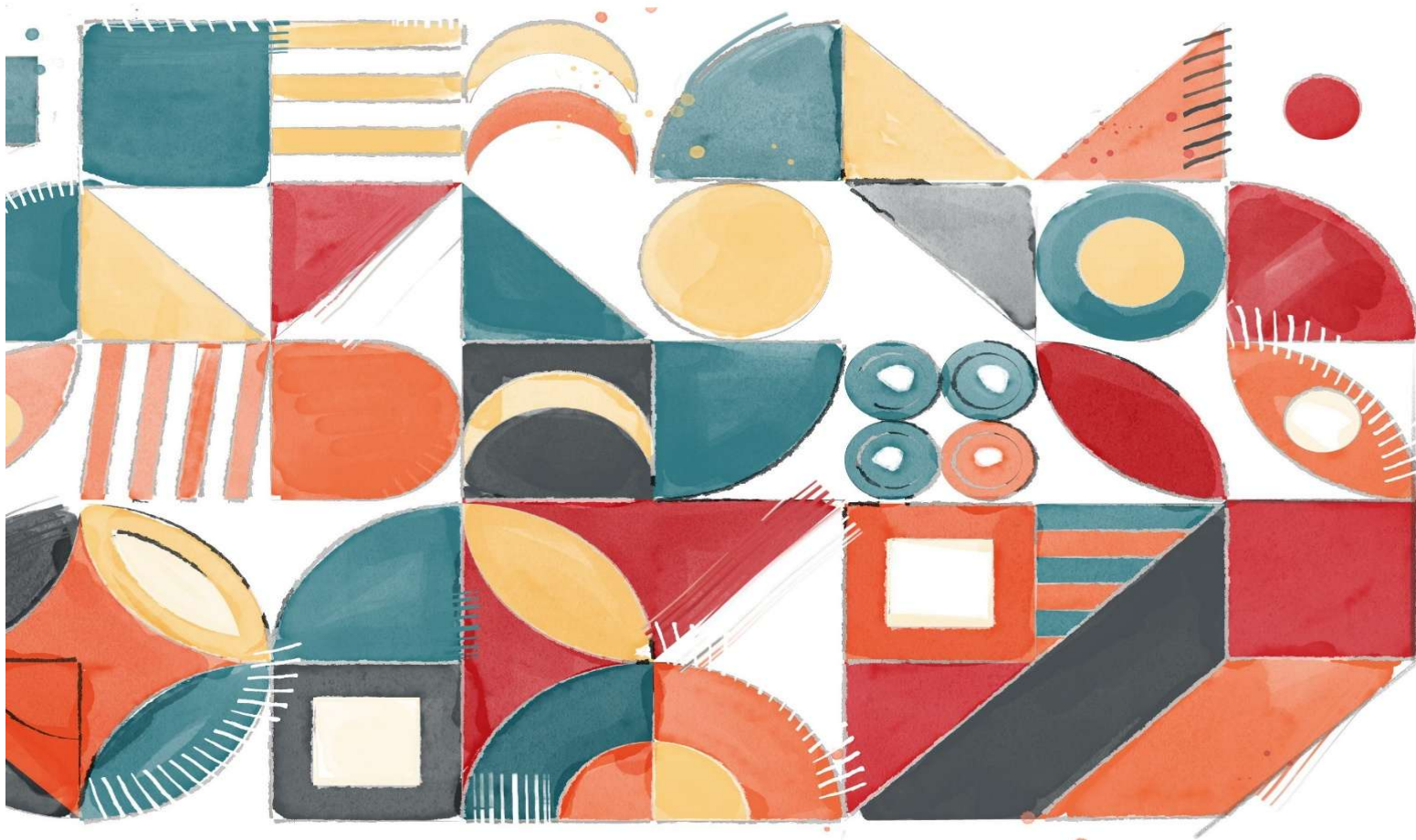


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Labour law developments in Africa
La partecipazione

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Mario Rusciano

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Editore: LLC-Labour Law Community; Luogo di pubblicazione: Firenze, Via Ciro Menotti 6, 50136;

Data di pubblicazione: dicembre 2025; Cadenza semestrale

Le opere grafiche presenti nel volume sono di Gianfranco Bonadies, salvo diversamente specificato

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The Italian law on strikes in essential services does not comply with the European Social Charter: which consequences?



