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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

19 May 2016

Case Document No. 4

Matica hrvatskih sindikata v. Croatia
Complaint No. 116/2015

**RESPONSE FROM *MATICA HRVATSKIH SINDIKATA*
TO THE SUBMISSIONS BY THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 5 May 2016



COUNCIL OF EUROPE
European Committee of Social Rights
F-67075 Strasbourg Cedex

Zagreb, May 4th 2016

Complaint No. 116/2015

STATEMENT OF MATICA - ASSOCIATION OF CROATIAN TRADE UNIONS RELATED TO THE RESPONSE OF THE GOVERNMENT OF THE REPUBLIC OF CROATIA

On March 16th 2015 MATICA - Association of Croatian Trade Unions submitted a Collective complaint to the Council of Europe due to violations of Article 5 The right to organize and Article 6 The right to bargain collectively guaranteed in Part II of European Social Charter, which occurred due to entry into force of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Act on the suspension of payment of certain rights to public service employees) (Official Gazette No. 143/2012), and by which it requested from the Committee that it should be established whether the Republic of Croatia is acting in accordance with Article 5 and Article 6 of the European Social Charter. Hereby the Association is submitting to the Council of Europe its statement to the Response of the Government of the Republic of Croatia sent to the Council of Europe following the submitted Collective complaint.

Economic and macroeconomic circumstances preceding the adoption of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services

With the explanation on long-term global financial and economic crisis, which started in Croatia in 2008, and impacted the Croatian economy by means of a great decrease in economic activity, constant fall of gross domestic product and decrease of the standard of living of citizens, the Government has repeatedly and utterly arbitrarily interfered in the collective bargaining system and it continues to do so, thereby jeopardising the overall system and purpose of collective bargaining. However, the long-term recession cannot be a valid excuse for derogating the Croatian legal order and constitutional principles in the Republic of Croatia, and thereby the rights guaranteed by international regulations as well. Since it is evident that this is a long-term unfavourable argumentations in order to justify the adoption of the Act on Withdrawal by economic reasons of fighting the recession, it is not sustainable.

Namely, such an argument could be valid solely if the economic practice and theory would undoubtedly prove that the choice of the Government's path is consensually accepted and proven in practice. As it is known, the endeavours of the Croatian Government just like many other European governments to pull the country out of the crisis by a series of limitations of rights in the public sector have proven to be unsuccessful. The policy of cutting rights and public consumption is destroying economic growth much stronger than financial consolidation is helping, which is also a long-known and proven fact in theory.

The fact that such measures, with the goal of achieving significant savings on the expenditure side, did not achieve that goal in other countries are either, should have been a sufficient argument for the Government of the Republic of Croatia that austerity measures are pro-cyclical i.e. that they are solely deepening the recession, which is also the standpoint of today's leading economic experts, Nobel prize winners in economics as well as the standpoint of prominent economists of the International Monetary Fund, International Labour Organization, OECD, etc.

Cancellation of the Basic Collective Agreement from 2010, concluding the new Basic Collective Agreement for Employees in Public Services in 2012, adopting the Act on Withdrawal of Certain Material Rights of the Employed in Public Services

In its Response to the Collective complaint the Government is stating that negotiations with trade unions about the Basic Collective Agreement (hereinafter: BCA) started in June 2012. Also, in its Response the Government states that more than half of the employees in public services, on whom the BCA applied, are working in health and education systems, and thereby it acknowledges the importance of a possible strike, which Government has eliminated by initiating negotiations after the end of the academic and school year.

During the negotiations on the amendments of the BCA stated in the Government's Response, four of the eight representative trade unions, organizing more than two thirds of all members in the area of public services, refused to accept the specified amendments without securing that the above rights shall be paid when economic conditions for such payment are met. However, the Government refused such a compromise with trade unions.

