France
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1. The right to strike, fundamental right

1.1. The right to strike in France is a fundamental right, meaning that it is a right proclaimed and guaranteed by the Constitution (formally, it is dedicated, in the same terms as in the Italian Constitution, by the Preamble of the 1946 Constitution, which the Preamble of the 1958 Constitution refers to).
This dedication and guarantee have two different effects. On one side, only legislation can regulate the right to strike. The right to strike is not a possible subject (issue) to collective bargaining, except when legislation, precisely, gives a real responsibility to collective bargaining. This responsibility, nevertheless, can only be limited. On the other side, it is of the responsibility of the Constitutional Court, in its control procedures of legislation's constitutionality, to ensure compliance, by the legislation and the jurisprudence, of the right to strike. It is only in the name of norms of the same constitutional value that the legislation can limit the exercise of the right to strike.

1.2. The legislative interference in the right to strike are very few. General provisions exist to protect the workers who use their right to strike: in substance, these provisions provide that the right to strike doesn't interrupt the contract and that the worker can be in no kind of dismissal or penalization for participating to a strike. A limit exists, which consists in a worker's gross misconduct.
In public services there are other provisions about the right to strike. Some are common to all public services: they are essentially procedural. The law establishes
an obligation to notice a future strike by the representative trade unions.
This notice activates in principle a negotiation phase.
These provisions prohibit in principle rotating strikes in public services.
Other provisions are specific to certain public services. Exceptionally, some officials are denied the right to strike, but in practice they use their working layouts to take part in the strike. In some services (including the emblematic example of public transport), the provisions go beyond the notice and provide

in the name of the protection due to certain fundamental rights, the maintenance of an activity during a strike and terms of assignment to maintain part of the activity.
Neither the collective bargaining agreement (which targets a wide range of topics) nor the collective convention (which has a limited topic, but follows the same rules as the collective agreement) regulates the right to strike. The only exception is when the legislation delegates specifically and so circumscribed, to collective bargaining, the task of fixing the procedure for implementing legislation. This delegation exists actually only in regular public land transport.

1.3. The form commonly used to define the ownership of the right to strike is known in other countries: it is an individual right for workers with a collective exercise. In French law it is well established: the right to strike is a personal right. Under French case law, it is a right for the dependent worker. In other words, the independent worker is not concerned, unless the legislation has extended the scope of the labor law rules, which is the case for several categories of economically dependent workers.
Every dependent worker is concerned, within the limit of the obligations on officials entrusted with state prorogations. Even when the legislation stipulates that the representative trade unions have the exclusive ability to start a strike, as in public services, the right to strike stays an individual right. In the event of a strike, workers may not strike, and then they commit no misconduct, by striking without a regular union, but only if his intention was drawn by irregularity. Finally, as a personal right, there is no requirement that several workers from the company strike together. The worker uses regularly his right, if he joins a collective movement that grows beyond the company, even if he is the only one following the strike in his company.

1.4. In France, the right to strike is proclaimed and protected as a specific right. Formally, on one side it is distinct of trade union freedom, of which it is not an expression, on the other side of collective bargaining. Collective bargaining has a constitutional basis in the right to participate proclaimed in the 1946 the Constitution Preamble, which refers to the current Constitution Preamble. The right to strike is therefore never treated as an auxiliary to the right to collective bargaining.
The identity of the right to strike provides strong reasons to preserve its character of individual right and establishes no legal relationship between strike and collective bargaining.

2. Strikes, illegal movements, abusive strikes

2.1. The law gives no definition of the strike, meaning the movement which is granted by constitutional protection. It is case law that establishes a definition. It is constant. Strike is defined as «a concerted work stoppage in support of

