

**DECISION ON THE MERITS**

**Adoption: 21 March 2018**

**Notification: 26 April 2018**

**Publicity: 27 August 2018**

***Matica Hrvatskih Sindikata v. Croatia***

Complaint No. 116/2015

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 298th session in the following composition:

Giuseppe PALMISANO President  
Monika SCHLACHTER, Vice-President  
Karin LUKAS, Vice-President  
Eliane CHEMLA, General Rapporteur  
Birgitta NYSTRÖM  
Petros STANGOS,  
Jozsef HAJDU  
Marcin WUJCZYK  
Krassimira SREDKOVA  
Raul CANOSA USERA  
Marit FROGNER  
François VANDAMME  
Barbara KRESAL  
Kristine DUPATE

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 5 December 2017, 24 January and 21 March 2018,

On the basis of the report presented by Marit FROGNER,

Delivers the following decision adopted on this last date:

## **PROCEDURE**

1. The complaint lodged by *Matica Hrvatskih Sindikata* was registered on 24 March 2015.
2. *Matica Hrvatskih Sindikata* alleges that Croatia is in violation of Article 5 and 6 of the European Social Charter 1961 (“the 1961 Charter”) on the grounds that the Act on Withdrawal of Certain Material Rights of the Employed in Public Services, Official Gazette No. 143/2012, and other legislation enacted and implemented by the Government of Croatia (“the Government”) on 20 December 2012 infringe the right to organise and the right to bargain collectively.
3. On 16 September 2015 referring to Article 6 of the 1995 Protocol providing for a system of collective complaints (“the Protocol”) the Committee declared the complaint admissible.
4. In its decision on admissibility, the Committee invited the Government to make written submissions on the merits of the complaint by 17 November 2015.
5. In application of Article 7§1 of the Protocol, the Committee invited the States Parties to the Protocol, and the States having made a declaration in accordance with Article D§2 of the Revised Charter, to transmit to it any observations they wished to make on the merits of the complaint before 17 November 2015.
6. In application of Article 7§2 of the Protocol, it invited the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter to make observations by 17 November 2015.
7. The observations of the European Trade Union Confederation (ETUC) were registered on 17 November 2015.
8. On 2 February 2016, the Government asked for an extension to the deadline for presenting its submissions on the merits. The President of the Committee extended this deadline until 29 February 2016. The Government’s submissions on the merits of the complaint were registered on 25 February 2016.
9. The deadline set for *Matica Hrvatskih Sindikata*’s response to the Government’s submissions on the merits was 5 May 2016. *Matica Hrvatskih Sindikata*’s response was registered on 5 May 2016.

10. In accordance with Rule 32§2 of the Committee's Rules, the President of the Committee permitted the ETUC to submit additional observations by 22 November 2016. The additional observations of the ETUC were registered on 22 November 2016.

## **SUBMISSIONS OF THE PARTIES**

### **A – The complainant organisation**

11. *Matica Hrvatskih Sindkata* alleges that the situation in Croatia is in violation of Articles 5 and 6 of the 1961 Charter as a consequence of the cancellation of the Basic Collective Agreement of 4 October 2010, and the adoption on 20 December 2012 and the further implementation of the Act on Withdrawal of Certain Material Rights of the Employed in the Public Services (Official Gazette No.143/2012) as well as other legislation.

### **B – The respondent Government**

12. The Government requests the Committee to find the complaint unfounded in all respects.

## **OBSERVATIONS BY WORKERS' ORGANISATIONS**

### **The European Trade Union Confederation ("ETUC")**

13. The ETUC refers to a range of international material on the right to organise and bargain collectively, including the right to strike. It states that there is not enough information regarding certain of the allegations so it cannot comment on all of them.

#### *Article 6§1*

14. According to the ETUC the Government did not or not sufficiently consult trade unions in the legislative process when adopting the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No.143/2012) as well as subsequently the Act on Withdrawal of Right to Salary Increase Based on Years of Service (Official Gazette No. 41/2014).

#### *Article 6§2*

15. As regards the violation of Article 6§2 of the 1961 Charter the ETUC argues that the annulment by legislation of existing collective agreements is a very serious interference with the right to collective bargaining and cannot be justified. A justification is even less possible taking into account the following elements which were described above, in particular:

- ILO case-law;
- the jurisprudence of the European Court of Human Rights (ECtHR) in relation to Article 11 ECHR in general;
- the importance of securing fundamental social rights in times of crisis.

16. The ETUC argues that the cancellation of the Basic Collective Agreement of October 2010 amounted to a violation of Article 6§2 of the 1961 Charter as the Government has not demonstrated that the cancellation complied with the requirement that there had been significant changes to the economic circumstances. It further maintains that the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No.143/2012) amounts to a violation of Article 6§2 of the 1961 Charter and cannot be justified by reference to the economic situation nor to the fact that civil servants had relinquished similar rights and the Government could not be seen to discriminate against them.

#### *Article 6§4*

17. As regards the 'back-to-work' order referred to in the complaint during a strike of doctors, the ETUC refers to the ECtHR judgment in the *Hrvatski Liječnički Sindikat (HLS)* case where the ECtHR found a violation of the right to strike (see below §31).

18. As regards the level of trade union organisation entitled to call a strike, the ETUC states that general question of who is entitled to call a legal strike is defined in Section 205(1) of the Labour Act which provides that 'trade unions' shall have the right to call and undertake a strike in two situations:

- in order to protect and promote the economic and social interests of their members or
- on the ground of non-payment of remuneration and compensation, or a part thereof.

19. However, Section 4 of the Act on Trade Unions and Employers Associations Representativeness provides that:

"Representative union organisations and employer organisations of a higher level participating in tripartite bodies at national level, shall have the right to:

...

4) participate in collective bargaining over collective agreements covering employees who work for employers which are members of a higher-level employer organisation."

20. The ETUC supports *Matica Hrvatskih Sindkata's* view that this legislation limits higher level representative organisations to collective bargaining without the right to strike as it is more specific than the Labour Act.

