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

23 November 2015

Case Document No. 2

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

**OBSERVATIONS BY
THE EUROPEAN TRADE UNIONS CONFEDERATION
(ETUC)**

Registered at the Secretariat on 17 November 2015

Collective Complaint

Matica Hrvatskih Sindikata v. Croatia

Complaint No. 116/2015

(17/11/2015)

Observations by the European Trade Union Confederation (ETUC)

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- 1 In availing itself of the opportunity provided in the Collective Complaints Procedure Protocol (CCPP - Article 7§2) the European Trade Union Confederation (ETUC) would like to submit the following observations. While welcoming the fact that Croatia has ratified the Collective Complaints Procedure Protocol (CCPP) the ETUC would invite the Government to take the appropriate steps to ratify the Revised European Social Charter (in accordance with a series of documents adopted in Council of Europe¹).
- 2 The main content of the complaint is described by the ESC Secretariat as follows:

The complaint registered on 24 March 2015, relates to Articles 5² (the right to organise) and 6 (the right to bargain collectively) of the European Social Charter (“the 1961 Charter”). The complainant organisation, MATICA, Association of Croatian public sector unions, alleges that the Act No. 143/2012 on Withdrawal of Certain Material Rights of the Employed in Public Services implemented by the Government of Croatia on 20 December 2012, was adopted in violation of the above provisions of the Charter.

I. International law and material

- 3 The ETUC would like to add pertinent references to international law and material to the description provided in the complaints.³

A. United Nations (UN)

- 4 In interpreting and applying the ICESCR the CESCR takes trade union rights seriously by i.a. referring to ILO standards, recent examples being:

The Committee calls upon the State party to bring its legislation on trade union rights into line with international standards on the right to form and join the trade union of one’s choice. The Committee invites the State party to ratify **International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)** and **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**.⁴ (Emphasis added)

The Committee urges the State party to ensure to the employees in both the private and public sectors the effective enjoyment of the right to freely form and join trade unions, as well as the right to strike. While noting the draft law on strikes of 2013, the Committee recommends that the State party limit the prohibition against striking for public sector employees by narrowing

¹ For example, in its ‘Declaration’ on the 50th anniversary of the European Social Charter (Adopted by the Committee of Ministers on 12 October 2011 at the 1123rd meeting of the Ministers’ Deputies) the Committee of Ministers ‘calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so’ (para. 2).

² Articles without further indication relate to the 1961 European Social Charter (ESC).

³ As to legal impact of the ‘Interpretation in harmony with other rules of international law’ see the ETUC Observations in No. 85/2012 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden - [Case Document no. 4, Observations by the European Trade Union Confederation \(ETUC\)](#), paras. 32 and 33.

⁴ [E/C.12/VNM/CO/2-4 \(CESCR, 2014\)](#).

the definition of “essential services” so that it complies with the Covenant and relevant **International Labour Organization** standards.⁵ (Emphasis added)

The Committee recommends that the State party remove through the draft Labour Code the existing limitations on the right to strike and the right to collective bargaining, in particular by considering mediation as an alternative and not a condition for a strike, and ensure that the prohibition against striking for civil servants does not exceed the **ILO definition** of essential services.⁶ (Emphasis added)

- 5 In the same vein, the Human Rights Council also pays tribute to ILO standards in relation to trade union rights:

The Special Rapporteur recommends that the Government ... :

(a) ... ratify International Labour Organization Conventions Nos. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise and 98 (1951) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; ...⁷

B. International Labour Organisation (ILO)

- 6 This appears all the more important as this Article 6 ESC is based on the ILO Conventions Nos. No. 87⁸ and 98⁹, both of which form part of the eight fundamental rights conventions within the ILO and have been ratified by Croatia. They are described in their content below in the order according to the structure of Article 6 ESC.¹⁰ Therefore, in the ETUC's understanding the protection offered by these Conventions should be considered as guaranteeing a minimum level of protection when defining the content of Article 6 ESC.
- 7 More generally, freedom of association belongs to the 'hard core' of the human rights Conventions within the framework of the ILO. This has been recognised by and was even one of the founding principles for the ILO Constitution¹¹ itself expressed in its preamble referring to the “recognition of the principle of freedom of association” being reconfirmed in the Declaration of Philadelphia of 1944 (“effective recognition of the right of collective bargaining”).
- 8 Moreover, the International Labour Conference 1998 has adopted - as a sort of important 'evidence' - the "ILO Declaration on fundamental principles and rights at work"¹². Among the

⁵ [E/C.12/SRB/CO/2 \(CESCR, 2014\)](#)

⁶ [E/C.12/ALB/CO/2-3 \(CESCR, 2013\)](#).

⁷ [A/HRC/25/55/Add.1 \(HRC, 2013\)](#), § 107.

⁸ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Convention concerning Freedom of Association and Protection of the Right to Organise (Entry into force: 4 July 1950).

⁹ Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (Entry into force: 18 July 1951)

¹⁰ Article 6§2 relates to Convention No. 98 and Article 6§4 relates to Convention No. 87.

¹¹ Article 1(1) “A permanent organization is hereby established for the promotion of the objects set forth in the Preamble to this Constitution and in the Declaration concerning the aims and purposes of the International Labour Organization adopted at Philadelphia on 10 May 1944, the text of which is annexed to this Constitution.”

¹² ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up - Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010) - <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

four main subjects of human rights in the labour field the first is defined as "freedom of association and the effective recognition of the right to collective bargaining". This was reaffirmed by the "ILO Declaration on Social Justice for a Fair Globalization" (2008)¹³ constituting "a compass for the promotion of a fair globalization based on Decent Work". This Declaration is particularly important in the framework of this complaint dealing with one important aspect of (the consequences of) globalisation.