backing employment-related demands». This definition is important because it serves to delimit the area of rules, statutory and above all case law, meant to ensure the exercise of a constitutional right.
a. The movement is to «*support backing employment-related demands*». Formally this expression echoes the ban on political strikes. But the courts interpret broadly what a legitimate purpose to strike is. Indeed, they do not consider that the professional claims are necessarily requests that can likely be satisfied by the employer. The professional claims can cover everything related to the workers condition. Since this condition depends, partly, of government policy, standards set at various levels, the requests may, remaining professional, target actions and decisions emanating from public authorities (Parliament/Government) or national professional organizations or branches (sectors). A strike against political, economic or social government choices corresponds to the definition of the strike given by case law and results in the application of protective rules. The status of solidarity strike is more uncertain. Solidarity within the company is admitted when the solidarity beneficiaries embody collective interest. Solidarity between workers of different companies falls within the scope of protection when claims are made so they appear a shared collective interest.
b. Strike requires «concerted work stoppage». Reference to concertation is quite flexible: it implies that a certain number of workers act, but it is not necessary that they belong to the same company if the claims go beyond the company. French law remains, however, attached to a strike conception which makes the strike protections specific to a work stoppage. This does not mean that other forms of collective action can take place regularly but they will not benefit from the protection attached to the strike. They may, where appropriate, take advantage of the freedom to demonstrate, freedom of expression or trade union freedom.

2.2. Collective action that does not match the definition in case law, is an illegal strike, or rather, in the words of some contemporary decisions an illegal movement (unless the action benefits from the protection granted to freedom to demonstrate and freedom of expression or trade union freedom).
Actually, to the worker who is involved, it means that he is exposed to a sanction, and even a possible dismissal, which is not then dependent to the existence of gross misconduct as there is no strike.
It is necessary to separate an illegal movement, which is to say a collective action that does not meet the definition of the strike, from two other situations.
During a strike, it may first occur to illegal acts, such as a false imprisoning, a violent picket, or destruction of property. These illegal acts do not lead to disqualification
of the strike and its participants benefit from the protections that are under constitutionally protected rights. The authors of the illegal acts expose themselves to sanctions. The responsibility being personal, no penalty may be imposed on a participant of the strike, unless there is evidence that he has

committed an unlawful act. A trade union, meanwhile, has no vicarious liability. The trade union itself shall only be liable if called by its leaders, to commit unlawful acts.
It is still possible that a strike first lawful, becomes an abusive strike. Abusive strike, in French law, is a strike which leads not only to disruption of production but a «disruption of the business», that is to say that it endangers the survival of the company. The criteria for abuse are therefore in the effects of a strike. The notion of abusive strike, identified by law cases, has for function to justify the employer's initiatives, such as the closure of the company and therefore the suspension of the wages of non-strikers. Itself, the closure does not justify the loss of the strikers' guarantees, unless it is proved that the striker had taken an active part in generating the abusive activities.

2.3. In general, the liability of a union can only be initiated if the facts can fault him personally charged.
In particular it has no vicarious liability even if the striking workers are union members. It is also inconceivable that a union is responsible by virtue of inaction.
A union is therefore liable only for direct harmful consequences of wrongful acts that may be charged (at a decision or instruction of an organ of the union). And this conception of responsibility plays, whether it's an illegal movement – movement that does not meet the definition of the strike – of illegal acts made during a lawful strike or an abusive strike.
Criminal sanctions are only conceivable if illegal acts were committed during a strike and that these acts result in criminal indictments. But again the responsibility of a union cannot be initiated if the unlawful acts due to it. There exists no administrative penalty that may be applied in industrial conflicts.

2.4. French legislation remains committed to the strict connection between strike and work stoppage. The status of forms of collective action that do not result in a stoppage of work is variable. Some forms of collective action are intended to be protected under other fundamental rights, such as freedom of association for example, or freedom of expression. It is still not sure that the call for a boycott of certain products or the calls for sending mass e-mails have such protections.
Other forms of industrial action, which are often forms of a strike, raise nuanced assessments of the judges. Thus, the picket is accepted if not accompanied by too much constraint on the non-striking workers. The occupation of workplace, mechanism which has been an undeniable resurgence in recent years, is not always punished by the judges sometimes sensitive to the means of exerting pressure and expression.

3. The right to strike and its impact on labor relations

3.1. In the private sector, there is no notice requirement. A strike can be triggered by a group of workers at short notice (provided, widely understood, the group continues satisfaction of professional interests). In this sense strikes may be spontaneous. And as no initiative is required from a union, French legislation does not know the concepts of official strike and unofficial strike.
The only requirement is the objective work stoppage (to support the professional claims). Therefore, there are no pure intention strikers. The worker whose job is not programmed is not a striker. A worker, whose work is already suspended, due to illness for example, is a non striker as well.
In public services, a previous strike notice is necessary. It can be given by one or more trade union with representative status. The notice must be accompanied by an indication of the motives and methods of the strike, leads to an obligation to negotiate, which, however, often remains formal. In public land transport each regular employee who intends to join the strike must announce it to his employer, two days before stopping work.