## RELEVANT DOMESTIC LAW AND COLLECTIVE AGREEMENTS

21. In their submissions the parties refer to the following provisions of domestic law:

22. Act on Denial of Payment of the Substantive Rights of Public Service Employees (Act on Withdrawal of Certain Material Rights of the Employed in Public Services) (Official Gazette No. 143/2012) dated 20 December 2012

### **Article 1**

This Act, due to changes in the economic situation and the need for uniform regulation of rights of civil servants and public service employees for 2012 and 2013, denies the payment of certain substantive rights of the public service employees which are agreed upon by collective agreements or other agreements entered into by the Croatian Government.

### **Article 2**

(1) Public service employees are denied the right to payment of an annual Christmas bonus for year 2012 and 2013.

(2) Public service employees are denied the right to receive reimbursement for vacation bonus for the year 2013.

### **Article 3**

The rights under the provisions of Article 2 of this Act are not affected by the provision of Article 7 (3) of the Labour Act. ("Official Gazette" no. 149/09, 61/11 and 82/12).

### **Article 4**

This Act shall enter into force on day of its publishing in the "Official Gazette".

Class: 121-01/12-01/01

In Zagreb, 14 December 2012

23. Basic Collective Agreement for Civil Servants and Employees in Public Services (Basic Collective Agreement for the Officers and Employees in Public Services) dated 4 October 2010 ("BCA 2010")

## **GENERAL PROVISIONS**

### ***Scope of Application***

#### **Article 1**

This agreement determines the rights and obligations from work and on the basis of work of officers and employees in public service to which the Act on Salaries of Public Service Officers (hereinafter referred to as: employees) applies.

#### ***Term***

#### **Article 2**

(1) This Agreement shall enter into force on the day of its signature.

(2) This Agreement applies to 4 October 2013.

...

### ***Implementation of the Agreement in Good Faith and Changed Circumstances***

#### **Article 6**

- (1) The Parties undertake to implement this Agreement in good faith.
- (2) If, due to changes in circumstances that did not exist or were not known at the time of entering into the agreement, one of the parties could not implement any of the provisions of the executed agreement, or such action would it be made extremely difficult, that Party agrees that it will not unilaterally break the agreement, but suggest the amendment of the agreement to the other party.

...

### **AMENDMENT, CANCELLATION AND RENEWAL OF AGREEMENT**

#### ***Amendments to the Agreement***

#### **Article 22**

- (1) Any contracting party may propose amendments to this Agreement.
- (2) Proposal for an amendment to this Agreement shall be submitted to the other Party, which, for the union parties means to all the unions signatories to this Agreement.
- (3) The Party to the Agreement which received a proposal for an amendment to this Agreement shall provide a written statement within 15 days of receipt of the proposal and must enter into negotiations on the proposed amendment within 30 days of the receipt of the proposal, otherwise the conditions for the application of provisions on mediation procedure of this Agreement will be achieved.

...

#### ***Cancellation of the Agreement***

#### **Article 23**

- (1) This Agreement may be cancelled in writing with a notice period of 3 months.
- (2) This Agreement may be cancelled by either party in the case of significantly changed economic circumstances.
- (3) Before cancelling the Agreement, the party which cancels the Agreement is required to propose the amendments to the Agreement to the other party.

...

#### ***Vacation Bonus***

#### **Article 60**

- (1) The Employee shall be entitled to reimbursement for the vacation bonus.
- (2) The amount of bonus shall be negotiated by the Government and public service unions each year in the process of drafting of the state budget proposal, whereby if an agreement is not reached, the bonus shall amount at least as much as the last payment of the bonus resulting from an agreement between the Government and unions.

...

#### ***Per diem and Travel Reimbursement***

#### **Article 64**

(1) When an employee is sent on a business trip to the country, he/she is entitled to full reimbursement for transportation, per diem and reimbursement of the full amount of accommodation costs, in accordance with the Croatian Government Regulation.

(2) Per diem amounts 170 kuna per day.

...

#### ***Jubilee Awards***

#### **Article 69**

(1) An employee is entitled to jubilee award according to conditions laid down in Article 49 herein, provided that the following conditions are fulfilled:

- 5 years - in the amount of 1 basis under paragraph 2 herein,
- 10 years - in the amount of 1.25 bases under paragraph 2 herein;
- 15 years - in the amount of 1.50 bases under paragraph 2 herein;
- 20 years - in the amount of 1.75 bases under paragraph 2 herein;
- 25 years - in the amount of 2 bases under paragraph 2 herein;
- 30 years - in the amount of 2.5 bases under paragraph 2 herein;
- 35 years - in the amount of 3 bases under paragraph 2 herein;
- 40 years - in the amount of 4 bases under paragraph 2 herein;
- 45 years - in the amount of 5 bases under paragraph 2 herein.

(2) The amount of base pay for jubilee award shall be negotiated between the Government and public service unions each year in the process of drafting a state budget proposal provided that if the agreement is not reached, the basis for jubilee award shall amount at least HRK 1,800.00 net.

...

#### ***Christmas Bonus***

#### **Article 71**

(1) The employees in the public sector shall be entitled to payment of an annual award for Christmas holiday in the same amount (Christmas bonus).

(2) The amount of Christmas bonus shall be negotiated by the Government and public service unions each year in the process of drafting of the state budget proposal, whereby if an agreement on Christmas bonus is not reached, the basis for the bonus shall amount at least as much as the last payment of the last Christmas bonus resulting from an agreement between the Government and unions.

24. Basic Collective Agreement for Civil Servants and Employees in Public Services (Basic Collective Agreement for the Officers and Employees in Public Services) (Official Gazette No. 141/2012) dated 12 December 2012 ("BCA 2012")

## **GENERAL PROVISIONS**

### ***Scope of Application***

#### **Article 1**

This agreement determines the rights and obligations from work and on the basis of work of officers and employees in public service to which the Act on Salaries of Public Service Officers (hereinafter referred to as: employees) applies.

### ***Term***

#### **Article 2**

- (1) This Agreement shall enter into force on the day of its signature.
- (2) This Agreement applies to 12 December 2016.

...

### ***Vacation Bonus***

#### **Article 60**

- (1) The Employee shall be entitled to reimbursement for the vacation bonus.
- (2) The amount of bonus shall be negotiated by the Government and public sector unions each year in the process of drafting of the state budget proposal, whereby if an agreement is not reached, the bonus shall amount at least as much as the last payment of the bonus resulting from an agreement between the Government and unions.

...

