheless true that the final result in most cases resembles a hybrid system in which the State still retains prerogatives that go beyond the traditional powers of an employer in the collective labour relations systems prevailing in the private sector.

The limitations that are accordingly imposed on a pure bargaining procedure generally take the form of more detailed regulations than those covering the private sector on a wide range of issues: the fields covered by consultation/negotiation, the procedures, the identification of the parties and the legal effect of formal or informal agreements. On all these points, the issue is for the State to adapt the system so that it takes into consideration the imperatives and constraints of the public sector: the need to maintain public services, and in particular services essential to the population; the widespread desire to limit budget deficits and public expenditure; and respect for the powers of the budgetary authority.

Fields covered

With regard to the fields covered by procedures for the determination of terms and conditions of employment, the issues that most frequently give rise to problems relate to salaries and other financial components of remuneration, as well as the managerial decision-making powers of administrations.

Salaries and remuneration are certainly among the issues to which trade union organizations pay the greatest attention. In view of the fundamental importance accorded by unions and workers to the claims made in this field, the State is therefore faced with the need, with a view to avoiding disputes, to pay particular attention to this area. Nevertheless, it has to take into account the procedures for the authorization and control of budgets that are exercised in most cases by the legislative authority. This explains why the

[4] Ruling C-1234 of 29 Nov. 2005.

issue of pay is often excluded from collective bargaining (for example, in the United States at the federal level and in many states, as well as in the Philippines, Romania and Senegal), and that even in countries where there is greater freedom of collective bargaining (such as Finland and the United Kingdom), agreements with implications for public expenditure cannot enter into force unless they have been approved by the competent public authority or have to comply with pre-established limits (Argentina, in the context of the Budget Act; Spain, with reference to the predetermined increase in the overall wage mass). From this point of view, the situation of France is paradoxical since, despite the survival of a system that is primarily statutory, salaries are the sole issue explicitly identified by law as having to be covered by bargaining.

Managerial decision-making powers (the organization of services, staff numbers, career progression, disciplinary powers, etc.) remain in many cases (for example, Argentina, Finland and United States) issues over which the administration retains total responsibility for its decisions, in the same way as executive powers are often preserved from interference through bargaining in private sector enterprises. It may even be the case that the involvement of unions in the determination and management of individual career systems goes deeper in the public sector through their participation in recruitment processes and disciplinary procedures, as in the cases of France and Senegal.

Procedures

The co-determination of working conditions gives rise to procedures which may be more or less firmly established and detailed depending on their formal or informal nature and the existence (for example, in Brazil, South Africa, Spain, Turkey and Uruguay) of permanent dialogue and negotiation bodies, or the absence of such machinery. These procedures may be either voluntary or compulsory, while refusal to engage in bargaining may even be assimilated to an unfair labour practice (United States). There tends to be a guarantee that negotiations have to be conducted in good faith (Argentina, Canada, New Zealand and United States), and for this purpose rules are often adopted to ensure that all the necessary information is compiled so that discussions can be held in full knowledge of the facts and are effective, for example through the establishment of independent research and information bodies with competence in the fields of working conditions and remuneration.

Finally, certain systems provide for the intervention of neutral third party bodies, which make recommendations to the public authorities on the level of remuneration and other working conditions after hearing the parties and making comparisons with the private sector (Japan with the National Personnel Authority and the local personnel commissions and the United Kingdom for the sectors covered by review bodies). Such a system does not necessarily exclude bargaining if the organizations representing public employees are able to negotiate with administrations on the basis of the recommendations made by the third party body.

Identification of the parties

The identification of the parties raises a more delicate issue for the representation of the State in its capacity as employer than for employees. Precise rules are undoubtedly necessary to determine the organization(s) which will represent employees, but the procedures used for this purpose may be of the same type as those applied in the private sector, based on criteria of representativeness linked to membership or the outcome of elections. The procedures and criteria for recognition are often closely aligned with those in the private sector, such as in the cases of Canada, United States and Philippines, where the system is based on bargaining units.

In contrast, the choice of the representative for the employer may give rise to very different rules. The representative may be the chief of the agency concerned, which may result in a fragmentation of State power and lead to differences in the treatment of employees between the various agencies, or it may be the Ministry of the Public Service (France, Spain), the Ministry of the Economy or Finance (Portugal) or a single body composed of representatives of the ministries concerned (Finance, Public Service, Labour and, possibly, the Parliament: South Africa, under the authority of a chief negotiator, Argentina under the authority of the Ministry of Finance), or an institution established for that purpose (Public Service Commission in countries following the English legal tradition, the Treasury Board in certain jurisdictions in Canada, the Representative Agency for Collective Bargaining in the Public Administration in Italy, the Public Sector Employers' Council in Sweden, the public sector employers' committee in Turkey, etc.).