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Abstract: The Article analyses the Decision taken by the European Committee of Social Rights on the 13 March 2025, which has declared the Italian Law No. 146/1990 on the right to strike in essential public services inconsistent with Articles 6, paragraph 4, and G of the European Social Charter. After the examination of the juridical principles and precedents on which the collective complaint and the Decision are rooted, the study assesses the impact of the Decision in the Italian legal system, with special reference to the role of the Guarantee Commission (Commissione di Garanzia dell'attuazione della legge sullo sciopero nei servizi pubblici essenziali).

Keywords: Strike - European Social Charter - European Committee of Social Rights - Italy - Public Services - Guarantee Commission

ISSN: 3103-4721

DOI: <https://doi.org/10.82087/dlopenll-2026-01-16>

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1. Introduction

In recent years, the lowering of protection levels for social rights - justified by the austerity policies adopted in the wake of the Great Recession of 2007-2008 - has increasingly led legal scholars and case law to explore the potential of international instruments that were previously undervalued, and to utilise their channels for the justiciability of rights. Among these instruments, the European Social Charter (Esc) deserves particular attention, along with its dual system for monitoring compliance with the rights it proclaims. This system, managed by the European Committee of Social Rights (Ecsr) (Calvellini 2018), is based, on the one hand, on the submission of reports drawn up by Member States and, on the other, on the lodging of collective complaints by specifically identified entities, including representative national trade union organisations¹.

In Italy, this second monitoring channel has been utilised in recent years with reference to the compensation mechanism provided for unfair dismissals by Legislative Decree n. 23/2015 (the so-called Jobs Act on increasing protections). Following a complaint lodged by the Cgil, the Ecsr issued a decision on 11 February 2020, which revealed the non-conformity of the Italian framework with Article 24 of the Esc². This event reignited debates regarding the domestic effectiveness of the provisions of the Esc and the rulings of the ECSR, not least because of the stance taken by the Constitutional Court in Judgments n. 120/2018, n. 194/2018, and n. 7/2024. These judgments recognised the capacity of the ESC, as an "interposed source" (*fonte interposta*)³, to supplement the constitutional parameters under Article 117, paragraph 1, of the Italian Constitution. However, they ruled out the idea that the Ecsr's decisions, authoritative as they may be, are binding on national courts⁴. This

¹ Articles C and D Esc.

² Complaint n. 158/2017 *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy* - [Decision on the merits \(Publicity\) 11.02.2020](#)

³ See C. cost. 347/2007 and 348/2007, with reference to Echr.

⁴ See C. cost. n. 7/2024 (Speziale 2024, Ferrante 2025); C. cost. n. 194/2018; C. cost. n. 120/2018 (Lazzari 2018).

latter stipulation does not diminish the innovative scope of the jurisprudential trend in question, which has rescued the Esc from being treated merely as a “large footnote” to the Echr⁵. Even regarding the decisions of the Ecsr, although they lack prescriptive force, they can certainly be used for interpretive purposes by Italian judges - starting with the Constitutional Court⁶ - both in the exegesis of the ESC as an interposed norm and in reinterpreting domestic legislation in conformity with international law principles, such as those of the Echr (Perrone 2020). This is without overlooking the “political” effects of such decisions, which can help spur the legislature to amend the current framework (Orlandini 2019).

The light recently shed on the Esc and the decisions of the Ecsr by the Constitutional Court justifies fresh reflection on the compliance of domestic labour law with this supranational source, potentially concerning any labour regulation, whether relating to individual or collective rights (Orlandini 2019, p. 111). Among the latter, the right to strike merits analysis, particularly regarding its exercise within essential public services (Campanella 2026). This is both because of renewed academic interest in Law n. 146/1990 (*Norme sull'esercizio del diritto di sciopero nei servizi pubblici essenziali e sulla salvaguardia dei diritti della persona costituzionalmente tutelati. Istituzione della Commissione di garanzia dell'attuazione della legge*), sparked by the health emergency of the Covid-19 pandemic (Pino 2021, Corazza 2020, Boccafurni 2021a), and because the aforementioned law has for years been the subject of censure by the Ecsr without our legislature taking a clear stance on the matter (Orlandini 2019, p. 111). It is precisely within this context that the collective complaint procedure unfolds, leading to the Ecsr decision of 13 March 2026⁷ regarding certain aspects of the law on strikes in public services, censured by the Committee as non-compliant with the Esc.

2. The complaint

The case originated from a collective complaint lodged in March 2022 by the trade union Usb (*Unione Sindacale di Base*) before the European Committee of

⁵ See (Giubboni 2020, recalling Kahn-Freund 1976).

