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STRIKES IN PUBLIC FACILITIES: LEGAL CHALLENGES AND THE PRESERVATION OF PUBLIC INTEREST (A COMPARATIVE STUDY BETWEEN THE KUWAIT AND FRANCE LEGAL SYSTEMS)

Muna Alhajri^{1*}

¹Associate Professor Constitutional and Administrative Law in the College of Law in Kuwait University.
Email: Munaalhajri8@gmail.com Orcid ID: <https://orcid.org/0009-0005-6308-4402>

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Corresponding Author: Muna Alhajri
(Munaalhajri8@gmail.com)

ABSTRACT

The right to strike is a form of peaceful assembly. A strike is among the public rights and freedoms stipulated in some constitutions, and it constitutes part of the right to freedom of assembly and freedom of expression. The strike is not just a stoppage of work, it is a 'cultural and social phenomenon' that originated with the industrial revolution in France. This study tackles the extent of the legitimacy of strikes in public facilities in the State of Kuwait in light of the absence of explicit constitutional and legal regulation of this right. It examines the constitutional freedoms, legal regulation, and international conventions applicable in the State of Kuwait. It should be noted that this right represents an important tool in the hands of employees to exert pressure on the administration so that the latter may respond to their vocational demands. However, the exercise of this right may conflict with principles within public facilities, most notably the principle of the regular and continuous functioning of public services. Accordingly, the study seeks to find a reconciliation and balance between exercising the right to strike and maintaining the provision of public services to citizens and residents in the best possible manner without interruption et seeks to find Social Sustainability, while referring to the legislative and judicial experience in France in regulating the right to strike.

KEYWORDS: Strike, Continuity and Regularity of Public Services, Public Employee, Freedom of Opinion, Public Facilities.

Freedom of peaceful assembly, including the right to strike, is a fundamental of a democratic system. The role of public utilities in social and cultural stability. The right to strike is one of the public rights and freedoms stipulated in some constitutions¹, as it represents part of the right to freedom of assembly and freedom of expression. The importance of studying the right to strike in public facilities lies in the fact that it constitutes a central point of conflict between employees and the public authority. Although this right is considered an important means in the hands of workers (employees) to exert pressure on the administration to achieve their vocational demands, its exercise conflicts with principles within public facilities, most notably the principle of the regular and continuous functioning of public services. Consequently, work stoppages in public facilities do not stop at the level of employment effects but extend to causing harm to the national economy².

The Kuwaiti Constitution issued in 1962 regulated many rights and freedoms in intellectual, social, economic, religious, and political fields, *inter alia*. However, it did not explicitly provide for the right to strike in general, whether for private-sector workers or employees in public facilities. Therefore, several issues have arisen that sparked debate in legal doctrine and judicial rulings due to the exercise of the right to strike, and how such exercise may affect the public interest, given its connection to the management and organization of public facilities and the principle of their regular and continuous operation. This is particularly relevant as, from time to time, employees in Kuwaiti ministries and government entities threaten to collectively abstain from work in a manner that disrupts the interests of citizens and residents and obstructs the functioning of public facilities.

Accordingly, this study addresses the following questions: Is the right to strike accepted in the State of Kuwait? Is there any legal or regulatory framework governing strikes? Is it permissible for employees to exercise strikes in public facilities? Has the State of Kuwait ratified international conventions that permit the right to strike? Based on this, the study examines how to reconcile the right to strike in public facilities—as a manifestation of freedom of

expression for workers and employees—with the public interest, which necessitates refraining from using strikes as a means of damaging the national economy or harming social peace.

All these questions are addressed in this research through a descriptive and analytical study of constitutional texts, laws, and international agreements in the State of Kuwait, with a comparison to certain aspects of French law, which has an interesting experience in regulating the right to strike in public facilities.

Accordingly, the study is divided into two sections:

- I. Strike as a form of peaceful protest
- II. The conflict between the right to strike and the principles and nature of certain public facilities

I. STRIKE AS A FORM OF PEACEFUL PROTEST

Strikes and assemblies are among the fundamental rights guaranteed by constitutions, and they constitute an important means of expressing political, social, or vocational demands.

Accordingly, a strike is considered a manifestation of freedom of expression and a means of claiming rights. For instance, a group of individuals whose vocational demands are unified may gather peacefully. However, individuals must be aware of local laws and required procedures to ensure their rights.

The term “strike” is historically associated with a place in the French capital, Paris, known as *Place de Grève*.³ From this historical designation, the term *la grève* was derived, meaning a means of exerting pressure on the employer and public authority to achieve certain vocational demands.

Accordingly, a labor strike is defined as the collective cessation of work by workers in order to achieve specific vocational purposes, especially to compel the employer to comply with their demands related to working conditions.⁴ Although this practice is intertwined with many political, economic, and administrative concerns—such as its impact on the regular and continuous functioning of institutions—the prevailing trend in most comparative legal systems today recognizes strikes as a legitimate right, albeit subject to a set of

¹ The 2014 Egyptian Constitution, in Article 15, provides for the right to strike, stating: “Peaceful strike is a right regulated by law.” It also stipulates that the 1958 French Constitution, in its preamble, adopts all the principles and rights set forth in the preamble to the 1946 French Constitution, including its recognition of the legitimacy of the right to strike.

² Dr. Gamal Fakher Al-Nakkas, *Comparative Kuwaiti Labor Law*, Publications of the Authorship, Translation and Publishing Unit, First Edition, 1993, p. 150.

³ Flise Léon., *De la grève dans les service Publics*, 1912, Paris, p. 94.

⁴ Such as increasing wages or reducing working hours, among many others. For more details, see: Dr. Abdel Fattah Abdelbaqi, *Labor Law*, Kuwait: Kuwait University, 1975, p. 56. Douglas L. Leslis. *Labor Law*. Minnesota: Thomson West, 2008, pp.71-85.

regulatory frameworks such as specifying certain times, prior notice, and prohibiting strikes in certain critical sectors.⁵

French legal doctrine defines a strike as an organized work stoppage by workers intended to compel the employer, through pressure, to accept their viewpoint regarding the dispute in question.⁶ It also defines it as any complete cessation of work that has a collective character and is motivated by vocational demands.⁷ The jurist Claude Albert Colliard provided a comprehensive definition encompassing all elements of a strike, stating that it is “a collective and organized refusal expressing the workers’ intention to temporarily release themselves from the conditions of the employment contract in order to assert their demands.”⁸

French jurisprudence defines a strike as a collective and organized work stoppage⁹ based on collective action aimed at supporting vocational demands. Therefore, a simple gathering of a single individual cannot be considered a strike. However, exceptionally, the right to strike—recognized constitutionally—may be exercised by a single employee acting individually if that employee is “the only one capable of effectively defending his vocational demands.”¹⁰

It is important to emphasize that a “political strike” is prohibited within public facilities. It is prohibited in principle because it does not aim to achieve vocational demands of striking workers; rather, it seeks to achieve political objectives by exerting pressure on the government or one of the other public authorities, with the aim of compelling

it to adopt a particular political position or preventing it from achieving certain political goals.¹¹ Accordingly, judicial precedents have established the prohibition of political strikes and consider them to constitute a fault.¹²

1. THE RIGHT TO STRIKE IN INTERNATIONAL CONVENTIONS

International conventions have provided for the protection of workers’ rights by granting them the right to resort to strikes as one of the legitimate means of claiming their rights. This right is not limited to workers in the private sector but also extends to employees in the public sector, subject to regulations and restrictions that ensure a balance between the State’s interest in maintaining the regular functioning of public facilities and protecting the rights and privileges of workers therein.