- 9 The relevant case-law of the Committee of Experts on the Application of Conventions and Recommendation (CEACR) is contained in particular in its General Survey 2012¹⁴ as well as in the respective individual observations concerning specifically Croatia. The case-law of the Committee on Freedom of Association is summarised in its Digest of 2006.¹⁵

1. ILO Convention No. 98

a) General statements

- (1) Committee of Experts on the Application of Conventions and Recommendations (CEACR)

- 10 As a principle the CEACR stressed:

51. Freedom of association and collective bargaining, which are now set out in most of the constitutions of member States, are of vital importance for the social partners, as they enable them to establish rules in the field of working conditions, including wages, to pursue more general claims and to reconcile their respective interests with a view to ensuring lasting economic and social development. In the Committee's opinion, strong and independent workers' organizations are essential to compensate the legal and economic inferiority of workers.

- 11 Generally speaking, the CEACR General Survey (2012) states:

198. Under the terms of the ILO Declaration on Fundamental Principles and Rights at Work, 1998, collective bargaining is a fundamental right accepted by Member States from the very fact of their membership in the ILO, and which they have an obligation to respect, to promote and to realize in good faith. ... The **agreements** so concluded must be respected and **must be able** to establish **conditions of work more favourable** than those envisaged in law: indeed, if this were not so, there would be no reason for engaging in collective bargaining.¹⁶ (Emphasis added)

¹³ "drawing on and reaffirming the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998) in which Members recognized, in the discharge of the Organization's mandate, the particular significance of the fundamental rights, namely: freedom of association and the effective recognition of the right to collective bargaining, ..."

¹⁴ ILO, International Labour Conference, 101st Session, 2012, Report III(1B): Giving globalization a human face, General Survey on the fundamental Conventions concerning rights at work in light of the Declaration on Social Justice for a Fair Globalization, 2008, ILC.101/III/1B referred to as 'General Survey 2012'.

¹⁵ ILO, Freedom of Association - Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition, Geneva 2006, referred to as CFA Digest 2006.

¹⁶ General Survey 2012, see above note 14, § 198.

- 12 The intervention into existing collective agreements is considered as contrary to the principles of promotion of collective bargaining such as the 'Free and voluntary negotiation and autonomy of the parties'

Under the terms of Article 4 of the Convention, collective bargaining must be free and voluntary and respect the principle of the autonomy of the parties. However, the public authorities are under the obligation to ensure its promotion. Interventions by the authorities which have the effect of **cancelling or modifying the content of collective agreements** freely concluded by the social partners would therefore be **contrary to the principle of free and voluntary negotiation**.¹⁷ (Emphasis added)

- 13 As regards representativity the CEACR extensively describes the requirements in terms of content and procedure.¹⁸

(2) *Committee on Freedom of Association*

- 14 The CFA is clear in stating that any intervention into existing collective agreements is not permissible by referring to the principle that

State bodies should refrain from intervening to alter the content of freely concluded collective agreements.¹⁹

and by specifying it in relation to the derogation of collective agreements:

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.²⁰

In any case, any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the workers' and employers' organizations in an effort to obtain their agreement.²¹

b) Statement concerning Croatia

- 15 In its most recent Observations²² the CEACR criticised the situation in Croatia (on the basis of information by other sources than the - missing - Government's report, see above para. 37) in the following terms:

¹⁷ General Survey 2012, see above note 14, § 200.

¹⁸ General Survey 2012, see above note 14, §§ 224 – 237.

¹⁹ CFA, Digest 2006, see above note 15, § 1001.

²⁰ CFA, Digest 2006, see above note 15, § 1008.

²¹ CFA, Digest 2006, see above note 15, § 988.

²² Observation - adopted 2014, published 104th ILC session (2015), Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Croatia (Ratification: 1991) - Follow-up to the discussion of the Committee on the Application of Standards (International Labour Conference, 103rd Session, May–June 2014); these Observations concern also further elements relevant to this complaint, however they do not yet contain a clear decision by the CEACR.

The Committee notes from the information provided by the Government to the Conference Committee that this law is no longer in force, that it is standard procedure to adopt annually an act on the realization of the state budget, and that the Act on the Realization of the State Budget of the Republic of Croatia for 2014 was recently adopted but not yet translated into one of the ILO working languages. **The Committee requests the Government to provide a copy of the aforementioned Act and underlines the importance of ensuring that any future Act on the Realization of the State Budget does not enable the Government to modify the substance of collective agreements in force in the public service for financial reasons.**

2. ILO Convention No. 87

a) Committee of Experts on the Application of Conventions and Recommendations (CEACR)

16 Concerning the right to strike the CEACR has in the past recognised this right as deriving from Convention No. 87 and reaffirmed it i.a. in its General Survey 2012:

Strikes are an essential means available to workers and their organizations to protect their interests ...

The Committee reaffirms that the right to strike derives from the Convention. The Committee highlights that the right to strike is broadly referred to in the legislation of the great majority of countries and by a significant number of constitutions, as well as by several international and regional instruments, which justifies the Committee's interventions on the issue. Indeed, the principles developed by the supervisory bodies have the sole objective of ensuring that this right does not remain a theoretical instrument, but is duly recognized and respected in practice....²³

b) Committee on Freedom of Association (CFA)

17 Concerning back-to-work orders the CFA stated:

Whenever a total and prolonged strike in a vital sector of the economy might cause a situation in which the life, health or personal safety of the population might be endangered, a back-to-work order might be lawful, if applied to a specific category of staff in the event of a strike whose scope and duration could cause such a situation. However, a back-to-work requirement outside such cases is contrary to the principles of freedom of association.²⁴

18 As regards damages the CFA is of the opinion that

[t]he Committee could not view with equanimity a set of legal rules which: (a) appears to treat virtually all industrial action as a breach of contract on the part of those who participate therein; (b) makes any trade union or official thereof who instigates such breaches of contract liable in damages for any losses incurred by the employer in consequence of their actions; and (c) enables an employer faced with such action to obtain an injunction to prevent the commencement (or continuation) of the unlawful conduct. The cumulative effect of such provisions could be to deprive workers of the capacity lawfully to take strike action to promote and defend their economic and social interests.²⁵

²³ General Survey 2012, see above note 14, §§ 117 and 119.