⁶ After all, the Finnish Society case was recalled by the Italian Constitutional Court in decision n. 194/2018 (see *European Committee of Social Rights*, [Decision on admissibility and the merits](#), *Finnish Society of Social Rights v. Finland*, Complaint n. 106/2014 and n. 106/2014, 31.01.2017).

⁷ Complaint n. 208/2022, *Unione sindacale di base (USB) v. Italy*, [Decision on the merits \(Publication\)](#) 13.03.2026, on which see (Recchia 2026, Nappi 2026, Golia 2026, Guglielmi 2026, Orlandini 2026a).

Social Rights⁸. The complaint alleged that the rules governing the exercise of the right to strike based on Law n. 146/1990 conflicted with the standards set by the European Social Charter, specifically Article 6, paragraph 4 (which recognises the right to strike) (Chatziliau 2023, Lukas 2021, Dorssemont 2017) and Article G, which permits restrictions on workers' fundamental rights only if they are «necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals».

According to the complaining trade union, Law n. 146/1990 imposed excessive restrictions compared to those permitted under Article G, consisting of:

1. the performance of work activities during a strike (*“prestazioni indispensabili”*) that cannot be reduced solely to the “minimum services” (*“servizi minimi”*) necessary to pursue the objectives of Article G of the ESC;
2. the obligation to state the duration of the strike concurrently with its declaration;
3. the provision for mandatory cooling-off and conciliation procedures to be activated prior to the implementation of the strike, the length of which undermines its effectiveness;
4. the prohibition of striking during periods following a previous strike (*“rarefazione oggettiva”*) and during specific times of the year (*“franchigie”*);
5. the conferral upon an independent administrative authority (the “Guarantee Commission”, *“Commissione di Garanzia dell’attuazione della legge sullo sciopero nei servizi pubblici essenziali”*) of the power to inhibit or otherwise limit the exercise of the right to strike in a manner that is *de facto* unreviewable, without the possibility of effective judicial control;
6. the conferral upon the Prefect and the President of the Council of Ministers (or a delegated Minister) of the power to inhibit or limit a strike via back-to-work orders (*“precettazione”*), in the absence of sufficiently clear and defined statutory requirements to enable judicial review of its lawful exercise.

More specifically, while Italy's violation of the Esc regarding the obligation to specify the duration of a strike was nothing new - the Committee having already noted this violation in its Conclusions for 2006, 2010, and 2014⁹ - the other violations identified by the complaining union were unprecedented. These emerged not so much by looking at the provisions of Law n. 146 in isolation, but rather by assessing their durability in application, combining them

⁸ [Unione sindacale di base \(USB\) v. Italy. Complaint No. 208/2022](#). Registered at the Secretariat on 31.03.March 2022

⁹ *Conclusions 2014*, Italy, Article 6§4; *Conclusions 2010*, Italy, Article 6§4; *Conclusions 2006*, Italy, Article 6§4.

with the “secondary sources” derived from the law itself - namely, collective agreements, codes of self-regulation, provisional regulations, and all measures adoptable by the Guarantee Commission and back-to-work ordering authorities.

Thus, to simplify, the complaint censured the Guarantee Commission’s power to broaden the concept of “essential services” to encompass activities not strictly linked to constitutionally guaranteed rights, perhaps because they were instrumental or accessory to the services identified by law. It also targeted provisions in agreements where indispensable services sometimes equaled, or even exceeded, normally provided services, with the sole aim of neutralising the inconvenience caused by the strike (p. 19 of the Complaint). In the same vein, the union contested the wide discretion granted to the Commission in exercising its powers of intervention, as well as to the administrative authority regarding the use of back-to-work orders (p. 26 ff.). These entities could, in practice, demand the postponement or even the cancellation of a strike on the occasion of minor events or in the absence of real danger to users’ rights, without the exercise of such powers being subject to effective and timely legality review. Furthermore, the USB highlighted how excessively long notice periods, especially when combined with the periods necessary to exhaust the cooling-off and conciliation procedures provided for in the sources delegated by Law No. 146, ultimately neutralised the effectiveness of strikes (p. 22 ff.). The exercise of the right to strike was further precluded by the combination of all those provisions prohibiting collective action during certain periods of the year or concurrently with other strikes. These rules compress the exercise of this right into very narrow timeframes, which ironically end up harming users by forcing unions to concentrate strikes on specific days (p. 24 ff.).

3. Precedents to the Ecsr’s Decision

The complaint relied on well-established ECSR precedents that seemed to align with the complainants’ grievances.

