

The right to Strike in accordance with Law 23-08 as a mechanism for exercising the union right

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Abdelkrim BENRAMADANE*, laboratory of Law and Society in the Digital Space
University of Ghardaïa

benramdane.abdelkrim@univ-ghardaia.dz

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Abstract:

With the enactment of Law 23-08 on June 21, 2023, starting the prevention and resolution of collective labor disputes and the exercise of the right to strike, Algeria introduced a new legal framework to regulate labor strikes. This law establishes procedural requirements that must be met before initiating a strike. While some interpret these provisions as a legitimate regulatory framework ensuring the lawful and structured exercise of this right, others view them as restrictive measures that limit both the right to strike and union activities. Although mediation and arbitration procedures appear to be essential steps designed to encourage negotiations and preemptive conflict resolution before resorting to a strike, the law also imposes administrative restrictions, penalties for unauthorized strikes, and automatic dispute resolution mechanisms enforced by law. These measures reflect a strict approach to strike policies and are often perceived as constraints on this fundamental freedom and union activity as a whole.

Key words: Trade union freedom, right to strike, Law 23-08, restriction, regulatory provisions.

Introduction:

Strikes represent a crucial social and economic necessity for workers, serving as a powerful mechanism through which they have historically overcome deteriorating working conditions and secured recognition of their trade union rights. As an effective tool for resolving collective labor disputes, strikes enable workers to push for difficult professional demands that employers often resist fulfilling.

A strike functions as a means of pressure against both employers and political systems that support them, allowing workers and employees to voice their grievances against various forms of injustice imposed by employers and administrative authorities. Although Islamic law acknowledges the right to strike, it is considered a last resort due to its potential to disrupt public interests.

In modern times, France formally recognized the right to strike during the Third Republic in 1936, and it gained constitutional recognition in 1946 as a fundamental labor right. Algeria adopted this right in its constitutions and legal frameworks, initially enshrining it in the Constitution of September 10, 1963, without distinction between the public and private sectors, leaving its regulation and implementation to legislative texts. However, with Algeria's adoption of socialism and the Constitution of November 22, 1976, the right to strike was restricted in the public sector and allowed only in private sectors, justified by the need to ensure the continuity of public services.

With the Constitution of February 23, 1989, political and economic liberalization, and the

* Corresponding Author

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introduction of political pluralism, the right to strike was explicitly recognized in the public sector but within a legal framework. This recognition was reinforced by the 1996 constitutional amendment and subsequent revision

The exercise of the right to strike is not absolute within labor legislation¹ and the employment sector²; rather, it is subject to the applicable laws and regulations governing this matter. Any violation of these legal frameworks is subject to sanctions under Ordinance No. 66-156, which includes the Penal Code (as amended and supplemented)³, as well as Law 23-08⁴, which regulates the exercise and implementation of the right to strike⁵. Consequently, the practice of this right is closely tied to legal safeguards that seek to balance preventing abuse or excessive restrictions by employers and administrative authorities with avoiding the misuse of rights under the pretext of exercising freedoms.

This necessitates an increased awareness among administrative authorities, employers, and the labor community of the legal framework governing the right to strike, ensuring it is exercised within the bounds of law—neither excessively nor insufficiently. Against this backdrop, the following research question arises

To what extent does Law 23-08 provide the necessary guarantees for exercising the right to strike while balancing regulatory constraints and obstacles?

To address this issue, a **descriptive methodology** will be employed through a legal analysis of the provisions enshrining this right, alongside an **analytical approach** to examine and interpret the relevant legal texts. The study is structured into two main axes, with the **first axis** focusing on the procedural regulations governing the right to strike under Law 23-08, including an examination of procedural mechanisms designed to prevent the need for resorting to strikes.

(First): Procedural regulations for striving to exercise the right to strike.

(Second): The second axis addresses the obstacles to the freedom to exercise the right to strike.