²⁴ CFA, Digest 2006, see above note 15, § 634.

²⁵ CFA, Digest 2006, see above note 15, § 664.

- 19 According to the CFA the right to call strikes may be limited in relation to local branches on the understanding that the higher levels retain their prerogatives:

The Committee has considered to be in conformity with the principles of freedom of association a situation where the decision to call a strike in the local branches of a trade union organization may be taken by the general assembly of the local branches, when the reason for the strike is of a local nature and where, in the higher-level trade union organizations, the decision to call a strike may be taken by the executive committee of these organizations by an absolute majority of all the members of the committee.²⁶

C. Council of Europe

1. European Convention on Human Rights (ECHR)

- 20 In recent times, the European Court of Human Rights (ECtHR) has developed an important jurisprudence on Article 11 ECHR on the freedom of association.

- 21 The most important judgment was delivered unanimously by the Grand Chamber in the *Demir and Baykara*²⁷ case which reversed the Court's previous jurisprudence by recognising for the first time the right to collective bargaining as being enshrined in the protection of freedom of association guaranteed by Article 11 ECHR. Based on this judgment the Third Section has also recognised in *Enerji Yapı-Yol Sen*²⁸ the right to strike as an aspect of the same human right. This was followed by a series of further judgments²⁹.

a) Concerning collective bargaining

- 22 Indeed, the ECtHR recognised the right to collective bargaining also in the public service in the following terms:

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 paragraphs 106-07 above).³⁰

- 23 Moreover, the ECtHR found that the impugned interference, namely the annulment ex tunc of the collective agreement entered into by the applicants' union following collective bargaining

²⁶ CFA, Digest 2006, see above note 15, § 562.

²⁷ ECtHR (Grand Chamber [GC]), 12.11.2008, no. 34503/97 *Demir and Baykara v. Turkey* [2008] ECHR 1345.

²⁸ ECtHR 21.4.2009, no. 68959/01 *Enerji Yapı-Yol Sen v. Turkey*.

²⁹ ECtHR 15.9.2009, no. 30946/04 *Kaya and Seyhan v Turkey*, 15.9.2009, no. 22943/04 *Saime Özcan v. Turkey*, 13.7.2010, no. 33322/07 *Çerikci v. Turkey* (see also 27.3.2007, no. 6615/03 *Karaçay v. Turkey*).

³⁰ ECtHR, *Demir and Baykara*, see above note 27, § 154.

with the authority was not “necessary in a democratic society”, within the meaning of Article 11 § 2 of the Convention.³¹

b) Concerning the right to strike

24 In addition to the *Enerji Yapi-Yol Sen* and subsequent judgments (see above para. 21) recognising, in principle, the right to strike even to civil servants it should be noted that the Court recently dealt with the specific situation of Croatia in relation to the legislation on the right to strike. Indeed, the ECtHR in its judgment *Hrvatski Liječnički Sindikat (HLS)*³² had criticised the restrictions to the right to strike. It is specifically important to note that the ECtHR in particular recognised the right to strike of doctors:

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.³³ (Emphasis added)

25 More generally, in the Concurring Opinion describes the situation comprehensively in relation to the international law material to be taken into account.

2. Concerning austerity measures

26 Besides the ECSR several other CoE bodies have addressed the serious problem of the impact of austerity measures on human rights in general and fundamental social rights in particular. The following list of material is neither exhaustive nor substantive in the sense that general sources are coupled with relevant quotations.

a) The ‘Turin process’

27 This approach is also part of the “Turin process”³⁴ aimed at reinforcing the Charter and its impact. This is demonstrated by Theme I “The role of the European Social Charter in affirming social rights during the crisis period and the crisis exit phase” of the Turin Conference in October 2014 the results of which are summarised by the General Report, established by Mr Michele Nicoletti, Vice-President of the Parliamentary Assembly of the Council of Europe.³⁵

28 Moreover, the Conference on the future of the protection of social rights in Europe organised in Brussels, 12-13 February 2015 led to a final document (elaborated by a group of academic

³¹ ECtHR, *Demir and Baykara*, see above note 27, § 169.

³² ECtHR, 27.11.2014 – No. 36701/09 – *Hrvatski Liječnički Sindikat (HLS) v. Croatia*

³³ ECtHR, *Hrvatski Liječnički Sindikat*, see above note 32, § 59.

³⁴ <http://www.coe.int/en/web/turin-process/>.

³⁵ High-Level Conference on the European Social Charter - Turin, 17 - 18 October 2014 - General Report, 2015, pp. 26 ff. <http://www.coe.int/T/DGHL/Monitoring/SocialCharter/GENERAL%20REPORT%20FINAL%20EN%20a%20vec%20annexes%20ET%20couverture%20%283%29.pdf>

experts).³⁶ This ‘Brussels’ Document on the Future of the Protection of Social Rights in Europe Brussels’, once again addresses austerity measures (“1. Protecting Social Rights in the Time of Crisis”).

b) Parliamentary Assembly (PACE)

29 The PACE adopted numerous resolutions and recommendations on the economic crisis, in particular Resolution 1884(2012) Final version – “Austerity measures – a danger for democracy and social rights” (26 June 2012) and more recently Resolution 2032(2015) - “Equality and the crisis” (28 January 2015).

30 More specifically and in the framework of the Turin Conference the Sub-Committee on the European Social Charter stated that many austerity programmes were not in line with European Social Charter.³⁷

c) Other bodies

31 The CDDH indirectly considered the question of social rights in its draft feasibility study on “The impact of the economic crisis and austerity measures on human rights in Europe” (CDDH(2014)017, 4 November 2014).

32 Several other monitoring bodies, such as the Committee for the Prevention of Torture (CPT) and the European Commission against Racism and Intolerance (ECRI), have addressed the impact of the economic crisis on human rights within the margins of their specific mandates.

