**Questionnaire on theme III**

**The Right to Strike and its possible conflict with**

**other fundamental rights of the people**

**Russia**

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Please, note that you only have to reply to those questions that correspond to your own legal and industrial relations background. Simply skip the questions that are not relevant in your national industrial relations practices.

**I. Definitions**

Does your national law provide for a definition of strike. If it does, how it is defined. If it has not been defined by law, has it been defined by judicial doctrine?

The definition of *strike* is set up by the art. 398 of Labour Code of the Russian Federation (further – Labour Code). “Strike is a temporary voluntary refusal of the employees to perform their labour duties (in whole or in part) with a goal to resolve the collective labour dispute”.

As long as the strike is understood only as means of resolving the “collective labour dispute”, its legal definition is also essential for the proper understanding of meaning of the “strike” term. The definition of *collective labour dispute* is given in the same article of the Labour Code. It is defined as “non-resolved disagreements between employees (their representatives) and employers (their representatives) concerning the establishment and alteration of conditions of work (including the wages), conclusion, alteration and execution of collective agreements and accords and also concerning the refusal of the employer to take into account the opinion of the employees’ elected representative body in the process of adoption of local normative acts [of the employer – N.L.]”

II. Legal framework

II.1 Please, enounce the legal sources under which the right to strike is guaranteed and regulated in your national law and practice, more especially:

(a) Constitutional provisions;

(b) International law by which your country is bound;

(c) Statutory law and regulations;

(d) Judge-made law;

(e) Collective agreements;

(f) Self-regulation by trade union by-laws.

(a) Constitutional provisions. Article 37, paragraph 4 of Constitution of Russia[[1]](#footnote-1) provides for “Right to individual and collective labour disputes with use of the methods of their resolution provided by federal law including the right to strike”.

This means that:

1. Constitutional right to strike is not absolute but may only be realized in the manner established by separate federal law. Such federal law regulation is mainly contained in chapter 61 of the Labour Code[[2]](#footnote-2) (see further).
2. Constitutional right to strike is limited to resolution of labour disputes (Labour Code provides that strike is a means of resolution of collective labour disputes only – see the definition above). This puts limitations to performance of solidarity actions and political strikes because in both cases the parties of the strike will fall out of the definition of collective labour dispute.

(b) International law. Russian Federation is a party to International Covenant on Social, Economic and Cultural Rights establishing the right to strike (art. 8, para. 1 “d” thereof).

Russia is also bound by article 6, para. 4 of the European Social Charter, which establishes the right to strike. Nevertheless, Russia has not ratified the Additional Protocol to the Charter setting up a collective complaints procedure and therefore is not subject to this control mechanism.

Russia is also a party to the ILO fundamental Conventions on freedom of association – No. 87 and 98. These Conventions have no direct statements on right to strike but ILO controlling bodies – Committee of Experts on Application of Conventions and Recommendation (CEACR) and Committee on Freedom of Association (CFA) consider that right to strike is an integral part of freedom association established by these Conventions. Decisions of CEACR and CFA are not themselves sources of law that may be directly applied by Russian courts. Still they may be used as a secondary source of the interpretation of applicable norms.

(c) Statutory law and regulations. Article 409 of the Labour Code mentions the right to strike as a method of collective labour disputes’ resolution with reference to art. 37 of the Constitution.

II.2 Does your national legal system provide for a positive right to strike, or the right to strike is built on the base of a system of exceptions and immunities?

There is a positive right to strike in the legislation – see II.1 above. Beside the right to strike, art. 409 of the Labour Code also provides for the voluntary character of strikes and the prohibition of any coercion in respect of strike performance, i.e. both positive and negative right to strike.

II.3 Is the right to strike, in your country, subject to procedural or other requirements, such as the following:

(a) Exhaustion of all means of negotiation between the parties to the conflict;

According to art. 409, para. 2 of the Labour Code the employees or their representatives have right to start the organization of a strike if the peaceful procedures have not lead to the resolution of the collective labour dispute, or the employer or its representative is evading to take part in the peaceful procedures or does not execute the decision of labour arbitration which is binding to the parties, with the exception of cases of prohibition of strikes established by the article 413 of the Labour Code (see II.8 further).

Article 410, para. 2 sets up the exception of this rule: if strike has been announced by the trade union or trade unions’ confederation, it may be performed upon the decision of workers of certain employer without the performance of peaceful procedures.

(b) Approval of the strike by the workers’ rank and file (if it is, please specify whether the law or other regulations, including trade union by-laws provide for a secret ballot or a vote by show of hands, and a required majority);

Requirements are set in the article 410 of the Labour Code. The decision to announce a strike is being taken by the meeting or a conference of the employees of the employer.[[3]](#footnote-3) The meeting quorum is no less than half of this employer’s employees, the conference quorum is no less than two thirds of delegates. Initial quorum was two thirds for both conference and meeting but after critics of the provision of the Labour Code by the ILO[[4]](#footnote-4) the quorum for the meeting was lowered in 2006. The decision to take strike should be taken by no less than half of the employees or delegates present at meeting or conference.

(c) Notice (please, specify the period of notice that is required);

10 calendar days (art. 410, para. 8 of the Labour Code).

(d) A waiting period, during which the dispute that would eventually motivate the strike needs to be referred to mandatory conciliation or mediation;

Conciliation is the only mandatory procedure among three peaceful collective labour disputes resolution procedures (conciliation, mediation and arbitration). Conciliation commission is to be set up within three calendar days since the day of beginning of the collective labour dispute (art. 402 of the Labour Code). The day of beginning of collective labour dispute is a day when the employer informs about declining of all or part of the employees’ or their representatives’ demands or the failure of the employer to inform about its decision (art. 398 of the Labour Code). The employer is obliged to inform the employees or their representatives about its decision concerning their demands within a month term after receiving of the demands (article 400 of the Labour Code). The conciliation commission has the 5 calendar days to examine the collective labour disputes. The term may be prolonged upon written agreement of both parties of the dispute (article 402, para 6).

(e) Congruency between the “area of conflict” and the area of application of the collective agreement if the strike aims at bringing about such agreement.