Legal effects

The legal effects of consultations/negotiation procedures vary widely according to the country. In certain countries (such as Japan), the conclusion of agreements is not envisaged. In others, the protocols or agreements that are signed do not have binding force and therefore have to be transcribed into law without there being a legal obligation to do so, with the result that commitments entered into only have moral and political force (for example, France and the Netherlands). In certain cases, the agreement becomes applicable after a certain period, with the Parliament only intervening in relation to financial commitments (Canada). Finally, in rare cases, the legislation provides for the immediate entry into force of the agreements that are concluded without it being necessary to obtain the approval of a higher public authority (Norway).

Labour disputes and strikes: Issues that are still controversial

It was long considered that labour disputes in the public sector were in the final instance resolved by the all-powerful State. As the State was considered to be fully sovereign, including in its capacity as employer, its position prevailed and was systematically imposed on public employees and their organizations. In accordance with this view, the submission of disputes to an external body would have constituted a denial of the authority of the State.

However, significant changes occurred in the conception of the role and powers of the State in its capacity as employer over the last decades of the twentieth century. In view of the specific characteristics of the public and para-public sector and the important, and even essential nature of the services provided for the community, it is becoming increasingly common to envisage the intervention of third parties to facilitate the successful conclusion of procedures for the co-determination of working conditions. These procedures consist most frequently of conciliation (Finland, Norway, Sweden), supplemented or sometimes directly replaced by mediation (Canada, United States). Machinery of this type has the common characteristic of not imposing solutions on the parties, and indeed of leaving them free to accept or reject the solutions proposed subject, in the latter case, to having voluntary recourse to more binding procedures, such as arbitration, in which the final award is binding, or more conflictual forms of protest action (including strikes).

In contrast, under certain systems, in the event of the failure of negotiations, which may be followed by phases of conciliation and mediation, there is systematic recourse to arbitration with awards that are binding on both parties and which, as such, give rise to a direct prohibition of strikes (except where they are explicitly envisaged by the legislation, as in the United States) or their indirect prohibition (as a result of the accumulation of procedures).

This latter form of dispute resolution is sometimes applied more narrowly to cover only a limited number of public services, in view of their essential nature, or specific categories of employees based on the type of functions that they perform. In such cases, the scope of the prohibition of strikes depends on how broadly the categories covered by compulsory arbitration procedures are defined.

The existence of these different systems for the resolution of collective disputes leads to an extremely diversified situation in relation to the right to strike in the public and para-public sector, ranging from broad freedom for almost all public employees (generally with the exception of specific categories engaged in the field of security) to the pure and simple prohibition of strikes, with intermediary situations in which strikes are limited without being totally prohibited.

The first category includes, in particular, European countries such as France, Italy and Spain, where most public employees enjoy the right to strike, even though certain modalities sometimes have to be respected (the giving of notice in France, the maintenance of a minimum service in Spain, monitoring by the Guarantee Commission in Italy).

The general prohibition of strikes in the public service is to be found in countries which have retained a strong conception of the State as being sovereign in its labour relations with public employees. This is the case, for example, in addition to certain countries covered by the present study (United States, at the federal level and for a majority of states, Japan and Philippines), in the Republic of Korea, India and several Latin American countries. There are also very broad prohibitions in certain European countries: Bulgaria, where the right to strike of civil servants is limited to the right to carry signs and symbols, armbands and protest posters, but without ceasing to perform their public service duties; Denmark, where no employee hired under the terms of the Civil Servants Act has the right to strike; and Estonia, where strikes are prohibited for almost all public employees. In Germany, the prohibition applies to public servants in the strict sense *(Beamte)*, who do not have the right to strike, even where they are employed in partially privatized enterprises, such as the postal service and the railways. In contrast, public employees *(Angestellte)* and manual workers in the public sector *(Arbeiter)* have the right to strike.

In Switzerland, the situation has changed recently: whereas previously all federal employees were denied the right to strike, an Ordinance which came into force in 2002 limits the prohibition to public servants exercising authority in the name of the State, thereby taking up the wording used by the ILO supervisory bodies. In contrast, public employees in certain cantons are still denied the right to strike.

In certain countries, specific conditions have to be met for strikes to be prohibited in the public sector. In Australia (New South Wales), strikes are prohibited where they have a major and substantially adverse effect on the provision of any public service. The prohibition is also very broad in other countries, such as Poland, where the law prohibits the participation of public employees in strikes and protest action liable to perturb the operation of the service.

The prohibition of strikes is limited in certain cases to clearly determined categories of employees: in Lithuania, strikes are prohibited for managers of subdivisions of agencies and high ranking officials; in Slovakia, the prohibition covers the judiciary, public attorneys, members of the armed forces, firefighters and air traffic controllers; in Hungary, strikes are prohibited for officials with a fundamental function (according to the Government, those exercising managerial responsibilities, that is those who have the power to hire, dismiss and discipline employees).