In this section, we will study:

- **(First):** The restriction of the freedom to exercise the right to strike.
- **(Second):** The responsibility for violating the procedural regulations governing the exercise of the right to strike.

1- First Axis: Procedural Regulations for Exercising the Right to Strike in Light of Law No. 23-08

The legal framework for the exercise of the right to strike is crucial for understanding its essence and the organizational regulations surrounding it. This framework outlines the conditions and procedures that must be followed by the stakeholders in this process, including workers and trade unions, to ensure the legal and peaceful execution of this right.

This phase can be preceded by procedural regulations aimed at avoiding the need to resort to the right to strike, through collective bargaining and arbitration via the local or national committee. In case of failure, the procedural regulations for striving to exercise the right to strike come into play, starting with the prior notification of the strike, followed by mediation, and ensuring the provision of essential services at a minimum level.

1.1- First: The Concept of the Right to Strike

A series of definitions help clarify the concept of the right to strike, including:

Article 8, paragraph 1 of the International Covenant, which states that the States parties to this covenant recognize the right to strike, provided it is exercised in accordance with the standards and laws of the respective country⁶.

In French legislation, the right to strike is not specifically defined in various laws related to it. Instead, it is simply recognized as a constitutional right, as stated in Article 8 of the 1946 Constitution, which reads: "The right to strike is exercised within the framework of the laws that govern it."

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The Algerian legislator did not define the strike but included it as one of the fundamental rights recognized for civil servants, ensuring its practice under the constitution as a principle and basic right. Additionally, public service laws address it as a right for employees, alongside the relevant regulatory texts related to it⁸.

French jurisprudence has defined the strike in many rulings based on the legal obligation. For example, criminal courts (such as the Chateaubriand court) It defined a strike in its ruling issued in 1985 as "an explicit and premeditated collective cessation of work with the intention of agreeing to improve working conditions." ⁹.

Some scholars view it as a reaction to a real situation that expresses the interests and demands of workers in the face of their employers and superiors, considering that the natural field for these interests and demands is the economic and social domain. They regard it as a right akin to economic and social rights. In line with this perspective, they draw a relationship between the right to strike and those rights. This is because, if the civil liberties recognized in the 1789 Declaration of Rights were intended to restore the lost and legal balance in favor of the oppressed classes, the right to strike serves a similar purpose¹⁰.

Elements of the Strike

1-1-1. Material Elements: These are represented in the collective cessation of a mandatory task on a temporary basis.

A. Cessation of Work:

This refers to the workers' and employees' refusal to fulfill their obligations and duties as mandated by law. This is the defining and distinguishing element of a strike, as its legitimacy is only realized when this condition is met, providing a proper and explicit legal classification of the act as a strike. The cessation of work must be complete and clear.

B. Collective Cessation of Work:

The cessation of work must be collective, meaning that a group of public employees or workers must refuse to perform the tasks assigned to them. This is confirmed by the Algerian legislator in Law No. 90-02¹¹, amended and supplemented by Law N°. 91-27¹².

1-1-2. Moral Elements of the Strike:

The moral element of the strike consists of three parts:

A. The Intent of the Strike:

This refers to the workers' intention to temporarily refrain from work, with the aim of suspending the employment contract for a temporary period. The intent has two components: knowledge and will.

B- Arranging the strike:

This refers to the explicit and prior agreement of the workers, employees, and employers, meaning a consensus, convergence, or union of their wills in advance for a collective work stoppage.

C- Professional demands:

The absence of professional demands leads to the loss of the legitimate nature of the strike, which is defined by the planned collective cessation of work or duties. The Algerian legislator categorized professional demands in Law No. 90-02, as amended, in its second article.

1.2- Second: Procedural Provisions to Avoid Resorting to the Right to Strike

In many countries, laws encourage the peaceful settlement of labor disputes before resorting to a strike, including Algeria. This policy aims to promote dialogue and negotiation between workers and employers while avoiding the economic and social disruptions that may result from strikes. It includes peaceful means of dispute resolution, such as collective bargaining, arbitration, and mediation¹³.