If the question concerns the level of conflict, it must be the same as level of the collective agreement.

(f) Other, not mentioned above?

II.4 Who can call and launch a strike under your country’s law and practice:

(a) only a trade union or a coalition of unions;

(b) only a trade union that represents a majority of the workers involved in a dispute (for example a union that has been certified as the exclusive bargaining agent in respect to a specified bargaining unit, such as a plant, an enterprise, an industry, etc);

(c) a non-union body (for example staff delegates, a workers’ committee);

(d) a federation or a confederation of workers;

(e) the workers in general;

(f) other?

The decision to take a strike is being taken by a meeting or a conference of the employees of the enterprise (of the company in whole or of the division of the company, or of the individual entrepreneur not being a company) – article 410, para. 2 of the Labour Code. The strike may be *announced* by a trade union or trade unions’ federation (see above) but the *decision to take part* in a strike is being taken by the employees themselves. If the strike is being taken, no individual employee may be coerced to take part in it.

Although the right to strike is granted not only to the employees of certain employer (a company) but to its divisions being separate enterprises, in practice it is difficult for the employees to prove that their division has sufficient independence from the “main” employer. Usually such strikes are being considered illegal.[[5]](#footnote-5)

II.5 Who is entitled to participate in a strike? In particular:

(a) Are persons entitled to participate in a strike who belong to another trade union than the union which is the party to the strike?

(b) Are persons entitled to participate who do not belong to any trade union?

(c) Is the entitlement of employees to participate in a strike dependant on them potentially benefiting from the outcome of the strike?

The employees being party to collective labour dispute which means – the employees and their representatives (see above). If the strike is being announced by the trade union on higher than plant-level, it would consist of number of separate strikes at plant level. Such strikes were happening sometimes in 1990-ies.

II.6 Is there any restriction relating to the type of conflicts that would eventually lead to a legal strike, for example:

(a) Strikes relating to issues that have been settled by a collective agreement that is still in force (relative peace obligation);

(b) Strikes on any cause, during the life of a collective agreement, when the parties have agreed upon a no-strike clause (absolute peace obligation);

Collective agreement concluded on plant level (*kollektivniy dogovor*, “collective accord” in terms of Russian legislation) may contain the obligation not to strike “in the event of fulfillment of the corresponding obligation by the employer”, i.e. the relative peace obligation (art. 41, para. 2 of the Labour Code). The article 46 concerning the contents of the multi-employer collective agreements (*soglasheniya*, “agreements” in Russian legislation) does not name such obligation, although it doesn’t prohibit parties to include it into the agreement. Nevertheless the performance of strike that would violate the peace obligation is not included in the limited list of illegal strikes contained in the article 413 of the Labour Code. Arguably such strike may be considered as being performed “in breach of terms, procedures and requirements set up in the Code” (art. 413, para. 3). Still breach of peace obligation is violation of collective agreement and not of the Labour Code directly. No court decisions on the matter are known. If they existed they wouldn’t be considered as precedents anyway, as long as Russia is not a common law country.

(c) For (a) and (b) above, if a peace duty exists:

i. Is it a mandatory duty or can it be set aside by the parties concerned;

It is up to parties of collective agreement whether to include it or not.

ii. Who can claim rights which arise from that duty;

Theoretically – the employer affected by the strike, see above. But no practice is known.

iii. Who is bound to such duty;

The parties of collective agreement on employees’ side. These are all employees of the employer (on plant-level) or of the employed being covered by the multi-employer agreement. Union membership is irrelevant.

iv. What does the “peace duty” imply (prohibition of strike action relating to an existing collective agreement or prohibition of any strike action);

Strike relating to the existing agreement (see above).

v. When does the “peace duty” begin and when does it end;

During the course of collective agreement validity – subject to limitations and unclear character of the duty itself – see above.

vi. What exactly is required to fulfill the “peace duty” (for instance, refusal of providing support by trade unions, appealing of trade unions to workers who engage in strike action)?

Only the direct participation in strike may be limited.

(d) Strikes arising out of rights disputes;

No official distinction between the “rights” and “interests” disputes exists in Russian labour legislation. Two different procedures on resolution of collective and individual labour disputes exist. Collective labour disputes (see the legal definition in I. above) are being resolved in a manner usual for disputes of interest: conciliation, mediation, arbitration and strikes. According to articles 381 and 382 of the Labour Code, the individual labour disputes are always the disputes of rights and may be settled by courts and commissions on labour disputes (voluntary pre-court procedure). One type of disputes of rights may be settled both as individual and collective labour dispute: the disputes about the execution of collective agreements. Consequently two principally different procedures of resolution may be applied in the same time to the same dispute.

(e) Strikes aiming at bringing about a collective agreement (for instance, the legal validity of such agreement);

Such strikes would be considered as strikes on resolution of collective labour dispute about the execution of collective agreement which is one of permitted grounds – see (d) above.

(f) Strikes aiming at enforcing the collective agreement;

See (d) and (e) above.

(g) Strikes arising out of disputes relating to issues that are not fit to be regulated by collective bargaining (management prerogatives);

The demands on collective labour disputes must be addressed to the employer or its representative. If the demand itself would not be contradictory to legislation and would be within employer’s control, there is no limitation on such strike.

(h) Strikes arising out of inter-union disputes;

Such strike wouldn’t be legal because the demands of the employees wouldn’t be addressed to the employer or its representative.

(i) Political strikes (i.e. strikes that are called to make pressure on the government)?

Illegal – see (h) above.

(j) Strikes to announce certain concerns to the public?

Illegal – see (h) above.

II.7 Which of the following modalities of industrial action are not permitted under your country’s law and practice:

(a) Solidarity/sympathy/secondary strikes;

Illegal – see II.6 (h) above.

(b) Warning strikes;

Permitted. Article 410, para. 6 states that a warning strike may be taken by the employees after 5 calendar days since the beginning of conciliation commission work. It may last for one hour and may be taken once in the course of this collective labour dispute. The employer shall be informed about the warning strike no later than 3 days in advance. The minimum works (services) rules (see II.9 further) applicable to normal strikes are in the same way applicable to the warning strikes.

