



**The right to strike  
in the public sector in  
Kazakhstan**



## **The right to strike in the public sector – Kazakhstan**

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## 1. Legal basis

### International Level

United Nations instruments - the Republic of Kazakhstan has ratified:

- The International Covenant on Economic, Social, and Cultural Rights and
- The International Covenant on Civil and Political Rights

### ILO instruments:

The Republic of Kazakhstan has ratified:

- ILO Convention No.87 (1948) on Freedom of Association and Protections of the Right to Organise  
(Law No. 29-II of 30.12.1999 “On Ratification by the Republic of Kazakhstan of the 1948 Convention on Freedom of Association and Protection of the Right to Organise”)
- ILO Convention No.98 (1949) on the Right to Organise and Collective Bargaining  
(Law No. 118-II of 14.12.2000 “On the Ratification of the Convention on Application of the Principles of the Right to Organise and Collective Bargaining”)

But it has **not** ratified:

- Convention No. 151 concerning Labour Relations (Public Service)
- Convention No. 154, Collective Bargaining Convention, 1981

### National Level

#### Constitution

Article 24 of the Constitution establishes the right to individual and collective labour disputes using legitimate means for their settlement including the right to strike.<sup>1</sup>

#### Applicable laws

Article 16 of the Labour Code covers the settlement of collective labour disputes including the right to strike.<sup>2</sup> According to Item 13, Part 1, Article 16 of the Law “On Trade Unions”<sup>3</sup>, trade unions have the right to organize and run strike actions and peaceful assemblies following the procedure established in the legislation.

## **2. Who has the right to call a strike?**

According to Article 171 of the Labour Code, the right to strike belongs to workers, i.e. persons who have a labour contract with an employer in an entity of any form of property and legal and organizational status. At the same time, certain restrictions have been established with regard to some categories of workers who do not enjoy the right to strike.

Workers are entitled to taking a decision to go on strike, if conciliatory procedures have failed to settle a collective labour dispute and also if their employer avoids conciliatory procedures or fails to implement the agreement reached in the course of settling the collective labour dispute.

The decision to go on strike is taken by a meeting (conference) of workers (or their representatives). A workers' meeting has a quorum, if over a half of the workforce are in attendance. A conference has a quorum, if attended by at least two thirds of the delegates elected by workers in accordance with their recorded decisions.

### **3. The definition of a strike**

Article 162 of the Labour Code defines a strike as a full or partial stoppage of work seeking workers' social, economic, and professional demands to be met in a collective labour dispute with their employer.

The Kazakh legislation has no provisions on solidarity strikes or strikes over issues related to state policies, indeed the law does not allow strikes on political grounds.

According to Article 32 of the Constitution, citizens of the Republic of Kazakhstan have the right to peaceful assembly, have meetings, rallies, demonstrations, marches, and picketing. The implementation of this right can be limited by law in the interests of state security, protection of public health, public order, rights and freedoms of other persons. A strike is classified as a form of citizens' gathering the right to which is enshrined in the Constitution.

According to Article 21 of the Law "On Trade Unions", unions shall organise and run strike actions and peaceful assemblies in accordance with the national legislation. Unions can hold joint protest actions and carry out such actions as a sign of solidarity with other unions and groups of workers.

#### **4. Who may participate in a strike?**

Participants in a strike shall include citizens who are workers, i.e. persons having a labour contract with an employer. Given that a strike is a form of settling a collective labour dispute, it can be joined by collective workforces or groups of workers observing procedures and grounds for calling a strike determined in the legislation.

Article 176 of the Labour Code establishes restrictions on the implementation of the right to strike. According to Part 4, Article 171 of the Labour Code, participation in a strike shall be voluntary and so nobody can be forced to take part or refuse to take part in a strike.

Based on Article 176 of the Labour Code, strikes are illegal under martial law, or an emergency situation, or special measures put in place in accordance with the laws “On Martial Law” and “On Emergency Situations”.