33 The Council of Europe Commissioner for Human Rights has published an Issue Paper on “Safeguarding human rights in times of economic crisis” (November 2013).³⁸

34 Examining austerity measures and their implications in relation to the ESC an International Legal Research Group found that the situation in Croatia was not in conformity with Articles 5 and 6:

However, even though Croatia guarantees its citizens the right to a fair social dialogue, the right to collective bargaining has been severely affected by the austerity measures. Only in the first four months of 2015, Croatian Government passed two new Acts that restrict workers’ rights from collective agreements; the Act on deprivation of rights to a wage increase based on actual years of service⁴⁹ and the Act on deprivation of payment of certain material rights of employees working in the public service⁵⁰. With this legislation, Croatian Government is nullifying the payment of certain material rights for public employees agreed in the collective agreements. Some of the workers’ rights that were cancelled are the right to receive Christmas bonus and the right to receive payment of recourse for using the annual leave for 2015. The official explanation on why is Croatian legislator cancelling workers’ right

³⁶ [the ‘Brussels’ Document’, http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Doc_Bruxelles_version_EN_FR_DEF.pdf](http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Doc_Bruxelles_version_EN_FR_DEF.pdf)

³⁷ See [Statement by PACE Sub-committee on the European Social Charter](#)

³⁸ See his Human Rights Comment “[Youth human rights at risk during the crisis](#)” (6 March 2014). The CoE Human Rights Commissioner drew attention to the negative impact of the crisis not only on the social and economic rights of young people, but also on “their right to equal treatment, their right to participation, and their place in society, and more broadly, in Europe”.

guaranteed even in the Constitution of the Republic of Croatia is that those measures are necessary due to the change in the economic situation for the year 2015.³⁹

⁴⁹ Act on deprivation of rights to a wage increase based on actual years of service, 2015 (Zakon o uskrati prava na uvećanje plaća po osnovi ostvarenih godina radnog staža)

⁵⁰ Act on deprivation of payment of certain material rights of employees working in the public service, 2015 (Zakon o uskrati isplate pojedinih materijalnih prava zaposlenima u javnim službama)

II. The law

A. General considerations

1. The problem of non-reporting

35 From the outset, the ETUC would like to stress the utmost importance of fulfilling the Government's requirement to report in the regular intervals on the implementation of its obligations under the ESC, under the relevant ILO Convention No. 98 and under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Conversely to this precondition of a proper functioning of the monitoring activities The Government of Croatia has failed to do.

36 Indeed, in its last Conclusions XX-3 concerning i.a. Article 6 the European Committee of Social Rights (ESCR or the Committee) had to state the following:

Croatia did not submit a report and therefore the Committee was unable to reach any conclusions on its conformity with the relevant provisions for this cycle. The Committee notes the failure of Croatia to respect its obligation, under the Charter, to report on the implementation of this treaty. Under the circumstances the Committee considers that there is nothing to demonstrate that the situation in Croatia as regards the provisions concerned is in conformity with the 1961 Charter.

37 Also, under the heading of 'Case of serious failure' the Conference Committee of the Application of Standards (CAS) of the 103rd International Labour Conference (2014) of the ILO had to state :

The Committee urged the Governments of ... Croatia, ... to make all efforts to transmit as soon as possible the required information. The Committee decided to note these cases in the corresponding paragraph of the General Report.

38 Finally, concerning the ICESCR with its important Article 8 on trade union rights the second report of Croatia is due since 30 June 2006 and therefore also missing.

39 In conclusion, the Government of Croatia is seriously undermining the supervisory systems of all relevant international monitoring bodies dealing with the most important social rights such as trade union rights. This neglecting attitude has also a direct negative bearing on this complaint because it prevents the Committee to examine the whole situation concerning

³⁹ International Legal Research Group on Social Rights - Final Report, Austerity measures and their implications. The role of the European Social Charter in maintaining minimum social standards in countries undergoing austerity measures, July 2015. http://www.coe.int/T/DGHL/Monitoring/SocialCharter/LRG_Social_Rights_Final_Report_EN.pdf, p. 330.

trade union rights and collective bargaining in the reporting system and - as aggravating circumstances also in relation to this complaint - take into account the evaluation of the (possibly criticised) situation by other international bodies.

2. Concerning the complaint

a) Scope

40 Although the complaint mentions violations of Article 5 it would appear that the complaint mainly focuses on Article 6. This conclusion appears to be particularly justified in relation to mainly three issues related to Article 5. First, the question of non-consultation will be dealt with under Article 6§1 (see below para. 45). Second, infringing on trade union rights by a new (draft) law is only referred to as an ‘aggravating circumstance’ and in relation to consultation. Moreover, the final content of the adopted law⁴⁰ in relation to trade union rights is not yet clear from the complaint. Third, although usually dealt with under Article 5 the question of representativeness which is not only closely related to Article 6§2 but has been addressed by the complainant also under this heading and will therefore be dealt with accordingly (see below para. 55).

b) Content

41 The content of the complaint leaves relevant elements still open. First and foremost, the translation of the pertinent legislation is missing. Moreover, certain other elements would not yet appear sufficiently specified (see, for example, paras. 63, 67, 75 and 76). Therefore, the ETUC would request to be granted another possibility to submit observations as soon as the complainant organisation as well as the Government have submitted their observations.

3. Principles on austerity

42 To deal with austerity measures in times of crises is not a new challenge for the ECSR. Indeed, it has already concluded and reaffirmed it in its decision GENOPI-DEI and ADEDY that:

the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.

In addition, doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems, particularly social assistance, unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection.

These general principles ... are taken into account in the assessments made by the Committee in the part concerning the alleged violation of the articles of the 1961 Charter.⁴¹

⁴⁰ Act of 15 July 2014 on Representativeness of Employer Associations and Trade Unions (according to ILO NATLEX).

