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Comments by Hungarian Trade Union Confederation (MASZSZ) on

Thematic groups 2: health, social security and social Protection regarding Hungary

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CYCLE 2022

Observations to the Hungarian situation under the European Social Charter reporting mechanism

HUNGARIAN TRADE UNION CONFEDERATION (MASZSZ)

EUROPEAN TRADE UNION CONFEDERATION (ETUC)

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INTRODUCTION

Based on Article 23 of the European Social Charter (hereinafter referred to as ESC), all ETUC affiliates have the opportunity to contribute to the supervisory reporting system in the framework of the European Social Charter. In this context and as an affiliate of ETUC, the Hungarian Trade Union Confederation (MASZSZ) is presenting its observations regarding the conformity of the Hungarian law with the 'Labour rights' provisions of the ESC.

Based on the deadlines of the current reporting cycle, the Hungarian Government should have presented the Hungarian country report until the end of December 2021. Following Article 23 of the ESC, copies of this report should have also been communicated to the employers and trade unions. None of these commitments have been fulfilled this year either. Regarding that we could see the same defaults in 2018, this can be the result of a strategic decision of the Hungarian Government in order to avoid the adoption of unfavourable conclusions by the ECSR. In addition, this puts the social partners into difficulties, as we can not make our observations to an already elaborated report and this practice also hinders the social dialogue focusing on the compliance with the ESC. However, we decided to make our observations seeing that the Charter have been violated several times since 2017.

In this observation, we implemented the internal reports of two of our largest member organisations including on the one hand Vasas, the Hungarian Metalworkers' Federation, which represents workers' interests of the metal, automotive, mechanical engineering, electronics and ICT industry, and on the other hand VDSZ, the Federation of Chemical Workers of Hungary, which represents workers of the chemical, pharmaceutical, energy and related industries. These internal reports show how the implementation of the Charter works in practice, therefore references on these practical reports are made in each sections of the observation.

ARTICLE 2: THE RIGHT TO JUST CONDITIONS OF WORK

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit; (…)

5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;

The general rules of daily and weekly working hours have not been changed since decades in Hungary. However, in some parts of the private sector (including for example the automotive and the chemical industry) two legal instruments of flexible working-time arrangement are getting more and more frequently applied. On the one hand the overtime work, and on the other hand the reference period.

The overtime can increase both the daily and the weekly working hours of the employee in a limit of 12 hours a day and it can also reduce the weekly resting period. In Hungary, the application of overtime is more and more facilitated by recent legislation. By the Labour Code of 2012, the annual maximum of overtime was increased from 200 to 250 hours per year, which may be raised by the collective agreement to 300 hours. This has also been changed since 2018, when the legislator added the possibility of 'voluntary overtime' to the Labour Code (by the the so-called "Slave Law"), which means that the employee and the employer can individually (!) agree to increase the limit of 250 hours up to 400 hours per year.[1] Even though the trade union side emphasized that these individual agreements are against the traditional labour law perspective due to the stronger position of employers, this rule is still in force without any supervision applied on the negotiations of these individual agreements neither by the State nor by the trade unions.

The application of reference period/working time banking permits the employer to arrange working time unequally in a given period (irregular work schedule). Therefore the limits of the standard employment (e. g., 40 hours per week) have to be respected only on average during this period, which makes possible for the employer to order more working time on one week than normally without any financial compensation. Regarding the working time banking, the same trend is seen as in the case of overtime. By the Labour Code of 2012 the maximum

[1] Article 109 (2) of the Labour Code.

duration of working time banking was increased from two to four months, but may even be increased to twelve months in the collective agreement. This has also been changed since 2018, when the maximum duration was increased to 36 months in a collective agreement.[2] The practice of the automotive industry shows that in a case when the trade unions refuse to agree in such a long period, employers sometimes envisage collective redundancies to force the consent. Furthermore, during the pandemic state of emergency, a government decree permitted the employers to decide and apply unilaterally a 24 months long period,[3] which meant the temporary loss of the remaining trade union control on the instrument.