(c) Go slows, sit-ins, work-to-rule;

Strike is defined as “refusal to work (in whole or in part)” (see I. above), so *go-slows* are legally the same strikes as the classic ones.

*Sit-ins*, meaning the strikes on the working places of the employees are not prohibited - there are statements in law regarding the place where a strike may be taking. So, it would not be illegal to strike at working site as well. In the same time there is no prohibition for the employer not to allow workers to their working places, i.e. to effectively organize a lockout (in the sense used in the most countries, but not in Russia). There is an article in Labour Code (415) “prohibition of lockouts” but “lockouts” prohibited by this article are defined only as *dismissal* of the employees because of their participation in collective labour dispute. In practice the situation of simultaneous legality of both sit-in strikes and “real” lockouts may lead to the attempts of forceful “solution” of the labour conflicts.

*Work-to-rule* means a scrupulous performance of the work duties aimed in reality at disorganization of the economic process. As long as the demands of workers are not being stated officially, there is no official labour dispute in such situation. Certainly, it may not be prohibited to perform the duties scrupulously. The examples of work-to-rule actions are known in Russian railroads.

(d) Rotating strikes;

There is a statement in art. 410 para. 9 of the Labour Code among other requirements concerning the note on strike such note shall include “the information on date and time of the commencement of a strike, its expected duration and the expected number of participants”. The words “expected” are added into the text of Labour Code upon the proposals made by the ILO. Legally this means that it is up to strikers to decide how many workers will take part in the strike and what kind of schedule of strike will be used. Nevertheless, the employer must be informed about the strike (including its rotating character) in advance. The number of strikers and the schedule may change in the course of strike but this may not be an *intentional* change by strikers as long as they are obliged to inform about the “expected” number of strikers and duration of the strike in advance.

(e) Occupation of the enterprise’s premises;

The employer is not obliged to allow the employees to occupy any of his premises therefore it may call the police or security service to “clear up” his premises. Nevertheless in certain “resonance” cases such actions are being performed and may include the occupation of premises with a view to perform a hunger-strike. The hunger-strikes were quite a common event in 1990-ies. Since that time they have become a rarity, although sometimes they still occur, as it was in March, 2008 in the *Krasnaya Shapochka* mining enterprise – a case that certainly has had a big public resonance.[[6]](#footnote-6)

(f) Blockades;

No direct mentioning in law, but such actions would be considered illegal depending on nature of specific action being performed.

(g) Picketing;

Beside the performance of a strike, according to paragraph 8 of article 401 of the Labour Code, *the employees themselves* (trade unions are not mentioned in the Labour Code) have right to perform assemblies, meetings, demonstrations and *picketing* in support of their demands in contemplation of a collective labour dispute in form and substance provided by the legislation. The right to organize meetings, street demonstrations, picketing and other collective actions as means of protection of workers’ rights is also granted to *the trade unions* according to article 14 of the Trade Unions Act.[[7]](#footnote-7) The way of carrying out of these actions is provided by the Federal Act of June, 19, 2004 “On assemblies, meetings, demonstrations, marches and picketing” No.54-FZ[[8]](#footnote-8) (further – Act on Assemblies).

But the word “picketing” used in these laws is far from having the same meaning as it is common for the Western industrial relations practice. It does not mean that a trade union or the employees may organize the blockade similar to the one that happened e.g. in the *Laval* case. According to the definition of picketing contained in the article 2 of the Act on Assemblies, the picketing “…is a form of public expression of the opinions, performed without transportation and using the audio transmitting technical equipment by means of allocation near the object of picketing of one or more citizens using the placards, banners and other items of visual agitation”. It is out of question that the participants of picketing or any other action envisaged by law could forcefully interfere or block the business activity of the employer. Any attempt to interrupt the operations of the employer by any action except for a strike is illegal, and employer does not need to apply to court – it would be sufficient to call the police to restore the public order.

(h) Other, not listed above?

II.8 Is the right to strike restricted or altogether denied in certain industries or sectors, such as the following:

(a) The civil service. In case strikes are not permitted in the civil service, please explain if all employees who work for the state are deprived from the right to strike, or this restriction applies only to certain categories of government employees?

Strikes are not permitted in “state civil service”[[9]](#footnote-9) and “municipal service”[[10]](#footnote-10). The regulations of law on state civil service and on municipal service cover only the government and municipal officials. Any employees performing secondary functions in the Government institutions are covered by the provisions of Labour Code and have the right to strike. These two laws also do not cover the employees of the state-owned companies and institutions. Policemen, procurator’s office servants, military servants and people serving an alternative civil service, state messengers, state security services officials have no right to strike according separate law establishing their status.

(b) Public utilities in general?

Employees of state-owned companies in general have the right to strike. Chief executive officers of state unitary enterprises have no right to take part in strikes.[[11]](#footnote-11) Such regulation was established as a reaction on the practice of state-owned enterprises directors in 1990-ies to organize strikes as method of pressure on Government to get funding. Nevertheless, there is no prohibition for company directors of other organizational forms of companies (e.g. the joint-stock companies) to take part in the strike, even if such companies are totally state-owned.

(c) Enterprises or industries that are of crucial importance for the country’s economy or the defense?

According to article 413, para. 1 (a) of the Labour Code it is forbidden to perform strikes: during the state of military alert,[[12]](#footnote-12) state of emergency[[13]](#footnote-13) or special measures taken according to legislation on state of emergency; in the military forces of Russian Federation, other military, para-military and other organizations or their divisions that are directly involved into issues of state defense, state security, emergency and rescue services, fire-fighting services, the services of prevention and liquidation of consequences of natural disasters and emergency situations; in the police and other state security services; in the organizations (or their divisions) directly servicing the dangerous production or equipment, at ambulance stations.

