



Resolution CM/ResChS(2018)10 Matica Hrvatskih Sindikata v. Croatia Complaint No. 116/2015

(Adopted by the Committee of Ministers on 24 October 2018
at the 1328th meeting of the Ministers' Deputies)

The Committee of Ministers,¹

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint registered on 24 March 2015 by Matica Hrvatskih Sindikata against Croatia;

Having regard to the report by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

- **unanimously that there is no violation of Article 5 of the 1961 Charter;**

The allegations made by Matica Hrvatskih Sindikata concerning an obligation to publish annual reports and audits relate to provisions of a Draft Act on Financial Transactions and Accounting of Non-Profit Organizations which were not retained in the final act. Therefore, there is no violation of Article 5 of the 1961 Charter on this ground.

Regarding the other allegations, namely the cancellation of the Basic Collective Agreement (BCA) of 2010 and subsequent adoption of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012), it is recalled that Article 5 and Article 6§2 of the 1961 Charter are closely linked and that a fundamental trade union prerogative is the right to bargain collectively. However, in the instant case the alleged intervention did not constitute part of a pattern of repeated interference in collective bargaining, it was limited in scope and time and was therefore not such as to infringe Article 5 of the 1961 Charter.

- **by 13 votes to 1 that there is a violation of Article 6§2 of the 1961 Charter;**

The cancellation of the BCA 2010 does not constitute a violation of Article 6§2 as it was not a case of Government intervention in collective bargaining, in this case the Government was a party to the agreement. Section 23 of the 2010 BCA agreed by the parties permitted the BCA to be cancelled by either of the parties where the economic situation had significantly changed. It is noted that Matica Hrvatskih Sindikata contests the Government's arguments that the economic situation had changed, and that therefore the conditions for cancellation were satisfied. However, this is *prima facie* a matter for the domestic courts to determine whether the conditions for cancellation of the BCA were met. Nevertheless, even if there had been recourse to the domestic courts and they had held that the conditions for cancellation had not been met, this would still not demonstrate Government interference.

¹ In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and the United Kingdom.

Despite the cancellation of the BCA 2010, branch collective agreements for certain public sectors still remained in force and contained similar or identical provisions as the cancelled BCA 2010. In order to cancel these provisions the Government enacted the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012). The adoption in 2012 of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) amounted to an interference in the collective bargaining process.

The Government justified the adoption of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) on economic grounds. However, the justifications put forward for the adoption of the above mentioned Act are general in nature and not sufficient to demonstrate that the conditions of Article 31 of the 1961 Charter have been satisfied. It is recalled that Article 31 permits a possibility for States to restrict rights enshrined in the Charter. Given the severity of the consequences of a restriction of these rights, Article 31 lays down specific preconditions for applying such restrictions. Furthermore, Article 31 must be interpreted narrowly. Restrictive measures must have a clear basis in law, i.e. they must have been agreed upon by the democratic legislature, and need to pursue one of the legitimate aims defined in Article 31§1. Additionally, restrictive measures must be "necessary in a democratic society", they must be adopted only in response to a "pressing social need" (Conclusions XIII-1, Netherlands, Article 6§4, see also European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on the merits of 2 December 2013, § 207 and seq.). Although the intervention complained of was prescribed by law, and was justified by the Government in order to maintain the fiscal stability of the public service system, (i.e. the public interest), the Government has provided little information on the economic situation prevailing in Croatia at the time of the adoption of the legislation. Neither has it been documented that the intervention in collective bargaining was "necessary in a democratic society" for the pursuance of this purpose, i.e. that the restriction was proportionate to the legitimate aim pursued: there must be a reasonable relationship of proportionality between the restriction on the right and the legitimate aim(s) pursued (Conclusions XV-1, Spain (2000)).

- **by 13 votes to 1 that there is no violation of Article 6§1 of the 1961 Charter;**

Concerning the failure of a government to consult representative trade unions on a draft law or decree, it is recalled that it is traditional legal practice in democratic states to consider parliamentary debate, particularly in an assembly elected by universal suffrage, as cancelling out any failure to engage in mandatory prior consultation with authorities or bodies with less broad-ranging legitimacy. It is of course assumed that interest groups have access to members of elected bodies in order to influence their debates.