In its Response the Government states that, considering the possibility of solving the dispute in an arbitration procedure stipulated by Article 9 of the BCA, it has offered trade unions an amicable settlement of disputes, but the trade unions refused to sign the Amendments to the BCA. The Government states that the unions have refused such solution but in doing so it does not quote the reasons. Namely, in their statement dated July 20th 2012, the trade unions have quoted that they do not want to enter into dispute settlement by means of arbitration until their members express their opinion at a referendum about the proposal of Amendments to the BCA since it is not permissible that an arbitration outcome deprives the members of their response to the above proposal. At that time the trade unions did not rule out the possibility that the members could agree with the above quoted Amendments to the BCA, whereby it would not be required to conduct the arbitration procedure. They have also stated that, in case the members refused the proposal, there would be the possibility to solve the dispute by arbitration. Since employees in public services are using the major part of their annual leave in July or August, it was not possible to conduct the referendum about the disputed issue until September and therefore the beginning of the arbitration procedure in July was not acceptable.

As stated in the filed Complaint, 84% of trade unions' members have accessed the referendum in September. 91,1% of all members who accessed the referendum voted against the proposal of the Government. After the trade unions' referendum was conducted and the voting results were published, on September 14th 2012, the Government of the Republic of Croatia did not again call upon the trade unions to resolve the dispute in an arbitration procedure, but it adopted the decision on Cancelling the Basic Collective Agreement at its telephone session on September 17th 2012. The above quoted Decision was not confirmed at the first following Government session although this was obligatory in accordance with the Rules of Procedure of the

Government of the Republic of Croatia. Also, the Decision of the Government does not contain an explanations of the reasons for cancelling the BCA but it is solely in short stated that significantly changed economic conditions have occurred. However, such a reason does not have its economic foundation since significantly changed economic conditions did not occur, especially such that could not have been foreseen at the time of concluding the agreement.

Available official data in September 2010 were showing a decline in real GDP of 2,7% in the first quarter of 2010 and 3% in the second quarter of 2010. The Government evidently did not consider the above data a relevant hindrance for signing collective agreements. In 2011 the GDP stagnated which also did not represent a reason for the Croatian Government to question the validity of the BCA. In 2012, on the day of cancelling the BCA, i.e. September 17th 2012, the Government had knowledge solely of the data that in the first quarter of that year the real GDP declined by 1,3% which, in relation to the period of concluding the BCA, represents a level of change which is not a significant change, nor does it justify the cancellation of the collective agreement since the even higher decline in the first two quarters of 2010 was not a reason for not concluding the above BCA. Furthermore, even if the change of GDP at the beginning of 2012 had pointed to significantly changed circumstances at the beginning of 2012, the Croatian Government did not have the right to cancel the BCA based on that fact. Namely, at the moment of cancellation the Government did not have the data on GDP trends throughout the year 2012 and therefore neither the knowledge on the real potential of the national economy which could have led to the conclusion of impossibility of fulfilling contractual obligations, and this especially to the working people of the Republic of Croatia. Also, it is important to emphasize that the Croatian Government did not foresee the decline of GDP neither in 2012 nor in 2013 in its official documents. On the contrary, in the *Explanation of the national budget and financial plans of extrabudgetary users for 2012 and projections for 2013 and 2014*, from February 2012, the Government of the Republic of Croatia had planned a growth of real GDP rate of 0,8%, and a growth of 1,5% in 2013. Hence, the trade unions accepted to waive their rights in good faith even though this waiver was not an imperative of economic or budgetary necessity, but they requested the funds for remunerations and the rights related to these remunerations to be returned when economic indicators become more favourable. On the other hand, the Government obviously had other reasons for cancelling the BCA because the savings measures, even if they were economically justified (about which there are serious disputes among today's leading economic experts) could have been achieved in different ways whereby it was not necessary to primarily infringe the rights of workers.