1-2-1. Collective Bargaining

This is a peaceful means of resolving disputes through direct negotiations and discussions

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between the parties involved. Worker representatives meet with the employer in regular meetings to exchange opinions and propose potential solutions, aiming for mutual agreements to resolve the dispute. Collective bargaining can be either preventive or corrective. Preventive bargaining addresses issues like wages and working hours before disputes arise, while corrective bargaining seeks to resolve ongoing conflicts. As such, it is considered a cornerstone in labor relations and problem-solving related to work, whether involving public sector employees or private sector workers¹⁴.

1-2-2. Arbitration and Mediation:

Arbitration and mediation are two key tools for peaceful dispute resolution, often used proactively in conjunction with collective bargaining. Although arbitration shares similarities with collective bargaining as a peaceful means of resolving labor disputes, it differs in several ways. First, arbitration requires...

"Recourse to collective bargaining before resorting to arbitration is a necessary condition for submitting the dispute to arbitration. The parties must first go through the collective bargaining stage. On the other hand, collective bargaining is limited to the parties to the collective dispute themselves, whereas arbitration imposes a third party, which is the arbitration body responsible for settling the dispute.

A- Arbitration:

Arbitration is a means of resolving collective labor disputes, resorted to based on a definitive agreement between the disputing parties, involving the intervention of a third party known as the 'arbitrator,' in accordance with general arbitration rules¹⁵.

The Algerian legislator has ensured that arbitration is established as a settlement mechanism covering all stages of the collective dispute, up to and including the strike, where it is considered a mandatory procedure when necessary. The dispute is then referred to the provincial arbitration¹⁶ committee or the national committee¹⁷, depending on jurisdiction.

B- Mediation:

Mediation is a process in which an independent party intervenes as a mediator to help the disputing parties reach an agreement. The mediator aims to facilitate dialogue and negotiation between the parties and seeks a mutually acceptable resolution.

This process is an effective means of resolving disputes peacefully without resorting to strikes, contributing to labor relations stability and preventing disruptions caused by labor disputes¹⁸.

1.3- Third: Procedural Provisions for Exercising the Right to Strike

To ensure a peaceful and legal expression of the demands of labor and employment actors and to defend their rights, certain procedural regulations govern the exercise of this option. These include prior notification and the obligation to provide a minimum level of essential services within the organization.

1-3-1. Prior Notification

The importance of prior notification lies in its role in fostering dialogue and negotiation between workers and employers before a strike is carried out. This step helps prevent labor disputes and ensures stability in labor relations by notifying the relevant labor authority of the intention to strike within a specified period before its implementation. It serves as an official notice to the parties involved, allowing sufficient time for preparation and intervention if necessary. It also provides an opportunity to initiate dialogue and negotiations to resolve the dispute through peaceful means.

Additionally, prior notification is a safeguard for the administration, enabling it to take necessary and appropriate measures before the strike begins, including administrative precautions to handle collective work stoppages within the organization. It can also be considered an invitation for the employer to make necessary concessions to settle the dispute.

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The prior notification must be formally submitted on the same day by a representative trade union organization or elected representatives of public employees involved in the dispute. It must be filed with the relevant institution, public administration, or regional labor inspection office, with an acknowledgment of receipt. The strike cannot commence until the expiration of the notification period¹⁹, which begins from the date of its submission to the employer or the regional labor inspectorate. It must also be accompanied by a judicial officer's report as stipulated in Article 48 of the same law.

Thus, prior notification is one of the legal requirements determining the legitimacy of a strike. If not fulfilled, the strike is deemed unlawful, granting the employer the right to challenge its validity before the competent judicial authorities, either to request its annulment or to claim compensation²⁰.