### ***Per diem and Travel Reimbursement***

#### **Article 64**

- (1) When an employee is sent on a business trip to the country, he/she is entitled to full reimbursement for transportation, per diem and reimbursement of the full amount of accommodation costs, in accordance with the Croatian Government Regulation.
- (2) Per diem amounts 170.00 kuna per day.

...

### ***Jubilee Awards***

#### **Article 69**

(1) An employee is entitled to jubilee award according to conditions laid down in Article 49 herein, provided that the following conditions are fulfilled:

- 5 years - in the amount of 1 basis under paragraph 2 herein;
- 10 years - in the amount of 1.25 bases under paragraph 2 herein;
- 15 years - in the amount of 1.50 bases under paragraph 2 herein;
- 20 years - in the amount of 1.75 bases under paragraph 2 herein;



- 25 years - in the amount of 2 bases under paragraph 2 herein;
- 30 years - in the amount of 2.50 bases under paragraph 2 herein;
- 35 years - in the amount of 3 bases under paragraph 2 herein;
- 40 years - in the amount of 4 bases under paragraph 2 herein;
- 45 years - in the amount of 5 bases under paragraph 2 herein;

(2) The amount of base pay for jubilee award shall be negotiated between the Government and public service unions each year in the process of drafting a state budget proposal provided that if the agreement is not reached, the basis for jubilee award shall amount at least HRK 1,800.00 net.

...

### **Christmas Bonus**

#### **Article 71**

(1) The employees in the public service shall be entitled to payment of an annual award for Christmas holiday in the same amount (Christmas bonus).

(2) The amount of Christmas bonus shall be negotiated by the Government and public service unions each year in the process of drafting of the state budget proposal, whereby if an agreement on Christmas bonus is not reached, the basis for the bonus shall amount at least as much as the last payment of the last Christmas bonus resulting from an agreement between the Government and unions.

...

#### **Article 93**

The entry into force of this Agreement shall supersede the Basic Collective Agreement for Officers and Employees in Public Sector ("Official Gazette" no. 115/2010), except for the provisions of Article 67, which shall be applied to 31 December 2012.

25. Appendix I of the Basic Collective Agreement for Civil Servants and Employees in Public Services (Appendix I to the Basic Collective Agreement for the Civil Servants and Employees in Public Services) dated 12 December 2012

#### **Article 1**

By signing this Appendix, the parties established a temporary limit of substantive rights agreed upon by Basic Collective Agreement for officers and employees in public sector concluded on 12 December 2012 (hereinafter: BCA).

#### **Article 2**

Article 60 of the BCA shall not be applied in 2013.

#### **Article 3**

The amount of per diems for business travel in the Republic of Croatia, under Article 64 (2) of the BCA will amount 150.00 kuna in 2012 and 2013 year.

...

#### **Article 5**

Article 71 of the BCA shall not be applied in 2012 and 2013.

#### **Article 6**

(1) All collective agreements for certain sector, sections or groups according to the National Classification of Activities, which have been concluded pursuant to the Basic Collective Agreement for officers and employees in public service, will be aligned with this Appendix within 30 days after its signing.

(2) If a particular substantive right, contained in Article 60, Article 64 (2), Article 67, Article 69 (2) and Article 71, of the BCA becomes actionable, according to collective agreements under paragraph 1 herein, the Croatian Government admits liability of those rights to other officers and employees in public sector to which these collective agreements do not apply in the scope and the amount of substantive rights contained in the respective collective agreements.

#### **Article 7**

This agreement consists of nine original copies, one copy for each union a copy, and three copies to the Croatian Government.

### 26. Act on Financial Transactions and Accounting of Non-Profit Organizations

#### **Article 37 VIII. PUBLICATION OF ANNUAL FINANCIAL REPORTS**

(1) The annual financial reports of non-profit organizations shall be published through the Register of non-profit organizations.

(2) A non-profit organization whose annual financial reports are publicly available via the Register of non-profit organization is not required to submit the same to the request.

(3) Publication of the annual financial reports referred to in paragraph 1 of this Article shall not apply to trade unions and employers' associations.

(4) Trade unions and employers' associations referred to in paragraph 3 of this Article may submit their annual financial reports of the parties concerned if this does not violate their free and independent functioning.

### 27. Act on Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining of 28 July 2012 (No Longer in Force)

### 28. Act on Trade Unions and Employers Associations Representativeness of July 2014

#### **Article 4**

Representative union organisations and employer organisations of a higher level participating in tripartite bodies at national level, shall have the right to:

(1) propose to the Government of the Republic of Croatia their representatives for tripartite delegation of the Government of the Republic of Croatia at the International Labour Conference and appoint their representatives to other international and European bodies and organizations

(2) appoint their representatives, in accordance with law and other special regulations, and otherwise participate in the work of the Economic and Social Council and other bodies through which tripartite social dialogue is promoted at national level

(3) appoint their representatives to other bodies for which the participation of union and employer representatives at national level has been provided for in specific regulations or agreements

(4) participate in collective bargaining over collective agreements covering employees who work for employers which are members of a higher-level employer organization.

## 29. Labour Act No. 758/95

### *Article 205 Strike and solidarity strike*

(1) Trade unions shall have the right to call and undertake a strike in order to protect and promote the economic and social interests of their members or on the ground of nonpayment of remuneration and compensation, or a part thereof, if they have not been paid by their maturity date.

(2) In the event of any dispute related to conclusion, amendment or renewal of a collective agreement, the right to call and undertake a strike shall have trade unions which have been determined as representatives, under specific provisions, for collective bargaining and conclusion of a collective agreement and which have negotiated the conclusion of a collective agreement.

(3) A strike must be announced to the employer, or to the employers' association, against which it is directed, whereas a solidarity strike must be announced to the employer on whose premises it is organized.

(4) A strike may not begin before the conclusion of the mediation procedure, when such a procedure is provided for by this Act, or prior to the completion of other amicable dispute resolution procedures agreed upon by the parties.

(5) A solidarity strike may begin even if the mediation procedure has not been conducted, but not before the expiration of two days from the date of commencement of the strike in whose support it is organized.

(6) A letter announcing the strike must state the reasons for the strike, the place, date and time of its commencement, as well as the method of its execution.

### *Article 206 Disputes in which mediation is mandatory*

(1) In case of dispute which could result in a strike or other form of industrial action, the mediation procedure must be conducted as prescribed by this Act, except when the parties have reached an agreement on an alternative method for its resolution.