The new BCA was concluded in accordance with the then valid Act on Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining which entered into force during negotiations about the amendments to BCA from 2010. The Government states that it has signed the new BCA with six of eleven representative trade unions, but it does not quote that the trade unions signatories of that Agreement do not represent even a third of members of the total number of employees in public services. The above absurd situation was legitimate in accordance with the then valid Act, on which fact trade unions as social partners were warning about during the drafting of the quoted Act.

Act on Withdrawal of Certain Material Rights of the Employed in Public Services dated December 20th 2012

It is true that, despite concluding the new BCA and Addendum I, by which an agreement for the reduction or temporary withdrawal of certain material rights was reached, in accordance with the principle of the Labour Act by which the more favourable right is applied, the rights reduced by Addendum I continued to be applied. Namely, in branch collective agreements the same rights were agreed for every public service individually

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(health system, social care system, primary and secondary education, science, higher education and culture). Under the pretext of urgent maintenance of fiscal stability of public services systems considering the increasingly worsening economic conditions, the Government, instead of primarily initiating negotiations with public services trade unions for branch collective agreements which still contained the above quoted rights, adopted the Act on Withdrawal of Certain Material Rights of the Employed in Public Services. The Government initiated negotiations about branch collective agreements in public services systems only after adopting the Act concerned. By the Act on Withdrawal the Government, as an employer which also has the possibility to propose legal regulations, violated the obligations it accepted in collective agreements, contrary to the nature and purpose of concluding collective agreements and contrary to international sources of labour law which are obliging it. We emphasize that this was only the first in a series of regulations on withdrawing the rights agreed in collective agreements.

Furthermore, it is not clear why the Government considers that in this case civil servants are discriminated in relation to employees in public services. Namely, trade unions representing civil servants have finished negotiating their Collective Agreement with the Government in August 2012 and in Addendum I to Collective Agreement they also agreed that Christmas bonuses shall not be paid to civil servants in 2012 and 2013 and that vacation allowances and anniversary awards shall not be paid in 2013 and that travel expenses shall be reduced from 170 HRK to 150 HRK. The same was also offered to trade unions in public services which, as already quoted above, were willing to accept the waiver of the quoted rights, but not unconditionally. The process of collective negotiating is voluntary and it has to be such, and the rights agreed in that process also depend on the strength of a trade union and its pressure on the employer. Taking into consideration that the process of collective negotiating is voluntary and that every union is autonomous in making decisions, we consider that there is no foundation for the claim on discrimination of civil servants.

Also unclear is the statement of the Government that it is negotiating with the complainant about the branch collective agreement for science and higher education when the Government itself, in its Response correctly emphasized that the complainant (MATICA - Association of Croatian Trade Unions) as the representative higher level association of unions has the right to collectively negotiate solely about concluding a collective agreement which would be applied to workers employed at employers associated in a higher level employers' association.

Act on Financial Transactions and Accounting of Non-Profit Organizations

In matters of the Act on Financial Transactions and Accounting of Non-Profit Organizations the complainant quoted that one of the measures by which the Government of the Republic of Croatia intended to limit the activities of trade unions and weaken their strength was also the proposal of the above Act by which it intended to stipulate the obligation of publishing annual financial reports and audits. After repeatedly emphasizing the above problem issue, in the final text of the Act the Government dropped the disputed provisions which does not exculpate it from its attempt to derogate the very essence and function of the trade union as an organization for the protection of workers' and social rights.

The work of the Economic and Social Council at national level

In its response the Government of the Republic of Croatia is quoting data on the number of held meetings of the Economic and Social Council and its working bodies as well as the number of laws and subordinate legislation which were subject of discussions during these meetings, fully uncomprehending the problem stated in the submitted Complaint.

The complainant does not dispute that meetings of the Economic and Social Council as well as its working bodies are held. However, contrary to the Agreement on the foundation of the Economic and Social Council, the Government does not consult its social partners regarding all regulations stipulated by the Annual plan of normative activities for which social partners have shown an interest. We are also repeatedly quoting that the Government, in case it proposes regulations which it did not anticipate by its Annual plan, is obliged to inform social partners about the same in order for them to be able to express their interest for including professionals in the work of the Council's bodies at appropriate levels. The above quoted obligation of the Government was not fulfilled when adopting any of the laws on withdrawal (during the period from 2012 – 2015 in total 4 laws on withdrawal and 2 ordinances prolonging the implementation of these laws were adopted).