The State of Kuwait has ratified the ILO Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organize¹³, and the ILO Convention No. 98 of 1949 concerning the Right to Organize and Collective Bargaining.¹⁴ However, neither of these conventions explicitly addresses the right to strike, and the term “strike” is not expressly mentioned in either of them.

In 1994, the International Labour Conference, in its 81st session, issued a report on Convention No. 98, stating that the right to strike is an intrinsic component of the right to form trade unions protected under Convention No. 87.¹⁵ Accordingly, labor demands in Kuwait often rely on the State’s ratification of these two conventions.¹⁶

⁵ Dr. Ibrahim El-Desouki Abu Al-Lail, *The Legal Regulation of Collective Labor Relations under Kuwaiti Law in Light of Comparative Law and International Law*. *Journal of Law*. Special Issue, Year 18, No. 3, September 1994, p. 93.

⁶ Jean Rivero et Jean Savitier. *Droit du travail*. P.U.F, Paris, 1956, p.180.

⁷ Jean Pélissier, Alain Supiot, & Antoine Jeammaud. *Droit du travail*. Editions Dalloz, 2006, p. 255.

⁸ Claude Albert Colliard, *libertés publiques, précis*, Dalloz, 1939, p. 458.

⁹ French courts have examined numerous cases concerning strikes and have required, for a situation to qualify as a strike, that the cessation of work be complete and explicit. Accordingly, they have excluded, for example:

- A slowdown in the performance of work does not constitute a form of strike; rather, it is considered improper performance of the employment contract. Cass.Soc.5 mars 1953, Bull.Civ.T.V.P.140.
- Refusal to perform non-mandatory overtime work is not considered a strike. This was affirmed by the French Conseil d’État when it held that teachers’ refusal, following union instructions, to admit more than 25 students per class did not constitute a work stoppage, as they continued teaching during their assigned hours. C. E 20 mai 1977, min. l’éducation/c Quinteau et autres,

Rec.p.230.

- There is no work stoppage where circumstances beyond the control of the public service prevent employees from performing their duties, such as in cases of force majeure or unforeseen events.

¹⁰ CAA Marseille, 18juin 1998, Mlle Thomas.

¹¹ See in this regard Dr. Mohamed Abu Al-Saud Habib, *The Public Employee and the Exercise of Political Rights and Freedoms*, Dar Al-Thaqafa Al-Jami ‘iyya, Cairo, 1966, p. 160; Dr. Mohamed Hisham Abu Al-Fotouh, *Strike Action: Between Prohibition and Permissibility*, n. p., 1989, p. 38.

¹² C.E,7 juillet 1950 sieure Dehaene.

¹³ See the text of the Convention, which Kuwait ratified in 1961. <https://www.ohchr.org/en/instruments-mechanisms/instruments/freedom-association-and-protection-right-organize-convention>, accessed on 16/ 1/ 2026.

¹⁴ See the text of the Convention, which Kuwait ratified in 2007. <https://www.ohchr.org/en/instruments-mechanisms/instruments/right-organise-and-collective-bargaining-convention-1949-no-98>, accessed on 16/ 1/ 2026.

¹⁵ International Labour Conference, *Report of the 81st Session* (International Labour Organization, 1994), p. 66.

¹⁶ Dr. Mashaal Abdulaziz Al-Hajri, *The New Kuwaiti Labor Law*, supra, p. 173.

When examining other international agreements ratified by Kuwait¹⁷ that explicitly refer to the right to strike, we find the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁸, specifically Article 8(1), which provides for “the right to strike, provided that it is exercised in conformity with the laws of the State.” It is evident that this Covenant clearly recognizes the right to strike but leaves its regulation to each State in accordance with its national legislation, thus organizing rather than prohibiting it, as a right for workers provided for by the Covenant, signed by the states organizing the ICESCR. Thus, this right has become one of the rights recognized by the State and exercisable by workers.

However, Kuwait has entered reservations to certain provisions of this Covenant,¹⁹ particularly Article 8(1)(d), which recognizes the right of workers to form and join trade unions and protects their right to strike in accordance with national laws, with exceptions for the military, police, and government administrative employees.

It is worth noting that international treaties and conventions, when concluded in accordance with the provisions of the Kuwaiti Constitution,²⁰ Article 70, which regulates the mechanism for concluding treaties and conventions, follow the general rule that all treaties are concluded by decree, and the executive authority must immediately notify the National Assembly of these treaties, accompanied by an appropriate statement. A treaty has the force of law in Kuwait after it is concluded, ratified, and published in the Official Gazette. As an exception, some treaties and conventions require legislative approval for ratification, meaning that the legislature must pass a law ratifying the treaty and publish it in the Official Gazette. These treaties are enumerated exhaustively²¹ in the Kuwaiti Constitution. Since the International Covenant on Economic, Social and Cultural Rights concerns the rights of citizens, Law No. 11 of 1996 was issued, incorporating this Convention.

We observe that Kuwait has ratified a large

number of international conventions issued by the International Labour Organization (ILO); however, none of them obligates the state to allow or permit strikes. It is also important to note that the provisions of ILO conventions primarily regulate labor relations in the private sector, including workers, employers, and management, and therefore apply specifically to the private sector without encompassing public employees in government administrations.

There is often confusion in understanding and interpreting ILO Conventions No. 87 on freedom of association and protection of the right to organize (1948) and Convention No. 98 on the right to organize and collective bargaining. However, the application of these conventions is limited to labor relations in the private sector.

The ILO issued a specific convention for public employees, namely Convention No. 151 (ILO Convention concerning Labour Relations in the Public Service, 1978),²² which protects the right to organize and regulates conditions of employment in the public service. Article 1 of this convention specifies its scope of application to public employees, and Article 11 states:

“1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General”

We emphasize that Kuwait has not ratified Convention No. 151 concerning public employees. Furthermore, several conventions explicitly exclude public service employees in state administrations from their application, as provided in Article 6 of ILO Convention No. 98 concerning the right to organize and collective bargaining.

2. CONSTITUTIONAL AND LEGAL REGULATION OF THE RIGHT TO STRIKE

Some constitution’s guarantee the right of workers to strike. For example, the Preamble of the 1946 French Constitution, paragraph 7, states that: “The right to strike shall be exercised within the

¹⁷ Kuwait acceded to the International Covenant on Economic, Social and Cultural Rights in 1996, making the provisions of the Covenant part of Kuwait’s domestic law pursuant to Law No. 11 of 1996. The law was issued on 3 April 1996 and published in the Official Gazette on 7 April 1996, Issue No. 252, 42nd Year.

Source: Kuwait Lawyers Website <https://mohamoon-kw.com/> Accessed on 14 January 2026.

¹⁸ See <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>. Accessed on 15/ 1/ 2026.