(2) The mediation referred to in paragraph 1 of this Article shall be conducted by the mediator selected by the parties to a dispute from the list established by the Economic and Social Council or determined by mutual agreement.

### *Article 210 Resolution of disputes by arbitration*

(1) Parties to a dispute may agree to bring their collective labour dispute before an arbitration body.

(2) The appointment of an individual arbiter or an arbitration board and other issues related to the arbitration procedure may be regulated by a collective agreement or by an agreement of the parties made after the dispute has arisen.

## RELEVANT INTERNATIONAL MATERIALS

### A – The Council of Europe

1. **The European Convention on Human Rights 1950 (“the Convention”)** includes the following provision:

**“Article 11 - Freedom of assembly and association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

### 2. **European Court of Human Rights**

30. *Demir and Baykara v. Turkey* – Application No. 34503/97, judgment of 12 November 2008:

“154. Consequently, the Court considers that, having regard to the developments in labour law, both international and national, and to the practice of Contracting States in such matters, the right to bargain collectively with the employer has, in principle, become one of the essential elements of the “right to form and to join trade unions for the protection of [one’s] interests” set forth in Article 11 of the Convention, it being understood that States remain free to organise their system so as, if appropriate, to grant special status to representative trade unions. Like other workers, civil servants, except in very specific cases, should enjoy such rights, but without prejudice to the effects of any “lawful restrictions” that may have to be imposed on “members of the administration of the State” within the meaning of Article 11 § 2 – a category to which the applicants in the present case do not, however, belong (see paragraph 108 above).”

31. *Hrvatski Liječnički Sindikat v. Croatia* - Application No. 3670/09, judgment of 27 November 2014:

“In the absence of any exceptional circumstances, the Court finds it difficult to accept that upholding the principle of parity in collective bargaining is a legitimate aim (see paragraph 57 above) capable to justify depriving a trade union for three years and eight months of the most powerful instrument to protect occupational interests of its members. That is especially so in the present case where the applicant union was in that period not allowed to strike to pressure the Government of Croatia to grant doctors and dentists the same level of employment-related rights the Government had already agreed upon in the Annex, which had been invalidated on formal grounds only. It follows that the interference in question cannot be regarded as proportionate to the legitimate aim it sought to achieve” (§59).

### **3. Parliamentary Assembly**

32. Resolution 2033 (2015) of 28 January 2015, "Protection of the right to bargain collectively, including the right to strike" reads as follows:

"1. Social dialogue, the regular and institutionalised dialogue between employers' and workers' representatives, has been an inherent part of European socio-economic processes for decades. The rights to organise, to bargain collectively and to strike – all essential components of this dialogue – are not only democratic principles underlying modern economic processes, but fundamental rights enshrined in the European Convention on Human Rights (ETS No. 5) and the European Social Charter (revised) (ETS No. 163).

2. However, these fundamental rights have come under threat in many Council of Europe member States in recent years, in the context of the economic crisis and austerity measures. In some countries, the right to organise has been restricted, collective agreements have been revoked, collective bargaining undermined and the right to strike limited. As a consequence, in the affected countries, inequalities have grown, there has been a persistent trend towards lower wages, and negative effects on working and employment conditions have been observed.

3. The Parliamentary Assembly is most concerned by these trends and their consequences for the values, institutions and outcomes of economic governance. Without equal opportunities for all in accessing decent employment and without appropriate means of defending social rights in a globalised economic context, the inclusion, development and life chances of whole generations will be put into question. In the medium term, the exclusion of certain groups from economic development, the distribution of wealth and decision making could seriously damage European economies and democracy itself.

4. Investing in social rights is an investment in the future. In order to build and maintain strong and sustainable socio-economic systems in Europe, social rights need to be protected and promoted.

5. In particular, the rights to bargain collectively and to strike are crucial to ensure that workers and their organisations can effectively take part in the socio-economic process to promote their interests when it comes to wages, working conditions and social rights. "Social partners" should be taken to mean just that: "partners" in achieving economic performance, but sometimes opponents striving to find a settlement concerning the distribution of power and scarce resources."

### **B – The United Nations**

33. The International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966) includes the following provision:

"Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

....”

## **C – International Labour Organisation**

### **34. Convention (No. 98) the Right to Organise and to Bargain Collectively**

“Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation 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 LAW**

### **I. ALLEGED VIOLATION OF ARTICLE 5 OF THE 1961 CHARTER**

#### **35. Article 5 of the 1961 Charter reads as follows:**

##### **Article 5 – The right to organise**

Part I: “All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.”

Part II: “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.”

## **A – Arguments of the parties**

### **1. The complainant organisation**

36. *Matica Hrvatskih Sindikata* argues that the Draft Act on Financial Transactions and Accounting of Non-Profit Organizations which imposes an obligation on trade unions to publish annual financial reports and audits, amounts to an unacceptable encroachment on the autonomy of trade unions, especially in light of the fact that they receive no state funding.

37. *Matica Hrvatskih Sindikata* further argues that the behaviour of the Government cancelling the Basic Collective Agreement of 2010 and subsequent enactment the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) also amounts to a breach of Article 5 of the 1961 Charter.

## **2. The respondent Government**

38. The Government states that the right to organise, as a basic precondition of the realisation of the freedom of association and right of collective bargaining is guaranteed by the Constitution and labour law, as well as international labour standards and agreements.

39. With respect to the Act on Financial Transactions and Accounting of Non-Profit Organizations, the Government states that the complainant's allegation is not correct, as according to the Article 37 of the Act, the obligation to publish the annual financial reports shall not apply to trade unions and employers' associations. It is also provides that trade unions and employers' associations may submit their annual financial reports to parties concerned if that does not violate their free and independent functioning.

## **B – Assessment of the Committee**

40. The Committee firstly notes that 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 the Committee holds that there is no violation of Article 5 of the 1961 Charter on this ground.

41. Regarding the other allegations namely the cancelling of the 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), the Committee recalls 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 Committee considers that 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. Therefore the Committee will confine its examination of the issue whether the Government's intervention in collective bargaining in 2012 was justified under the 1961 Charter, under Article 6§2.

## II. ALLEGED VIOLATION OF ARTICLE 6 OF THE 1961 CHARTER

42. Article 6 of the 1961 Charter reads as follows:

### Article 6 – The right to bargain collectively

Part I: “All workers and employers have the right to bargain collectively.”