The prisoners’ strike is considered as major breach of the rules of imprisonment according to article 116, para. 1 of the Penal Execution Code of Russian Federation.[[14]](#footnote-14)

(d) Essential services:

i. Please, explain how are essential services defined in your country, and if possible provide a list of the services or the sectors which have been declared to be essential services;

ii. Explain whether strikes in essential services are forbidden altogether, or they are permitted, provided a minimum service is guaranteed. In this case, please explain how this minimum service is established?

According to article 413, para. 1 (b) of the Labour Code it is forbidden to perform strikes *if the strike performance may lead to danger of the country defense and state security, life and health of people*: in the organizations or subdivisions thereof that a directly connected to the support the life-sustaining activity (supply of energy, heating, water supply, gas-supply, aviation and railroads, communications, hospitals).

Article 52 of the Air Code of Russia[[15]](#footnote-15) prohibits strikes for the aviation personnel of civil aviation responsible for servicing and directing the aviation transport.

Strikes are prohibited[[16]](#footnote-16) for the employees of the railroad transport whose work is connected with trains’ operations, maneuvering operations, passengers’, senders and recipients of cargo shipment service according to the list established by Federal Law. This list is so wide that almost any railroad employee has no right to take part in strikes. This regulation was challenged as unconstitutional in the Constitutional Court in 2007, but the Court didn’t agree that right to strike was excessively limited in respect of railroad workers.[[17]](#footnote-17) The law has been left unchanged.

In slightly more radical situation concerning the civil aviation the Constitutional Court of Russia has considered[[18]](#footnote-18) the law unconstitutional in 1995. The then existing law “On collective labour disputes”[[19]](#footnote-19) was prohibiting the strikes in civil aviation enterprises *in whole*. Such prohibition being based only on a fact of enterprise belonging to certain economic sector was found unconstitutional and was abrogated by the Constitutional Court. Nevertheless, it seems unlikely that analogous decision would be taken in the nearest future in respect of railroads because of political reasons.

Federal Law “On use of nuclear energy” prohibits the strikes, meetings, demonstrations and picketing, blocking of transport and other social actions near to the nuclear industry enterprises and strikes that may damage the work of such enterprises.[[20]](#footnote-20)

II. 9 Are there other limits to a lawful strike?

(a) What main principles and criteria/tests are applicable in this regard (proportionality, “ultima ratio” principle, abuse of rights, fairness, reasonableness, others)?

Limitation is provided by the obligation to perform minimum works (services) during the course of a strike. According to article 412, para. 4 of the Labour Code, the list of minimum works (services) to be performed during a strike shall be defined by the agreement of the parties of the collective labour dispute together with local government authority within 5 days since the announcement of strike. The inclusion of certain type of works (services) into list must be motivated by the possibility of injuring the life or health of people. It is not permitted to include into list the works (services) not being included into lists of minimum works (services) being adopted in respect of sector of economy or territory. There are lists of minimum services adopted by the responsible governmental bodies in respect of certain number of economic sectors subject to approval by the sectoral trade union federations. In case of disagreement between the parties concerning the list, it is to be approved by the Government authority of subject (territory) of Russian Federation.

(b) Are strikes subject to limitations on the basis of the need of protecting the common good?

Beside the minimum works (services) and essential services limitations described above, there is a right of Government to suspend the strike performance for the period of no more than 10 calendar days “in situations of special importance for the vital interests of the Russian Federation or its territories” – article 413, para. 8 of the Labour Code.

(c) Are the aims of a strike and/or the underlying demands to be taken into account when determining the lawfulness of a strike? Do at least some “outer limits” exist in this regard (for instance, a prohibition of destroying the means of existence of the other party either by the strike action as such or by the results likely to be achieved by the strike; protection of vitally important goods)?

There are no other limitations regarding the aim of the strike except for the statement that it is a means of resolving collective labour dispute. Therefore the aim of a strike may be the same as of the collective labour dispute in general (see its definition in I. above).

(d) Are additional principles and criteria/tests to be taken into account when determining the lawfulness of a strike (for instance, the need to ensure that the parties to a conflict are on a par either in general or with regard to an individual conflict even)?

No.

II.10 Lawful strikes

What are the legal consequences of lawful strikes with regard to the individual contracts of employment of:

(a) persons participating in the strike?

According to article 414 of the Labour Code the participation in a strike cannot be regarded as a disciplinary misconduct, and be a ground for dismissal, except for the case of non-fulfillment of the obligation to stop a strike that has been already declared illegal by the court. Employees retain their working positions during the course and after the end of a strike (article 414, para. 3 of the Labour Code).

(b) others (persons employed in an undertaking that may be inside or outside the scope of the strike)? In particular: What is the impact of lawful strikes on the pay claims of workers in case that their employers have to interrupt the business temporarily due to the strike?

If the workers are taking part in the strike, the employer is not obliged to pay the wage for the period of strike except for the workers performing the minimum works (services) – article 414, para. 4 of the Labour Code).

If they are not taking part in the strike but cannot perform their duties because of the strike, such situation is considered as a “standstill not on their fault”. It is not absolutely clear whether such situation must be interpreted as standstill on the fault of the employer (because employer may stop the strike by the satisfaction of strikers’ demands) or a standstill because of reasons out of control of the parties. In first case the employee would have the right for two thirds of his/her medium wage for the period of standstill including all parts of wage (basic salary, premiums, additional payments, etc.). In the second case employee will have the right to two thirds of basic salary only (article 157, paras. 1 and 2). It would be up to judge to finally qualify the reasons of standstill in each particular case.

The employer has the right to change the place of work or working duties of the workers affected but not taking part in the strike (article 414, para. 6 of the Labour Code).

II.11 Illegal strikes and liability

(a) Can a strike be declared illegal by the government alone, or it is indispensable that declaration of illegality/unlawfulness be made by an independent authority, for example

i. the judiciary in general;

ii. a specialized Labour Court;

iii. an ad-hoc industrial relations body

iv. other?

The strike may be declared illegal by the decision of high courts of subject (territory unit) of Russian Federation – article 413, para. 4 of the Labour Code.

(b) What are the effects of declaration of illegality/unlawfulness of a strike on the individual contract of employment:

i. can the strikers be summarily dismissed, or it is necessary that they be previously enjoined to return to work;

ii. can they be subject to disciplinary measures short of dismissal, such as withholding of pay or fines;

iii. can they be made liable for damages?