⁴¹ ECSR, Decision on the merits, 23 May 2012, *GENOP-DEI and ADEDY v Greece*, Complaint No 65/2011; see for an in-depth analysis of the two decisions *C Deliyanni-Dimitrakou*, ‘La Charte sociale européenne et les mesures d’austerité grecques: à propos décisions nos 65 et 66/2012 du Comité

43 Additionally, in accordance with its previous practice, the ECSR should take account of the different statements and other documents dealing more recently with austerity measures and in particular in relation to the Council of Europe (see above paras. 26 ff.).

4. Protection against regression by Article 31

44 Besides this general approach there is a specific legal issue under Article 31. The ECSR has addressed this problem by denying it the status of an admissible complaint basis. However, the ETUC would, once again, express the opinion that even if this article cannot be raised on its own as admissible it requires nevertheless, on a more concrete basis, an in-depth justification and examination of all restrictions in relation to social rights.⁴² Thus, reduction in the already achieved level of protection of social rights with reference to the economic crisis must meet the test of specific justification regarding human rights restrictions (principle of proportionality).

B. Article 6§1

1. Content of the complaint

45 The complaint refers to the problem of consultation in the following terms:

By the Conclusion of the European Committee of Social Rights from December 2010 Number XIX-3 (2010), and regarding the Economic and Social Council in the Republic of Croatia, consisting of representatives of the Government, higher level employers association and higher level trade union associations, established with the goal of protecting and promoting economic and social rights respectively interests of workers and employers, pursuing a harmonized economic, social and development policy, as well as promoting, concluding and implementing collective agreements, it was established that the situation in the Republic of Croatia is not in accordance with Article 6 Paragraph 1 of the European Social Charter since the system of mutual consultations covering all areas of mutual interest is not yet established. ...

That the situation in the Republic of Croatia did not change after passing the aforementioned Conclusion of the European Committee of Social Rights either, is proven by the fact that the Government of the Republic of Croatia on December 20th 2012 passed the controversial Act on Withdrawal of Material Rights as well as subsequently the Act on Withdrawal of Right to Salary Increase Based on Years of Service (Official Gazette No. 41/2014, 154/2014). Namely, by the Act on Withdrawal of Right to Salary Increase Based on Years of Service by 4, 8 and 10 percent, the Government once again, by its direct actions, derogated 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. This time the Government went a step further and by the aforementioned Act it reduced the basic pay of workers with more than 20 years of service.

From all the aforementioned it is evident that in the Republic of Croatia the basic principles of the rule of law are not respected nor the bodies established with the goal of improving

européen des droits sociaux fondamentaux' (2013) 7–8 *Revue du Droit du Travail* 457. In its most recent 'General Introduction' to Conclusions 2013 and XX-2 the ECSR again refers to this case law.

⁴² In respect of social rights there is usually a distinction in the terminology between 'restriction' of a right and 'regression' or of a 'fall-back' to an already achieved level of a so-called dynamic (or progressive) right. As argued below, while there might be a difference in the terminology, there should not be difference in the substance.

social dialogue as one of the most important democratic values of the society and the basic precondition for joint actions in achieving defined goals and reaching consensus on the further development of the Croatian society.

The question arises, in accordance with the Conclusion of the Committee, why the Government does not discuss with its social partners all questions of influence and importance for all parties, regardless of the importance of individual topics for various parties, but the work of the Economic and Social Council is based solely on primary issues of economic and social policy, respectively, whether the trade unions *have* an influence on solving economic and social issues at tripartite level.

2. Case-law of the Committee

46 Generally speaking the Committee has defined the content of Article 6§1 in the following terms as regards tripartite consultation:

Within the meaning of Article 6§1, joint consultation is consultation between employees and employers or the organisations that represent them.⁴³ Such consultation can take place within tripartite bodies provided that the social partners are represented in these bodies on an equal footing.⁴⁴

If adequate consultation already exists, there is no need for the state to intervene. If no adequate joint consultation is in place, the state must take positive steps to encourage it.⁴⁵

Consultation must take place on several levels: national, regional/sectoral. It should take place in the private and public sector (including the civil service).^{46 47} ...

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.).^{48 49} ...

47 As the ECSR had no chance to examine the conformity of the situation in Croatia with the RESC requirements in its most recent Conclusions, the assessment in Conclusions XIX-3 will be referred to as still pertinent:

Matters for joint consultation

The Committee understands from the report that joint consultation in the above mentioned **tripartite bodies** concerns primarily matters related to economic and social policy.

The Committee reiterates that 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.) (Conclusions I, Statement of

⁴³ Conclusions I, Statement of Interpretation on Article 6§1, pp. 34-35.

⁴⁴ Conclusions V, Statement of Interpretation on Article 6§1, p. 41.

⁴⁵ *Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41.

⁴⁶ Conclusions III, Denmark, Germany, Norway, Sweden, p.33.

⁴⁷ *Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41.

⁴⁸ Conclusions I, Statement of Interpretation on Article 6§1, pp. 34-35.

⁴⁹ Conclusions V, Ireland, pp. 42-43.

Interpretation on Article 6§1 and Conclusions V, Ireland). It thus requests the next report to clarify whether this is the case. Meanwhile, it cannot establish whether joint consultation covers all matters of mutual interest.

Conclusion

The Committee concludes that the situation in Croatia is not in conformity with Article 6§1 of the Charter as it has not been established that joint consultation covers all matters of mutual interest. (Emphasis added)

3. Assessment

48 As demonstrated by the complaint, the Government has not or not sufficiently consulted trade unions in the legislative process.

49 Concerning non-consultation the complaint mentions two important examples:

- Act on Withdrawal of Certain Material Rights of the Employed in Public Services⁵⁰ as well as subsequently the
- Act on Withdrawal of Right to Salary Increase Based on Years of Service.⁵¹

50 As regards insufficient consultation the complaint describes the situation as to the bill on Financial Transactions and Accounting of Non-Profit Organizations criticising in particular that it was neither evident nor explained why the Act applies to trade unions and employers which are not funded from the state budget.