- **by 13 votes to 1 that there is no violation of Article 6§3 of the 1961 Charter;**

In the instant case the facts do not sufficiently disclose in what manner Article 6§3 of the 1961 Charter has been violated. Matica Hrvatskih Sindikata has failed to provide any concrete evidence of how the situation is in violation of Article 6§3 of the 1961 Charter, apart from indicating the prescribed period for conciliation is too short. However, it has not submitted any information on how the duration of this period (which may be extended) has in reality hampered conciliation.

- **by 12 votes to 2 that there is no violation of Article 6§4 of the 1961 Charter.**

The only sustainable allegation under Article 6§4 of the 1961 Charter relates to the issue as to whether a higher level organisation may call a strike. It is recalled that limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4 (Conclusions XV-1 (2000), France).

There is insufficient information at its disposal to determine whether the situation is in violation of Article 6§4 of the 1961 Charter. Matica Hrvatskih Sindikata has failed to provide information on the situation in practice, regarding whether strikes have in fact been called by higher level organisations, whether any strike called by a higher level has been declared illegal and whether the alleged restrictions have been the subject of any court decisions.

Having regard to the information communicated by the Croatian delegation at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 11 September 2018 (see Appendix to the resolution),

1. takes note of the information that the Croatian authorities have communicated in this regard (see annex to the present resolution), and in particular that the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Journal Official No. 143/2012) is no longer in force;

2. invites the Croatian authorities to report, at the time of the submission of the next report concerning the relevant provisions of the Charter, on any new developments regarding their implementation.

Appendix to Resolution CM/ResChS(2018)10

Matica Hrvatskih Sindikata v. Croatia Complaint n° 116/2015

Response of Republic of Croatia to the Committee of Ministers on the report of the European Committee of Social Rights²

The complaint was registered on 24 March 2015. The European Committee of Social Rights (ECSR) adopted its decision on admissibility on 9 September 2015 and its decision on the merits on 21 March 2018.

Republic of Croatia has given full consideration to the report of the European Committee of Social Rights (ECSR).

Republic of Croatia welcomes the finding that there is no violation of Articles 5, 6 (1), 6 (3) and 6 (4) of the 1961 Charter.

In respect of the finding of a violation of Article 6 (2) of the 1961 Charter, the Republic of Croatia notes that the justification of Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) was discussed not only before European Committee of Social Rights (ECSR) but also before the Constitutional Court of Croatia and the International Labour Organisation.

1. Reasons for Adoption of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012)

Due to the unfavourable economic and financial developments in the euro zone, the financing of the State budget deficit has become difficult. The planned deficit in the 2013 reached 10.9 billion which led to a further increase in interest expenditures which in the amount of 9.5 billion accounted for as nearly 90% of the total deficit. Therefore it was necessary to carry out further fiscal austerity measures to reduce public debt.

Namely, the global economic and financial crisis that started in 2008 had strong negative impact on Croatian economy and labour market. At the end of 2012, when the above-mentioned Act was passed in Croatian Parliament, Croatian economy was struggling. The average number of registered unemployed persons in the first 10 months of 2012 was 318,662 which was an increase of 14,014 or 4.6% compared to the same period of 2011. The number of employed persons in October 2012 was 1,355,472, which was 25,039 or 1.8% less compared to 2011. The unemployment rate in October 2012 reached 19.6%, representing an increase of 2.2% compared to 2011. Industrial production in 2010 recorded an annual decrease of 1.5%, in 2011 the decline amounted 1.2%, while in the first nine months of 2012 the decline was 5.6%. The construction works index dropped in 2010 and 2011 on interim basis by 15.9 and 9.1%. In the first nine months of the 2012 it dropped down to a further 11%.

All these figures indicated that negative trend would continue in 2013 as well. Given the fact that the income of the State budget was decreasing and in the same time the material rights for public servants deriving from the collective agreements were increasing, it was crucial to adjust the finances in order to save the Croatian economy and public finances from bankruptcy. Therefore, the Government started the negotiations with the public sector trade unions. Despite huge efforts it was impossible to reach an agreement. The Act on Withdrawal of Certain Material Rights of the Employed in Public Services remained the only solution in order to protect the public interest - State budget.

Further escalation of fiscal imbalances could lead to an additional fall in credit rating and a further rise in the price of government loans. This would be an additional burden for the overall competitiveness of the economy and debt sustainability.

² See document: DD(2018)854.

2. Complaint to the Constitutional Court of Croatia

Matica hrvatskih sindikata lodged a complaint to the Constitutional Court stating that Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) is not in line with the Constitution of the Republic of Croatia. In March 2015, the Constitutional Court brought a decision according to which Act on Withdrawal of Certain Material Rights of the Employed in Public Services is in compliance with the Constitution.