Act on Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining dated July 28th 2012

The complainant emphasizes to be aware of the fact that the Act on Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining dated July 28th 2012 is no longer in force, but that the provisions of that Act are relevant because the valid BCA was signed in accordance with those provisions.

Notwithstanding possible disagreements between social partners during the preparation of draft bills, the Government as the proposer of final legislation is responsible for the efficiency of proposed solutions and legal security. Even though the implementation of the Act did not block in practice or negatively influence all procedures of collective negotiating, it had an exceptionally negative influence on negotiations in public services.

By the Act concerned the system of collective negotiating was seriously infringed and the stability of collective agreements of public services was in full excluded. The result of such legal provisions was the concluding of the Basic Collective Agreement dated December 12th 2012 and the Addendum I to the same, signed solely by six public services trade unions representing merely one third of members in public services, but which is applied to all employees in public services. Hence, the absurdity of the above quoted situation is that the majority of unions (six out of eleven) which signed the BCA in fact represent only the minority of all employees, and thereby also the minority of employees in public services organized in trade unions.

Conciliation and voluntary arbitration procedure with the goal of solving labour disputes

The complainant has mentioned the comments on conciliation and voluntary arbitration procedures in the context of requirement for additionally encouraging the peaceful settlement of disputes. Also, it is not disputed that there are normative and technical frameworks for resolving disputes in such procedures, but what is worrying is the number of cases which were not successfully solved by peaceful settlement.

Right to strike

In its Response, reflecting solely on Article 205 of the Labour Act, the Government again did not comprehend the meaning of the complaint from the submitted Complaint. Namely, the complainant quotes, in the context of reasons due to which it is possible to initiate a strike, that trade unions or their higher level associations have the right to call a strike solely due to salaries, respectively salary compensation in case of their non-payment within 30 days as of their maturity date. Even though by the Act it is stipulated that the legitimate reason for a strike is also the furtherance and protection of economic and social interests of trade unions' members, through court practice this was proven to be wrong. In addition, not only that the trade unions were exposed to the danger that their strike initiated with the goal of furthering and protecting their members' economic and social interests shall be considered illegal, but the new Labour Act was also preventing higher level trade union associations to initiate a strike due to the same reasons. Namely, as the Government of the Republic of Croatia is quoting in its Response, in accordance with Article 4 of the Act on Representativeness of Employer Associations and Trade Unions and Article 205 of the Labour Act, a representative higher level trade union organization participating in tripartite bodies at national level has the right to collectively negotiate on concluding a collective agreement which would be applicable on workers employed at employers joint in a higher level employers association and in case of any dispute related to concluding, amending or renewing that collective agreement, has the right to call a strike and organize the same. However, in the Republic of Croatia there is no tradition of concluding such general collective agreement and thus from the above quoted it is arising that at this moment higher level trade union associations almost do not have any possibility to call a strike.

Equal approach towards all

With regard to the claim of the appeal proposer that the Government has withdrawn individual material rights solely to some employees in public services, but not to the remaining public sector owned by the State, and the complainant considers this to be contrary to the principle of equality, the Government states that salaries and other material rights of employees in companies and other legal persons owned by the State are not secured in the state budget.

Of course, the complainant is familiar with that statement as well as with the fact that the Government is not the signatory of a collective agreement which is negotiated between trade unions and the Management Boards of companies.

Taking into consideration that the State is the majority if not the only owner of these companies, it is responsible for covering the losses and therefore these companies are very often users of the state budget just like public services.