Moreover, according to the Labour Code, in case of an irregular work schedule (for example in case of a reference period/working time banking), after six days of work, one day of rest shall be allocated in a given week. However, for the employees working in continuous shifts, shift work or in seasonal jobs, shall be allocated only at least one weekly resting day in a given month.[4] Concerning the practical consequences of this rule, shift workers in the metal, automotive, chemical and pharmaceutical industries regularly have to work 18–20 days consecutively without a single resting day (!). This situation is completely lawful, because the minimum weekly rest period (48 hours) is calculated only on average during the period of working time banking.[5] Furthermore, the principal rule of the 8-hours-long daily working time is also calculated on average, so there is no legal obstacle of scheduling 12-hours-long workdays consecutively for a longer period[6] even without further financial compensation.

In our opinion, the Hungarian legislation does not comply with the provisions of the ESC. Reasonable weekly and daily working hours are not necessarily provided for the workers while the employer applies the working time banking. In the case of employees working in continuous shifts, shift work or in seasonal jobs only one weekly resting day is guaranteed, which leads to a total lack of weekly rest period. This issue in fact affects the workers of Vasas, when in some periods they have to work 12 hours each day for 18–20 days consecutively without any rest day. The workers of VDSZ also had to and have to face the same problem, when only one weekly resting day is allocated to them for a same period.

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[2] Article 94 (3) of the Labour Code.

[3] 104/2020. (IV. 10.) Government decree.

[4] Article 105 of the Labour Code; Tamás Gyulavári, Gábor Kártyás: The Hungarian Flexicurity Pathway? New Labour Code after Twenty Years in the Market Economy. Pázmány Press, Budapest, 2015. p. 37. https://www.researchgate.net/profile/Tamas-Gyulavari-2/publication/321803594_THE_HUNGARIAN_FLEXICURITY_PATHWAY_New_Labour_Code_after_Twenty_Years_in_the_Market_Economy/links/5a327a32458515afb6f65ab9/THE-HUNGARIAN-FLEXICURITY-PATHWAY-New-Labour-Code-after-Twenty-Years-in-the-Market-Economy.pdf (2022. 06. 21.).

[5] Article 106 (3) of the Labour Code.

[6] Article 99 (2) of the Labour Code.

We can also see the lack of any legislation or even governmental plans to progressively reduce the working week. The so called Széll Kálmán Plan,[7] the long-term strategy of employment does not include any reference to a potential decrease of working time. In fact, increasing the annual limit of overtime shows that the total amount of working time is getting increased, not decreased. In our opinion, this is also against the provisions of the ESC.

From a practical perspective, we can also see that even the rules which are in conformity with the ESC, are in many cases not respected. Although it would be the responsibility of the State to enforce the respect of these rules, recent changes are opposed to this goal. For example, the right to veto certain measures of the employer was deleted from the Labour Code. According to the 1992 Labour Code, a local trade union branch was entitled to contest any unlawful action taken by the employer or his/her failure to act by way of a demurrer in case such action directly affected the employees or the trade union.[8] In addition, monitoring compliance with labour law became the general task of the practically less efficient workers' councils, even though they used to be the rights of trade unions.[9] So trade unions have lost their effective measures concerning the respect of working time rules, but at the same time, the existing State control mechanisms have also lost their efficiency. Labour inspection monitors regularly only a very small percentage of employers,[10] and even when it finds unlawful practices, it only applies sanctions that do not efficiently prevent the further application of illegal methods. Both Vasas and VDSZ reports have stated that labour inspection has no real effect on everyday practice.

In our opinion, not only the current trend of legislation, but also the methods aimed to ensure the respect of the resting period rights are against the ESC due to their lack of efficiency.

[7] Széll Kálmán Plan, Hungarian Work Plan.

[8] (Gyulavári, Kártyás 45–46)

[9] Article 262 of the Labour Code.

[10] There is no detailed long-term statistics available about the activity of labour inspection. However quarterly published reports (http://www.ommf.gov.hu/index.php?akt_menu=563) are available in Hungarian. These reports are about the controls executed at only a few thousand employers. Illegal practices are regularly found at the majority of these employers.