Although it was clear that the Government's measure impinged on material rights of employees employed in public sector which are deriving from the provisions of the collective agreement, during the Court's procedure it was established that this measure was justified with exceptionally strong, objective and relevant reasons.

The Constitutional Court established that during the legislative procedure there have been some deviations from the full respect of the rule of democratic procedure in collective bargaining. Nevertheless, considering the case in its entirety and the context in which the disputed legal measure was adopted, the Constitutional Court concluded: "that in this particular case it was not the practice of the unlimited political power ("legalised arbitrariness") of the Government as an executive authority." It was established that legislative measure was necessary in order to reduce the negative trend of the unfavourable economic and financial developments faced by the Republic of Croatia in the period from 2011 to 2012. Therefore, the restriction was justified because it was proved that the measure was necessary to protect public interest. In that time the measure was reasonable, proportionate and balanced and did not create an excessive burden.

3. Complaint to the International Labour Organisation

Matica hrvatskih sindikata alleged that the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) which allows the Government to unilaterally derogate from the public service collective agreements in force violated the right to freedom of association guaranteed by Conventions Nos. 87 and 98, both ratified by Republic of Croatia. The Republic of Croatia has sent its observations in a communication dated 22 September 2014.

The Committee on Freedom of Association set up by the Governing Body of the International Labour Office brought a definite report on 323rd session in March 2015. The Committee noted the allegations from Matica hrvatskih sindikata and the Government's reply, in particular the information it had supplied to the Committee on the Application of Standards of the International Labour Conference at its 103rd Session (May-June 2014). The Committee concluded that the unilateral cancellation of the collective agreement followed the procedure provided in the agreement itself. There weren't any recommendations regarding the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012).

4. Collective complaint Matica hrvatskih sindikata v. Croatia No. 116/2015

The European Committee of Social Rights (ECSR) concluded by 13 votes to 1 that there is a violation of Article 6 (2) of the 1961 Charter. According to their opinion the adoption of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) amounted to an interference in the collective bargaining process. The explanation states that the justification made by the Government was general in nature and not sufficient without providing enough information on the economic situation prevailing in Croatia at the time of the adoption of the legislation.

The Republic of Croatia wishes to emphasise that it strongly believes that all the conditions prescribed by the Article 31 have been met at the time of the adoption of the contested measure. The suspension/withdrawal of the Christmas bonus was determined by the law which was adopted in normal legislative procedure in Croatian Parliament. The measure was necessary in order to protect the fiscal stability of the State which is definitely in the public interest. Namely, insufficient revenues or excessive deficit could have led to massive social inequalities in Croatian society. While many workers from the private sector suffered dismissals which led to increased budget for unemployment and social benefits, the workers in public sector did not face such problems. In order to make a balance in budget and to protect social justice the Government tried to make an agreement with trade unions from the public sector. Since it was not possible to reach an agreement the only solution was to pass the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012). The Act clearly presents a proportionate measure since it did not include dismissals in public sector and it did not diminish the salaries. Even if the arguments from the Government were too general and insufficient they did demonstrate excessive public deficit and huge problems with fiscal stability. Due to negative rating of the public finances the Republic of Croatia was not able to finance additional debts. The global financial and economic crisis has had a belated effect on the Croatian economy, which was reflected in a considerable decrease in

economic activity, a steady decline in the GDP and a constant increase in the rate of unemployment, with a subsequent decrease in the citizens' standard of living. As a conclusion, the Republic of Croatia strongly believes that the possibility to use restrictions according to Article 31 of the 1961 Charter was used within the scope of the Article in order to protect public interest and it was used proportionally to the aim pursued.

5. Update on developments

The Republic of Croatia wishes to inform that the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) is not in force any more. It was a short term measure that no longer produces any legal effects. It had only limited duration during the economic crisis.

In the meanwhile, the Republic of Croatia has signed a new collective agreement with trade unions representing workers from public sector. The new collective agreement contains all material rights which were suspended during the economic crisis. Therefore, the workers from the public sector are entitled to both Christmas bonus and bonus for holidays as agreed in the collective agreement. The Government respects all contractual obligations. Since 2017 the basic salary for all workers in the public sector was increased three times each time by 2%.

The Republic of Croatia remains ready to update the European Committee of Social Rights (ECSR) and the Committee of Ministers on future developments, in the context of the annual reporting mechanisms on compliance with the provisions of the 1961 European Social Charter.