Part II: “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;
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;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise:

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.”

## PRELIMINARY CONSIDERATIONS

43. The Committee considers that the core of the complaint is the allegation of Government interference in collective bargaining which relates to Article 6§2 of the 1961 Charter. It notes that the *Matica Hrvatskih Sindikata* makes numerous other allegations, some not particularly well substantiated and peripheral, and has failed to provide sufficient information on the legal and factual situation. Therefore the Committee will examine the part of the complaint relating to Article 6§2 first, and the other allegations relating to Article 6 of the 1961 Charter subsequently.

### Article 6§2 –Collective bargaining

#### A – Arguments of the parties

##### 1. The complainant organisation

44. *Matica Hrvatskih Sindikata* states that the employment status/terms and conditions of service of persons employed in the public services in Croatia is primarily regulated by a Basic Collective Agreement for Civil Servants and Employees in Public Services as well as by branch collective agreements.

45. In February 2012, according to *Matica Hrvatskih Sindikata* the Government adopted a budget which failed to provide for sufficient funds for the fulfilment of Government obligations assumed under the Basic Collective Agreement for Civil Servants and Employees in Public Services dated October 2010 (BCA 2010) and branch collective agreements. Therefore it initiated negotiations in June 2012 with public service trade unions in order to either cut salaries or withdraw certain



allowances. However, no agreement could be reached as the unions requested that any allowances cancelled or cuts to salaries be reinstated once economic conditions were more favourable.

46. The Government refused to accept the proposal of the trade unions and at the beginning of August 2012 it announced the cancellation of the BCA. During the entire period preceding the cancellation, there were no negotiations to seek to reach a compromise between the Government and the trade unions.

47. *Matica Hrvatskih Sindikata* states that the Government illegally cancelled the BCA dated 4 October 2010 in December 2012.

48. On 12 December 2012 the Government signed with the minority of public service trade unions a new Basic Collective Agreement for Civil Servants and Employees in Public Service (Official Gazette No. 141/2012) as well as its Addendum I, by which the parties agreed, temporarily, for the year 2013, to reduce/waive some of the benefits of those employed in public services (holiday allowance, Christmas bonus, etc.).

49. However, branch collective agreements for certain public service sectors still remained in force, and contained similar or almost identical provisions on allowances for example, as the cancelled BCA. Employees in public services, through the application of the principle "*in favorem laboratoris*" (in favour of the worker), notwithstanding the cancellation of the BCA, therefore still had the right to receive allowances which had been suspended by the agreed Addendum I to the new BCA (annual Christmas bonus and holiday allowance). According to *Matica Hrvatskih Sindikata* in order to deprive the employees of their aforementioned rights, the Government, contrary to obligations in collective agreements and contrary to the nature and purpose of concluding collective agreements, and to international sources of labour law and, without any negotiations or notifications whatsoever, on 20 December 2012 passed the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012). This was only the first in a series of regulations on withdrawing the rights agreed in collective agreements.

50. *Matica Hrvatskih Sindikata* maintains that the above mentioned act is a direct attack on collective bargaining which is guaranteed by the 1961 Charter.

51. The Government justified the measures taken with reference to the economic situation, in particular the need to reduce the public debt. However, *Matica Hrvatskih Sindikata* states these reasons were irrelevant and unjustified. Firstly the economic situation had not deteriorated since the 2010 BCA was adopted. Secondly, *Matica Hrvatskih Sindikata* disputes that austerity measures will in any way improve the economic situation. Finally, it states that a recession cannot be a valid excuse for derogating from, inter alia, international obligations.

52. *Matica Hrvatskih Sindikata* argues that by the adoption of the Act on Withdrawal of Right to Salary Increase Based on Years of Service (Official Gazette No. 41/2014, No. 154/2014), the Government derogated from provisions of branch collective agreements in health system and primary, secondary and higher education and science with the same explanation as when passing the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012). *Matica Hrvatskih Sindikata* states that the Government by this Act reduced the basic pay of workers with more than 20 years of service.

53. *Matica Hrvatskih Sindikata* alleges that the cancellation of collective agreements, both the BCA 2010 and branch level agreements (such as the collective agreement for Research and Institutions of Higher Education), demonstrates a breach of the right to collective bargaining.

54. *Matica Hrvatskih Sindikata* also alleges that the Government has not treated all persons employed in the public sector the same way. It removed the payment of certain allowances and bonuses to employees in the public services, but it did not proceed in the same way with employees in the other part of the public sector which is owned by the State, i.e. in trading companies and other legal persons majority-owned by the State.

55. *Matica Hrvatskih Sindikata* maintains that modifications were made to the criteria for establishing representativity during the period prior to the adoption of the BCA from 2012 by the Act on Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining (Official Gazette Nos. 82/2012 and 88/2012) which had gave minority unions/small unions increased power in collective bargaining. Although the legislation was subsequently modified it was in force during the negotiations of the BCA 2012 with the effect that the BCA was signed by unions representing only a third of all employees in the public service, although it is applied to all employees in the public service.

## **2. The respondent Government**

56. The Government describes the economic backdrop to the circumstances that give rise to the complaint; constant decrease in GDP, constant increase in the rate of unemployment and decrease in the standard of living. The unemployment rate had increased from 11.8% in 2010, 13.5% in 2011 and to 19.4% in early 2012. These unfavourable economic trends led to a weak fiscal situation and at the end of 2011 the share of public debt of the GDP amounted to 46.7% and in 2012 55.5%. Therefore in order to ensure fiscal consolidation it was necessary to take measures to reduce Government spending.

57. Consequently the Government entered into negotiations with the public service trade unions and proposed amendments to the BCA. The BCA for public services is negotiated upon and applied to the following fields of public services: social welfare, primary and secondary education, science, higher education and culture (in 2012 covering 166,306 public servants, out of which more than a half in health care and education sectors).

58. Eight negotiation meetings were held from 4 June to 16 July 2012.

59. Proposed amendments were aimed at reducing or temporarily suspending the following rights:

- the right to a Christmas bonus in 2012;
- the right to a holiday bonus in 2013;
- the right to "jubilee awards" in 2013, except for employees who had been employed for more than 35 years and were retiring in the year to which they were entitled to the bonus;
- travelling allowances would be reduced from 170 Croatian kuna (HRK) to 150 HRK;
- and the method of reimbursement of transport costs to and from work would be calculated differently.