The participation in a strike that has been declared illegal by the court, is not itself a ground for disciplinary measures. Only the refusal to return to work one day after the court decision on declaration a strike illegal or on suspension or delay of strike comes into force, the workers may be subject to disciplinary sanctions – article 417, para. 1 of the Labour Code. In such situation they may be dismissed for *“progool”* - absence from work for period for more than four hours during the working day or during whole working day (article 81, para. 6(a) of the Labour Code). If the absence period is shorter than stated, worker may be penalized by “warning” or “rebuke” which may result in dismissal for another disciplinary misconduct during a period when “warning” or “rebuke” is considered “valid” in respect of this worker (usually – one year period). In such situation worker may be dismissed for “non-single non-fulfillment of labour obligations” (article 81, para. 5 of the Labour Code). This ground of dismissal may also be applied to the worker for the short absence at work in the same situation, if there are already “valid” disciplinary sanctions for this worker for previous misconduct.

The workers cannot be liable for damages caused to the employer by the illegal strike.

(c) What are the effects of declaration of illegality/unlawfulness of a strike on the unions that have declared the strike:

i. Can the employer demand that the court or other appropriate body releases an injunction to order the union to stop the industrial action;

ii. Can the union be made liable for damages;

iii. Can the union be sanctioned with fines;

iv. Can the union be deprived of other rights (for example, certification as bargaining agent may be cancelled, or the right to collect union dues through check-off may be suspended or cancelled);

v. Can their leaders be prosecuted under penal laws?

The workers’ representative body that has announced a strike can be liable for damages caused to the employer by the illegal strike if it didn’t stop the strike after the court’s decision on its illegality has come into force – art. 417, para. 2 of the labour Code.

II.12 Arbitration

(a) Please, explain whether there is a practice of arbitration in industrial disputes in your country. If such practice exists:

i. What’s the legal source? Has it been established by law or through negotiation between both sides of industry?

ii. Can arbitration be imposed by the state? If it can, in which cases the state can order that an industrial dispute be settled by arbitration?

iii. Can the workers’ or the employers’ side demand that a dispute be submitted to arbitration?

Mandatory arbitration may be established for the cases where strikes are illegal. In such situation if the parties can’t agree on candidates of the arbiters, their power and schedule of work, such decision is being taken by the Government authority – article 404, para. 7 of the Labour Code.

According to article 404 of the labour Code, if the strikes are not forbidden, labour arbitration is a voluntary peace procedure of collective labour disputes resolution. Labour arbitration is an *ad hoc* body. It may be established only if parties of the collective labour dispute have concluded a written agreement on binding force of its decision (except for mandatory arbitration cases – see above). Labour arbitration is being formed by the parties of the collective labour dispute and Governmental body on collective labour disputes resolution within 3 days after the fail to resolve the collective labour dispute by conciliation commission or a mediator. This body now is Federal Agency on Labour and Employment (*Rostrud*). The creation of labour arbitration, its composition, the powers in respect of the dispute are being established by the decision of the parties of the dispute and of the Governmental body.

(b) Please, explain

i. When a dispute is submitted to arbitration, how are the arbitrators appointed?

See II.12 (a) above.

ii. Is there an established procedure to handle disputes that have been submitted to arbitration?

See II.12 (a) above.

iii. Is the strike suspended when an order to submit the dispute to arbitration has been issued?

The arbitration is to be taken before the strike.

iv. What are the legal effects of arbitration awards? Are they final and binding or they can be challenged by either party, and on what grounds?

The arbitration decision is binding and settles the collective labour dispute. There is no appealing procedure for arbitration. However, if the employees are dissatisfied with the arbitration decision there is no formal prohibition to start a new collective labour dispute on the same ground immediately again. It would be difficult to mobilize workers for this though. Such examples are not known in the practice up to now.

(c) How frequently are industrial disputes submitted to arbitration?

There is no statistics available concerning the arbitration. The overall number of collective labour disputes that have been registered by Rostrud[[21]](#footnote-21) is very small:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Year | 2006 | 2007 | 2008 | 2009 | 2010 |
| Number of disputes | 18 | 9 | 17 | 6 | 9 |

Taking into account that not all of them have passed through the official arbitration procedure, the number of labour of labour arbitration cases is even smaller.

**III. Strikes in practice**

1. To what extent restrictions such as those mentioned in II.5, II.6, II.7 and II.8 above, are respected in practice?

Almost all strikes that are happening in the last years are being performed either illegally from the beginning or they are organized with an intention to be legal but they finally are considered illegal by the courts. Therefore the level of legal discipline of strikers is low: there’s no motivation for it. In most serious situations it comes to serious social unrest (see V. below).

1. What has been the actual practice in respect to issues that are addressed under II.11 here above; in particular have workers been dismissed and fines or other sanctions been imposed on the unions or their leadership?

Although the official liability for illegal strikes is quite mild, there are cases in practice when employers are taking disciplinary measures beyond the legal provisions. Such cases happen not only for taking part in strikes but for trade union activity in general.[[22]](#footnote-22)

1. Who are in most cases the parties to strikes (trade unions, workers, others)?

As stated above, from legal point of view, the decision to take a strike is always being taken by the workers themselves. However, in fact most of the strikes are being organized by the trade unions.

1. What are in practice the most frequent causes of strikes?

There are no official strikes during last years (see 5 below). Nevertheless, unofficial protests are happening frequently. According to sociologists that have been monitoring the unofficial protests in Russia,[[23]](#footnote-23) the big majority of protests (more than 50% among all other reasons) are caused by delay of wages payment. This reason itself cannot be a ground for the strike from legal point of view: it is a dispute of rights to be resolved in courts (see II. 6 (d) above).

1. Does an industrial conflict typically start with a strike or are there a considerable number of strikes in response to lock-outs?

Lockouts are rarely used by Russian employers (lockouts in the commons sense, not “lockouts” in a sense of article 415 of the Labour Code – see II.7(c) above, that are prohibited). Usually industrial conflict is initiated by the discontented workers.

