



The right to strike in the public services

Croatia



The right to strike in the public services: Croatia

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This factsheet reflects the situation in January 2021. It was elaborated and updated by Diana Balanescu (independent expert), reviewed by EPSU/ETUI and sent to EPSU affiliates for comment.

1. Legal basis

International level

Croatia has ratified:

UN instruments¹

International Covenant on Economic, Social and Cultural Rights

(ICESCR, Article 8)

International Covenant on Civil and Political Rights

(ICCPR, Article 22)

ILO instruments²

Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise
(ratification on 8 October 1991)

Convention No. 98 concerning the Right to Organise and to Bargain Collectively
(ratification on 8 October 1991)

Croatia has not ratified:

Convention No. 151 concerning Labour Relations (Public Service)

Convention No. 154, Collective Bargaining Convention, 1981

European level

Croatia has ratified:

Article 6(4) (the right to collective action) of the European Social Charter of 1961³
with no reservations (ratification on 26 February 2003 and entry into force on 28 March 2003)

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints⁴
(ratification on 26 February 2003 and entry into force on 1 April 2003)

Article 11 (the right to freedom of assembly and association) of the European Convention on Human Rights⁵
(ratification and entry into force on 5 November 1997)

National level

The Constitution of Croatia

Article 60 of the Constitution of the Republic of Croatia⁶ guarantees the right to strike with some restrictions as follows: 'The right to strike shall be guaranteed. The right to strike may be restricted in the armed forces, the police, the civil service and public services as specified by law.'

Applicable laws

- **In general** : Article 205(1) of the Labour Act⁷ provides that: '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 non-payment of remuneration or compensation, or a part thereof, if they have not been paid by their maturity date.'
- **Specific laws for certain sectors**: Article 220 of the Labour Act provides that: 'Strikes in the armed forces, police, public administration and public services shall be regulated by specific provisions.' For example, the right to strike is restricted by specific laws based on the Constitution for the active military personnel and police officers in some circumstances,⁸ e.g. the Police Act and the Act on Service in the Armed Forces (see section 4 below).
- Croatian **case law** is not very extensive. As indicated above, the right to strike is explicitly recognised by the Constitution and ordinary statutory law.⁹
- The role of **collective agreements** is to provide for measures to be taken during a strike in order to ensure that 'minimum services' are maintained. Article 214 of the Labour Act provides for 'Rules applicable to activities which must not be interrupted'. The trade union and the employer prepare and adopt an agreement on rules applicable to the maintenance of production activities and essential activities which must not be interrupted during a strike or lockout. Accordingly, the social partners must agree on the provision of **minimum services** (for a detailed analysis, see section 4 below).
- The collective agreement for state civil servants and employees which is applied to all public employees, stipulates that, in the event of collective labour dispute that could result in a strike, a mediation procedure is to be carried out pursuant to the provisions of the Labour Act and the Ordinance on the method of selecting the mediators and the employment dispute mediation procedure¹⁰. This collective agreement provides a possibility for resolving disputes by arbitration. Where the parties agree to arbitration, but otherwise fail to agree on the structure and procedure for arbitration, the rules applicable to activities which must not be stopped specified in the provisions of the Labour Act will be applied. Where a ban on strike in a certain public service is determined by law, a collective dispute will be brought before an arbitration body.¹¹

2. Who has the right to call a strike?

The right to strike in Croatia is an exclusive **right of trade unions**.¹² According to the Labour Act, only trade unions 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 non-payment of remuneration or compensation, or a part thereof, if they have not been paid by their maturity date.¹³

In the event of a dispute with the employer or employers' association on the conclusion, amendment or renewal of a collective agreement, the right to call and stage a strike belongs only to trade unions that have been determined to be **representative** for the purposes of collective bargaining.¹⁴ Their representativeness is determined in accordance with the Act on Representativeness of Employer Organisations and Trade Unions.¹⁵

In accordance with the provisions of the Labour Act, a **trade union** may be established by a minimum of 10 adult persons with legal capacity. The union is required to adopt articles of association, acquiring legal personality on the date of its entry in the register of associations.¹⁶

The application for registration is filed by its founders and must be accompanied by the deed of foundation, the minutes taken at the founding assembly, the articles of association, the list of founders and members of the executive body, and the full name(s) of the person(s) authorised to represent the association. The registering body must issue a decision on the application for registration in a register of associations no later than 30 days from the date of filing of the application,¹⁷ although, in practice, this decision is issued well within that period.¹⁸

In its Conclusions XXI-3 (2018), the European Committee of Social Rights concluded that the situation in Croatia was **not in conformity** with Article 6(4) of the Charter on the ground that the right to call a strike is reserved only to trade unions and the time frame for registering a trade union, which may take up to thirty days, infringes the right to strike (see section 7 below).¹⁹

3. Definition of a strike

The Labour Act establishes the following types of strike action:

- 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 non-payment of remuneration or compensation (Article 205(1) of the Labour Act);
- In the event of any dispute related to the conclusion, amendment or renewal of a collective agreement, a strike may be called and undertaken by trade unions which have been determined as **representative**, under specific provisions, for collective bargaining and conclusion of a collective agreement and which have negotiated the conclusion of a collective agreement (Article 205(2) of the Labour Act);
- A **solidarity strike** must be announced to the employer on whose premises it is organised.²⁰ 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 support of which it is organised.²¹

The Labour Act expressly provides for the above-mentioned types of strike action. There are no explicit legal provisions on other types of collective action such as **warning strikes, sit-ins, go-slow action, rotating strikes, work-to-rule action, picketing** or **blockades**.

4. Who may participate in a strike?

Article 60 of the Constitution guarantees the right to strike with some restrictions. However, only trade unions have the right to call a strike.²² According to the Labour Act, a worker must not, by any means, be coerced into participating in a strike,²³ which means that a worker is free to choose whether or not to participate in a strike.