60. During the negotiations on the amendments to the BCA, which were aimed at avoiding wage adjustments, four of the eight representative trade unions who had signed the BCA confirmed that they would accept the proposed amendments; the other four refused to accept them, requesting that the Government commit itself to paying the funds to the public servants in the future. The Government refused to undertake this obligation since it was impossible to predict the dynamics of future economic recovery, but it was open to negotiations when the necessary economic conditions were attained.

61. In accordance with the provisions of the Labour Act (Official Gazette No. 758/95) in such cases a conciliation procedure is obligatory, but the conciliation was unsuccessful.

62. The BCA itself envisaged the possibility of bringing the dispute before arbitration and therefore the Government, on the proposal of the four trade unions who had signed the proposed BCA amendments, on 17 July 2012, suggested arbitration to the trade unions who had refused to sign the amendments. On 19 July 2012 it appointed its representatives to the arbitration council, while constantly inviting the trade unions to reach an agreement. The trade unions that had refused to sign the amendments sent a written rejection of the arbitration settlement of the dispute, stating that arbitration was not mandatory.

63. Section 23 of the BCA 2010 provided that the Agreement can be cancelled in writing by both parties in the event of economic circumstances have significantly changed, after the party cancelling the Agreement had proposed amendments to the other party beforehand, with a notice period of three months. Having exhausted all possibilities of coming to an agreement, on the basis of Section 23 of the BCA, the Government on 17 September 2012 took the decision to revoke the BCA for public service employees with a notice period of three months. The Government maintains that the conditions and procedure for cancellation of the BCA were fulfilled and therefore the cancellation was legal.

64. Prior to the repeal of the BCA 2010, the Government initiated negotiations on the conclusion of a new BCA, the text of which would not significantly differ from the text of the original BCA; with the exception of the issue of the reimbursement of transport costs. The issues of the Christmas bonus, holiday bonus and jubilee award would be agreed in an Annex to the BCA. The new BCA, with an Annex I, was signed on 12 December 2012. Collective bargaining was conducted with the bargaining committee of the trade unions established in accordance with the Act on the Criteria for Participation in Tripartite Bodies and the Representativeness for Collective Bargaining, which entered into force in the meantime (28 July 2012). It was signed by a total of six out of 11 representative trade unions.

65. With respect to the allegation that the Government signed collective agreement with the minority trade unions it points out, first of all, that on the basis of Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), workers and employers, without distinction whatsoever, are guaranteed the right to organise, as a basic precondition of the realisation of the freedom of association and freedom to bargain collectively.

66. Despite the conclusion of the new BCA and Annex I (agreement to reduce or temporarily suspend some material benefits), pursuant to the principles in the Labour Act where more favourable provisions are in existence these should be applied, therefore the more favourable provisions found in branch/sectorial collective agreements continued to be operative.

67. Further, the Government points out that civil servants had negotiated their collective agreement with the Government on 2 August 2012. In Annex I of the collective agreement, inter alia, they agreed that for civil servants, the Christmas bonus would not apply in 2012 and 2013; the holiday bonus and jubilee award would not apply in 2013; and travelling allowances would be reduced from HRK170 to HRK150 (the same that was offered to the public service employees).

68. Civil servants in this case were, in practice, discriminated against. As a result, the Government decided to apply the provisions contained in Annex I of the collective agreement applying to civil servants to public service employees and enacted the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012).

69. This decision was taken in order to urgently maintain the fiscal stability of the public service system under the deteriorating economic conditions and to achieve a balance in the rights of both categories of officials.

70. In order to bring the branch collective agreements in line with the BCA, the Government entered into negotiations at the beginning of 2013 with representative trade unions of each public service (in health care, social welfare, culture and primary and secondary education sectors). In 2013, a collective agreement was concluded for the health-care sector. Collective agreements for the social welfare, culture and primary and secondary education sectors were all concluded in 2014.

71. By 2016, only branch collective agreements for science and higher education had not been concluded, although the Government entered into negotiations with the complainant organisation in May 2013.

72. The Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) is no longer in force as from 1 January 2016.

73. Moreover, according to the Government the Act on the Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining of 28 July 2012, is no longer in force, as a new Act on Trade Unions and Employers Associations Representativeness was adopted in July 2014 and entered into force on 7 August 2014.

74. The new Act was prepared in close cooperation and after numerous consultations with all representative social partners at the national level (four representative trade union confederations, including the complainant, and the Croatian Employers Association (CEA), and with professional assistance of experts from ILO and national experts, as was the previous one of 2012.

75. Although the Act on the Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining adopted in 2012, is no longer in force, the Government sets out the circumstances preceding its adoption. It states that negotiations for a law which would regulate the criteria for establishing the representativeness of higher-level employers' and trade union associations for participation in tripartite bodies on the national level, as well as the criteria for establishing representativeness of trade unions for collective bargaining, began in 2008, four years prior to the adoption of the Act on the Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining.

76. The Government maintains that it tried to reach an agreement on a text however, this was not possible.

77. After a series of meetings and consultations with social partners, the Act on the Criteria for Participation in Tripartite Bodies and the Representativeness for Collective Bargaining was adopted and entered into force on 28 July 2012.

78. Furthermore, the Government argues that data indicates that the implementation of the Act did not, in practice, negatively affect collective bargaining. For example, in the period of 28 months starting from the application of the Act, 57 new collective agreements applicable to the whole country and 60 amendments to applicable collective agreements were signed, not including the number of new collective agreements and amendments signed in this period and applicable only at local level.

79. As regards the allegation that the Government suspended some rights only of certain public service employees, but not of the rest of the public sector owned by the State, the Government states that salaries and rights of employees in trading companies and other legal persons owned by the State are not paid out of the state budget. Accordingly, the Government is not a party to their collective agreements. Each collective agreement for each respective company is negotiated between management and representative trade unions.