Also, in accordance with legal regulations, the Management Board of a company is managing business operations in accordance with the Articles of Association, the decisions of the members of the company and the obligatory instructions of the General Assembly and Supervisory Board, in case the company has one. Management boards, General Assemblies and Supervisory Boards of state-owned companies consist of persons appointed by the competent Ministry, respectively in general, the Government.

By the withdrawal of rights respectively by concluding collective agreements with a smaller range of material rights for employees in state-owned companies operating at a loss or which cannot cover all their liabilities, the funds of these companies would increase and the burden on the budget due to their expenses and losses would be reduced. Hence, the Government of the Republic of Croatia has indirectly selectively reduced the rights solely in public services.

The statements of the Government that most companies have independently changed or negotiated their collective agreements in the restructuring procedure are not relevant since at the same time it is not quoted whether the rights of employees which existed till then were kept.

Finally:

The Government is stating that, with the acts on withdrawal, rights were minimally suspended for a definite period of time equally for all employees, with a justified reason for such action due to a significant disturbance in the economic system. Contradictory, thereafter the Government emphasizes that the Act on Withdrawal of Certain Material Rights of the Employed in Public Services dated January 01st 2016 is no longer in force meaning that the withdrawal of rights was in force continuously from December 2012 till January 2016.

Taking into consideration that the acts on withdrawal were prolonged year after year and that by those acts were withdrawn the rights to Christmas bonuses and vacation allowances but also the right to salary increase based on years of service, it can by no means be stated that the rights were suspended minimally or for a definite period of time. The repeated prolongation of the duration of measures has undoubtedly lead to the fact that the very measures from exceptional and temporary have in fact turned into more permanent respectively permanent.

With such actions the Government has misused its constitutional authority for proposing laws since, under the pretext of long-term recession, it utterly arbitrarily interfered in the collective bargaining system. However, long-term recession cannot be a valid excuse for derogating the legal order and constitutional rights and the Government, as the signatory of collective agreements, should have proposed amendments to the collective agreements to the other side.

That the Government of the Republic of Croatia does not see any problem whatsoever in the legal derogation of rights from collective agreements which it signed itself is evident not only from its Response to the Complaint submitted to the Council of Europe, in which it refers to the problem concerned solely with a short text, but is also evident from the Report on the topic of applying the European Social Charter which the Republic of Croatia is obliged to submit.

Namely, in the 8th Report on applying the European Social Charter in the Republic of Croatia referring to the period from January 01st 2009 till December 31st 2014, and which was produced in April 2016, the Act on Withdrawal of Certain Material Rights is only casually mentioned. It is important to emphasize that solely the Act from 2012 is mentioned while at the same time it is not quoted that the measure stipulated by that Act was in force in 2013 as well as in 2014. Furthermore, is the Act on Withdrawal of Right to Salary Increase Based on Years of Service which entered into force on April 01st 2014 and by which then, for the first time, the payment of salary increased by a 4, 8, 10 % bonus on years of service was suspended, was not at all mentioned in the Report on applying the European Social Charter.

The Act on Withdrawal of Certain Material Rights of the Employed in Public Services (December 2012), the Ordinance on Amendments of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (December 2013) and the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (March 2015) as well as the Act on Withdrawal of Right to Salary Increase Based on Years of Service (March 2014), the Ordinance on Amendments of the Act on Withdrawal of Right to Salary Increase Based on Years of Service (December 2014) and the Act on Amendments of the Act on Withdrawal of Right to Salary Increase Based on Years of Service (April 2015) are in full contradictory to the European Social Charter and in the same proclaimed and stipulated universal values of international law, and which principles and values are a part of the legal order of the Republic of Croatia.

Such actions of the Government take away all meaning of the right to organize, as the basic precondition for realizing the freedom of association and the right to collective bargaining granted by the Constitution and the law as well as by international labour standards and agreements, whereby the position of trade unions in the Republic of Croatia is endangered.

MATICA - Association of Croatian Trade Unions
Vilim Ribić, President



A handwritten signature in blue ink, appearing to read "Vilim Ribić", is written over a horizontal line.

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