51 Concerning both Acts there is a violation of Article 6§1 because the consultation process does not cover all relevant issues at least in practice. The Committee should also come to the same conclusion as regards incomplete information in the consultation process of the bill mentioned above. The concept of 'consultation' necessarily presupposes all relevant information (e.g. the targeted and comprehensive description of the reasons for specific legislation).

52 In conclusion, it is suggested that the Committee concludes that Article 6§1 has been violated on the account that consultation of trade unions was either totally absent or insufficient in relation to relevant and important legislation.

C. Article 6§2

1. Content of the complaint

53 The main issue of the complaint is the alleged violation of the obligation to promote collective bargaining in accordance with Article 6§2. The complaint raises several issues in this respect:

a) Annulment of collective agreements

54 The complaint states:

⁵⁰ Official Gazette No. 143/2012.

⁵¹ Official Gazette No. 41/2014, 154/2014.

The Republic of Croatia, abruptly and without a *valid* explanation, cancelled collective agreements in vital areas for the functioning of the state and thereby *overthrew* provisions on promoting the resolution of conditions of employment by means of collective agreements.

The culmination of the autocracy of the State lies in cancelling all branch collective agreements in the education system (primary and secondary education as well as science and higher education).

On its session of December 12th 2013 the Government decided to cancel collective agreements in education and science and thus, after seven months of intensive negotiations, for the first time since it was agreed in 1998, the Collective Agreement for Research and Institutions of Higher Education was cancelled, and negotiations are still ongoing.

As the primary reason for cancelling the aforementioned collective agreement in the science and higher education sector emphasized is the considerably worsened economic situation, and among other reasons the following are quoted: trade unions' refusal to delete all provisions which are already agreed by the Basic Collective Agreement, failure to reach an agreement on the list of jobs for employees in scientific-educational profession, failure to reach an agreement on the size of lecture groups, expenses payment problem, respectively tuition fee for postgraduate doctoral studies for assistants employed in the sector, failure to reach an agreement on special working conditions.

Every of the aforementioned reasons, apart from payment of expenses for postgraduate doctoral studies for assistants, is completely untrue. It is evident that the authorities had the intention to cancel the *Collective Agreement*, at all costs, so it *even* stated false reasons. The real reason for such a proceeding of the Government is the complete collapse of the economic politics with the consequence of a repeatedly poor filling of the state budget urging the Government to further cutting of indispensable expenses such as, for example, transport costs in education system as well as various fringe benefits. In this way the Government obviously endeavoured to achieve savings regardless of the severe damages which are thereby caused to the education system, one of the vital functions of this society crucial for the further development of the Republic of Croatia, whereby savings achieved in this way are really minimal.

By such proceeding the current authorities have once again shown that the principle *pacta sunt servanda* is valid solely for the chosen ones and demonstrated their power by showing that the Government can negotiate and agree but that the agreed can also be unilaterally abolished by means of the law. The principle that agreements must be respected is valid solely when, for example, agreeing the purchase of official vehicles for the Government and the Parliament worth 271,1 million Kuna in the middle of the procedure of cancelling branch collective agreements, while in case of public servants it is no problem whatsoever to derogate the collective agreement by means of the law exactly due to lack of funds in the state budget. The seriousness of the situation is increased by the fact that salaries in the education sector are lower than salaries in all other sectors and by the Act on Withdrawal and the Act on Withdrawal of Right to Salary Increase Based on Years of Service that level is additionally lowered and this for employees who are giving the largest contribution to the society as a whole.

b) Representativeness

55 Concerning the legislation on representativeness the complaint highlights:

At the time of passing the Act on Withdrawal one of the aggravating factors for actions in accordance with Article 6 of the European Social Charter was the at that time valid Act on Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining (revised text of the Act, Official Gazette No. 82/2012 and 88/2012). Namely, by the aforementioned Act, passed shortly before the legal derogation of rights agreed by collective agreements, the Government completely destroyed the system of collective bargaining. By that Act the stability of collective agreements was completely excluded. It was anticipated that the procedure of establishing representativeness can be initiated by the employer as well which is an absolutely unacceptable interference with the rights of trade unions. Namely, by the aforementioned Act special, different criteria were set for establishing representativeness of a trade union gathering a certain percentage of member workers of the same profession and occupation (so called craft unions) meaning that unions in accordance with that Act did not have equal conditions for representativeness thus enabling unions with a small number of members to participate in collective bargaining. The result of these legal provisions is the conclusion of the Basic Collective Agreement dated December 12th 2012 and its Addendum I which, after the unjustified cancellation of the BCA of October 04th 2010, was signed by just six trade unions of public services representing solely one third of membership in public services and which due to the institute of extended application is obligatory for all employees in public services.

2. Case-law of the Committee

56 In its Conclusions XIX-3 the Committee was not yet able to assess the situation as regards the legislation and practice from 2012 onwards. However, there are important principles in its case-law based either on decisions on the merits or summarised in its Digest 2008⁵² which are worth recalling:

a) Principles

57 The Committee has established important principles for the interpretation of Article 6§2 summarised in the decision in the *LO/TCO v. Sweden*⁵³ case as follows:

109 From a general point of view, the Committee considers that the exercise of the right to bargain collectively and the right to collective action, guaranteed by Article 6§§2 and 4 of the 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), information and consultation (Article 21), participation in the determination and improvement of the working conditions and working environment (Article 22), protection in cases of termination of employment (Article 24), protection of the workers' claims in the event of the insolvency of their employer (Article 25), dignity at work (Article 26) workers' representatives protection in the undertaking and facilities to be accorded to them (Article 28), information and consultation in collective redundancy procedures (Article 29).