## **B – Assessment of the Committee**

### **Representativity**

80. As regards *Matica Hrvatskih Sindikata's* complaint that modifications were made to the criteria for establishing representativity; during the period prior to the adoption of the BCA 2012 by the Act on Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining (Official Gazette No. 82/2012 and 88/2012) which gave minority unions/small unions increased power in collective bargaining, the Committee recalls that it is open to States Parties to require trade unions to meet an obligation of representativeness subject to certain general conditions. With respect to Article 6§2 of the 1961 Charter such a requirement must not excessively limit the possibility of trade unions to participate effectively in collective bargaining. In order to be in conformity with Article 6§2, the criteria of representativeness should be prescribed by law, should be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusals.

81. Regarding the specific complaint the Committee is not convinced that this is meant to be an allegation of a separate violation as such, rather circumstances aggravating the alleged violation consisting in the cancellation of the BCA 2010 and the adoption of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012). Few arguments have been adduced stating why this Act violated the 1961 Charter. It further notes that the legislation in question; the Act on Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining (Official Gazette Nos. 82/2012 and 88/2012) has been repealed and was not in force at the time of the lodging of the complaint and no longer continues to have any effects.

82. Therefore the Committee holds that there is no violation of Article 6§2 of the 1961 Charter on this ground per se.

**Cancellation of BCA 2010 and subsequent adoption of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012)**

83. The Committee recalls that the exercise of the right to bargain collectively guaranteed by Article 6§2 of the 1961 Charter, represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter, including for example those relating to just conditions of work (Article 2), safe and healthy working conditions (Article 3), fair remuneration (Article 4). In addition, the Committee notes that the right to collective bargaining receives constitutional recognition at national level in the vast majority of the Council of Europe's member States, as well as in a significant number of binding legal instruments, in additions to the European Convention on Human Rights, at the United Nations and EU level. In this respect, reference is made inter alia to Article 8 of the International Covenant on Economic, Social and Cultural Rights (see §33 above), the relevant provisions of the ILO Conventions Nos. 87 and 98 as well as the EU Charter of Fundamental Rights.

84. The Committee recalls that on the basis of Article 6§2 of the Charter "Contracting Parties (...) undertake not only to recognise, in their legislation, that employers and workers may settle their mutual relations by means of collective agreements, but also actively to promote the conclusion of such agreement if their spontaneous development is not satisfactory and, in particular, to ensure that each side is prepared to bargain collectively with the other (...)" (Conclusions I - 1969, Statement of Interpretation on Article 6§2; see also Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, §§110-111).

85. The Committee notes that the ILO Committee on Freedom of Association has stated that “The suspension or derogation by decree – without the agreement of the parties – of collective agreements freely entered into by the parties violates the principle of free and voluntary collective bargaining established in Article 4 of Convention No. 98. If a government wishes the clauses of a collective agreement to be brought into line with the economic policy of the country, it should attempt to persuade the parties to take account voluntarily of such considerations, without imposing on them the renegotiation of the collective agreements in force” (ILO Digest 2006, §1008). Further it has held that “While the Committee appreciates that the introduction of wage restraint measures must be timed in order to obtain the maximum impact on the economic situation, it nevertheless considers that the interruption of already negotiated contracts is not in conformity with the principles of free collective bargaining because such contracts should be respected” (ILO Digest 2006, §1009).

86. The Committee considers that 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. It notes that 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 notes that *Matica Hrvatskih Sindikata* contests the Governments arguments that the economic situation had changed, and that therefore the conditions for cancellation were satisfied. However, the Committee considers that this is *prima facie* a matter for the domestic courts to determine whether the conditions for cancellation of the BCA were met. However 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.

87. The Committee notes that 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 Committee therefore considers that 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.

88. It recalls that it has previously held (in the context of the private sector) that direct state intervention in the collective bargaining process is a very serious measure which could only be justified according to the relevant conditions laid down in Article 31 of the 1961 Charter (Conclusions XII-1 (1991)). The Committee has also stated that “certain limitations on the right to collective bargaining of public employees, may not be incompatible with the Charter, but where a general agreement has been concluded and duly adopted by the authorities – as in the given case – any unilateral interventions into its terms could only be justified with reference to Article 31” (Conclusions XI-1, Spain (2000)).



89. The Committee notes in the instant case that 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. The Committee finds, however, that 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. The Committee recalls 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 to be 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)).

90. Therefore the Committee holds that there has been a violation of Article 6§2 of the 1961 Charter on this ground.

## **Article 6§1 – Adequate consultation**

### **A – Arguments of the parties**

#### **1. The complainant organisation**

91. *Matica Hrvatskih Sindikata* refers to the Committee's conclusion under the reporting system in 2010 (Conclusions XIX-3) under Article 6§1 of the 1961 Charter, where it found that Croatia failed to ensure consultation covering all areas of mutual interest.

92. *Matica Hrvatskih Sindikata* alleges that the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) and the Act on Withdrawal of Right to Salary Increase Based on Years of Service (Official Gazette No. 41/2014, 154/2014), were adopted without proper consultation in violation of Article 6§1 of the 1961 Charter. These pieces of legislation were not discussed by Economic and Social Council as they had not been included in the annual plan of activities of the Council.

## **2. The respondent Government**

93. The Government states that the Economic and Social Council (ESC) held 10 meetings in 2012 while the ESC Commissions (working bodies) held a total of 44 sessions.

94. In 2012 the Economic and Social Council and Commissions reviewed more than 80 draft laws and sub-laws. Social partners participated in the work of various working groups for drafting legislative proposals.

95. The Government states that public policies, national strategies, draft laws, regulations, programs and other documents pursuant to the Government Annual Plan of activities shall be considered by the Economic and Social Council or the relevant working bodies, in accordance with the Work Programme of the Council.

## **B – Assessment of the Committee**

96. The Committee recalls that within the meaning of Article 6§1, joint consultation is consultation between employees and employers or the organisations that represent them (Conclusions I (1969), Statement of Interpretation on Article 6§1). Such consultation can take place within tripartite bodies provided that the social partners are represented in these bodies on an equal footing.

97. Consultation must take place on several levels: national, regional/sectorial and should take place in the private and public sector (including the civil service). Consultation must cover all matters of mutual interest, and particularly: productivity, efficiency, industrial health, safety and welfare, and other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.).

98. However, the Committee recalls that it held in *Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, decision on the merits of 9 May 2005, §39, which concerned the failure of a government to consult representative trade unions on a draft law or decree, 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.”