ARTICLE 2: THE RIGHT TO JUST CONDITIONS OF WORK

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

2. to provide for public holidays with pay;

3. to provide for a minimum of four weeks' annual holiday with pay;

According to the Labour Code, the annual vested leave shall be at least twenty working days.[11] Employees can also be entitled to extra leave under independent legal titles, for example based on their age, their disabilities, their parenthood etc.[12] The Labour Code provides that leave must be allocated during the year when it is due, although some exceptions derogate this principle.[13] Firstly, if the period of leave starts in the year when it is due, a maximum of 5 working days can be allocated in the year following the year when the leave is due, without interrupting the leave.[14] This means that if the employee is only entitled to the minimum amount of vested leave, then the application of this exception leads to a reduction of the annual paid holiday to three weeks, which is against Article 2§3 of the ESC. The same problem arises if the employee is even entitled to extra leave according to his/her age, but he/she agrees (individually) with the employer to allocate the extra days to the following year.[15]

Secondly, one-fourth of the leave, if so stipulated in the collective agreement (in the event of the employer's economic interests of particular importance or any direct and consequential reason arising in connection with its operations) can also be allocated by March 31 of the following year,[16] which can also lead to a derogation of the four weeks' principle.

Thirdly, if leave could not be allocated in the year when due for reasons within the employee's control, then it shall be allocated within 60 days after the cause terminates. In this case, the leave can be allocated even after the expiration of the year following the year when it is due. However, according to the Vasas report, this provision does not only derogate the four weeks' principle, but also leads to a misuse by employers in practice, who frequently refer to it to avoid the annual allocation of paid holiday. This illegal practice can not be controlled by the earlier mentioned, practically inefficient labour inspection.

[11] Article 116 of the Labour Code.
[12] Articles 117–120 of the Labour Code.
[13] Article 123 of the Labour Code.
[14] Article 123 (4) of the Labour Code.
[15] Article 123 (6) of the Labour Code.
[16] Article 123 (5) c) of the Labour Code.

Malfunctioning of the annual paid leave emerges regarding other aspects of the allocation too. According to the Labour Code, the leave shall be allocated to contain at least fourteen consecutive days at a time during each calendar year, however this can be derogated via individual agreements.[17] In the practice of metal and automotive industry, we can see that these individual agreements are only of the interest of the employees.

To conclude, the basic rules of paid holidays are already established in the Hungarian labour law, however the above-mentioned derogations lead on paper and in practice as well to the non-compliance with the provisions of the ESC.

[17] Article 122 (3) of the Labour Code.

ARTICLE 2: THE RIGHT TO JUST CONDITIONS OF WORK

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations; (...)

6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

The protection against dangerous or unhealthy occupations is part of the Hungarian legal system, as it is on the one hand a principle of the Fundamental law,[18] and on the other hand an obligation of the employers according to the Labour Code.[19] However, the two instruments of protection (working time reduction and additional holidays) required by the ESC to be implemented are not fully, or even at all established in the Hungarian law.

Concerning the working time reduction, we can only find one related provision in the Labour Code, which makes it optionally possible to reduce the 8 hours of daily working time without proportionate reduction of wages.[20] However, this remains only an optional element of either individual or collective agreements even for those workers who are exposed to serious dangers (e. g., in the metal and pharmaceutical industry). The Hungarian law does not contain any further legal provision concerning the reduction of working time of this vulnerable group of workers.

According to the ESC, the Parties can (or in such a case have to) provide additional paid holidays for workers engaged in inherently dangerous or unhealthy occupations as an alternative to the working time reduction. Nevertheless, the Labour Code contains only one related provision, which provides five extra days of leave each year to employees, who work permanently underground, or spend at least three hours a day on a job exposed to ionizing

[18] Article XVII (3) of the Fundamental law.
[19] Article 51 (4) of the Labour Code.
[20] Article 92 (4) of the Labour Code.

radiation.[21] However, workers who are exposed to other kinds of risks (e. g., in the chemical and pharmaceutical industry) are not entitled to any additional paid holidays by the law.

In our opinion, the lack of legal obligations concerning the working time reduction, and the narrow scope of the additional paid holidays results in the non-compliance of Hungarian law with the ESC, because the majority of workers exposed to such dangerous working conditions are not entitled to any of the two prescribed rights.

According to the Labour Code, workers who perform a minimum of one hour of night work (between 10 p. m. and 6 a. m.) are entitled to night work supplement with a value of 15% of the basic salary.[22] Therefore, there is no legally mandatory additional benefit for workers how perform less than 1 hour of night work.