110 In addition, the Committee notes that the right to collective bargaining and action 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 at the United

⁵² Digest of the Case Law of the European Committee of Social Rights, 1 September 2008, http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf, referred to as ECSR, Digest 2008.

⁵³ Decision on admissibility and the merits 03/07/2013 - No. 85/2012 – *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*

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 paragraph 37 above), the relevant provisions of the ILO conventions Nos. 87, 98 and 154 (see paragraph 38 above) as well as the EU Charter of Fundamental Rights, Directive 2006/123/EC on services in the internal market (cf. Article 157) and the Directive 2008/104/EC on temporary agency work - recital 19 (see paragraphs 36 above).

111 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). The Committee also considers that the States should not interfere in the freedom of trade unions to decide themselves which industrial relationships they wish to regulate in collective agreements and which legitimate methods should be used in their effort to promote and defend the interest of the workers concerned.

58 Moreover, it should be recalled that in the *EuroCOP v Ireland*⁵⁴ case the Committee concluded:

186. Taking note of the essential role of pay bargaining for the purposes of Article 6, the Committee considers that the legislation and practice fails to ensure the sufficient access of police representative associations into pay agreement discussions. The Committee consequently holds that there is a violation of Article 6§2 of the Charter.

b) *Annulment of collective agreements*

59 In the most recent Conclusions XIX-3 the Committee had already held that the situation in Croatia was not in conformity with the requirements of Article 6§2 and had asked for further clarifications:

In its previous conclusion (Conclusions XVIII-1), the Committee asked the Government to clarify whether there are regulations allowing for a participation of employees in the public sector in the determination of their working conditions. The report does not provide information in this regard.

The Committee however notes from another source¹ that the 1993 Act on the Realisation of the Government Budget allows the Government to modify the substance of a collective agreement in the public sector, if there are not sufficient funds in the budget to meet all the financial obligations arising from that agreement. Moreover, according to the same source, the Act on Salaries in Public Services also limits collective bargaining rights in the public sector to basic salaries only. In this regard, the Committee notes that within the framework of ILO, again in 2009, the Committee of Experts on the Application of Conventions and Recommendations (CEACR)² reiterated its request to the Croatian Government to comment on both of the above statements (i.e. that the Government may modify the substance of a collective agreement in the public sector for financial reasons and that public sector workers can negotiate on their basic salaries only). The Committee asks the Government to clarify the situation in this regard. Meanwhile, it has not been established that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them.

⁵⁴ Decision on admissibility and the merits 02/12/2013 - No. 83/2012 - *European Confederation of Police (EuroCOP) v. Ireland*

Conclusion

The Committee concludes that the situation in Croatia is not in conformity with Article 6§2 of the Charter on the ground that it has not been established that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them.⁵⁵

c) Representativeness

60 The ECSR Digest 2008 states:

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 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.⁵⁶

3. Assessment

a) Annulment of collective agreements

61 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:

- the ILO case-law (see above paras. 12, 14 and 15); this is all the more important as the previous Conclusions XIX-3 (see above para. 59) had actually referred to the ILO case-law in this respect,
- the jurisprudence of the ECtHR in relation to Article 11 ECHR in general (see above paras. 22 and 23),
- the principles (see above para. 57) as well as the specific statements on the annulment of collective agreements (see above para. 59) by the Committee
- the importance of securing fundamental social rights in times of crisis (see above para. 26),
- the non-regression principle (see above paras. 26 - 33).

62 In conclusion, the ETUC would suggest that the Committee should conclude that the Government has not ensured the satisfactory application of Article 6§2 by enacting legislation which on the one hand allows to declare or directly declares certain collective agreements or certain parts thereof invalid and/or Government's decisions to the same effect.

⁵⁵ Conclusions XIX-3 – Croatia – Article 6§2

⁵⁶ ECSR, Digest 2008, p. 51.

b) Representativeness

63 There are different elements in the complaint which relate to the procedure and the criteria to define the representativeness of trade unions. However, they would not yet appear to be sufficiently specified as to allow a final assessment. In any event, when examining the substance the Committee should take into account the relevant case-law of the ILO (see above para. 13).

D. Article 6§3

1. Content of the complaint

a) General description

64 Besides the description of the normal framework for conciliation the complaint refers to the following problems:

It often seems that the conciliation procedure in collective labour disputes is conducted more for the sake of appearance and not with the goal of achieving a sustainable and fair agreement with the mediation of a third neutral party. In addition, the Labour Act establishes a short period for mediation of no longer than *five* days, including non-working days and holidays. The aforementioned deadline does not *favour* the conciliation procedure, respective conducting the required consultations and finding a mutually acceptable solution.

It is by all means positive that in 50 percent of initiated procedures for peaceful settlements of labour disputes an amicable settlement was achieved but it is also worrying that a significant number of disputes still ends unsuccessfully, respectively that, during the year, identical situations are recurring in a certain number of cases. The Labour Act also defines the possibility of arbitrary resolution of labour disputes, but till now this option remained without an apparent effect, and this situation is not to be accepted as a permanent condition.

The aforementioned solution should be encouraged more in such a way that the provisions on arbitrary settlement of labour disputes are included in collective agreements or special agreements between parties. Such a way of resolving contentious issues is *very* efficient and acceptable for both sides, but in the Republic of Croatia it is still not sufficiently fostered. With an agreed procedure of arbitrary resolution of disputes, cases of solely formally conducting conciliation procedures in accordance with the Labour Act (which is the most often case in the Republic of Croatia), unnecessary lawsuits would be substantially reduced, which due to duration are additionally elevating the tension between a trade union and an employer, thereby directing parties to waste their energy on consequences instead on basic issues of solving the cause of the problem.

b) Problems with new Labour Code having entered in August 2014

65 Besides the description of the normal framework for conciliation the complaint refers to the following problems:

We are emphasizing that by the proposal of the new Labour Act which entered into force in August 2014 only one conciliation procedure on the same dispute was foreseen. In this way the Government, instead of encouraging the possibility of mediation for all the aforementioned reasons, intended to limit the conciliation procedure and thereby risked the possibility of resolving disputes solely through industrial actions which, ultimately, are not

the best way of dispute resolution. It is in the interest of the Government to allow better conciliation possibilities, even a multiple repetition, instead of risking the discontent of trade unions resulting in industrial actions.