99. Therefore the Committee holds that there is no violation of Article 6§1 of the 1961 Charter.

## **Article 6§3 – Conciliation**

### **A – Arguments of the parties**

#### **1. The complainant organisation**

100. *Matica Hrvatskih Sindikata* alleges that the conciliation procedures in place are not effective. It states that the Labour Act provides for a short period for mediation of no longer than five days, including non-working days and holidays which does not favour a successful conciliation procedure. The Labour Act also provides the possibility for arbitration in case of labour disputes, but according to *Matica Hrvatskih Sindikata* this is rarely used.

#### **2. The respondent Government**

101. The Government states that there is a framework for the peaceful settlement of collective, as well as individual labour disputes.

102. As regards the prescribed period of five days, including non-working days and holidays, which the complainant organisation believes is too short, the Government states that the conciliation procedure provided for by the Labour Act and the Ordinance on the method of selection of conciliators and the conduct of the mediation in collective labour disputes, must be completed within five days, except if the parties to the dispute reach an agreement on a different deadline for the completion of the conciliation procedure.

103. According to Section 12 of the Ordinance on the method of selection of conciliators and the conduct of the mediation in collective labour disputes, the parties to the dispute may at any time by mutual agreement propose to the conciliator the suspension of the conciliation procedure in order to enable them to resolve the dispute themselves. The suspension of the procedure in turn suspends the deadline of five days for conciliation proceedings.

104. As regards arbitration, pursuant to Article 210 of the Labour Act, parties to a dispute may agree to bring their collective labour dispute before an arbitration body, the appointment of an individual arbitrator or an arbitration board and other issues related to the arbitration procedure may be regulated by collective agreement or by an agreement of the parties after the dispute has arisen.

## **B – Assessment of the Committee**

105. The Committee recalls that according to Article 6§3 of the 1961 Charter, conciliation, mediation and/or arbitration procedures must be instituted to facilitate the resolution of collective conflicts. They may be instituted by law, collective agreement or industrial practice. Article 6§3 applies also to the public sector.

106. Article 6§3 applies to conflicts of interest, i.e. generally conflicts which concern the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in an existing collective agreement. It does not concern conflicts of rights, i.e. conflicts related to the application and interpretation of a collective agreement, or to political disputes.

107. The Committee finds in the instant case that 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, the Committee notes, be extended) has in reality hampered conciliation.

108. Therefore the Committee holds that there has been no violation of Article 6§3 of the 1961 Charter.

## **Article 6§4 – The right to strike**

### **A – Argument of the parties**

#### **1. The complainant organisation**

109. The Labour Act in Article 269 provides that trade unions or their higher level associations have the right to call and undertake a strike in order to, among other things, promote and protect the economic and social interests of their members. However Article 205 of the current Labour Act and Article 4 of the Act on Trade Unions and Employers Associations Representativeness appear to limit the right of higher level associations to initiate a strike. In practice the right to strike has been restricted to cases where the dispute concerns salaries, more particularly the non-payment of salaries.

110. Even in situations when a trade union is authorized to initiate and undertake a strike, there are, according to *Matica Hrvatskih Sindikata* many difficulties. *Matica Hrvatskih Sindikata* states that the Croatian Medical Union on 18 September 2013 initiated a strike of doctors in healthcare institutions. On 14 November 2013 the Government adopted a decision “introducing a work obligation” requiring doctors to return to work in health care facilities. The decision was unconstitutional and illegal. This was confirmed by the Constitutional Court which held that the Government, by introducing work obligation for doctors, illegally interfered with the right to strike of health care workers and thereby prevented them from exercising their constitutional right.

## **2. The respondent Government**

111. The Government denies *Matica Hrvatskih Sindikata*'s allegation that higher level trade unions are not authorised to call a strike, and that consequently, the right to strike is limited. Article 205 of the Labour Act provides that in the event of any dispute related to conclusion, amendment or renewal of a collective agreement, the right to call and undertake a strike belongs to the trade unions which have been determined as representative, under specific provisions, for collective bargaining and which have negotiated the collective agreement.

112. Article 4 of the 2014 Act on Trade Unions and Employers Associations Representativeness, provides that representative union organisations of a higher level participating in tripartite bodies at national level, shall have the right to participate in collective bargaining over collective agreements covering employees who work for employers which are members of a higher-level employer organisation.

113. Since they may be deemed as representative for collective bargaining, in the event of any dispute related to conclusion, amendment or renewal of a collective agreement which they have negotiated, representative union organisations of a higher level are entitled to call a strike.

### **B – Assessment of the Committee**

114. The Committee notes that several allegations have been made regarding a breach of Article 6§4 of the 1961 Charter. As regards the allegation that doctors were required to return to work during a strike in 2013, the Committee recalls that any back to work order amounts to a serious interference in the right to strike. However the Committee also recalls that the right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article 31 of the 1961 Charter i.e. are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. Prohibiting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, i.e. “energy” or “health” – is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4.

115. The Committee considers that as it has very little information about the circumstances or details of the strike, or even the “back to work order”, only that the Constitutional Court found that the Government had illegally interfered with the right to strike in this respect. In these circumstances the Committee finds that it does not have sufficient information to examine the allegation.

116. The Committee finds that the other allegations are also too vague and unsubstantiated to examine.

117. The Committee considers that 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. The Committee recalls that it has held 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). However, the Committee notes that it is a matter of dispute between the parties as to whether a higher level organisation may call a strike and under what conditions. The Committee notes in this respect that the ILO addressed a Direct Request to Croatia on this issue asking the Government to clarify the matter (Direct Request adopted 2015).

118. The Committee finds that it does not have sufficient 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 restriction has been the subject of any court decisions,

119. The Committee holds therefore that there is no violation of Article 6§4 of the 1961 Charter.

## CONCLUSION

For these reasons, the Committee concludes:

- unanimously that there is no violation of Article 5 of the 1961 Charter;
- by 13 votes to 1 that there is a violation of Article 6§2 of the 1961 Charter;
- by 13 votes to 1 that there is no violation of Article 6§1 of the 1961 Charter;
- by 13 votes to 1 that there is no violation of Article 6§3 of the 1961 Charter;
- by 12 votes to 2 that there is no violation of Article 6§4 of the 1961 Charter.



Marit FROGNER  
Rapporteur



Giuseppe PALMISANO  
President



Henrik KRISTENSEN  
Deputy Executive Secretary