In the past, the Committee had censured national frameworks that limited the right to strike within essential public services across an excessive number of production sectors, and which had failed to take into account the opinions of workers’ representatives when determining minimum services¹⁰. Similarly, the Ecsr had repeatedly declared the obligation to communicate the duration

¹⁰ *Conclusions 2018*, Armenia, Article 6§4.

of a strike¹¹, as well as excessively long conciliation and cooling-off procedures¹², to be contrary to the Esc (including against Italy, as noted above)¹³. Violations of the Esc had also been found where provisions granted public bodies the power to intervene during strikes in circumstances that were not merely exceptional¹⁴, or in the absence of a threat to public and constitutionally grounded interests¹⁵, which must always be balanced against the right to strike¹⁶ so as not to render its exercise substantively ineffective¹⁷. According to the Ecsr, these principles require, as a corollary, the legal certainty of the restrictions imposed on the right to strike and the establishment of procedures that weigh the various competing interests; hence the non-conformity with the ESC of laws that fail to clarify the limits of the right to strike from the outset and which feature procedures that exclude trade unions¹⁸.

Yet, the outcome of the complaint was far from certain, not least because during the (decidedly lengthy) proceedings, restrictive trends regarding the international protection of the right to collective action had taken shape within the Council of Europe itself. This reflected a general climate across various nation-states that was unsympathetic to the causes of social and industrial conflict.

Indeed, the last decade has seen a regression in the European Court of Human Rights (ECtHR) case law on the right to strike, dampening the enthusiasm sparked in 2009 by the landmark judgments concerning Turkey¹⁹, through which the rights to collective bargaining and strike action were brought under the protective umbrella of Article 11. In subsequent case law, the ECtHR clarified that Article 11 is to be considered violated only in the most extreme cases of denial of the right to strike (such as an absolute ban on strikes for entire categories of workers, like public servants in Turkey, or rail-

¹¹ *Conclusions 2018*, Ucraina, Article 6§4.

¹² *Conclusions 2004*, Czech Republic, Article 6§4.

¹³ See footnote n. 7.

¹⁴ *Conclusions 2018*, Spain, Article 6§4.

¹⁵ *Conclusions 2018*, Iceland, Article 6§4; *Conclusions 2014*, Norway, Article 6§4.

¹⁶ Complaint No. 111/2014, *Greek General Confederation of Labour (GSEE) v. Greece*, [Decision on the merits \(Publicity\)](#) 05.07.July 2017.

¹⁷ *Conclusions 2014*, The Netherlands, Article 6§4

¹⁸ Complaint n. 59/2009, *European Trade Union Confederation (ETUC)/Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/ Confédération des Syndicats Chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium*, [Decision on the merits \(Publicity\)](#) 08.02.2012.

¹⁹ European Court of Human Rights, Court (Third Section), *Case of Enerji Yapi-Yol Sen v. Turkey*, Application n. 68959/01, Judgment, 21.04.2009; European Court of Human Rights, Grand Chamber, *Case of Demir and Baykara v. Turkey*, Application n. 34503/97, Judgment, 12.11.2008, on which see (Ewing and Hendy 2010).

way workers in Russia in the Ognevenko case, which also involved criminal sanctions)²⁰. Even the strike ban imposed on public school teachers in Germany was declared compatible with Article 11 of the ECHR because it was compensated for by other rights and guarantees available to public servants within the German legal system²¹.

This unfavorable climate for workers' rights (and primarily the right to strike) had consequently affected the Ecsr as well - which, by virtue of Article 6(4) of the Esc, is the European body most properly tasked with monitoring international standards on strikes. This shift was also due to changes in the composition of the Committee, whose members are nominated by national governments on a rotational basis, meaning today a significant portion are appointed by non-pro-labour governments.

The effects of this new climate had made themselves felt in recent, highly disappointing decisions on strikes, such as the 2024 ruling that rejected the complaint by the Dutch trade union Fnv against highly restrictive judicial rules on strikes in public services²². Specifically, the ability of labour courts to issue urgent injunctions limiting the right to strike has a particularly sharp impact on the dynamics of industrial conflict in that country. In the reasoning that led the Ecsr to dismiss the complaint in that case, the distinction between the "regulation" of the right to strike and restrictions or prohibitions on its exercise proved decisive. For the Ecsr, "regulation" is permissible in principle and includes procedural constraints to which the right to strike may be subjected (ranging from notice periods and strike ballots to conciliation procedures, rarefaction rules, and the general principle of *extrema ratio*/last resort). The only limit States must adhere to is that these procedural constraints, perhaps overlapping, must not translate into an excess of regulation that makes exercising the right to strike too difficult, if not practically unfeasible. While traces of this approach could be found in earlier Ecsr positions, the point is that in the Dutch case, the Committee failed to clarify when such a situation might arise, leaving a wide margin of discretion in the exercise of that power. Consequently, such principles might have foreshadowed an unfavorable outcome for the USB complaint, given that a large part of the limits provided for by Law n. 146/90 are procedural in nature. Instead, this did not

²⁰ European Court of Human Rights, Court (Third Section), *Case of Ognevenko v. Russia*, Application n. 44873/09, Judgment, 20.11.2018.