2. Case-law of the Committee

66 The Committee has defined the general content of Article 6§3 as follows:

According to Article 6§3, conciliation, mediation and/or arbitration procedures should be instituted to facilitate the resolution of collective conflicts. They may be instituted by law, collective agreement or industrial practice.⁵⁷ Such procedures should also exist for resolving conflicts which may arise between the public administration and its employees.¹⁸⁴

3. Assessment

67 Mirroring the information provided for in the complaint against the principle described by the Committee it would appear that there is a discrepancy. However, at this stage it does not yet appear that there is sufficient information in order to assess whether there is a violation.

E. Article 6§4

1. Content of the complaint

68 Besides the general description of the very difficult situation in the private sector in general and the SMEs in particular the complaint highlights three situations in relation to Article 6§4 which are of particular importance:

a) Back to work order

69 The first problem relates to 'back to work' orders by the Government:

Even in those situations when a trade union is authorized to initiate and undertake a strike, there are many difficulties. An example for the aforementioned is the Croatian Medical Union which on September 18th 2013 initiated the strike of physicians in health institutions. On November 14th 2013 the Government of the Republic of Croatia adopted the Decision on the introduction of work obligation for medical doctors in hospital health care facilities. That decision is unconstitutional and illegal, because it has no legal basis and there is a clear constitutional limitation which was ultimately confirmed by the Constitutional Court of the Republic of Croatia in its explanation that the Government, by introducing work obligation for medical doctors, illegally interfered with the strike of health care workers and thereby prevented them in exercising their constitutional right.

b) Claims for damages by employers

70 The second problem deals with the financial consequences of strikes:

In general, trade unions in the Republic of Croatia were damaged to a great extent for initiating and conducting a strike, taking into consideration solely the common basis for conducting the same, which was also crystalized through case law. Even though by the Labour Act (Official Gazette No. 149/2009, 61/2011, 82/2012, 73/2013), Article 269, it is stated that trade unions or their higher level associations have the right to call and

⁵⁷ Conclusions I, Statement of Interpretation on Article 6§3, p. 37. ¹⁸⁴ Conclusions III, Denmark, Germany, Norway, Sweden, p. 33.

undertake a strike in order to, among other, promote and protect" the economic and social interests of their members, practice has proven that the sole legitimate reason for initiating a strike is salary, respectively salary compensation in case of their non-payment within 30 days of their maturity date.

c) Level of trade union organisation entitled to call a strike

71 Finally, the question at which levels strike can be initiated is described in the following terms:

The valid Labour Act, by Article 205, is additionally limiting the right to initiate a strike, in which higher level trade union associations are no longer cited along with the trade union as a subject authorized to call a strike.

2. Case-law of the Committee

72 Concerning its scope of examination of national case-law the Committee states:

... case law of domestic courts is closely examined in order to verify whether the courts rule in a reasonable manner and in particular whether their intervention does not reduce the substance of the right to strike so as to render it ineffective.^{58 59}

73 In general terms, the Committee defines the groups entitled to call a strike as follows:

The decision to call a strike can be taken only by a trade union provided that forming a trade union is not subject to excessive formalities.⁶⁰ On the contrary, 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§4.⁶¹

3. Assessment

74 As regards the 'back-to-work' order referred to in the complaint one might at first glance be tempted to find less problems in as much as doctors are normally considered to be part of the 'essential services' and thus strikes might be limited and back-to-work orders possibly be justified. Taking however the ECtHR's judgment in the *Hrvatski Liječnički Sindikat (HLS)* case (see above para. 24) into account it is not any more possible to argue on the former basis. Conversely, the recourse to such measures is limited as for other groups of strikers (see above para. 17). This appears to be confirmed by the national Constitutional Court's jurisprudence. Therefore, Article 6§4 has been violated by this order.

75 Concerning the claims for damages which trade unions are facing in the event of a strike the information provided in the complaint hints to serious problems in this respect. However, there is not yet sufficient precise information as to the cases, the amount of financial claims etc. which would allow a final assessment at this stage.

76 Finally, the level of trade union organisations permitted to call a strike are obviously restricted. Again, this raises serious problems as to the limitation of the right to strike. However without the translation of the relevant provision and more information as to the

⁵⁸ [footnote 174 in the original text:] Conclusions I, Statement of Interpretation on Article 6§4, p. 38.

⁵⁹ [footnote 175 in the original text:] Conclusion XVII-1, Netherlands, p. 317.

⁶⁰ [footnote 178 in the original text:] Conclusions 2004, Sweden, pp. 565-566.

⁶¹ [footnote 179 in the original text:] Conclusions XV-1, France, pp. 254-257.

concrete cases it would also not appear possible to finally assess the situation in relation to Article 6§4.

III. Conclusions

77 This case is of great importance. It would appear that it is for the first time that the Committee will have to deal with the consequences of austerity measures in relation to collective rights.⁶² The approach which will be taken by the Committee will have great impact on the future of the protection of collective rights in times of crisis (possibly also beyond the framework of the ESC).

78 The ETUC has described certain problems in relation to the complaint (see above para. 41). The ETUC would therefore request

to be granted a further possibility to submit observations following the observations to be submitted by the complainant organisation as well as the Government.

79 Reserving its final assessment accordingly, the ETUC would nevertheless suggest that already at this stage the Committee would find a violation in relation to

- Article 6§1 (see above para. 52),
- Article 6§2 (see above para. 62),
- Article 6§4 (see above para. 74).

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⁶² It will be recalled that the complaints against Greece could not deal with Articles 5 and 6 as they have not been accepted by Greece.

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