However, the obligation of the employer to pay night work supplement can be derogated via individual agreements concluded by the employee and the employer, either by making the supplement a part of the basic salary or by prescribing a flat-rated supplement in advance for the future night works.[23] Both ways of substituting the supplement can lead to very unfavourable situations for the individual employees, because the amount of the flat-rated supplement and the basic salary can eventually be disproportionately low compared to the night work actually performed.

The Hungarian law does not contain any other kind of night work benefits (for example extra leaves or special resting periods), which in our opinion is based on an ignorance of the legislator concerning the special nature of work. MASZSZ does not find the existing (and eventually derogated) measures suitable for compensating the difficulties night workers have to face.

[21] Article 119 (2) of the Labour Code.
[22] Articles 89, 142 of the Labour Code.
[23] Article 145 of the Labour Code.

ARTICLE 5: THE RIGHT TO ORGANISE

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

The Hungarian law declares the right of workers to form or to join trade unions.[24] Current legislation formally does not impair this fundamental right. However, the application of this right and the related legal norms does not always guarantee the forming of trade unions in practice.

A well-known example of this is the case of Vasas and the Japanese automotive company, Suzuki. Suzuki is a strategic partner of the Government since 2012.[25] As the strongest trade union federation of the automotive industry, Vasas tried to establish a local organisation at Suzuki in 2019, and with the participation of a group of workers, a local secretary has been elected. However, just before the official notification of the management about the foundation, the newly elected secretary has been dismissed with immediate effect. This step of the company was evidently unlawful and discriminatory. Nevertheless, the only mandatory legal remedy in such a case is going to court by the individual employee. However, these litigations regularly last years, and even if the judges condemn the employers, the eventual, even the most serious legal consequences do not result in the recognition of a local trade union organisation. Secondly, Vasas in this case could not initiate any sufficient legal procedures to enforce the recognition of the local trade union organisation. Since the beginning of the individual litigation, Suzuki has always rejected to participate in collective negotiations with Vasas.

In the meantime, the Hungarian Government remained passive. The strategic partnership agreements (concluded by the Government and large multinational companies) never contain any explicit clause that would require from the partner company to have a minimum level of labour relations and social dialogue. This shows that actually ensuring at least a minimum level

[24] Article VIII of the Fundamental law, Article 231 of the Labour Code.

[25] The list of the strategic partners of the Hungarian Government can be found here: https://kormany.hu/kulgazdasagi-es-kulugyminiszterium/strategiai-partnersegi-megallapodasok

of industrial relations is far from being a priority for the Hungarian Government. The same problem can be seen concerning public procurement procedures: the law do not require to have established industrial relations at the contractor to participate in the procedure.

To conclude, even though the legal basis of the freedom to form and to join trade unions are included in the Hungarian labour law, the lack of efficiency during the application of these norms lead to a non-conformity in practice with the provisions of the ESC.

ARTICLE 6: THE RIGHT TO BARGAIN COLLECTIVELY

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;

There are three traditional levels of social dialogue in Hungary: the national, the sectoral and the company level.

Since 2011, the Government has made major efforts to reduce the influence of social partners on the national level. A new multipolar organisation, the National Economic and Social Council (NGTT) has been established[26] following the abolition of the National Interest Reconciliation Committee (OÉT). While the government refers to NGTT as the national institution to discuss with social partners, it is NOT a tripartite social dialogue structure (the government is not even part of it). According to the former Labour Code, the Government had to discuss issues of national significance concerning labour relations and employment relationships with the organisations of employees (six trade union-federations) and employers (nine employers' associations) in the OÉT.[27] The Committee had a significant influence on minimum wages as well. Regarding the NGTT, we cannot – and for the reasons above, one should not – find similar requirements.