¹⁹ For all Kuwait’s reservations on this Covenant, see <https://indicators.ohchr.org/>, accessed on 15/ 1/ 2026.

²⁰ In all cases, the treaty must not contain any secret provisions that contradict its public terms.

²¹ These treaties, which concern the following subjects – (treaties of peace and alliance; treaties relating to the state’s territory, its natural resources, sovereignty rights, or the public and private rights of citizens; treaties on trade and navigation; treaties on residence; and treaties that impose expenditures on the state treasury not included in the budget or that entail amendments to Kuwaiti laws) – must be enacted by law in order to take effect.

²² C151 - Labour Relations (Public Service) Convention, 1978 (No. 151). See the text of the Convention: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312296:NO, accessed on 17/ 1/ 2026.

framework of the laws that regulate it.” Based on this provision, the French Constitutional Council ruled that the right to strike has constitutional value, but it must be reconciled with the principle of continuity of public services.²³

Studying the reality of strikes in Kuwait requires examining the constitutional framework, legal rules, and government measures taken against strikes in ministries and governmental entities.

2.1. *Absence Of an Explicit Constitutional Text for the Right to Strike in Kuwait*

As a general principle, human rights and freedoms are not created by any legislator; rather, the rules laid down reveal inherent natural rights. People are inherently free, with their own opinions and ideas; they are free in their movements, individually and collectively, in separation or assembly, as long as their actions do not harm others. Human rights and freedoms have become part of the global conscience and are embedded in human collective awareness. Democratic systems strive to protect these rights and provide guarantees, and constitutions generally include them to inform citizens, acting as a constraint on the legislator. These freedoms have evolved into a social system and essential rights for individuals within civil society, which cannot be waived or sacrificed except when necessary for the common good. Public freedoms are interconnected, so that the restriction of one inevitably affects the others—they support and reinforce each other and cannot be fragmented or isolated.

Since the Constitution is the supreme law of the State, and since the Constitution of the State of Kuwait is a concise one, limited to stipulating rights and freedoms while leaving their regulation to ordinary laws, the legislator, when regulating these rights, is bound by the fundamental principles and provisions contained in the Constitution and may not exceed them.

It is worth noting that the Kuwaiti Constitution does not contain an explicit provision regarding the right to strike, nor does it include a provision prohibiting strikes.

Accordingly, although the Constitution lacks a specific textual regulation of the right to strike,

other constitutional provisions implicitly support and guarantee this right, as outlined below:

- Article 6 of the Kuwaiti Constitution establishes that Kuwait’s system of government is democratic and that sovereignty belongs to the people. This principle is reflected throughout the Constitution, repeatedly emphasizing the rules and principles that define the concept of democracy. These principles shape the society envisioned by the Constitution, whether by affirming popular sovereignty (the essence of democracy), guaranteeing public freedoms and rights (its goal), or promoting participation in exercising authority (its means).
- The Explanatory Memorandum of the Kuwaiti Constitution emphasizes the role of public opinion and the responsibility of democratic governance to protect and guarantee it. Public oversight is described as the backbone of governmental legitimacy. The Explanatory Memorandum states that:

“These components and guarantees collectively provide citizens with a wide range of political freedoms, securing for them—not only the right to vote—but various elements of personal liberty (Articles 30, 31, 32, 33, 34), freedom of belief (Article 35), freedom of expression (Article 36), freedom of press, printing, and publishing (Article 37), freedom of correspondence (Article 39), freedom to form associations and unions (Article 43), freedom of private assembly and the holding of public meetings, processions, and gatherings (Article 44), and the right to submit petitions to public authorities (Article 45). In an environment full of these freedoms, political awareness inevitably grows and public opinion strengthens...”²⁴

- A reading of the Kuwaiti Constitution shows that workers’ rights are protected alongside other rights and freedoms. Freedom of opinion is specifically guaranteed under Article 36.²⁵ A jurist whose views we support considers the right to strike a constitutional right that cannot be questioned, because it constitutes a legitimate method of expressing opinion,

express and propagate his opinion verbally, in writing or otherwise, in accordance with the conditions and procedures specified by law.)

https://media.gov.kw/assets/img/Ommah22_Awareness/PDF/Follow_the_information_unit/new/consitiution%20-%20English.pdf. Accessed on 21/ 3/ 2026.

²³ Cons. const., 25 juill. 1979, n° 79-105 DC, Droit de grève à la radio-télévision.

²⁴ For more of the articles of the Kuwaiti Constitution, see https://media.gov.kw/assets/img/Ommah22_Awareness/PDF/Follow_the_information_unit/new/consitiution%20-%20English.pdf

²⁵ Art 36 (Freedom of opinion and of scientific research shall be guaranteed. Every person shall have the right to

consistent with Article 36. Within this framework, a strike can be understood as a form of expressing opinion to communicate a position on a particular issue, provided it does not damage public property or disrupt public services.²⁶

- Another perspective holds that although the Constitution does not directly mention the right to strike, Article 36 guarantees individuals the right to express their opinions, ideas, and thoughts. Under this interpretation, striking can be considered among the means for individuals to express their contemporary ideas and viewpoints.²⁷

In conclusion, guarantees of freedom of opinion and expression, the prohibition of forced labor, the freedom not to join an association or union, and the right to peaceful assembly within the limits of public order and morals²⁸ all constitute implicit support for the right to strike. Therefore, the Kuwaiti Constitution implicitly adopts the right to strike, but it is subject to the same limitations that apply to other rights. As the Explanatory Memorandum emphasizes, all rights guaranteed in the Constitution are subject to a general limitation—even if not explicitly stated—requiring that individuals exercise their rights in a manner consistent with public order and morality (explicitly mentioned in Article 49 of the Constitution).

2.2. *Absence Of Explicit Legal Regulation of the Right to Strike in Kuwait*

The right to strike is a practice that involves many political, economic, and administrative considerations, including the regular and continuous operation of public services. However, the prevailing trend in most contemporary comparative legal systems recognizes the strike as a legitimate right,

albeit restricted by a set of regulatory frameworks (specific cases, designated times, prior notice, etc.).²⁹

In support of this, the right to strike in France is exercised “within the framework of the laws that regulate it”, and it also guarantees the right to strike for public employees (CGFP, Article L. 114-1).³⁰

Historically, regulating strikes has always been problematic in Kuwaiti law, yet the practice of striking in Kuwait has a long history. The first recorded strike occurred in 1928 by pearl divers, and in 1937, taxi drivers struck in protest against restrictions on their travel routes.³¹

In the late 1940s and early 1950s, a series of major labor strikes occurred among oil company workers due to unaddressed demands.

The Kuwaiti Government Sector Trade Union also played a role in some strikes, such as the strike on 8 April 1974, demanding insurance coverage for state vehicles against employee liability for accidents; the strike on 21 August 1974, in support of the petroleum sector. Also, in 1996, pilots at Kuwait Airways announced a strike, but the government intervened and resolved the dispute amicably, meeting the pilots’ demands.³²

Although the Kuwaiti Constitution lacks an explicit provision permitting strikes, the Constitution’s provisions are interpreted as implicitly supporting this right, particularly through protections for labor rights, political rights, the right to petition authorities, and freedom of expression.³³

The ambiguity surrounding the right to strike increases when we note that Kuwaiti criminal law does not criminalize strikes, and both the previous Labor Law No. 38 of 1964 and the new Labor Law No. 6 of 2010 are silent on the matter—they neither prohibit nor explicitly permit strikes.