Strikes are banned in:

- military command bodies, the armed forces, other forces and military formations and organisations in charge of the country’s defence, national security;
- emergency response and rescue operations, ambulance services, firefighting and disaster prevention;
- specialized state and law-enforcement bodies;
- companies that are classified as dangerous production facilities.

In the absence of a minimum number and volume of the relevant services defined in a preliminary agreement between workers’ representatives and the local administration, strikes are forbidden in organisations immediately involved in the provision of essential life-sustaining public services including heat and power supply, water supply and waste water disposal, gas supply, air, railroad, road, water and public transport, telecommunications, and healthcare. They can also be forbidden in dangerous production facilities where stoppage can entail grave and dangerous consequences should the continuous operation of essential equipment and mechanisms be interrupted.

A court shall recognize a strike as illegal, if it has been called in breach of the terms, procedures and requirements established in the Labour Code, and in situations where a strike creates a clear and present danger to people’s lives and health.

## 5. Procedural requirements

In accordance with Article 171 of the Labour Code, workers are entitled to take a decision to go on strike, if conciliatory procedures have failed to settle a collective labour dispute and also if their employer avoids conciliatory procedures or fails to implement the agreement reached in the course of settling the collective labour dispute. The decision to go on strike is taken by a meeting (conference) of workers (or their representatives).

The decisions of a workers' meeting (conference) are taken by a majority of the participants' votes. If holding a workers' meeting (conference) is impossible, the workers' representative body has the right to approve its decision by collecting over a half of the workers' signatures who are in favour of going on strike.

A strike is headed by a body (a strike committee) duly mandated by workers (their representatives). If workers (their representatives) call a strike involving several employers with the same demands put forward, the strike can be headed by a joint body composed of equal numbers of such workers' representatives.

According to Article 172 of the Labour Code, the employer, an association (union) of employers (their representatives) shall be notified in writing by the worker-authorized body defined in Item 3, Article 171 of the Labour Code of the beginning of the strike and its possible duration at least five working days before the calling of the strike. The decision of the workforce to go on strike shall specify the list of differences between the parties forming the grounds for the strike; the date, time, and venue of the strike; a provisional number of participants; the name of the body leading the strike; the list of workers' representatives mandated to take part in conciliatory procedures; and a proposal on the minimum of essential work (services) to be performed during the strike.

It should be noted, that throughout the strike the parties to the collective labour dispute are obliged to continue negotiations with a view to settlement of the dispute. The employer, the governmental bodies, and the body heading the strike are obliged to take all measures in their power to maintain, throughout the strike, public order, preserve the company's property, ensure workers' safety, as well as continued operation of the machinery and equipment whose shutdown poses an immediate threat to people's lives and health.

## **6. Legal consequences of participating in a strike**

No repressive, disciplinary measures can be applied to its participants in a legal strike. For instance, Article 175 of the Labour Code states that organising or taking part in a strike (except for cases when a strike is recognized as illegal) cannot be construed as a violation of workplace discipline and entail the application of disciplinary measures provided in the Labour Code. Workers shall keep their jobs (positions) during the strike, along with their right to a social benefit for temporary unemployment, uninterrupted service record, and other rights associated with their labour relations. Workers taking part in a strike do not get to retain their wages except for strikes related to non-payment of wages or wage arrears.

However, if a court recognizes a strike as illegal under Article 177 of the Labour Code, the employer has the right to hold those who have taken part in organizing or running the strike responsible and take disciplinary measures against them.

Article 178 of the Labour Code bans lockouts, i.e. mass dismissal of workers for their participation in a collective labour dispute and a strike.

It should be noted that social relations associated with the implementation of the right to strike are protected under the criminal law. For instance, coercing workers to take part or not to take part in a strike is punishable under Article 157 of the Criminal Code.<sup>4</sup> Thus, coercion of citizens to go on strike and, equally, to give up their right to strike through intimidation, violence, powers of an office, etc. constitutes a criminal offence. Also, there is criminal liability for obstructing legitimate activities of workers' representatives (Article 154 of the Criminal Code). Such representatives could be members of a union workplace committee heading the strike. Article 155 of the Criminal Code protects the right to organizing, holding, and taking part in a peaceful assembly which is an allied right to the right to strike.