1-3-2. Minimum Level of Essential Services

In essential service sectors, workers are responsible for ensuring the continuous and regular provision of fundamental services during a strike to prevent any negative impact on public interest and citizens' rights. Regardless of the nature of the service or product provided—whether it is a critical element of public order, such as healthcare, or of lesser importance—it must still be adequately maintained with acceptable quality. However, this requirement should not be exploited to undermine or neutralize the strike. Maintaining these services without interruption can also reduce pressure on other services and avoid the need for emergency measures or reliance on alternative services that may be insufficient or inadequate²¹.

Ensuring a minimum level of service is a regulatory measure aimed at mitigating the negative effects of strikes, particularly in public service sectors where disruptions can have severe consequences. The list of affected sectors, job positions requiring minimum service provision, and the group of employees concerned by the strike are determined by the relevant sector minister after consulting the most representative trade unions or elected representatives of public employees, depending on the case. The Minister of Labor is also informed of these determinations²².

2- Section 2: Barriers to the Freedom of Exercising the Right to Strike

The freedom to exercise the right to strike is not absolute but is practiced within the framework of legal principles. Some interpret the regulatory nature of legal rules as a regulatory idea, while others interpret it as a restriction on this freedom. Through this, they argue that it restricts or limits the influence of trade unions, which rely heavily on strikes as one of their main means of pressure. Similarly, it can be interpreted as expanding the scope of responsibility in establishing boundaries, whether they are disciplinary or penal.

2.1- First: Restricting the Freedom to Exercise the Right to Strike

A legal debate has arisen over whether procedural or substantive legal rules serve as a restriction or obstacle to the exercise of the union's right to strike. Some believe that rights cannot be exercised freely but should be organized by law.

This is explained as a restriction on the exercise of this right due to procedural and substantive issues governing the preemptive exercise of the right to strike. We have previously discussed the procedural aspect, especially related to the need for dispute resolution procedures and prior notice. To avoid repetition, we will focus on some of the substantive restrictions, as we have already addressed ensuring the continuity of public services by guaranteeing the minimum level of essential services, or as we will discuss later in terms of protective guarantees for the public service, which prevents misuse under the pretext of exercising a strike. Violating these guarantees results in criminal liability, as we will explain. Therefore, we will limit the discussion to the substantive restrictions related to the elements of a strike.

Substantive Restrictions Related to the Elements of a Strike:

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2.1.1. Collective Work Stoppage: The collective cessation of work or duties is a fundamental element of professional or occupational strikes. For a strike to occur, it must involve a group of workers or employees collectively refusing to perform their professional tasks. Referring to Algerian legislation, the amended and supplemented law 90-02²³ stipulates the requirement of a collective work stoppage, meaning a refusal by a number of employees or contractors to perform their duties. Only in this context does the cessation of work take on the character of a strike, as described by the term "collective work stoppage" in the context of "striking workers"²⁴.

2.1.2. Achieving Demands: The legislator has acknowledged that the purpose of a strike is to fulfill professional demands, as outlined in Law No. 08-23, Article 42: "The term 'strike' within the context of this law refers to a collective, agreed-upon cessation of work aimed at achieving social and professional demands..."²⁵ Thus, professional demands encompass all matters related to social and professional relations, and one must refer to the various aspects of public service law, labor law, and the specific related regulations. Legal studies on public service law have agreed on the constraints regarding professional demands and the rights related to the guarantees for the continuity of public services, as outlined in the law. These cannot be violated because the legitimacy of a strike is directly linked to respecting these guarantees²⁶.

2.2- Second: Responsibility for Violating the Rules of Exercising the Right to Strike

Violating these rules may lead to disciplinary responsibility as well as criminal responsibility.

2.2.1- Disciplinary Responsibility

The disciplinary system in labor legislation plays a significant role in the relationship between the employee and the employer, as well as in the public service within the professional career of the employee. It has evolved over time according to the level of conflict between the parties in labor relations and the effects of the transformation between executive authority and democratic principles²⁷. It thus acts as a safeguard for ensuring the "principle of effectiveness."