Nevertheless, the previous labor law regulated collective labor disputes in general.³⁴ The new law

²⁶ It is Dr. Muhammad Abdul Mohsen Al-Maqati’s opinion. It was published in a press article in the Kuwaiti newspaper *Al-Nahar*, titled “Strike Between International Legitimacy and the Kuwaiti Government’s Prohibition”, Issue No. 917, dated 11/ 4/ 2010.

²⁷ It is the opinion of Dr. Abdullah Al-Rumaidhi, from the Public Law Department, Faculty of Law, Kuwait University, published in the seminar “*Strike in Kuwaiti Law*” in the newspaper *Al-Nahar*, Issue No. 129, dated 12/ 1/ 2008.

²⁸ The explanatory memorandum of the Kuwaiti Constitution clarified that public meetings—whether in their usual form at a designated location or in the form of processions moving along public streets, or gatherings where people meet in a public square, for example—are, regardless of their form, only permissible “according to the conditions and arrangements specified by law”, and on the condition that “the purposes of the meeting (or procession or gathering) and the means used are peaceful and do not violate public morals.”

Regarding public meetings, the Constitution allows them according to the conditions and arrangements specified by law,

provided that the purposes and means of the meeting are peaceful, and that the exercise of this right occurs within the framework of individuals’ duty to observe public order and public morals, as required by Article 49 of the Constitution.

²⁹ Dr. Ibrahim Al-Desouki Abu Al-Lail, *The Legal Regulation of Collective Labor Relations under Kuwaiti Law in Light of Comparative Law and International Law*, *Journal of Law*, Year 18, Issue 3, September 1994, p. 93.

³⁰ The French *Code général de la fonction publique*.

³¹ Dr. Mashael Abdulaziz Al-Hajri, *The New Kuwaiti Labor Law*, Dar Afaq Publishing, 2017, p. 171.

³² For further information on these strikes, see: Dr. Gamal Fakher Al-Nakkas, *Comparative Kuwaiti Labor Law*, Dar Al-Kutub Foundation, 2005, pp. 190–191.

³³ Dr. Muhammad Abdul Mohsen Al-Maqati, *Al-Waseet in the Kuwaiti Constitutional System and Its Political Institutions* (Kuwait: Kuwait University, 2006), p. 212.

³⁴ Chapter Fourteen of the former Labor Law (*Conciliation and Arbitration in Collective Labor Disputes*), Articles 88 to 93.

also regulates these disputes but includes a provision prohibiting the parties from fully or partially stopping work during certain situations:

- During direct negotiations.
- While the conciliation committee or arbitration panel is engaged.
- If the competent ministry intervenes in the dispute.

Some scholars argue that Article 132 of the new Kuwaiti Labor Law³⁵, if interpreted in terms of violations, suggests that a full or partial work stoppage – that is, a strike – would only be permitted after negotiations have ended.³⁶

We may note that the Kuwaiti government has issued multiple statements³⁷ regarding strikes in some public sectors. All of these statements have approached strikes from a cautious political perspective. In its statements, the government justifies this caution by emphasizing that, in order to preserve the public interest and avoid disrupting citizens and beneficiaries of public services, strikes should not be used to pressure the government into granting financial or other employment-related benefits. At the same time, the government expresses understanding of the strikers' demands, reminding them of the constitutional³⁸ and legal³⁹ provisions governing public employment, with its rights and obligations, and emphasizing that any demand can be addressed through legal channels and calm dialogue that ensures fairness and justice.

When strikes in some government entities escalate

³⁵ Article 132 of Kuwaiti Labor Law No. 6 of 2010 concerning work in the private sector: "Both parties to the dispute are prohibited from suspending work, wholly or partially, during the conciliation and arbitration procedures."

³⁶ Dr. Mashael Abdulaziz Al-Hajri, *The New Kuwaiti Labor Law*, op. cit., p. 172.

³⁷ Government Kuwait Decisions:

- The Council of Ministers issued Decision No. 1113, adopted at its meeting No. 50-3 on 19/11/2007, concluding in paragraph (3) with the issuance of a statement regarding strikes.
- The Council of Ministers issued Decision No. 1360, adopted at its meeting No. 45 on 22/9/2011, concluding with the issuance of a statement concerning strikes and forms of work stoppage.
- The Council of Ministers issued Decision No. 1400, adopted at its meeting No. 47 on 4/10/2011, concluding with the issuance of a statement regarding strikes and forms of work stoppage in certain government entities.
- The Council of Ministers issued Decision No. 1441, adopted at its meeting No. 48 on 10/10/2011, concluding with the issuance of a statement regarding strikes and forms of work stoppage in state bodies, specifically customs and fire services.

³⁸ All government statements emphasized that anyone who engages in a strike and causes disruption to the vital interests of

to a type of paralysis affecting the public and negatively impacting productivity in public services, the Kuwaiti government has tasked the relevant authorities that witnessed strikes or work stoppages with taking necessary legal measures to hold accountable those responsible for disrupting public services and harming the public interest.⁴⁰

Accordingly, Kuwaiti scholars have expressed three main opinions:

First Opinion: The Anti-Strike Approach

This view considers strikes prohibited because they disrupt public interests, halt development, and cause significant losses to the state. According to this perspective, there are legal avenues to pursue legitimate demands through official channels. Proponents of this view distinguish between demonstrations – which in Kuwait are constitutional, legally regulated, authorized by relevant authorities, and protected – and strikes, which involve deliberate work stoppages that disrupt legitimate interests and waste public funds. While Islam guarantees the right to express opinion, strikes are considered a serious breach in comparison because they are deliberate cessation of work, harm people's legitimate interests, and waste public money.⁴¹

Second Opinion: The Pro-Strike Approach

This perspective argues for the legitimacy of strikes, relying on the fact that: "The Kuwaiti Constitution guarantees public freedoms without directly addressing the right to strike, but Article 36

citizens must be held accountable, in implementation of Article 26 of the Constitution, which provides: "Public office is a national service entrusted to those who hold it, and state employees, in the performance of their duties, shall aim to serve the public interest."

³⁹ Among the legal provisions on which government statements relied are Article 24(2) of the Kuwaiti Civil Service Law Decree, which provides that:

"The employee shall devote official working hours to performing the duties of his position, and he may, in addition, be assigned to work outside official hours if required by the interest of work or the nature of the job ..."

and Article 27 of the same law, paragraph (1), which states:

"Any employee who breaches duties or violates the prohibitions stipulated in laws or regulations shall be subject to disciplinary sanction, without prejudice to any criminal or civil liability where applicable ..."

⁴⁰ For further reference, see Dr. Bilal 'Aql al-Sandid, *Constitutional and Legal Approaches in Research and Studies on Kuwaiti and Comparative Law*, Al-Haditha Publishing House / Lebanon, 2018, pp. 192 et seq.