## 7. Case law of international/European bodies

The Republic of Kazakhstan is a UN member and international standards established under the aegis of the UN including those protecting labour rights like the right to freedom of association, to decent remuneration, and the right to strike as a civilized form of social protest are relevant for the national legislation.

The UN Committee on Economic, Social, and Cultural Rights at its 44<sup>th</sup> Session in May 2010 noted with concern the restrictions in the area of the implementation of the right to strike introduced by Kazakhstan. The UN Committee has called on the Republic of Kazakhstan to review its legislation on the right to strike to make it compliant with Article 8 of the International Covenant on Economic, Social, and Cultural Rights (1966) and the ILO Conventions related to the right to strike (Article 8).<sup>5</sup>

The UN Committee on Economic, Social, and Cultural Rights examined the Second regular report of Kazakhstan in 2019 and adopted concluding remarks expressing the UN Committee's concern over: 1) law-enforcement officials and officers that still have their right to strike restricted; and 2) the excessively broad interpretation of Article 402 of the Criminal Code and Article 177 of the Labour Code (establishing liability for actions to support the continuation of a strike that have been recognized by a court as illegal) that may lead to unreasonable restriction of the right to strike as a special form of collective labour dispute resolution.

The UN Committee recommends that the Republic of Kazakhstan amends its national legislation, in particular, Article 402 of the Criminal Code and Article 177 of the Labour Code, in order to guarantee that the right to strike is not unduly restricted.<sup>6</sup>

Maina Kiai, the then United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, made an official visit to Kazakhstan in May 2015. His report pointed out that "the right to strike is restricted by the requirement to carry out mandatory preliminary mediation procedures without which a strike cannot be recognized as legal. Besides, the Labour Code bans strikes in specific sectors including rail roads, transport, and oil. It also establishes the employer's right to terminate employment of workers taking part in strikes that have been recognized as illegal. Apart from that, the effective Labour Code now includes a new *corpus delicti* provision criminalizing actions aimed at involving workers in a strike that has been recognized by a court as illegal".<sup>7</sup> Consequently, there has been excessive criminalization of social relations related to an illegal strike. In the opinion of the UN Special Rapporteur, the legal framework regulating strikes is geared more towards restricting them rather than promoting the implementation of the right to freedom of association.

## **8. Recent developments**

In the past decade, there has been increased strike activity particularly in oil production, mining, and construction. The official opinion of the Kazakhstan authorities is that Kazakh workers in these sectors go on strike to show their frustration over low wages and wage arrears.<sup>8</sup> Industrial action has been gaining momentum in the Mangistau oil-producing region since 2008 with a gradual increase in social protests and the number people involved in strike actions as demands have been repeatedly ignored.

One of the largest industrial conflicts since Kazakhstan's independence took place was focused on Zhanaozen in 2011. A number of strike activists faced persecution and the movement ended following rioting to which law enforcement forces responded with brutal violence, leading to the deaths of 17 people.<sup>9</sup> Navanethem "Navi" Pillay, the UN High Commissioner for Human Rights, called for a thorough investigation of that labour conflict and its tragic outcome<sup>10</sup> but this never happened. There are continuing tensions in this region of Kazakhstan and oil workers' strikes continue.

The government has also taken action to repress the independent trade union movement and only international intervention helped reduce some of the convictions of labour activists.

Since 2019 there have been strikes organized by bus drivers in the public sector in a number of cities and towns (Semey, Shymkent, Kostanay, Almaty, among others) in response to wage arrears and poor working conditions. However, in 2020 some workers were dismissed following the strike action.<sup>11</sup>

Official figures tend to under-report strike action. A monitoring exercise carried out by human and labour rights campaigners noted 20 strikes in 2019 and 24 in 2020, in contrast to official statistics that recorded only nine and four respectively.

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