²¹ European Court of Human Rights, Grand Chamber, *Case of Humpert and others v. Germany*, Applications n. 59433/18, 59477/18, 59481/18 and 59494/18, Judgement, 14.12.2023.

²² Complaint n. 201/2021, *European Trade Union Confederation (ETUC), Netherlands Trade Union Confederation (FNV) and National Federation of Christian Trade Unions (CNV) v. the Netherlands* [Decision on the merits \(Publication\)](#) 05.06.2024

happen, evidently due to the unique pervasiveness of the limits configured by the law in this instance. This is the most eloquent sign that the restrictions on the right to strike in Italian legislation are such as to render it irreconcilably incompatible with well-established principles of international law, branding the Italian case as an anomaly within the European context.

4. The international legal framework on strikes invoked by the Ecsr

The Ecsr connects precisely with well-established principles of international law when censuring Italian legislation in the extensive introductory section of the decision, which charts the intricate system of international sources on the matter. It emerges from this that the right to strike is firmly rooted within the human rights family, finding its foundation in all international treaties, whether universal (such as those adopted within the United Nations) or “regional” (such as those of the Council of Europe). Among the former, the right to strike is anchored in the international legal order not only by virtue of Article 8 of the International Covenant on Economic, Social and Cultural Rights of 1966 (which explicitly recognises it), but also through Article 22 of the contemporaneous International Covenant on Civil and Political Rights (which recognises freedom of association), thus expressing it as a civil and political freedom. Indeed, the Human Rights Committee, the Un body monitoring compliance with the Covenant on Civil and Political Rights, has warned signatory States to avoid excessive limitations on the exercise of the right to strike by public employees²³.

On the other hand, it is worth noting that the Ecsr decision under review was followed by the historic advisory opinion of the International Court of Justice on 21 March, in which the right to strike was brought within the scope of application of Ilo Convention n. 87²⁴. This overcame objections from the employers’ side and definitively clarified that the protection of freedom of association necessarily implies the protection of the right to strike (doing so in a more decisive manner than the ECtHR has done in its recent case law). The International Court reached this conclusion by also valuing the role played by Committees of experts in interpreting international sources.

²³ See United Nations, International Covenant on Civil and Political Rights, Human Rights Committee, 18.04.2019, *Concluding observations on the fourth periodic report of Estonia*, 7.

²⁴ International Court of Justice, Right to strike under ILO Convention n. 87, [Advisory opinion, 21.05.2026](#), on which see (Marinelli 2026, Orlandini 2026b)

Placing the decision under review within such a framework of international law is not a redundant stylistic exercise. In this way, the Ecsr intends to signal that its assertions regarding the Italian case are not the result of debatable interpretations by its members but find legitimacy in the consolidated standards developed by all bodies operating within the various international organisations tasked with ensuring respect for fundamental rights. The central principle from which these standards draw inspiration regarding strikes is the same one that applies to any fundamental right: limitations on its exercise are permissible only if aimed at defending rights and interests equally worthy of protection, and if they do not encroach upon its essential content - that is, they must not hollow out its effectiveness. For the right to strike, this has an obvious consequence: its compression is unjustified if it contradicts its very *raison d'être*, which is to allow workers to inflict economic harm on the counterparty to induce them to accept their demands. One principle, this, precisely obvious, but which in Italy finds a clamorous refutation in a regulation of collective conflict built upon the opposite implicit (and paradoxical) principle that conflict is permissible only if it is harmless and painless.

5. Aspects of Law n. 146/1990 censured by the Ecsr

Analysing Law n. 146/90 in light of these international standards, the Ecsr censures three aspects. The first concerns the very notion of “essential service”, upon which its application depends. This notion, the Ecsr recalls - linking with the statements of the Ilo committees - must be interpreted restrictively and cannot be used to limit a strike that «would not endanger the life, personal safety or health of the whole or part of the population or result in an acute crisis endangering the normal living conditions of the population and/or functioning of public services of fundamental importance»²⁵. According to the Strasbourg experts, it is necessary to distinguish the functions performed by workers in each sector of public services, providing limitations on the right to strike only where the service is genuinely functional to guarantee a good of significant general interest. It follows that the definition of essential public services under Article 1 of Law n. 146/1990 is excessively vague and broad, and, as interpreted by the Guarantee Commission, encompasses activities that are not necessary to protect vital societal interests²⁶. There is cer-

²⁵ *Unione sindacale di base (USB) v. Italy*, [Decision on the merits \(Publication\)](#) 13.03.2026, point 89.