In their last report sent to the ECSR, the Government is explaining this reform as a huge step forward: "With the establishment of the (…) Council, it has become possible to operate a much wider and more diverse consultation mechanism than ever." However, the Council has only a very limited effect on the traditional issues of social dialogue (e. g., wages, working conditions, labour legislation). On the one hand, the composition of the members is not suitable for genuine social dialogue. Firstly, the Council includes to many members, and some of them are not at all related to the world of work (e. g., artistic and scientific NGOs, historical churches). Eventually, traditional social partners together can remain in a minority position within this composition. Secondly, law does not guarantee a permanent and effective governmental representation in the NGTT.[28] Our representatives also confirmed the lack of practical efficiency of the Council

[26] Act XCIII of 2011 on the National Economic and Social Council.
[27] Act. XXII. of 1992.
[28] More about the NGTT: István Horváth, Sára Hungler, Réka Rácz, Zoltán Petrovics: Improving knowledge on the impact of Central- and Eastern European social partners on competitive labour market reforms facing the global crisis, VS/2016/0368. Case study: Hungary. Ceelab. p. 10–12 http://www.ceelab.eu/assets/images/case_study_hungary_en.pdf (2022. 06. 26.).

regarding the questions of the world of work. Therefore, the NGTT cannot be considered as a genuine forum of social dialogue.

The other existing forum of social dialogue on the national level is the so-called Permanent Consultation Forum in the Private Sector (VKF). Even though the Government is represented in that body, VKF is not either the appropriate forum of national level social dialogue. On the one hand, only some organisations of each sides are members of the VKF, and none of them represent the workers of the public sector. Therefore the workers of the public sector are not represented adequately on the national level. On the other hand, the lack of legal regulation of the VKF makes the rights and the obligations of the social partners unclear.[29] Representatives of MASZSZ regard it more as an information forum of the Government, than a traditional body of national social dialogue.

As opposed to the national level, the legal basis of sectoral level social dialogue is well established in Hungary.[30] However, the sectoral level consultations mostly also lack efficiency in practice. One of the reasons behind the weakness of sectoral level collective bargaining is the reduction of the financial support aimed to the dialogue committees at sectoral level, which are the established consultation bodies in each sectors. Another major problem is the lack of membership on the employers' side of the largest employers of some sectors. For example in the automotive industry, two of the largest employers (Audi, Mercedes) are not members of the sectoral employers' federation, so they do not participate at all in the sectoral level collective bargaining either. Therefore Vasas does not have relevant partners to negotiate with, and – as it was confirmed by the report – it seems to be unimaginable for years to conclude sectoral collective agreements in these committees. Another obstacle to conclude such an agreement is the extreme plurality of each sides in some sectors.

The Labour Code regulates the third, the local level of social dialogue. With the new Labour Code, trade unions have lost some of their rights regarding the consultations with the employers. Workers' councils are now entitled to these rights instead of trade unions, however, the councils (unlike the way they function in Germany) are not considered as efficient and well-known representative forms of the labour.[31] In this sense, the transformation of these rights from trade union rights to the councils' rights should be interpreted as a way of reducing the field of consultations.

[29] (Horváth, Hungler, Rácz, Petrovics 12–13)
[30] Act LXXIV of 2009 on dialogue committees at sectoral level and on certain issues of intermediate level social dialogue.
[31] (Gyulavári, Kártyás 43–47)

To conclude, the lack of promoting measures taken by the Government seems to be evident regarding Article 6§1 of the ESC. In our opinion, major legal and practical reforms would be required to fulfil the provisions of the ESC.

ARTICLE 6: THE RIGHT TO BARGAIN COLLECTIVELY

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

The coverage of workers by collective agreements is manifestly low in Hungary. According to the Central Statistical Office 20.6% of the workers were covered by a collective agreement, meanwhile in 2020, the coverage decreased to 18.5%.[32] However, no promoting measures have been taken in order to facilitate and encourage the conclusion of collective agreements since the beginning of the reporting period. In our opinion, this also proves the fallacy of the argumentation presented by the Government in the last report, according to which the general possibility to derogate in collective agreements from most of the provisions of the Labour Code would automatically increase the coverage.

In Hungary, lobbying of the large enterprises replaced the conclusion of collective agreements. This means in practice that employers' decisions which previously required the consent of trade unions (technically, by the conclusion of a collective agreement) become unilateral rights of employers by recent legislation. For example, before the pandemic, the application of a reference period/working time banking longer than 4 months required the conclusion of a collective agreement. However, a government decree changed the legal basis of the reference period and allowed the employers to apply 24 months long reference periods by their unilateral decisions during the pandemic, without any collective agreements.[33] This shows how lobbying and legislation reduces the importance of collective agreements. The same problem occurred regarding the rules of overtime. According to the Labour Code, the annual maximum of overtime is 250 hours per year, which may be raised by a collective agreement to 300 hours. This has been changed since 2018, when the legislator added the possibility of 'voluntary overtime' to the Labour Code. This 'voluntary overtime' means that the employee and the employer can individually (!) agree to increase the limit of 250 hours up to 400 hours per year.[34] Evidently, it is much easier for the employers to conclude such an agreement with their