Accordingly, disciplinary responsibility is the accountability of an employee or contractor who is found to have committed a positive or negative act that violates their professional duties. This results in a penalty affecting their professional status. This responsibility is based on a professional mistake resulting from the employee's failure to fulfill their duties or deviation from the obligations inherent in their work. Thus²⁸, it is considered one of the punitive systems that is influenced by the concepts of authority and punishment, in order to determine the competent body to impose the legally defined sanctions and to identify the professional duties for which an employee may be punished for neglecting or committing a disciplinary mistake.

• **Conditions for Establishing Disciplinary Responsibility:**

"Any failure to fulfill professional duties or any violation of discipline, or any mistake or violation committed by the employee during or in connection with the performance of their duties, constitutes a professional error and subjects the employee to disciplinary sanctions without prejudice to any criminal proceedings²⁹, if applicable." In its application to specific laws, it states that "any failure to fulfill organizational or contractual duties, any violation of discipline, or any mistake or violation committed by the contractual employee during or in connection with their activities, constitutes a professional error and subjects the employee to disciplinary sanctions without prejudice to any criminal proceedings, if applicable"³⁰.

Therefore, the employee will be held accountable disciplinarily if they commit a mistake or violation while performing their duties, and they will be subject to disciplinary penalties if two conditions are met for establishing disciplinary responsibility in the context of public service:

The individual committing the error must be considered an employee: "Any individual appointed to a permanent public position in a rank within the administrative scale"³¹.

-Professional Error or Disciplinary Violation³²

The exercise of the employee's or contractor's right to strike does not terminate their relationship with the employing administration, and thus they remain subject to the disciplinary

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system in matters of misconduct if they violate the obligations imposed on them under Law N° 23-08, which defines the legal regulations and restrictions for exercising the right to strike³³. Therefore, the exercise of the right to strike is subject to a set of regulations imposed by the legislator to be practiced as a right in accordance with the law, in order to ensure the proper functioning of public services and to protect public interest. If these regulations are violated, the following actions result in disciplinary responsibility:

- Failure to Respect Legal Regulations for Exercising the Strike.
- Obstruction of the Freedom to Work.³⁴
- Failure to Ensure the Minimum Service³⁵.
- Harnessed to perform job tasks³⁶.

2.2.2- Criminal Responsibility

A professional error committed by an employee may also expose them to criminal responsibility if this error does not prevent their criminal prosecution. Criminal responsibility is defined as "a set of legal rules that determine the policy of prohibition and punishment, as well as how the state enforces its right to punish while ensuring the rights of the accused³⁷.

" In its presence, it results in holding a person accountable for committing a positive or negative act that constitutes a crime punishable under the existence of its legal, material, and moral elements, exposing the person to criminal prosecution. Examples of this include:

-If one of the parties in a collective dispute absents themselves without a valid excuse from a session or meeting, they may be fined between 20,000 DZD to 50,000 DZD in the case of recidivism, where the fine is doubled³⁸.

-In the case of providing judges or mediators with forged documents or exerting pressure on them with such documents and directing their decision, "without prejudice to the provisions of the Penal Code, the person shall be punished with imprisonment for a period of three (3) months to six (6) months and a fine of fifty thousand dinars (50,000 DZD) to one hundred thousand dinars (100,000 DZD), or either of these penalties....." ³⁹

-In the case of a collective work stoppage in violation of the provisions of this law, or working to continue it, or working to continue it with the use of violence or assault on persons or property, ⁴⁰ "the person shall be punished with imprisonment for a period of three (3) months to six (6) months and a fine of fifty thousand dinars (50,000 DZD) to one hundred thousand dinars (100,000 DZD) ".

If the strike leader resorts to violence or assault on persons or property, they shall be punished with imprisonment for a period of six (6) months to one (1) year and a fine of one hundred thousand dinars (100,000 DZD) to two hundred thousand dinars (200,000 DZD), or either of these penalties"⁴¹.