²⁶ *Unione sindacale di base (USB) v. Italy*, [Decision on the merits \(Publication\)](#) 13.03.2026, point 89, points 80 ff. On the extension of the essential services see (Boccafurni 2021b).

tainly no justification for using this notion - endorsed over the years by the Commission itself - to guarantee the normal running of recreational events (from sports competitions to local festivals) or to avoid inconvenience to tourists, let alone to permit the transport of weapons (as occurred during the bombings of Gaza) (Tufo, forthcoming). The Ecsr's censure also targets the way the Commission has «often misused its margin of appreciation» in determining indispensable services pursuant to Article 13, paragraph 1, letter a) of Law n. 146/1990, by imposing, without well-founded reasons, the provision of 50% of the service during a strike with the deployment of one-third of the staff, thereby unjustifiably compressing the right to strike²⁷.

Regarding the other censures, the Ecsr declares rules relating to so-called objective rarefaction - namely, the mandatory time-interval between the implementation of one strike and the declaration of the next - as well as those identifying periods when striking is prohibited (*“franchigie”*), to be incompatible with European standards. These rules had been legitimised by the Committee itself in 2022 as part of its regular periodic monitoring of national systems²⁸. However, thanks to clarifications provided by the complainants, the Strasbourg experts have now reached a different conclusion: that such prohibitions excessively restrict the exercise of the right to strike in areas that cannot be traced back to genuinely essential services in the sense specified by the Committee, thereby rendering the right to strike ineffective and undermining its very essence²⁹.

The obligation to specify the duration of the strike in advance at the moment of its declaration is likewise deemed incompatible with the standards of the Social Charter. In this instance, as already seen, the Ecsr confirms what it had stated in the past specifically regarding Italy³⁰. Hence, the brief reasoning supporting this censure connects with the fundamental principle inspiring the entire decision: limitations on the right to strike cannot be justified if they render it ineffective - that is, if they weaken its function as an instrument of pressure against the employer. It is evident that forcing those who declare a strike to specify its duration in advance (moreover, mandatorily limiting it to a few hours) transforms the weapon of industrial conflict into an act of little more than symbolic value.

²⁷ *Unione sindacale di base (USB) v. Italy*, [Decision on the merits \(Publication\)](#) 13.03.2026, points 83-84.

²⁸ *Conclusions 2022*, Italy, Article 6§4.

²⁹ *Unione sindacale di base (USB) v. Italy*, [Decision on the merits \(Publication\)](#) 13.03.2026, points 98 ff.

³⁰ See footnote n. 9.

As for the aspects that were not censured, it is worth observing that the Ecsr denied any violation of Article 6(4) regarding the substantial unreviewability in court of the Guarantee Commission's deliberations and the acts adopted by the back-to-work ordering authority³¹. It considered that in both cases, there had been judgments by administrative courts refuting this assumption³². This conclusion fails to take adequate account of the limitations of administrative judicial review (which is confined to profiles of formal legality) and the fact (highlighted in the dissenting opinions of Salcedo and De Schutter)³³ that judicial intervention, even in the cases cited by the ECSR, arrives far too late to counteract the impact of the censured acts on the dynamics of the conflict. Nevertheless, it can be inferred that for the ECSR, the Italian legislation passes the compatibility test with Article 6(4) precisely because the powers of the Guarantee Commission and the ordering authority are subject to effective judicial control. This nonetheless constitutes an important interpretive principle to legitimise and strengthen judicial review (both administrative and ordinary) over the exercise of such powers.

6. A decision in defence of the European social model

As stated, the perspective from which the Ecsr operates - which lies at the root of its censures of Law n. 146/1990 - is that the compression of the right to strike cannot be justified if it results in its hollowing out, depriving it of all effectiveness.