⁴¹ The opinion of Dr. 'Ajil Al-Nashmi, President of the Association of Sharia Scholars in the Gulf Cooperation Council (GCC) countries, published in *Al-Watan* newspaper on 20/3/2012. For more details, see the link (accessed on 13/1/2026): <https://alwatan.kuwait.tt/articledetails.aspx?Id=180883&YearQuarter=20121>

guarantees the right of the individual to express his opinion."⁴² This view also emphasizes that Kuwaiti law does not explicitly regulate strikes, leaving no room to doubt the freedom to strike. It draws on practical evidence from Kuwait, citing the succession of strikes in private, oil, and government sectors. Proponents of this opinion argue that the legislature should regulate strikes, establishing conditions for exercising the right in a way that allows workers to use it as a means of pressure on employers, ensures that strikes are not abused, and minimizes economic and social impacts.⁴³

Moreover, no legislative or regulatory text criminalizes strikes, and neither the Civil Service Law nor the Labor Law prohibits them. Therefore, under general legal principles, what is not prohibited by law is permitted, making strikes legitimate.⁴⁴

A strike is nothing more than a right exercised by workers or employees to express their views in protesting against certain conditions within the workplace, institution, or administration.⁴⁵

Third Opinion: The Middle-Ground Approach

Most Kuwaiti scholars—a view we support—hold that in the absence of an explicit constitutional provision on the right to strike, strikes are considered legitimate based on other constitutional rights. Additionally, no penal provisions criminalize strikes, particularly since, according to the Constitution, “there is no crime and no penalty except what is stated by law”.

However, this view imposes conditions on strike action: Strikes should not cause serious disruption to the normal operation of public services.⁴⁶ Employees must not neglect their national duty to perform their work.⁴⁷ Strike actions must comply with constitutional principles, particularly Article 49,⁴⁸ and respect public order.

It is noteworthy that the Kuwaiti Court of

Cassation has established historic judicial principles that are fundamental in characterizing strikes. That court has held that a strike is a legitimate right for workers and does not constitute a crime, and that a worker may not be punished for participating in it as long as they adhere to professional frameworks. The Kuwaiti judiciary has also affirmed the prohibition of dismissing a worker participating in a strike; if dismissal occurs due to participation in a strike, it is considered arbitrary and warrants compensation.⁴⁹

The Kuwaiti judiciary has further affirmed, in another ruling, the legality of strikes as a constitutionally guaranteed trade union tool under Article 43 of the Kuwaiti Constitution⁵⁰ and the international conventions ratified by Kuwait.⁵¹

It is observed that although the right to strike has been judicially recognized, courts still take legal provisions into account. For instance, Kuwaiti Law No. 6/2010 on Collective Labor Disputes requires resorting to the conciliation committee and then the labor sector to resolve disputes before escalation. Courts also consider that strikes in vital public facilities (such as health or security sectors) are subject to the principle of the regular and continuous functioning of public services, i.e., strikes may not be used if they result in disrupting essential state interests.

II. CONFLICT BETWEEN THE RIGHT TO STRIKE AND THE PRINCIPLES AND NATURE OF CERTAIN PUBLIC FACILITIES

A strike is a coordinated work stoppage by a group aimed at supporting vocational demands. Therefore: mere assembly does not constitute a strike; a strike must be collective. An individual work stoppage can only be considered a strike as an exception, where the employee acting alone is “the only one capable of effectively defending his vocational demands.”⁵²

⁴² Dr. Abdullah Al-Rumaidhi, *Seminar on Strikes in Kuwaiti Law*, published in *Al-Nahar* newspaper, Issue No. 129, dated 12/1/2008.

⁴³ Gamal Fakher Al-Nakkas, *Comparative Kuwaiti Labor Law*, Publications of the Authorship, Translation, and Publishing Unit, Kuwait University, 1993, pp. 150–151.

⁴⁴ See in this regard: Dr. Gamal Fakher Al-Nakkas, *Comparative Kuwaiti Labor Law*, 1993, pp. 150–151.

⁴⁵ Dr. Amal Mohamed Hamza Abdel-Moaty. *The Right to Strike and Demonstrate in Contemporary Political Systems*. PhD Dissertation, Faculty of Law, Cairo University, 2012, pp. 23–25.

⁴⁶ Dr. Mohammed Al-Muqate', a newspaper article published in the Kuwaiti *Al-Nahar* newspaper entitled “Strikes between International Legitimacy and the Prohibition of the Kuwaiti Government,” Issue No. 917, published on 11/4/2010. Accessed on 11/1/2026: <https://annaharkw.com/ANNAHAR/Article.aspx?id=204478&date=18052010>

⁴⁷ For this opinion, see Dr. Bilal 'Aql Al-Sandid, *Constitutional and Legal Approaches in Kuwaiti and Comparative Law*, Al-Haditha Publishing House, Lebanon, 2018, p. 192.

⁴⁸ See Article 49 of the Kuwaiti Constitution: (Observance of public order and respect for public morals are a duty incumbent upon all inhabitants of Kuwait.)

[constitution - English.pdf](#)

Accessed on 22/ 3/ 2026.

⁴⁹ Ruling of the Kuwaiti Court of Cassation issued on 3/10/2017.

⁵⁰ See Article 43 of the Kuwaiti Constitution: “Freedom to form associations and unions on a national basis and by peaceful means shall be guaranteed in accordance with the conditions and manner specified by law. No one may be compelled to join any association or union.” [constitution - English.pdf](#) Access on 22/3/2026.

⁵¹ Judgment of the Kuwaiti Court of Cassation in Appeal No. 144/2011 (Labor).

⁵² CAA Marseille, 18juin 1998, MilleThomas

It is worth noting that French labor law prohibits terminating an employee's contract for exercising the right to strike, except in cases of serious negligence attributed to the employee.⁵³ The administrative courts have followed the same approach, confirming that a worker cannot be dismissed merely for exercising the right to strike.⁵⁴

The Kuwaiti Court of Cassation has followed the same approach, ruling that a worker may not be dismissed merely for exercising the right to strike: (The strike was collective on the part of bus drivers to demand their professional rights, and a collective strike is not prohibited by law; therefore, participation in or incitement to such a strike does not justify dismissal and does not affect the employee's entitlement to end-of-service benefits.)⁵⁵ The Kuwaiti Court of Cassation also affirmed that dismissal decisions must only be taken in accordance with the cases specified by law.⁵⁶

1. CONFLICT BETWEEN STRIKES BY PUBLIC SERVICE EMPLOYEES AND THE PRINCIPLES OF PUBLIC SERVICE AND CERTAIN FACILITIES

Originally, the right to strike was prohibited in the public service, and the French Council of State considered strikes to be "illegal acts" that were incompatible with the continuity of public services, "which were regarded as essential to life."⁵⁷

The French State Council [Conseil d'État] indeed considers that "it is incumbent upon the administrative authority to take the necessary measures to ensure the continuity of public service, particularly in the event of interruption due to a strike by the employees of that service."⁵⁸

The Kuwaiti Court of Cassation has adopted a similar approach, emphasizing the necessity of observing the principle of the regular and continuous functioning of public services in all cases related to public employment and administrative contracts.⁵⁹

1.1. Conflict Of Strikes with Public Service Principles

Public service employees in France—as in Kuwait—occupy an organizational position, meaning that working conditions in the public service are determined by laws and regulations, not by the individual preferences of employees.

