

The right to strike under attack: Recent patterns and trends of violations Edlira Xhafa

The right to strike is under attack in many countries across the world. Pressure on the right to strike has also increased at the international level. It culminated at the 2012 International Labour Conference (ILC) where the Employers' Group challenged the existence of an internationally recognised right to strike protected by the ILO Convention No. 87 and questioned the role of the supervising machinery of the International Labour Organisation (ILO). The controversy may have a serious impact on the exercise of this fundamental right, especially in the current context where economic and security arguments are increasingly used as an excuse for the violation of fundamental human and democratic rights. The Friedrich-Ebert Stiftung (FES) report, "The right to strike struck down?"¹, sheds light on recent patterns and trends of violations of the international principles² on the right to strike.

Main patterns of violations

The report shows that of the 119 countries covered by the report, 117 have adopted legal measures (in law and/or case-law) and/or practices which violate international standards on the right to strike. Many countries have enacted restrictive legal measures prior to the 2012 ILC controversy. Such restrictions pertained mainly to (a) exclusion of groups of workers from the right to strike; (b) compulsory arbitration accorded to strikes; and c) excessive prerequisites to strike.

In the last 5 years, 27 countries have adopted legal measures which reinforce existing violations – excessive prerequisites to strike (11 countries) and exclusion of groups of workers from the right to strike (8 countries). Meanwhile, of these 27 countries, almost half (13 countries) have introduced excessive sanctions on legitimate strikes. The dominance of repressive measures in the last 5 years is confirmed by an analysis of the violations in practice. Of the 84 countries that have adopted practices which violate the right to strike in the last 5 years, the majority have imposed excessive sanctions in case of legitimate strikes (59 countries); or are reported to have engaged in acts of interference during strikes (58 countries).

Worrying trends of violations: Exclusion and repression

The report suggests the existence of two notable trends: a continuation of excluding groups of workers from the right to strike and increasing repression against striking workers.

Exclusions

Several groups of workers continue to be excluded from the right to strike in clear violation of international standards. Whereas many of these exclusions have existed prior to the 2012 ILC controversy, new exclusions have been introduced in the last years due to the application of broad and vague categories of 'essential services', 'civil servants' or 'strategic or vital

establishments'. In particular, the right to strike in the public sector continues to be severely curtailed; striking public sector workers are subjected to more repression in the form of acts of interference and severe sanctions.

Repression

Those workers who are allowed to strike are subjected to increasing repression. The fact that excessive sanctions in case of legitimate strikes top the list of violations, indicate a clear trend of repressive legal measures and practices in the last 5 years. The use of excessive sanctions is enabled by other common areas of violation, namely public authorities suspending or declaring a strike illegal, imposition of compulsory arbitration in violation of international standards and infringements in the determination of minimum services. In addition, in an increasing number of cases, bureaucratic procedures and requirements add up to make it virtually impossible to legally go on strike. Taken together, such procedures and requirements often constitute serious acts of interference on the right to strike. Far from neutral, many of the measures 'regulating' industrial actions provide the employers and the state with powerful instruments to effectively repress the right to strike. When widespread practices of excessive sanctions and acts of interference which violate this right – for example hiring non-standard and migrant workers to replace strikers, arbitrary dismissals and imprisonment, hefty fines, shocking police repression during industrial action and lack of access to justice – are taken in consideration, it is all very astonishing that workers are still striking.

The trends of excluding workers from the right to strike and repression against striking workers have been accompanied, and perhaps reinforced, by a public discourse which has favoured the restriction of the right to strike. Arguments to restrict this right are framed around issues of competitiveness, access to markets, economic crisis, public interest, threat of terrorism and national security, and are championed by both governments and employers.

The right to strike in the context of broader trends of repression

The trends of repressive measures and practices violating the right to strike is a continuation of the attack on unionisation and collective bargaining rights, which has eroded workers' participation in decision-making at the workplace and in the policy space at all levels. The dose of repression dominating the 'regulation' of the right to strike, and other trade union rights more generally, also needs to be understood in the context of a global trend of state authoritarianism and 'securitising' politics and society, with

fundamental democratic rights of freedom of speech and assembly at stake in many countries. A process of ‘authoritarian learning’ seems to have been set in motion as governments learn from each other how to effectively restrict fundamental rights and freedoms, including the right to strike.

Conclusions: Now as then, the struggle over the right to strike is still on

The recognition of right to strike has been won through the decades-long struggles of workers across the world. National legislations and international instruments have recognised the right to strike as a fundamental right of workers and their organisations to promote their economic and social interests. Over the years, the ILO has, through its supervisory mechanisms, developed internationally recognised principles of fundamental rights at work including the right to strike.

Legal measures and practices which violate ILO principles have long existed in many countries. This trend has continued in the last 5 years as restrictive legal measures, and practices are increasingly applied across countries, regardless of their status of economic development and the political system in place. Trade unions which have won significant achievements in the past and those struggling to survive are faced with more restrictions and repression in exercising their right to industrial action. This growing attack on the right to strike has further eroded trade unions’ strength and means to tackle rising inequality and other economic and social problems.

Against this background, the 2012 ILC controversy – the challenge to the existence of an internationally recognised right to strike protected by the ILO Convention No. 87 and the questioning of the role of the supervisory machinery – is not a distant debate taking place in Geneva, but a development which reinforces the wave of attacks on the right to strike across countries. Indeed, in absence of any binding international grievance mechanism, the weakening of the ILO supervisory mechanism threatens to remove one of the few international instruments available to workers to challenge the violations of international norms by national governments or employers and to pressure them to respect and protect these norms. At the same time, the controversy may undermine the reception of ILO ‘jurisprudence’ by supranational and national courts (Hofmann and Schuster 2016), calling into question the benchmarks for national legislation and practice on the right to strike.

Despite these worrying trends, the remarkable courage of workers across the world who continue to strike in face of increasing legal restrictions and alarming repression shows that the verdict over the right to strike is far from over and it is being decided every day. Facing the attack on the right to strike, however, requires building power for a long-term struggle. It requires, among others, strengthening of alliances between workers, communities, academia and other democratic forces to frame and resist this attack as an assault on the democratic space needed to build a more just society. Inspiring stories of public support for the strike actions of teachers in Hesse (Germany) and Verizon workers (USA) highlight the power of trade union–community alliances to resist state and

employer pressure and uphold the workers’ right to strike, often the only instrument left to work with dignity.

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1 The right to strike struck down: An analysis of recent trends (Access to the full report at: <http://library.fes.de/pdf-files/iez/12827.pdf>) includes the main findings of a global survey conducted by the FES from March 1 to April 21, 2016. The survey findings, which covered 70 countries, were complemented by a review of recent reports of the ILO Committee on Application of Standards (CAS), the ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) and International Trade Union Confederation (ITUC) which covered an additional 49 countries bringing the total number of countries covered by this report to 119 countries.

2 The survey adopted 12 areas of violations constructed by David Kucera and Dora Sari as applied in the Labor Rights Indicator Project of the Global Labour University and the Center for Global Workers’ Rights at Penn State University (<http://labour-rights-indicators.la.psu.edu/>). The findings from the survey and the reviewed reports were analysed and classified along these 12 areas of violations.