This (obvious) perspective is not unique to the Ecsr; it is shared by all international bodies tasked with defining the *ubi consistam* of the right to strike, with which the Ecsr explicitly aligns itself. However, this is not the case for the institutional actors (the legislature, administrative authorities, and the higher and ordinary judiciary, backed by a large part of legal scholarship) operating within our legal system. Due to an improper application of the balancing of fundamental rights (on which Law n. 146 is based) - which fails to account for the need to preserve the effectiveness of a strike - the demand to minimise inconvenience to users overrides the need to preserve the strike's disruptive capacity. Consequently, strikes in public services no longer produce any deterrent effect, as they are incapable of inflicting any prejudice

³¹ *Unione sindacale di base (USB) v. Italy*, [Decision on the merits \(Publication\)](#) 13.03.2026, points 76 ff.

³² Consiglio di Stato, Sez. VI, n. 2115/2023 and n. 2116/2023, on which see (Orlandini e Lofredo 2023); TAR Lazio n. 14078 and 14079 of 09.12.2019.

³³ *Unione sindacale di base (USB) v. Italy*, [Decision on the merits \(Publication\)](#) 13.03.2026, 34 ff.

upon their counterparty; to the point where, by effect of Law n. 146/1990, a higher level of service may well be guaranteed during a strike than is normally provided. Such a regulatory framework is itself a cause of public inconvenience, amplified by overly restrictive rules that fuel the repetition of individually ineffective strike episodes.

It is precisely here that the importance of the European Committee's decision lies: it contradicts decades of narratives surrounding industrial relations (fed by the media and governments of all political stripes) that have led to a progressive debasement of the function and role of collective conflict, today widely perceived as a social detriment rather than a lever for social progress. This is commonly blamed on the alleged abuse of the right to strike within public services by workers themselves (and by a certain segment of the trade union world) - an abuse that has supposedly ended up holding users "hostage" to sectional corporate demands. However, this is a superficial and instrumental reading of industrial relations. It fails to consider how the so-called "tertiarization of conflict"³⁴ has gone hand in hand with the privatisation of public services, which has impoverished workers and, with them, the quality of services - and thus the rights of the users themselves, whose defence the strike is actually functional to.

The devaluing of industrial conflict is rather the offspring of a culture that criminalises any form of social conflict, reflecting an authoritarian and security-driven conception of democracy that demeans constitutional values and the principles that inspired the European democracies reborn from the ashes of the Second World War. The stakes surrounding the right to strike are therefore of vital importance, not only for the future of industrial relations but for the future of democracy itself. It is a battle currently being fought globally, as demonstrated by the attacks on the spaces for viable conflict (industrial and otherwise) carried out by national governments everywhere, even within "democratic" Europe. This is further shown by the mortal assault launched against the right to strike within the Ilo by the employers' group, fortunately repelled by the International Court of Justice³⁵.

For these reasons, the decision of the European Committee must be read as a bulwark in defence of what remains of the European social model. A fragile bulwark, of course, because international law "only goes so far" (to quote a famous remark by the Italian Foreign Minister, in response to Israel's violations) if national authorities have no intention of respecting it. This is partic-

³⁴ We are referring to the fact that strikes have shifted from industry to services, with consequences on users (see Accornero 2006).

³⁵ See footnote n. 24. On the whole case, see also (Marinelli 2024).

ularly true for international sources which, like the Social Charter, protect social and labour rights.

7. The effects of the Decision within the Italian system

By signing and ratifying the European Social Charter, the Italian State bound itself to give effect to the decisions of the Ecsr, especially if (as normally occurs) these are subsequently adopted in resolutions by the Committee of Ministers of the Council of Europe. However, the decisions of the Ecsr do not produce directly binding effects within the national legal system. At this level, the problem of the effectiveness of the Ecsr's acts emerges - an issue common to all so-called quasi-judicial bodies operating internationally (composed of experts rather than judges). As already mentioned, the Constitutional Court has clarified³⁶ that the decisions of the Ecsr, authoritative as they may be, do not bind it in constitutionality reviews based on Article 117, paragraph 1, like the approach taken in Spain and France.

It is to be hoped, however, that this decision will at least feed a serious reflection on how the balancing of constitutional rights is articulated (including by the Court). This is because (as international law scholars insist, see Borlini and Crema 2018; Forlati 2019; Forlati 2018), even if the case law of expert committees (including those of the Ilo) cannot be termed binding on the Court, the latter should at least justify its divergent interpretation of international sources, if challenged on the matter, in light of prevailing principles enshrined in our Constitution. This should require providing clarifications regarding the essential content of the right to conflict grounded in Article 40 of the Constitution³⁷, explaining why this norm cannot be interpreted within our legal order in harmony with prevailing international principles, with which the Ecsr aligns itself.