[32] 2015: https://www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_szerv9_01_45.html; 2020: https://www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_munkmin_9_18_03_04.html (20202. 06. 27.).
[33] 104/2020. (IV. 10.) Government decree.
[34] Article 109 (2) of the Labour Code.

individual, therefore more vulnerable workers, than to have a collective agreement with a trade union.

Another important legislative move concerns the health care workers. In 2020, a new legal status has been established regarding the employees of the public health care sector. According to Article 15 (10) of the Act C of 2020, the employers and the trade unions of the public health sector cannot conclude collective agreements anymore. This leads to the violation of Conventions 98 and 154 of the ILO,[35] and in our opinion, this provision does manifestly not comply with Article 6§2 of the ESC either.

Another problem arises regarding the capability of trade unions to conclude collective agreements. According to the Labour Code, trade unions can conclude a collective agreement, if the amount of their members at the workplace/employer is at least 10% of the total amount of workers. However, there is no explicit provision in the Labour Code, which would fix the way of proving the membership of workers towards the employers. In the automotive industry, Suzuki for example refused to recognize the quality of trade union membership of its workers even though they had asked the company to transfer their trade union membership fee directly to Vasas. In these cases, trade unions have no certain legal instruments in practice to prove their capability to conclude collective agreements.

Another default of the Labour Code raises another practical problem. If a collective agreement is concluded between a trade union and the employer, a newly strengthening trade union cannot have any influence on that previously concluded collective agreement, even if it already has more members than the trade union that concluded the agreement. Members of the new trade union cannot even go to strike to enforce the revision of the collective agreement.[36]

[35] In a recently published article, two academics have also confirmed the violation of the ILO Conventions: István Horváth, Gábor Kártyás: Látlelet: Az egészségügyi szolgálati jogviszonyról és a szabályozás kérdőjeleiről. In: Munkajog, 2021/1. p. 1-17.

[36] Article 3 (1) d) of the Act VII of 1989 on strike.

ARTICLE 6: THE RIGHT TO BARGAIN COLLECTIVELY

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

The right to strike is principally regulated by Act VII of 1989 on strike (hereinafter referred to as Strike Act).

Regarding the private sector on the one hand, the basic rules of strike remained unmodified during the reporting period. However, problems still occur in practice.

Firstly, the uncertainty of the provisions of Strike Act has a discouraging effect on strikes in practice, because trade unions have full responsibility for damages in case of an unlawful strike. For example, the actual strike can only be initiated when mandatory negotiations with the employer appear to be insufficient, or pointless.[37] Nevertheless, the Strike Act, or any other legal provisions do not clarify the notion of insufficiency in this sense, therefore it remains questionable when and by who these negotiations could be qualified insufficient in this sense. The difference between political (which is illegal) and economic or social (therefore legal) strike is also problematic particularly on national level. A third example to the uncertainty of law is the obligation to perform sufficient services during strikes. According to the Strike Act, workers of employers who carry out activities which are of fundamental concern to the public (in particular in the field of public transport and telecommunications, and in the supply of electricity, water, gas and other energy) can only go on strike, if it does not impede the sufficient services of the employer.[38] As it can be seen, the Strike Act only lists some examples of when a "sufficient level" of service have to be maintained during the strike, therefore the scope of this provision frequently remains debated. Another problem is the required level of "sufficient service", which can be defined by the courts. However, courts in practice usually miss the deadlines of the special procedure aimed to define the required level of service, which evidently also discourages trade unions to initiate strikes.

[37] Article 2 (1) a) of the Strike Act.
[38] Article 4 (2) of the Strike Act.