-The same applies in the case of destroying facilities or property. The legislator attempted to protect it by stating that "without prejudice to the provisions of the Penal Code, the person shall be punished with imprisonment for a period of three (3) months to six (6) months and a fine of twenty thousand dinars (20,000 DZD) to fifty thousand dinars (50,000 DZD) "⁴².

Conclusion:

The right to strike and its related legal guarantees are a vital part of the labor and public sector systems in Algeria. This right serves as a main tool for workers to express their demands and protect their collective interests. However, this right is not exercised freely without legal and procedural constraints, which act as safeguards for its proper exercise or to avoid its misuse. While these legal provisions are meant to regulate the right to strike, some view them as exceeding the limits of regulation, effectively restricting trade unions and depriving them of an important legal tool to pressure decision-makers in both the public and private sectors to fulfill their legitimate rights. Misuse of this right could lead to chaos if workers are not properly educated on how to exercise it responsibly, ensuring that both workers and employers understand

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the balance of rights and obligations in relation to the exercise of this right. This is crucial for maintaining a fair and stable work environment.

Adhering to the laws and providing proper legal guarantees for exercising the right to strike forms the foundation of a prosperous civil society that promotes justice and equality. Based on this, all involved parties must work together to ensure that the laws related to the right to strike are respected and applied, fostering stable labor relations and contributing to sustainable development in the country.

The legal framework for exercising the right to strike, as defined in Law No. 23-08 related to collective labor disputes and their resolution, aligns with international conventions and is enshrined in various national constitutions, including Algeria's. The right to strike, when restricted or misused, reflects the conflicts over professional interests and the general conditions of workers in different sectors and the imbalance of power between workers and employers.

It is possible for legislators to establish amicable and proactive rules based on peaceful and diplomatic means before resorting to strike action, provided that these rules are not used as a delay tactic to exercise the right to strike without restrictions or obstacles. Despite following all the legal procedures for exercising this right, workers may still resort to it. This highlights the fine line between lawful practice of this right and any interventions that may hinder or restrict it.

The study of this topic leads us to draw the following conclusions:

- The need for a scientific, rational, and conscious balance to ensure the effectiveness of the legal measures outlined to prevent collective labor disputes and in the employment field, especially the right to strike as a constitutional principle, while promoting legal solutions to resolve conflicts amicably to avoid the escalation of strike actions. This requires opening communication channels, listening to all demands, and prioritizing dialogue over rigid, non-negotiable stances, which is the most important guarantee for the correct application of the laws related to the right to strike.
- Promoting positive incentives to raise awareness among the parties involved in the conflict and encouraging them to comply with laws that ensure the protection of workers' rights and the guarantees associated with them, thus creating a work environment and a functional space that guarantees the dignity of the workers, even in their right to strike, to protect the rights of both workers and employees.
- Reducing the negative and unlawful impact of strike actions on public facilities and vital interests of society and the state, without obstructing the continuity of the work process, even though the legislator has imposed restrictions on the exercise of this right in sensitive sectors, such as through minimum service requirements, requisition, and ensuring that work and employment sectors are not disrupted.

As for the proposals that can be made, they include:

- Raising awareness about fulfilling rights and performing duties within the context of the relationship between workers and employers. This can be achieved through workshops and training sessions for workers and employers on the contents and provisions of Algerian law related to the right to strike and its regulations.
- Expanding consultation channels and easing tensions, considering the purchasing power of workers and employees, by promoting continuous dialogue between the government, trade unions, and employers. This should be done under the umbrella of a joint commitment to improving the implementation of laws related to the right to strike, making them flexible rules based on mutual understanding rather than one-sided directives. Joint committees can be established to activate effective negotiation mechanisms.
- The necessity for business managers or employers to abandon confrontational tactics and prejudging the legitimacy of the strike and refraining from using threats of dismissal.

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- Protecting those who exercise the right to strike by providing legal guarantees in line with constitutional principles, ensuring that they can exercise this right according to the law without discrimination or exclusion.

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