In this regard, the Kuwaiti Court of Cassation holds that "the relationship between the employee and the government is an organizational one governed by laws and regulations issued in this respect, placing the employee in a general legal position primarily regulated by such laws and regulations."⁶⁰

The public authority may intervene unilaterally and modify or abolish this position at any time, provided it serves the public interest.⁶¹

This is because a public employee, upon appointment, becomes subject to pre-established legal rules set by the competent authority. The employees do not have the right to refuse or amend these rules but is obliged to comply with them as long as they hold public office.⁶²

Some jurists argue that, because public employees hold an organizational position, no employee in public facilities may, upon entering public service, negotiate or dispute the conditions of their employment. Using strikes to pressure the public authority to change conditions would effectively convert public service into a private-sector contractual system, which is based on bargaining.⁶³

Only the legislator and the administration have the right to modify the public service system. When an employee attempts to substitute this authority through strikes, it constitutes a violation of the rules governing the service and may subject him to disciplinary responsibility and sanctions.⁶⁴

According to the Kuwaiti Civil Service system applicable to public employees, an employee's absence from work without permission—even if

⁵³ See the Labor Code, Article L2511-1 ("The exercise of the right to strike cannot justify the termination of the employment contract, except in the case of serious misconduct attributable to the employee...").

For more, see the website: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT00006072050/LEGISCTA000006160748/

Accessed on 3/3/2026.

⁵⁴ C.E, 9 décembre 2003, Mme Aguillon et a., n 262186.

⁵⁵ Judgment of the Kuwaiti Court of Cassation in Appeal No. 730 of 2012 (Labor/1), issued in the session of 21/1/2014.

⁵⁶ Judgment of the Kuwaiti Court of Cassation in Appeal No. 103/2001 (Labor), issued on 8/10/2001.

⁵⁷ CE, 7 août 1909, Winkell et Rosier : le juge considérait que l'agent gréviste rompait de façon unilatérale le « contrat de fonction publique » qui le liait à son employeur.

⁵⁸ State Council [Conseil d'État], Assembly, 18 January 1980, No. 07636.

⁵⁹ Judgment of the Kuwaiti Court of Cassation in Appeal No. 228/2003 (Administrative), session of 26/1/2004.

⁶⁰ See the judgment of the Kuwaiti Court of Cassation in Appeal No. 517/1997 (Commercial), session of 4/5/1998, and the judgment of the Kuwaiti Court of Cassation in Appeals Nos. 589 and 591/2010, session of 18/4/2013.

⁶¹ Dr. Ali Abdel Aal Sayed Ahmed, *The Right to Strike in Public Utilities*, Dar Al-Kutub Foundation, 2nd ed., 1997, p. 39.

⁶² See the judgment of the Kuwaiti Court of Cassation in Appeal No. 82/1988 (Commercial), session of 6/3/1989. See also Dr. Turki Sattam Al-Mutairi, *Principles of Administrative Law*, 2021, p. 64.

⁶³ Bonnard(R), *Précis de droit administratif*, 4th éd., 1934, p. 180.

⁶⁴ Morange (G.), *Les grèves et l'Etat*, 1947, Chron., p. 29.

following an authorized leave—results in deprivation of salary for the period of absence, without prejudice to disciplinary accountability.⁶⁵ This confirms the employee's obligation to comply with the laws and regulations governing public service and not to disrupt the regular and continuous functioning of public utilities.

Furthermore, an employee who joins public service is charged with serving a public facility for the nation. Therefore, he cannot abandon the facility to achieve personal demands, as doing so would constitute a breach of public interest, which is a duty inherent to public service.⁶⁶

1.2. Recognition Of the Legitimacy of Strikes in Public Service

Recognition of strike legitimacy in France began with the 1946 Constitution, granting strikes constitutional value. This is established in Paragraph 7 of the Preamble to the 1946 French Constitution, which states: "The right to strike shall be exercised within the framework of the laws regulating it." The 1958 French Constitution reaffirmed all rights and principles contained in the 1946 Constitution. French courts, in landmark rulings on strike legitimacy, relied on the Preamble of the 1946 Constitution, without waiting for specific laws regulating strikes. The courts based their rulings on reconciling individual rights and freedoms with the principle of not harming others, while allowing the legislator to issue laws to regulate the exercise of the right.⁶⁷

The right to strike was later confirmed for public employees under the French Civil Service Law⁶⁸ (CGFP, Art. L. 114-1). However, in practice, the legislator initially enacted partial legislation covering only certain categories of employees, which leads to

the next discussion: the prohibition of strikes in vital or strategic establishments.

The French State Council, for its part, considers the right to strike a fundamental freedom within the meaning of Article L. 521-2 of the Code of Administrative Justice.⁶⁹

1.3. Prohibition Of Strikes in Vital or Strategic Establishments

Strikes are considered a powerful tool for workers to defend their vocational interests. Unlike trade union freedom—which is constitutionally recognized in Kuwait⁷⁰—"political" strikes are prohibited.⁷¹

A political strike aims to pressure the government to achieve political demands. It involves workers stopping work to force the government to take a specific political action or to protest government actions. Political strikes target public authorities, unlike vocational strikes, which target employers to achieve objectives such as higher wages, bonuses, or adjustments to working hours.

Accordingly, French judicial precedents accept the prohibition of political strikes, considering them even as errors or unlawful acts.⁷²

In some cases, the exercise of the right to strike may be prohibited for reasons related to security, health, and public safety, as done by the French legislator, who prohibited strikes in certain sectors, such as:

- Military personnel; prison administration inspectors; transportation services under the Ministry of Interior.⁷³
- Technical staff and IT and communications employees under the Ministry of Interior:⁷⁴ For these employees, a strike constitutes a disciplinary offense, and therefore any

⁶⁵ Article 81 of the Kuwaiti Civil Service System.

⁶⁶ Chardon, H., *L'administration de France, Les fonctionnaires*, 1942, p. 101.

⁶⁷ C.E., 7 Juillet 1950, Dehanne, Rec, p.426.

⁶⁸ For further details, see the *General Code of the Civil Service*, Article L114-1:

"Public officials exercise the right to strike within the framework of the laws that regulate it."

Available at: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000044427955/2022-03-01

(Accessed on 22 January 2026).

⁶⁹ State Council [Conseil d'État], No. 262186, dated 09/12/2003. https://www.legifrance.gouv.fr/ceta/id/CETATEXT000008136455?init=true&page=1&query=262186&searchField=ALL&tab_selection=all

⁷⁰ Trade union freedom is guaranteed under the Kuwaiti Constitution (Article 43). It was regulated by Law No. 38 of 1964 concerning labor in the private sector, which was repealed by Law No. 6 of 2010, published in the Official Gazette on 10 February 2010.

⁷¹ Marseille Court of First Instance (summary proceedings order), 4 November 2005, RTM Marseille v. CGT Trade Union and others: a strike challenging the choice of the method of managing the public service.

⁷² CE, 12oct. 1956, Dlle Coquant.

⁷³ Article L114-3 of the *General Code of the Civil Service*: "Active-duty officials of the National Police and officials of the decentralized services of the prison administration do not enjoy the right to strike."

Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000044416551/LEGISCTA000044420637/#LEGISCTA000044427951

⁷⁴ Article L114-6 of the *General Code of the Civil Service*: "Officials belonging to the corps of technicians and to the corps of information and communication systems officers of the Ministry of the Interior do not enjoy the right to strike."

Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000044416551/LEGISCTA000044420637/#LEGISCTA000044427951

sanction requires following disciplinary procedures, or at least respecting some aspects of the principle of adversarial procedure.⁷⁵

Since there is no explicit provision in Kuwaiti legislation permitting strikes for public employees or workers,⁷⁶ and because Kuwait has expressed a reservation on paragraph (d) of Article 8(1) of the ILO Convention, which grants workers the right to strike⁷⁷ and leaves the method of exercising the right to domestic law.

It is also worth noting that Kuwaiti law contains provisions relating to public employment under the Civil Service system. Article 81 stipulates that if an employee is absent without permission for 15 consecutive days or 30 non-consecutive days within a year, they are deemed to have resigned by operation of law. Accordingly, the employee is obligated to devote working hours to the performance of their duties,⁷⁸ and any breach (such as striking without professional grounds) constitutes a disciplinary violation. Article 60 of the Civil Service Law sets out disciplinary penalties ranging from warnings and salary deductions to dismissal from service.

However, the Kuwaiti judiciary has played a role in establishing that the right to strike is not absolute; rather, it is restricted by the requirement not to harm others or public services. If the worker's right to strike conflicts with society's right to health and security, the court gives precedence to the public interest, and penalties may be applied in accordance with the law. The judiciary has also established an important principle: a public employee participating in a strike may not be dismissed if the strike is connected to legitimate professional demands.⁷⁹

It is necessary for Kuwait to explicitly define its position on the right to strike by enacting a law that regulates this right in light of the rights guaranteed by the Kuwaiti Constitution, and to specify which public sectors or public functions may allow strikes and which may not. This is especially important given that Kuwait's oil institutions are of critical

national importance, affecting both the state's revenue and economic security, and therefore work in these institutions cannot be suspended through strikes. By extension, it is recommended that the Kuwaiti legislator regulate the right to strike in a manner that reflects a clear approach: identifying sectors in which work cannot be stopped, and providing alternative mechanisms for employees to claim their legitimate rights and demands.

2. THE PROBLEM OF ENSURING THE CONTINUITY OF PUBLIC SERVICES DURING STRIKES

Originally, the right to strike was prohibited in public service, as it was incompatible with the regular and continuous operation of public services.⁸⁰ One of the important principles is the continuity of public service (also called the principle of orderly and continuous functioning of public services, which has been recognized by both the French Council of State⁸¹ and the French Constitutional Council.⁸²

2.1. *Restrictions On Exercising the Right to Strike in the French System*

Taking into account the Preamble of the French Constitution of October 27, 1946, referenced by the current 1958 French Constitution, the right to strike is exercised within the framework of laws regulating it.

Accordingly, the restriction of the right to strike is justified by the need to balance the continuity of public service with the protection of public interest, while allowing employees to defend their vocational interests, of which striking is one method. Thus, recognition of the right to strike does not eliminate the limitations that must be imposed on this right, as with any other right, to prevent abuse or use contrary to public order. The French Council of State emphasized these rules:

"Considering that, in the absence of such regulation, the recognition of the right to strike

⁷⁵ CE, 20 févr. 2019, n°425521 (service pénitentiaire) ; voir aussi la censure du Con. const., 10 mai

, 2019 n°2019-781 QPC. L'article L.114-3 al. 2 du CGFP (Code général de la fonction publique) consacre le droit des agents de l'administration pénitentiaire et de la police à présenter, au moins, des observations orales, dans le cadre de la procédure

⁷⁶ Article 132 of Law No. 6 of 2010 concerning labor in the private sector provides that it is prohibited for either party to the dispute, during the negotiation procedures, to suspend work wholly or partially. According to this provision, we consider that any stoppage of work is prohibited.

⁷⁷ Paragraph (d) of the Convention stipulates that the States Parties to this Covenant shall undertake... (d) the right to strike, provided

that it is exercised in accordance with the laws of the respective country.

⁷⁸ Article 24 of the Kuwaiti Civil Service Law, which specifies the duties that a public employee must comply with.

⁷⁹ Judgment of the Kuwaiti Court of Cassation issued on 3/10/2017.

⁸⁰ CE, 22 oct. 1937, Dlle Minaire et autres : la relation entre le fonctionnaire et son administration est qualifiée de légale et réglementaire, mais l'agent gréviste se place « en dehors des lois et règlements », et doit donc être radié des cadres.

⁸¹ C.E., 13 juin 1980, Madame Bonjean ; N17995.

⁸² Décision Le Conseil constitutionnel, n 79-105 DC du 25 juillet 1979.

cannot have the consequence of excluding the limitations which must be applied to this right, as with any other, in order to prevent abusive use or use contrary to the necessities of public order; that, under the current legislation, it is the responsibility of the government, which is accountable for the proper functioning of public services, to determine, under judicial supervision, the nature and extent of these limitations concerning these services;"⁸³

And further:

"Considering that, under the current legislation, it is the responsibility of the Government, accountable for the proper functioning of public services, to determine, under the supervision of the administrative judge, the nature and scope of these limits for the services under its authority; and that only the governing bodies of a public institution, acting under their general powers of organization for the services under their authority, are, unless otherwise provided, competent to determine these limitations for the public services they are responsible for."⁸⁴

It is also assumed that legislation is responsible for regulating the right to strike: "It is up to the legislator to enact the measures deemed appropriate to avoid frequent recourse to short-term strikes that threaten the continuity of public service, and to ensure a balance between defending vocational interests and maintaining the public interest, which may be affected or harmed by a strike."⁸⁵

Restrictions can be imposed with the specific purpose of protecting the public interest or ensuring the continuity of public services. In France, for instance, the labor law requires prior notice of at least five days before the start of a strike.

It is also possible to require strikers to declare

themselves as being on strike.⁸⁶

In other cases, the law may establish a minimum service, which can be defined as a restriction on the right to strike aimed at ensuring the uninterrupted functioning of public services. This is the case in air navigation, where Article L114-4 of the General Code of the Civil Service (CGFP) stipulates that in case of coordinated work stoppages in air navigation services, the following must always be ensured:

1. The continuity of government action and the execution of national defense missions;
2. The protection of France's vital interests or needs and compliance with its international commitments, particularly the right of overflight;
3. Missions necessary to safeguard people and property;
4. Maintaining connections to prevent the isolation of Corsica and overseas territories;
5. The protection of installations and equipment of these services.