(f) To what extent strike regulation applies also to work stoppages of short duration, such as “days of action”, general strikes, warning strikes and the like, the purpose of which is to support certain overall demands of the labour movement, or to express opposition to certain announced or intended government policies?

The strikes are declared at plant-level and demands are being addressed to the employer. See II.6 (h) above.

(g) Are general strikes frequent in your country’s industrial relations practice?

There were no precedents in modern Russia.

**IV. Support**

(a) Please give further details as regards support provided by trade unions to participants in a strike (for example, if unions have strike funds and pay allocations to workers on strike).

As long as the protest actions are in most cases unofficial, no data is available.

(b) Are employees entitled to payments provided by the state or social security funds (e.g. unemployment benefits) while on strike?

No.

**V. Economic relevance**

Please, if possible provide with data relating to:

(a) the number of strikes,

The official strike statistics of Russia since the 2000:[[24]](#footnote-24)

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Year | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009[[25]](#footnote-25) | 2010[[26]](#footnote-26) |
| Number of strikes | 817 | 291 | 80 | 67 | 5933 | 2575 | 8 | 7 | 4 | 1 | 0 |

It is obvious that this data cannot represent any kind of real picture. The period of last ten years is known for its relative social stability. No dramatic events in the 2004 and 2005 could be found to explain the rise of the strike record to four-digit numbers and then its immediate decrease to one-digits. The only explanation of such a strange picture can be found in the method of calculation. Since the 2006 only the legal strikes are counted by the official statistics. For the country with over 140 million population, the statistics for the last five years means that only in the very exceptional cases the conflicts of workers and employers are being settled by means of law. Most conflict situations are being resolved outside the scope of law. The non-governmental organization – Centre for Social and Labor Rights – has been performing a monitoring of all actions of the employees which have led to total or partial stoppage of the enterprise activity (strikes, work stoppages provoked by the wages’ non-payment, hunger-strikes, take-overs of the employer’s facilities and any other actions – legal or illegal) since 2008.[[27]](#footnote-27) The information was gathered through the internet, mass media and internal communications with trade unions, non-governmental organizations and other available sources. This is the data:

|  |  |  |
| --- | --- | --- |
| Year | Total number of actions (including the first 10 months of the year) | Monthly average (including the first 10 months of the year) |
| 2008 | 60 (46) | 5,0 (4,6) |
| 2009 | 106 (95) | 8,8 (9,5) |
| 2010 | 76 | 7,6 |

The first thing that comes clearly from this data is that illegal protests that fall outside the official statistics happen many times more frequently than legitimate strikes. It is also obvious that contrary to the official data, the strike level has risen after the beginning of the economic crisis.

This latency of the labor conflicts can easily be explained by the restrictive legislation on collective bargaining and strikes and in the same time presents a very dangerous sign from social and political point of view. The most resonant conflicts not only go beyond the legal means of regulation but also get outside the “walls” of the enterprise. There were two major labor conflicts in the last two years: at Picalevo cement plant (in 2009)[[28]](#footnote-28) and at Raspadskaya coal-mine (in 2010).[[29]](#footnote-29) The first was provoked by the stoppage of business and non-payment of wages and has led to the take-over by the workers of the federal route between Moscow and St. Petersburg. The second conflict was inspired by the catastrophe which has taken the lives of more than 70 miners and was supposedly[[30]](#footnote-30) a result of safety rules breach by the mine management. In the second case, the town Mejdurechensk, where the miners lived, was all affected by the protests and unsanctioned meetings. Special police forces were attracted to pacify the protesting people. In both cases only the direct involvement of the prime-minister V. Putin has stopped the protests.

(b) average duration of strikes,

(c) number of working days lost due to strikes,

(d) estimated damage brought about by strikes (with regard to the “opponent”, but with regards also to third parties like customers, suppliers, private consumers) in the recent past.

Taking into account situation described in V (a) above, no data on these issues can be provided.

**VI. Legal protection of conflicting interests**

How are (potentially) conflicting interests of other parties (in international law as far as applicable in your legal system, constitutional law and/or statutory law including penal law and also including judge-made law) legally protected?

In particular:

(a) Is there a legal protection of free entrepreneurship?

i. Can an employer claim a strike is abusive in that it undermines his/her freedom to provide services?

There were no court decisions in Russian practice that would be directly parallel to Laval case. Nevertheless, the more general contradiction between social and economic rights has been a subject of important court rulings. The *factual* conflict between the economic rights of the employer and the right to organize in general was considered by the Constitutional Court of Russia. In 2002 the Court has decided that provision of Article 25 of the Federal Act ”On trade unions, their rights and the guarantees of their activities” of January, 12, 1996 No.10-FZ[[31]](#footnote-31) (further – Trade Unions Act), stating that “…dismissal on the employer's initiative of employees who are members of trade union bodies and are not released from their main duties shall be permitted, apart from the general rules of dismissal, only with the prior consent of the trade union body of which they are members; dismissal of trade union group organizers – only with the prior consent of the respective body of the division of the organization (and in the absence thereof – of the respective trade union body in the organization); and dismissal of heads and members of trade union bodies in the organization and trade union organizers – only with the preliminary consent of the respective amalgamation (association) of trade unions” contradicts the Constitutional princeple of freedom of economic activity.[[32]](#footnote-32) Two years after the Constitional Court has examined the provisions of Article 374 of the Labour Code which contained the corresponding norms but in much more liberal way: there was only a limited list of grounds[[33]](#footnote-33) for dismissal of trade union officials and the list of the officials under protection was much shorter. In this case the Court has considered that the limitation of the employer’s right to terminate the employement contract with a condition of trade union’s approval in certain cases does not contradict Constitutional right of economic activiy.[[34]](#footnote-34) But in 2009 the same Constitutional Court has interpreted this into opposite way and declared para. 1 of article 374 of the Labour Code unconstitutional.[[35]](#footnote-35)

ii. Can an employer hire workers to replace those who are on strike?