3.2. The right to strike is, in principle, immune against any reaction of the employer. In other words, it is analyzed as the effect of a suspension of the execution of the contract and does not justify dismissal or other sanctions. Such paralysis of the employer's powers, normal corollary of the exercise of a right (with a constitutional value) is required by legislation.
The disciplinary sanction and dismissal issued in response to a strike are void, allowing the dismissal victim employee to request reinstatement. Also prohibited are discriminatory measures, such as the bonus paid to non-strikers. So that an employer can claim not to pay a bonus, he must deal in the same way all absences. Paralysis of the powers of the employer stops with a workers gross misconduct. Gross misconduct is the most important fault on the scale. It involves an intention to harm the employer or the company. It allows an immediate dismissal with no compensation. In the event that the collective movement is unlawful and does not meet the definition of the strike, gross negligence is not required for the employer to punish participants.

3.3. The right to strike results in the suspension of the execution of work which leads to the privation of salary. This denial must be strictly proportional to the duration of the stoppage.
In France, there is no compensation for strikers of any kind. Unions have no ways to support the strikers and, when they have the financial support, it might be contested. At most, there are some local events of solidarity. At the end of the conflict are negotiated the financial consequences of the strike, with possible payment by the employer of strike days.
It is an obligation for the employer to pay a compensation equivalent to the lost wages, in case the origin of the strike is in a serious violation of the employer regarding fundamental obligations towards his employees.

3.4. French legislation knows, as we have already mentioned, three categories of collective movements or illegal actions, the consequences are not the same. When the collective action does not meet the definition of the strike and does not benefit from the protection granted to other fundamental rights, the employer may use his power, including dismissals, which can be selective. If appropriate, a judicial supervision concerning a valid reason (real and serious) can be required.
When the strike is legal but is accompanied by illegal acts, the right to strike guarantees must be applied: can only be penalized, if necessary by the dismissal, workers who have personally committed gross misconduct. There is no collective responsibility. The same rule occurs in case of abusive strikes, a notion which, as already stated, is primarily used to justify the closure by the employer of the company and the suspension of payment of wages to non-strikers.

4. The employer during a strike

4.1. The first register in which the employer can react is the record of disciplinary power. Which is, in principle, paralyzed in front of a strike: no sanctions or dismissal. The employer covers his disciplinary powers against workers perpetrators
of gross misconduct which supposes the workers had an intention to harm the employer or the company.

4.2. More complex, is the employer's power of organization. In France the employer does not have a right to close the company, in advance or by retaliation. Lockout is not a concept enshrined in French legislation. However, case law allows an employer to proceed with the closure of the company or institution, during a strike, at least when there is an obvious impossibility to ensure all business operations. The employer has, on the contrary, the ability to reorganize the production during a strike. There is no ban on offshore production, changing the location of non-strikers or even recruiting new workers. However, legislation prohibits the recruitment by fixed-term contracts and the use of temporary workers to replace the strikers. The prohibitions are limited and cannot be extended without a particular text. There is no general disposition ensuring through criminal law protection of the right to strike. What legislation protects are the strikers exercising their right and this protection is primarily intended to individual relations between worker and employer. The employer still has the ability to search for the responsibility of the unions, the union representatives
and even the workers. But the responsibility that follows the general rules of civil liability of whom the employer is pursuing for serious misconduct and damage arising directly from this fault. This use of civil liability varies over time and circumstances.

4.3. The employer must provide work as much as possible, and pay nonstriking workers. He is released from this obligation if he determines that circumstances make it impossible to continue or maintain business.

5. Effectiveness of the right to strike

5.1 Factors that contribute to make the right to strike harder

Strike leads the strikers to significant sacrifices. They lose their salary and if multiple but modest initiatives exist to constitute «aid» to the strikers, there is no institutionalization of payment or compensation for strikers. This is a factor that weighs heavily on the right to strike. And this factor is even heavier in the context of high unemployment – every family is affected – and stagnation or loss of purchasing power of wages of a large part of the workforce.