Rather than prohibiting strikes, certain countries impose a minimum service to ensure the maintenance of an adequate proportion of services to the public (South Africa and Spain, for example).

Compulsory arbitration is also sometimes used, particularly where Parliament adopts return to work laws to bring an end to strikes in the public sector (for example, Canada and Norway). Generally, in such cases, the dispute is resolved by means of an arbitration award that is binding for a period equivalent to that covered by a collective agreement.

In overall terms, of the 147 countries that have ratified Convention No. 87, around 30 of them have been the subject of comments by the Committee of Experts (observations or direct requests) in relation to the right to strike in the public service.

Reference is often made in national law to the concept of essential services with a view to restricting or prohibiting strikes in public services, irrespective of whether they are provided by the public or the private sector. It is considered in these cases that work stoppages in public services cause substantial prejudice to the community and interrupt services that have to be supplied or guaranteed by the State to the population. In practice, such references range from a simple limitative enumeration to a long list set out in the law. Definitions are established in certain cases, ranging from the most restrictive to the broadest, with the latter encompassing all the activities that the government considers it appropriate to include or all strikes that it deems likely to prejudice public order, the general interest or economic development. In extreme cases, the law may provide that a mere declaration to that effect by the authorities is sufficient to establish the essential nature of the service.

Among the member States of the ILO in which the legislation, in the view of the Committee of Experts, raises problems in this respect are those which prohibit strikes on the grounds of their economic consequences. This is the case in Algeria, Australia, Benin and Chile. In other countries (Philippines, Senegal, Swaziland), reference is made to the prejudice caused to public order or to the general or national interest for the prohibition of strikes.

In certain cases, definitions or lists of essential services have been adopted that are too broad in relation to ILO criteria. This is the case in Angola, Antigua and Barbuda, Bangladesh, Belarus, Belize, Bolivia, Botswana, Canada (both at the federal level and in certain provinces), Costa Rica, Colombia, Dominica, Egypt, Ethiopia, Ghana, Guatemala, Guyana, Honduras, India, Indonesia, Kiribati, Kyrgyzstan, Republic of Korea, Lithuania, Republic of Moldova, Panama, Pakistan, Russian Federation, Sao Tomé and Principe, Seychelles, Swaziland, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Turkey and Zambia. In Zimbabwe, the Minister of Labour may declare any service essential, which has the effect of prohibiting the right to strike therein.

Among its comments on the right to strike, the question of essential services is the issue most commonly raised by the Committee of Experts, as it has made observations or direct requests on this subject to a little under 50 of the 147 countries that have ratified Convention No. 87.

However, it should also be noted that several countries have recently adopted legislation or prepared draft texts that are about to be approved containing definitions or lists of essential services that are analogous or very close to those proposed by the ILO supervisory bodies. These include Argentina, Gambia, Madagascar, Mali, Namibia, United Republic of Tanzania and Yemen.

In other cases, the problem has been resolved by agreement between the parties, such as in Cyprus where in 2004 the social partners concluded an agreement on the procedure for resolving labour disputes in essential services, which provides for disputes to be

referred to an Arbitration Committee that has to issue a decision within six weeks. If either of the parties does not accept the decision, strike action can be taken 25 days after notification is given in writing and a negotiated minimum service has to be complied with. In the Federation of Bosnia and Herzegovina, a strike may be interrupted if there is a serious threat to the provision of essential services which could give rise to an immediate danger or very serious repercussions for the life and safety of persons, or other irreversible consequences. Such an interruption is decided upon by common agreement between the strike committee and the chief of the administrative body or service concerned.

Final remarks

Over the past two decades, there have been significant changes in the public sector at the national level. Major reforms have been implemented almost everywhere in an effort to increase its effectiveness, ensure that it contributes to harmonious economic and social development and meets the needs of the population more fully. The nature and structure of public employment have often been substantially modified. An increasing proportion of the activities hitherto carried out under the direct responsibility of the State have been subcontracted or privatized. The traditional concept of the public employee engaged for life and protected by the all-powerful State has been considerably eroded, giving way to a much less monolithic panorama of employment in the public sector and to conditions of service and types of status that are more variable. The resulting uncertainties have given rise to discontent and to claims which have not failed to lead to serious labour disputes.

In parallel, while the development of labour relations in the sector is undeniably moving towards the increased participation of employees and their organizations in the determination of conditions of work, it is nevertheless true that public employees are among the categories of workers whose right to organize and to collective bargaining is still most frequently restricted.