Yes. On temporary basis.

iii. Can temporary employment agencies put temporary staff at the disposal of a user enterprise, to replace workers of the latter who are on strike?

Yes, but TEAs cannot be employers of these workers.

iv. Can an employer lay off the workers who are not on strike (defensive lock out)?

No. If the workers can’t perform their work because of a strike they will have the right for remuneration for the “standstill” – see II.10 (b) above.

(b) Is there a legal protection of property?

Yes, obviously.

(c) Is there a legal protection of the freedom of profession; in particular can non strikers demand that their right to work be respected and protected?

If the question is about the right of non-striking workers to force the strikers to stop the strike – no.

**VII. Neutrality of the state**

Is there a principle enshrined in your legal system, which assures neutrality of the state (non-interference by the state) with regard to strikes?

No specific statements in respect of strikes. There are basic norms on trade-union independence and principle of social partnership called “the co-operation of state in the strengthening and development of social partnership on a democratic base” (article 24 of the Labour Code).

As it is clear from the statistics provided above (see V.) the real situation with strikes is very far from the legal regulation – the “law in books”. Despite the serious motivation for social protests, currently there are practically no official strikes. In the same time the legal regulation of strikes themselves doesn’t look absolutely restrictive compared to other countries. There are discussions within expert society concerning the way of liberalization of strike performance.[[36]](#footnote-36)

But even if the experts’ proposals would be implemented in practice, which doesn’t seem likely in short-term perspective, this wouldn’t change the situation with strikes dramatically. Most of them still will be performed unofficially, beyond the scope of law and will possess a danger of social unrest. This is because of the fact that the narrow mechanism of declaration and performance of strikes is only a fragment of more broad industrial relations’ legal regulation. There is a serious problem of trade unions’ weakness and unjust system of inter-trade union relations where the “new” - independent and more “aggressive” trade unions have no real right to state their claims and are being prevented from this not only by the employers, but by the “old” trade unions that usually are dependent on the employer. The problem is also being aggravated by the lack of internal trade union democracy and transparency procedures, established by law and lack of legal responsibility of trade unions in respect of their own members.

The ILO is of little help in this situation. This may be explained by the fact that usually the newly formed independent trade unions are confronting not only the employer, but also the old trade unions that already represent the majority of workers in the enterprise. As long as the workers’ representation within the ILO is based on the “most representative” unions, there is practically no mechanism allowing ILO to hear the small unions’ voice within the ILO control procedures. When complaints concerning the inter-union discrimination were filed to the ILO Committee on Freedom of Association,[[37]](#footnote-37) its reaction was quite mild.

**VIII. Parity of parties**

Is there a principle enshrined in your legal system according to which the state has to ensure that the parties to a strike must be on equal footing? If so, what exactly is required by the state under that principle?

No. There is a principle of social partnership called “equality of the parties” (article 24 of the Labour Code) but it is about legal, not in-fact equality.