Secondly, temporary agency workers are not sufficiently protected by the law when they go on strike. Basically, the duration of the assignment of the agency worker can be terminated without any motivation by the user enterprise and according to an exceptional provision of the Labour Code, these workers can also be dismissed by the agency in such a case by only referring to the termination of the assignment.[39] In a recent case, agency workers went on strike, and consequently their assignment was terminated by the user enterprise without motivation, and when they returned to the agency, they have also been dismissed with a reference to the exceptional rule of the Labour Code.[40] In our opinion, the lack of legal protection of agency workers participating in collective actions results in a severe non-compliance with the ESC.

To conclude, there were no major legal reforms during the reporting period regarding the right to strike in the private sector, which also means that the lack of legal certainty persists. Furthermore, no promoting measures have been taken in order to facilitate and encourage the exercise of the right to strike.

On the other hand, in the public sector the right to strike has remarkably been reduced.

Firstly, since 2020, workers of the public health care can only go on strike in accordance with specific rules determined in an agreement concluded by the trade unions and the Government.[41] However, the agreement mentioned by the law has not even been concluded, so this provision results in a general prohibition of strike in the public health sector.[42]

Moreover, the right to strike in the public education sector has also been heavily restricted by the Government as a response to the increasing dissatisfaction of teachers and the previously organised strikes. Firstly, a temporary Government decree[43] declared that during the strike, the supervision of children has to be fully maintained even by the workers participating in the strike. Moreover, 50% of the lessons of all subjects and 100% of graduation subjects (e. g., maths, literature, history in graduating classes) are required to be conducted as normally. In practice, these provisions mean that workers who go on strike actually have to work: they have to either supervise the students or teach them as usual, even though they lose their wages because of the strike. A recent legislation has made these temporary provisions permanent by the force of

[39] Article 220 (1) of the Labour Code.

[40] In this case, the court applied the present rules of the Labour Code, and declared the lawfulness of the termination of employment. A brief summary of the case has been published in Hungarian by the counsel of the workers: https://merce.hu/2022/06/01/schiffer-andras-munkaerokolcsonzessel-a-berharc-ellen/

[41] Article 15 (11) of the Act C of 2020.

[42] (Horváth, Kártyás 13)

[43] 36/2022. (II. 11.) Government decree.

law.[44] In reality, this means that no efficient strikes can be organised in the public education, therefore workers are deprived of the right to strike.

Our concerns have also been presented this year in Geneva at the ILO Conference. However, the Government still does not intend to deal with the current issues. In our opinion, these modifications have deprived workers of the public health care and the education of the right to strike, therefore they present remarkable violations to Article 6§4 of the ESC. These modifications do not only mean the lack of promoting measures, but also present severe and unprecedented violations of the fundamental right to strike in the history of the Hungarian democracy.

[44] Act V of 2022.

ARTICLE 21: THE RIGHT TO INFORMATION AND CONSULTATION

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Issues concerning the right to information and consultation occur on two different levels. On the one hand, the modification of the legal basis by the Labour Code, and on the other hand practical difficulties that cause problems to the actual exercise of these rights.

According to the Labour Code, trade unions may request information from employers on any issue related to the economic interests and social welfare of employees in connection with their employment.[45] The Labour Code also contains the trade unions' right to express opinion and initiate consultation. Accordingly, trade unions shall be entitled to express their opinion to the employer concerning any employer action (decision), or the draft of such decisions, and to initiate talks in connection with such actions.[46] However, the Labour Code of 2012 still results in a step back regarding the rights of trade unions to information and consultation compared to the previous Labour Code. According to the Labour Code of 1992, employees were required by the law to inform trade unions and to initiate consultations with them in explicitly defined cases (e. g., collective redundancies, succession or change of status of the employer).[47] The lack of explicit requirement to inform trade unions in these cases in the Labour Code of 2012 can eventually lead to situations where trade unions do not initiate any consultation as they do not even know what they should initiate it about. This default of the law can lead to the inefficiency of Articles 272 (4) and (5) of the Labour Code. Secondly, workers' councils became entitled to some rights to consultation and information since 2012. However, the councils (unlike the way

[45] Article 272 (4) of the Labour Code.
[46] Article 272 (5) of the Labour Code.
[47] Articles 85/B, 86/B, 94/B of the Labour Code of 1992.

they function in Germany) are not considered as efficient and practically well-known representative forms of labour.[48] Member of the workers' councils are not even protected against dismissal. In this sense, the transformation of these rights from trade union rights to the councils' rights should be interpreted as a way of reducing the field of consultations.

