

THE RIGHT TO STRIKE IN EUROPE: A FALSE ALIBI FOR MSL

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COMPARATIVE JUSTIFICATION FOR MINIMUM SERVICE LEVELS

- Grant Shapps MP: 'The legislation will bring us into line with other modern European countries such as France, Spain, Italy, and Germany, all of which already have these types of rules in places.'
- Selective and misleading use of comparative examples and international labour standards to justify legislation.
- What he omitted to mention was the constitutional status of the right to strike in these countries.
- Cherry picking restrictions.
- The UK already had one of the most restrictive bodies of strike law in Europe.

SUBSTANTIVE LIMITATIONS ON THE RIGHT TO STRIKE

- Legitimacy of ‘political’ and secondary strikes?
 - The UK maintains a complete prohibition.
- **What about Spain?**
 - ‘Socio-political’ strikes are permitted and some secondary strikes where professional interests are affected by primary disputes.
- **What about France?**
 - Again, some scope for political and secondary strikes.
- **What about Italy?**
 - In practice, secondary strikes permitted where there is a community of interest and political strikes only prohibited if a threat to constitutional order.

PROCEDURAL CONSTRAINTS ON THE RIGHT TO STRIKE: STRIKE BALLOTS

- The UK has one of the most extreme balloting regimes in the world: see Creighton et al, *Strike Ballots, Democracy, and Law* (OUP, 2020)
- **What about Spain?**
 - Strike ballots unconstitutional because it is a protected individual right.
- **What about France?**
 - Again, a constitutional right of individual citizens: no ballot is permissible.
- **What about Italy?**
 - An individual right, no ballots, though some limited scope for mandatory notice requirements.

PROTECTING INDIVIDUAL STRIKERS

- UK law: limited protections from dismissal under s. 238A TULRCA 1992 where the strike is lawful; currently no protections from detrimental victimisation under s. 146 TULRCA 1992; wide scope to implement disproportionate deductions from pay.
- **What about Spain?**
 - The contract is suspended and strong individual protections for lawful strikers.
- **What about France?**
 - Doctrine of contractual suspension; French law prohibits discrimination against strikers through disciplinary sanctions.
- **What about Italy?**
 - Again, contractual suspension, and strong protections against dismissal and lesser penalties.

COMPARATIVE LAW AS A FALSE ALIBI

- UK strike law is one of the most restrictive in Europe on political/secondary strikes, balloting requirements, and limited protections for individual strikers.
- It is misleading to use France, Spain, and Italy as examples to justify MSL when these countries provide for a much wider and strongly protected right to strike.
- The importance of cumulative effects of restrictions: it is distorting to look at single legal rules, you have to consider the 'totality' of the restrictions and how they interact.
- UK law: MSL disputes will often already be subject to the super-thresholds in 'important public services' in TUA 2016.

SERIOUS ABOUT REFORM?

- The contract of employment should be treated as suspended during a lawful strike, not breached as it is in English contract law.
- Individual strikers should be protected from all forms of victimisation for participating in a lawful strike, dismissal and detriment.
- The strict rules on secondary and political strikes should be reconsidered in the light of comparative examples.
- Repeal the TUA 2016 thresholds and introduce electronic balloting.
- Then, perhaps, we can have a sensible conversation about MSL!