Different scenarios are conceivable, however, if one shifts from the constitutional plan of the Constitutional Court to evaluate the potential impact of the decision on lower courts and the Court of Cassation (Borelli, Orlandini e Tufo 2024). In recent case-law from the Court of Cassation, signs of growing and unprecedented attention to international sources can be detected precisely on the matter of the right to strike. Reference is made to the judgments of April 2025³⁸ on the right to collective action based on Article 39, reinterpreted precisely in light of international sources. Following this case-law, the

³⁶ See footnote n. 3.

³⁷ According to which "The right to strike shall be exercised in compliance with the law".

³⁸ Cass. n. 9526/2025.

task now is to provide an interpretation of Law No. 146 that conforms as much as possible to the international standards highlighted by the Ecsr. This opens up avenues to judicially contest the trends of the Guarantee Commission, which (especially in recent years) have been unilaterally oriented toward restricting the spaces for collective action as much as possible³⁹.

Of course, there remains the obvious route of reforming the law to bring it into line with the European standards set by the ECSR; but this is a path that is currently politically unfeasible.

8. The “perfect timing” of the Guarantee Commission: logistics included within the scope of Law n. 146/1990

The Guarantee Commission should obviously also take the Committee’s decision into account in its constant work of interpreting and applying the provisions of Law n. 146/1990. In this regard, the timing of the events reconstructed so far could not have been more striking. A few days before the publication of the Ecsr’s decision, the Guarantee Commission adopted an interpretive guidelines resolution (Resolution n. 26/88 of 11.03.2026) through which it provides a maximally extensive interpretation of the notion of essential service, vastly broadening the scope of application of Law n. 146/1990.

This interpretation is made possible by an unprecedented reading of Article 1, paragraph 2, letter *a*) of Law n. 146/1990, which includes within essential services «the supply of energy, energy products, natural resources, and basic necessities, as well as the management and maintenance of the relative plants, limited to what concerns their safety».

According to the Guarantee Commission, the term “supply” encompasses «the entire set of activities aimed at the distribution of the goods listed in the provision». Hence the conclusion that workers employed in the logistics sector instrumental to freight transport are *tout court* subjected to Law n. 146/1990, in the same manner as those employed in transport companies properly. This applies for the sole reason that the company for which they work performs logistics services involving goods traceable to the essential services indicated by law.

In other words, even if a strike does not affect any activity traceable to the (moreover loose and unspecified) notion of essential service adopted by Law n. 146/1990, workers are obliged to respect the rules provided for by it: the notice period, the statement of grounds, the duration, and the implementa-

³⁹ On the possible future judicial review by the labour courts regarding the application of Law n. 146/90 see also (Nappi 2026, Recchia 2026).

tion methods of the collective withdrawal of labour, as well as prior cooling-off and conciliation procedures. To prevent any loopholes from such a fatal extension of statutory constraints, the Commission specifies that non-compliance cannot be justified by «the circumstance that the company also moves other types of goods, even when the declaring entities state that the strike action will not affect company activities aimed at moving the goods contemplated by Article 1, paragraph 2, letter a) of Law n. 146/1990».

In short, the right to strike must be limited even if it does not impinge upon any right or interest of constitutional significance.

A more clamorous violation of the principles enunciated by the Ecsr could not have come from the Commission. The task now for workers and trade unions is to assert the validity of those principles before the judiciary when they translate into concrete acts harmful to the right to strike by companies in the logistics sector - a sector that is today highly strategic and where, as is well known, the most extreme dynamics of labour exploitation manifest themselves. Similarly, those principles serve to contradict the recent guidelines of the Commission regarding strikes declared with the purpose of hindering the loading and unloading of weapons in ports⁴⁰; guidelines that have already resulted in resolutions inviting unions to abstain from collective action (most recently, the invitation resolution of 13.03.2026) and subsequent sanctioning proceedings against the declaring trade unions.

The challenge to defend the spaces for viable conflict - and, with them, dissent and resistance against the security-driven and warmongering shifts currently underway - is also being played out in courtrooms, where such shifts can find a barrier partly thanks to international law. But it naturally falls upon the social actors who hold the right to strike (workers and trade unions) to give force and effectiveness to this right, pushing past the narrow margins within which its exercise is confined by national legislation, and trusting to find a judiciary capable of valuing the principles that Italy is bound to implement by virtue of its international obligations.

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⁴⁰ Indicazione immediata ai sensi dell'articolo 13, comma 1, lettera d), della legge 12 giugno 1990, n. 146, e successive modificazioni, 27 January 2026.

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