From a practical point of view, even when trade unions (or the workers' councils) request information or initiate consultation, the law does not guarantee the actual enforcement of these rights. Even though the Labour Code contains a special judicial procedure for the case when the employer does not fulfil his legal obligations,[49] the law does not link any efficient legal consequences to the final decision of the court. In practice, this procedure can only be used to express the seriousness of the unlawful situation, but in the end it remains the decision of the employers whether they comply with the decision or not. On the one hand, we can see examples in the chemical industry, when the employers fulfilled their legal obligations following such a judicial decision, but on the other hand, Vasas had to face the total ignorance of some employers in the automotive and metal industry.

To conclude, recent legislation did not promote the efficient exercise of the right of workers to be informed and consulted in compliance with ESC. However, a more serious problem, the lack of efficient legal remedy result in practice in a total ignorance of the right to information and consultation. In our opinion, this default leads to a serious non-compliance of the Hungarian law with Article 21 of the ESC.

[48] (Gyulavári, Kártyás 43–47)
[49] Article 289 of the Labour Code.

ARTICLE 22: THE RIGHT TO TAKE PART IN THE DETERMINATION AND IMPROVEMENT OF THE WORKING CONDITIONS AND WORKING ENVIRONMENT

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a to the determination and the improvement of the working conditions, work organisation and working environment;

b to the protection of health and safety within the undertaking;

c to the organisation of social and socio-cultural services and facilities within the undertaking;

d to the supervision of the observance of regulations on these matters.

In practice, workers' participation in the determination of issues defined by Article 22 of the ESC is manifestly low in Hungary. However, no promoting measures were adopted during the reporting period by the legislator.

Our observations regarding Article 22§a of the Charter have already been presented under Article 6 and Article 21. No further measures have been adopted in order to encourage workers' participation in the determination of working conditions since 2017.

Concerning Article 22§b of the ESC, Act XCIII of 1993 on Labour Safety (hereinafter referred to as Labour Safety Act) contains the basic rules of workers' contribution in the protection of health and safety. Accordingly, workers or the labour safety representatives have the right to consultation about health and safety.[50] However, the election of a labour safety representative is only optional in small enterprises (where less than 20 workers are employed). According to the reports of VDSZ and Vasas, there are only a few workplaces, where the labour safety representative can exercise actual control on the measures focusing on safety and health. On the one hand in many cases (specially in large employers), the elected representatives have too many locations and measures to supervise. On the other hand, employers frequently do not organise such an election in practice, though it would be mandatory by the force of law. This illegal practice is also one of the results of the lack of efficient labour inspection.

Regarding Article 22§c of the Charter, our reports show that the positive local practices especially in the chemical and pharmaceutical industry have been adversely affected by the pandemic. In our opinion, further promoting measures could encourage the employers in

[50] Article 70 of the Labour Safety Act.

reconstructing the previously well-functioning methods. Unfortunately, this does not seem to be a priority in recent employment policy.

ARTICLE F

DEROGATIONS IN TIME OF WAR OR PUBLIC EMERGENCY

1. In time of war or other public emergency threatening the life of the nation any Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

Article F is not part of the Labour Rights section of the ESC, therefore related comments cannot be part of the observation. However, Hungarian legislation disproportionately derogated labour rights with reference to public emergency during the Covid-19 pandemic. The legislation in public emergency affected all labour rights of the ESC, so for practical reasons, this derogation is presented in this observation under Article F, even though it is related to all other articles of this observation as well.

During the pandemic state of emergency, the government massively derogated labour law provisions via Government decrees. Article 6 (4) of 47/2020. (III. 18.) Government decree contained the most serious derogation. Accordingly, the employee and the employer may deviate from the provisions of the Labour Code in a separate agreement. This made it temporarily possible to derogate any provisions (including limits of working time, rest period, the right to salary etc.) even in an individual agreement concluded by the employee and the employer, without any supervision of the State or workers' representatives. In other words, none of the provisions of the ESC were guaranteed in this period by mandatory legal provisions. In our opinion, this was a huge step back in the history of labour law, which was not justified simply by the pandemic. The extremely large scope of the derogation was not required by the exigencies of the pandemic situation, therefore this Government decree severely violated the provisions of the ESC due to its manifestly disproportionate nature.