Though, the loss of pay sums up the French tradition of the strike action, collective action but action in which everyone agrees freely, action as much for pressure than for collective expression. The comprehensive vision that the judges have about strike may be explained by their awareness of the sacrifices supported by the strikers. Imagining a payment fund by the unions is quite illusory. Trade unions in France have very limited resources. The unionization rate is low. The amounts of contributions, on average, are low and resources other than contributions are allocated to key tasks of trade unions (such as training). Alone, the success of a strike, with an agreement on the payment of strike days, counterbalances to this factor that can be considered structural. Another factor weighing on the right to strike: is the regular reporting by officials of employers' organization, and now by politicians, the archaic (alleged) of the strike. The strike would be from another time, some say, once a great movement is emerging. This denunciation of strike archaism is now a double denunciation of privileges (alleged) benefited by workers who, relatively, use the most their right to strike, that are civil servants and public officials. The fate of strikes – and the right to strike – is due to an increasing extent in public opinion, to witness, but also sensitive to the impact of strikes on the daily lives of other workers and their families, yet sensitive to collective action found to be legitimate responses to sudden relocations, closures or organized bankruptcies.

5.2 Factors that facilitate the right to strike

There doesn't seem to be a general factor that would make the exercise of the right to strike easier. Especially the media doesn't have general obligation to report faithfully collective movements. The most that can be said is that the existence of effective pluralism of information, of a public broadcasting sector, with a diverse but significant unionization of journalists, avoids excess.

As partial factors of support for labor law, there is to be mentioned that some strikes generate sympathy, to those who do not join the collective actions. We have already talked about «strike by proxy». We should also mention the open understanding demonstrated by the judges, who said with such force that they

have no right to give their opinion about the merits of a claim, or to ordain more systematic expulsion of strikers occupying the workplace and report the occupation or to justify an action by the seriousness of a situation.

6. Conflict Resolution

Proposed to the protagonists of a conflict, there are three procedures, organized by the legislation: conciliation, mediation and arbitration. It's about the procedures that legislation uses the word «conflict», a term that could be interpreted as providing such procedures a wider field than the strike.

Indeed, the question is rather pointless because these procedures, which use can only be voluntary even if the local public authority, the Prefect, has a capacity of suggestion, are rarely considered.

Judges, for their part, are sometimes able to offer conflict protagonists, mediation, especially when they are asked to order the eviction of strikers occupying the work premises or where legal action is to provide information to staff representatives. This mediation, a judicial source or, if you prefer, in the shadow of the judge, has its own course: it does not reproduce the model proposed by the Labor Code.

Mostly, conflict resolution is and remains the collective bargaining, leading to agreements that have diverse content, named» protocols» or «end of conflict agreements».

7. Current Problems

It is necessary to distinguish.

a. The right to strike is, there is no doubt, made of an exercise more difficult and less effective. To this «*contraction*» of the right to strike, several factors, including,

perhaps even the weakening of the trade union movement, but also the faculties available to larger companies of a certain size, to neutralize the effects of strike.

This «*contraction*» of the right to strike most likely varies in intensity and in its manifestations, from one country to another.

Therefore, even if the EU institutions are sensitive to this «*contraction*» it is difficult to imagine what could be a European initiative. Moreover in many countries, the largest reserves are expressed, particularly from trade unions, on the intervention of legislation in the field of collective action. These reserves, very strong at state member level, have no reason to be lower in respect of a European legislation.

However, there is a dimension where the right to strike should create a community initiative: the recognition of the legitimacy of collective action on an international scale. It is surprising that capital and companies have an international dimension of freedom, although workers do not have a proven ability to take action of the same size.

b. The right to strike is achieved by the EU legislation itself, through the limits imposed gradually on behalf of the ECJ called fundamental freedoms of the Treaty. (Freedom of establishment, freedom to provide service...) Can this type of damage justify European initiatives?

Different actions could be considered.
There is first the weapon of criticism
– The jurisprudence of the ECJ is, of course, particularly critical. It involves fundamental legal choices, on which the construction of Europe stands: the European institutions have normally no jurisdiction to review national systems of industrial relations. Furthermore, every right of each State Member has, in its own way, organized coordination between the collective action right of and the market right.
– An «anti green paper» could be designed to show that everywhere on the side of the trade union organizations and experts, this jurisprudence only not meets criticism.
– Then there is the possible path of European negotiations, including sectors, to establish the obligation for service companies to respect the working conditions and normal remuneration of the country of execution of the service.
– Finally, there is a possible way for a legal action, so, through the discussion of a national decision that applies the legislation of the ECJ, to challenge the law before the European Court of Human Rights.