The conjunction between more precarious conditions and the still limited and incomplete development of collective rights means that there is currently a period of uncertainty that is, in many respects, unfavourable for public employees, their employers and the State as a whole. The widespread deterioration of conditions of employment, in both the industrialized and the developing world, has in most cases been synonymous with a loss of motivation among staff and a deterioration in the "spirit of public service".

There are nevertheless experiences at the national level which demonstrate that important transformations in the public sector can be made in full cooperation between the State, administrations, agencies and employer enterprises, on the one hand, and the employees' organizations concerned, on the other. And yet, for these initiatives to be successful, public employees' organizations still need to be considered as partners enjoying well-established and fully respected rights which, in turn, fulfil their role of defending and promoting the interests of their members in a constructive and responsible manner.

Peaceful labour relations within the public sector must become a major priority for all those concerned. This is the precondition if public services, and particularly education and health, of which humanity has such need, are to fulfil effectively their fundamental mission in the service of the general interest.

Bibliography

Ackerman, Mario, E.: *Trabajadores del Estado en Iberoamérica*, 1998.

–: "La relación de empleo público y el Derecho del Trabajo", *in Tratado de Derecho del Trabajo*, Tomo 1, 2005.

Bach, Stephen; Bordogna, Lorenzo; Della Rocca, Giuseppe; and Winchester, David: Public service employment relations in Europe: *Transformation, modernization or inertia?*, 1999.

Bonifacio, José Alberto; and Falivene, *Graciela: Análisis comparado de las relaciones laborales en la administración pública lationoamericana: Argentina, Costa Rica, México y Perú*, CLAD, 2002.

Council of Europe: European Committee of Social Rights: *Digest of the case law of the ECSR*, 2006.

Cremonte, Matías: "El nuevo Convenio Colectivo de Trabajo en la Administración Pública Nacional: La opción por la autonomía", in *Derecho del Trabajo*, July 2006.

Daza Pérez, José Luis; *Social dialogue in the public service*, ILO, 2002.

Fournier, Jacques: *Livre blanc sur le dialogue social dans la fonction publique*, "La documentation française », 2002.

Garcia Blasco, Juan: "La negociación colectiva en las administraciones públicas", in *Las relaciones laborales en las administraciones locales*, coordinated by Javier Garate, 2004.

Gernigon, Bernard; Odero, Alberto; and Guido, Horacio: *ILO principles concerning the right to strike*, ILO, 2000.

–: *Collective bargaining: ILO standards and the principles of the supervisory bodies*, ILO, 2000.

Ghellab, Youcef; and Laniel, Nicolas: *Systems of public sector remuneration in six OECD countries(Canada, France, Germany, Great Britain, Italy, United States): Comparative and analytical study*, ILO, 1998.

Hodges Aeberhard, Jane: *Comparative study of contents of civil service statutes*, ILO, 2002.

Huluman, Shamira: *The practice of social dialogue in the South African Public Service, PSCBC*, 2005.

ILO: Freedom of Association and Collective Bargaining, General Survey of the Reports on the Freedom of Association and Protection of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), 1948, and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), 1949, Report III (Part 4B), International Labour Conference, 81st Session, 1994.

–: *Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body*, fifth (revised) edition, 2006.

Kearney, Richard, C., with Carnevale, David, G.: *Labor relations in the public sector*, third edition, 2001.

Macedo de Britto Pereira, Ricardo José; *La negociación colectiva en la función pública: Una aproximación constitucional*, "Consejo Económico y Social," Spain, 2004.

Mgijima, Bobby: *Best practice in social dialogue in public service emergency services in South Africa*, Sectoral Activities Programme, Working Paper, ILO, 2003.

Olsen, Torunn (ed.): *Industrial relations systems in the public sector in Europe*, European Public Services Committee, 1996.

Oumarou, Moussa: *Le dialogue social dans l'administration publique des pays Membres de l'Union économique et monétaire ouest-africaine (UEMOA)*, ILO, 2007.

Ozaki, Muneto, et al.: *Labour relations in the public service: Developing countries*, ILO, 1988.

von Potobsky, Geraldo: "La negociación colectiva en la administración pública central y descentralizada", in *Revista española de derecho de trabajo*, 1989.

Sala Franco, Tomás; Blasco Pellicer, Ángel; and Altés Tarrega, Juan Antonio: *La negociación colectiva en el empleo público*, "Ministerio de Trabajo y Asuntos Sociales", Spain, 2001.

Treu, Tiziano, et al.: *Public service labour relations: Recent trends and future prospects: A comparative survey of seven industrialised market economy countries*, ILO, 1987.

Van Peijpe, Taco: "Public sector bargaining in the Netherlands and Nordic Countries", in *The International Journal of Comparative Labour Law and Industrial Relations*, 12(1), Spring 1996.