1. Sobraniye Zakonodatelstva Rossiyskoy Federazii of January, 26, 2009, No. 4, Art. 445. [↑](#footnote-ref-1)
2. Sobraniye Zakonodatelstva Rossiyskoy Federazii of January, 7, 2002, No. 1, Art. 3. [↑](#footnote-ref-2)
3. Conference is being called when the enterprise is too big to organize a meeting of all employees. In this case employees’ delegates for the conference are being elected. [↑](#footnote-ref-3)
4. In August 2001 the Government of the Russian Federation made a request to the ILO to comment on the draft Lbour Code adopted by the State Duma (the lower house of Parliament). In response to this request, the ILO experts prepared a Memorandum (further – Memorandum), addressed to the Government where certain proposals to amend the text were made. For further details see: Lyutov N., The Role of the ILO in the Adoption of the New Russian Labour Code // The International Journal of Comparative Labour Law and Industrial Relations, Vol. 19(2), 2003, pp.173-189. [↑](#footnote-ref-4)
5. See Supreme Court of Russian Federation Decision on strike in the transport department of Stock Company “Serebro Magadana” of August 2005. No.93-G-14. [↑](#footnote-ref-5)
6. < <http://www.miningexpo.ru/news/7252>>. Formore information on hunger strikes in Russia see; Sennikov N. O pravovyh osnovaniyah organizazii i provedeniya profoyuzami publichnih protestnyh meropriyaty // Trudovoe pravo. [Legal regulation of public protesting actions’ organization and performance by trade unions // Labour Law ]No. 3, 2008. P. 18-23. [↑](#footnote-ref-6)
7. Federalniy Zakon „O professionalnih Soyuzah, ih pravah i garantiyah deyatelnosti” [Federal Act „On trade unions, their rights and the guarantees of their activity”] of January, 12, 1996, amended in June, 9th 2005. Sobraniye Zakonodatelstva Rossiyskoy Federazii of January, 15, 1996, No. 3, Art. 148. [↑](#footnote-ref-7)
8. Sobraniye Zakonodatelstva Rossiyskoy Federazii of June, 21, 2004, No. 25, Art. 2485. [↑](#footnote-ref-8)
9. Art. 17, para. 15 of Federal Law “On State Civil Service” of July, 27, 2004. Sobraniye Zakonodatelstva Rossiyskoy Federazii of August, 2, 2004, No. 31, Art. 3215. [↑](#footnote-ref-9)
10. Art. 14, para. 14 of Federal Law “On Municipal Service” of March, 2, 2007. Sobraniye Zakonodatelstva Rossiyskoy Federazii of March, 5, 2007, No. 10, Art. 1152. [↑](#footnote-ref-10)
11. Article 21, para. 2, Federal Law „On state Unitary Enterprises” of November, 14, 2002 No. 161-FZ. Sobraniye Zakonodatelstva Rossiyskoy Federazii of December, 2, 2002, No. 48, art. 4746. [↑](#footnote-ref-11)
12. The state of military alert is being announced according to Federal Constitutional Law “On State of Military Alert” of January, 30th, 2002, No. 1-FKZ. Sobraniye Zakonodatelstva Rossiyskoy Federazii of February, 4, 2002, No. 5, Art. 375. [↑](#footnote-ref-12)
13. The state of emergency is being announced according to Federal Constitutional Law “On State of Emergency” of May, 30th, 2001, No. 3-FKZ. Sobraniye Zakonodatelstva Rossiyskoy Federazii of June, 4, 2001, No. 23, Art. 2277. [↑](#footnote-ref-13)
14. Sobraniye Zakonodatelstva Rossiyskoy Federazii of January, 13, 1997, No. 2, art. 198. [↑](#footnote-ref-14)
15. Air Code of Russian Federation. Federal Law No. 60-FZ of March 19, 1997. Sobraniye Zakonodatelstva Rossiyskoy Federazii of March 24, 1997, No. 12, art. 1383. [↑](#footnote-ref-15)
16. Article 26, para. 2, Federal Law “On Railroad Transport” of January, 10, 2003 No. 17-FZ. Sobraniye Zakonodatelstva Rossiyskoy Federazii of January, 13, 2003, No. 2, Art. 169. [↑](#footnote-ref-16)
17. Resolution of the Constitutional Court of February, 8, 2007 No. 275-O-P. Sobraniye Zakonodatelstva Rossiyskoy Federazii of May 22, 1995, No. 21, art. 1976. [↑](#footnote-ref-17)
18. Resolution of the Constitutional Court of May, 17, 1995 No. 5-P. Sobraniye Zakonodatelstva Rossiyskoy Federazii of May 22, 1995, No. 21, art. 1976. [↑](#footnote-ref-18)
19. Law of USSR of May, 20, 1991 „On resolution of collective labour disputes (conflicts)” No. 2179-1. Vedomosti SND and VS of USSR, June, 5, 1991, No. 23, art. 654. [↑](#footnote-ref-19)
20. Sobraniye Zakonodatelstva Rossiyskoy Federazii of January, 27, 1995, No. 48, art. 4552. [↑](#footnote-ref-20)
21. Kolichestvo collectivnuh trudovyh sporov, zaregistrirovannyh Rostrudom v period s 2006 po 2010 (The number of collective labour disputes, registered by Rostrud in the period from 2006 to 2010). Rostrud official site: <http://www.rostrud.ru/activities/34/22831/22835.shtml> . [↑](#footnote-ref-21)
22. See, for example, case on anti-union discrimination in Commercial Sea-port of Kaliningrad investigated by the ILO Committee on Freedom of Association – case 2199, CFA Report No. 331 where, as Committee has stated, Russian Government “has demonstrated total lack of cooperation” - <http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?PARA=7173&FILE=2199&hdroff=1&DISPLAY=INTRODUCTION#INTRODUCTION> . [↑](#footnote-ref-22)
23. Bizyukov P. Kakuyu rol’ igrayut trudovie protesty v regulirovanii trudovih otnosheniy? (What role do labour protests play in the regulation of labour relations?) Centre of social and labour rights, Moscow, 2010. <http://trudprava.ru/index.php?id=1896> . [↑](#footnote-ref-23)
24. Rossiyskiy statisticheskiy ejegodnik. 2009. Razdel 5: trud, metodologicheskie ukazaniya [Russian statistical annual, 2009. Part 5: Labor, methodological directions]. Moscow, 2009. <http://www.gks.ru/bgd/regl/b09_13/IssWWW.exe/Stg/html1/05-26.htm> . [↑](#footnote-ref-24)
25. Federalnaya slujba gosudarstvennoy statistiki [Federal service on state statistics] Informatsiya o socialno-ekonomicheskom polojenii Rossii, 2009. [Information on socio-economic situation in Russia], Moscow, 2009. [↑](#footnote-ref-25)
26. For the first 10 months. [↑](#footnote-ref-26)
27. Bizyukov P. Op. cit. [↑](#footnote-ref-27)
28. See: Zarakhovich Yu. Putin Resolves Protest in Pikalevo // Eurasia Daily Monitor Volume: 6 Issue: 110. [http://www.jamestown.org/single/?no\_cache=1&tx\_ttnews[tt\_news]=35097](http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5btt_news%5d=35097) . [↑](#footnote-ref-28)
29. Arutunyan A. Quiet anger in the Kuzbass // The Moscow New online newspaper. 24.05.2010. <http://themoscownews.com/news/20100524/187840831.html> . [↑](#footnote-ref-29)
30. The investigation is not over up to the moment of writing of this article. [↑](#footnote-ref-30)
31. Federalniy Zakon „O professionalnih Soyuzah, ih pravah i garantiyah deyatelnosti” [Federal Act „On trade unions, their rights and the guarantees of their activity”] of January, 12, 1996, amended in June, 9th 2005. Sobraniye Zakonodatelstva Rossiyskoy Federazii of January, 15, 1996, No. 3, Art. 148. The initial English text of Russian Trade Unions Act is available in the national labour legislation database of ILO NATLEX: <<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/42900/64988/E96RUS01.htm>*>*. [↑](#footnote-ref-31)
32. Constitutional Court Decision No. 3-P of January, 24, 2002. Sobraniye Zakonodatelstva Rossiyskoy Federazii of February, 18, 2002, Art. 745. <http://www.echr.ru/documents/doc/12025566/12025566.htm> . [↑](#footnote-ref-32)
33. Unlike many other countries Russian labour legislation doesn’t just contain the requirement of reasonability of the dismissal but provides for the limited list of grounds for dismissal. This list was substantially extended after the adoption of the new Labour Code. [↑](#footnote-ref-33)
34. Constitutional Court Ruling No. 421-O of December, 4, 2003. Rossiyskaya Gazeta, January, 25, 2004. [↑](#footnote-ref-34)
35. Constiturional Court Ruling No. 1369-O-P. Sobraniye Zakonodatelstva Rossiyskoy Federazii of 2009, No. 50, art. 6146. [↑](#footnote-ref-35)
36. For the details of the discussion see: Lyutov N. Freedom of association: the case of Russia // Comparative labor law and policy journal, Vol. 32, issue 4, 2011. P. 936-938. [↑](#footnote-ref-36)
37. See CFA cases No. 2244 and 2251. [↑](#footnote-ref-37)