Finally, the administration may call employees in to ensure the continuity of public services, but only in cases of serious harm to the continuity of public service or to meet the essential needs of the population.⁸⁷

Some relevant laws include:

1. In the French Defense Code, Articles L.2212-1 and following⁸⁸;
2. In the General Code of Local Collectivities, Article L.2215-1 and following.⁸⁹

2.2. *Strike Procedures*

The right to strike is not absolute; it is subject to restrictions determined by the legislator.⁹⁰ These

⁸³ CE, ass., 7juill. 1950, Dehaene ; autorités exécutives des collectivités décentralisées : CE, 9 juill. 1965, Pouzenc; organes dirigeants de la société EDF : CE, ass., 12avr. 2013, Fédération Force ouvrière Énergie et Mines et autres ; ministre des Transports, en ce qui concerne les personnels des sociétés Concessionnaires d'autoroutes : CE, 5avr. 2022, Syndicat CGT de la société Cofiroute ; directeur Général d'une régie de transports en commun : Cass.soc., 9 nov. 2022, n°21-19598.

⁸⁴ CE, 8 mars 2006, Onesto-RATP.

⁸⁵ Cons. const., 16 août 2007, n°2007-556 DC, Loi sur le dialogue social et la continuité du service Public dans les transports terrestres réguliers de voyageurs.

⁸⁶ CE, 6 juill. 2016, Syndicat CGT des cadres et techniciens parisiens des services publics territoriaux et autres.

⁸⁷ CE, sect., 24 févr. 1961, Isnardon.

⁸⁸ Article L2212-1 of the Defense Code: "In the event of a current or foreseeable threat affecting activities essential to the life of the Nation, the protection of the population, the integrity of the territory, or the continuity of the institutions of the Republic, or likely to justify the implementation of the State's international

defense commitments, the requisition of any person, whether natural or legal, as well as of all necessary property and services to address the threat, may be decided by decree of the Council of Ministers..."

https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT00006071307/LEGISCTA000006151492/#LEGISCTA000047921712
Accessed on 22/03/2026.

⁸⁹ Article L2215-1 of the General Code of Local Authorities. (4. In case of emergency, when the observed or foreseeable threat to public order, health, tranquility, and safety so requires, and when the means available to the prefect are no longer sufficient to achieve the objectives for which they hold policing powers, the prefect may, by a reasoned decree, for all the municipalities in the department, several of them, or just one, requisition any property or service, summon any person necessary for the operation of this service or the use of such property, and prescribe any useful measure until the threat to public order has ended or the conditions for its maintenance are secured.)

⁹⁰ Dr. Mohamed Abdel Latif, *Public Liberties*, 2nd edition, Publications of the Unit for Authorship, Translation, and Publishing, 2008, p. 330.

restrictions aim to balance defending the demands for which the strike is a tool with preserving public interest.⁹¹ Accordingly, the French legislator issued a general law on July 31, 1963, regulating strikes by public service employees and specifying the conditions for exercising the right to strike as well as the procedures required by law to legitimize this right.

First: Competent Authority for Strikes

Strike procedures in public services are regulated with reference to the French Labor Code (Articles L.2512-1 and following). The law grants the right to strike to employees of the state, administrations, municipalities, and public or private organizations, provided that the private institutions are responsible for public services for the purpose of regulating the strike.

The competent authority to declare a strike is the labor unions that are most representative at the national or vocational level, and they must observe the following:

1. One or more representative unions must submit a notice at least five full days before the strike. This notice must specify the reasons for the strike, its location, date, time, and expected duration. During this notice period, the parties are required to engage in negotiations.
2. Periodic strikes (e.g., alternating shifts) or “onsite” strikes—such as blocking administrative buildings to prevent non-strikers from working—are prohibited.
3. The department head can prevent striking employees from entering the facilities and may even order the evacuation of premises. Moreover, employees who abuse their right to strike (e.g., insulting senior authorities during the strike) may face disciplinary sanctions.
4. The General Council of Public Services also establishes arrangements to guarantee the continuity of work in many public services conducted within regional public service frameworks. Accordingly:

“In the local collectivities and public institutions

mentioned in Article L.4, the local authority and unions with at least one representative seat in the bodies where public agents participate may engage in negotiations to sign an agreement ensuring the continuity of public services, the interruption of which during a strike by public agents directly involved would violate public order, particularly public health, or the essential needs of their users, including:

1. Household waste collection and treatment;
2. Public passenger transport;
3. Assistance to the elderly and disabled;
4. Care for children under three years old;
5. After-school care;
6. Collective and school catering.”⁹²

The above agreement defines the roles and number of striking employees, as well as the conditions under which, in the event of expected disruptions, work organization is adjusted and attending employees are determined. This agreement is adopted by the designated authority.⁹³

Second: Effects Of Striking

Exercising the right to strike does not terminate the employment contract, but striking employees may still be held responsible in cases of serious misconduct.

Participation in a strike may lead to deduction from wages based on the principle of “payment after service rendered”. This applies to salary, allowances, and compensation.⁹⁴

In the state public service, the “undividable thirty” rule derived from public accounting is applied. In the public and health service, after a Constitutional Council decision, a proportional deduction is applied according to the duration of the strike.⁹⁵

The department head identifies striking employees and applies the deduction to their total salaries, within the limits of amounts that can be withheld.⁹⁶ The administration must deduct for days absent due to the strike, even if no work was required during that period, due to the fixed monthly salary of employees.⁹⁷ However, deductions do not affect annual leave if the employee had previously received authorization to take leave during a specified period.

⁹¹ Constitutional Council, 25 July 1979, cited above.

⁹² **Article L.114-7 of the French General Code of the Civil Service (CGFP)**

https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000044416551/LEGISCTA000044420647/#LEGISCTA000044427941

⁹³ Article L114-8 of the General Code of the Civil Service.

⁹⁴ Circular of 30 July 2003 concerning the implementation of deductions from the salaries of State public servants in the event of a strike <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT0000000414601?lang=en>

[en](#)

Accessed on 23/03/2026

⁹⁵ CAA Nancy, 31 mai 2001, Département de la Moselle.

⁹⁶ CE, 11 juillet. 1973, Alliaume.

⁹⁷ CE, 27 juin 2008, Min. fin. c/Morand. Le calcul peut se compliquer pour les agents qui ont des gardes

à assurer ; CE, sect., 17 juill. 2009, M. Bigot et autres.

Deductions do apply if the employee uses compensatory days during the strike.⁹⁸ The deduction is limited to the portion of salary subject to withholding and is a purely accounting procedure.

3. CONCLUSION

For public employees in general, and in consideration of public and social interest, international charters allow states to set their own framework for regulating relations between employees and the state.

However, since public administration manages public services to achieve public interest, this does not justify prohibiting the regulation of the right to strike. Kuwait cannot criminalize strikes, as doing so would conflict with the principle of legality and the Kuwaiti Constitution, which guarantees the right to freedom of expression, as strikes are a form of protest to claim rights. Thus, the right to strike must be

regulated within a clear legal framework, balancing the rights of public employees with the need for the continuous and orderly operation of public services. This balance is achieved by understanding that the strike aims to achieve legitimate demands while protecting public interest. In cases where public interest is critical—such as national security, economic stability, and public health and safety—strikes may be restricted, but employees should retain the right to express themselves to specific authorities to claim their rights and defend their interests. We should draw on the French experience in regulating strikes in public services.

We recommend that the Kuwaiti legislator should enact a law regulating the right to strike, set limits on its exercise, identify sectors and positions where strikes are prohibited, and provide alternative mechanisms for employees to communicate their legitimate demands to authorities.

⁹⁸ CE, 4déc. 2013, n°351229, M.B.