Limitations to the right to strike

According to Article 60 of the Constitution, 'The right to strike may be restricted in the armed forces, the police, the civil service and public services as specified by law.' Moreover, Article 220 of the Labour Act provides that: 'Strikes in the armed forces, police, public administration and public services shall be regulated by specific provisions.'

In its 2006 national report to the European Committee of Social Rights (ECSR), Croatia noted that the legislator has not made use of this authorisation with respect to employees in public administration and the public services who therefore have an unrestricted right to strike in accordance with the provisions of the Labour Act.²⁴

The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) took note that all public servants, with exception of those employed in the health sector, can exercise their trade union rights without any special restrictions. As regards the **health sector**, Section 198 of the 2018 Health Care Act prohibits strikes in emergency services and its Section 199(1) provides that in healthcare activities of healthcare institutions strikes must not begin before a mediation procedure (see section 7 below).²⁵

Active military personnel do not have the right to form trade unions or to strike,²⁶ while civil servants and employees in the **armed forces** can form trade unions in accordance with general labour regulations, but may not organise a strike in the event of a state of war or an imminent threat to the independence, unity or existence of the State, which is directly related to preparedness measures or to the combat readiness of the armed forces or which threatens the vital functions of the armed forces.²⁷

Article 39(1) of the Act on Police provides that **police officers** shall not have the right to strike in case of: (1) war or imminent danger to the independence and unity of the state; (2) armed mutiny, uprising and other forms of violent endangerment of the constitutional order of Republic of Croatia or fundamental freedoms and human rights of citizens; (3) announced natural disaster or direct danger from its appearance on the territory of two or more counties or on the whole territory of Republic of Croatia; (4) other disasters or accidents interfering with the normal life and endangering the security of people and property.²⁸

Essential services/activities

Under Article 214 of the Labour Act, upon a proposal by the employer, the trade union and the employer prepare and adopt an agreement on *rules applicable to the maintenance of production activities* and *essential activities* which must not be interrupted during a strike or lockout.

Such rules include, in particular, provisions concerning activities and the number of workers who must perform such activities during a strike or lockout, with the aim of enabling the restoration of regular work immediately after the strike ('the maintenance of production activities'), or with the aim of performance of work which is essential for the prevention of **risks to life, personal safety or health of the population** ('essential activities').

The Labour Act explicitly states that the definition of the activities referred to above must not deny or substantially restrict the right to strike.²⁹ It could be said that the Croatian Labour Act offers little more than a general definition of essential services. It does not, for example, provide a list of essential services, and the determination of such services is subject to the agreement of the parties or the decision of an arbitration body in cases where the parties fail to reach agreement, pursuant to the procedure described below. It should be noted that '**essential services**' in the strict sense of the term have been defined by the ILO as those services 'the interruption of which would endanger the life, personal safety or health of the whole or part of the population'.³⁰

With regard to the **procedural aspects**, if the trade union and the employer fail to reach agreement on the determination of the activities to be maintained within 15 days of the date on which the employer's proposal was submitted, the employer or the trade union may, within the subsequent 15 days, request that these activities be defined by an arbitration body.³¹

The **arbitration body** consists of one representative of the trade union, one representative of the employer and an independent chairperson who is appointed subject to an agreement between the trade union and the employer.³² If the trade union and the employer fail to reach an agreement as to the appointment of the chairperson of the arbitration board, and these issues are not otherwise regulated by a collective agreement or an agreement between the parties, the chairperson is appointed by the president of the court which, according to the provisions of the Labour Act, has first-instance jurisdiction to hear cases related to the prohibition of a strike or lockout.³³

If one of the parties refuses to participate in an arbitration procedure for defining activities which must not be interrupted, the procedure is completed without the participation of that party, and a decision on such activities is rendered by the chairperson of the arbitration board.³⁴

The arbitration body must render a decision on activities to be maintained within 15 days following the initiation of the arbitration procedure.³⁵

If the employer proposes a definition of the **activities to be maintained** after the day when the mediation procedure had commenced, the procedure for defining these activities may not be initiated until the end of the strike.³⁶ According to the Labour Act, the definition of activities which must not be interrupted during a strike or lockout may be proposed by the employer as late as the final day of the conciliation procedure, which renders the preparation of the strike extremely difficult.³⁷

5. Procedural requirements

- A strike may not begin before the conclusion of the **mediation procedure**, when such a procedure is provided for by the Labour Act, or prior to the completion of other amicable dispute resolution procedures agreed upon by the parties.³⁸
- In case of a dispute which could result in a strike or other form of industrial action, the mediation procedure must be conducted as prescribed by the Labour Act, except when the parties have reached an agreement on an alternative method for its resolution;³⁹ The mediation referred to above 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.⁴⁰
- 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 support of which the solidarity strike has been organised;⁴¹
- No **balloting mechanisms** are applicable; the Labour Act does not specify any procedural requirements in this respect;⁴²
- 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 being organised.⁴³ There are no notification periods provided by law;
- The letter announcing the strike must state the reasons for the strike, its location, the date and time of its commencement, as well as the method of its execution;⁴⁴
- A **minimum level of services** must be ensured for the maintenance of production activities and essential activities (see section 4 above);⁴⁵
- A worker must not, by any means, be coerced into participating in a strike;⁴⁶
- No **peace obligation** exists. The legislation does not provide for such an obligation.⁴⁷ There is an implicit regulation of a strike related to conclusion, amendment or renewal of a collective agreement⁴⁸ (see section 3 above). However, there is no explicit prohibition of a strike related to an issue, especially a non-regulated one, during the lifetime of a collective agreement - that is left to the collective agreement itself.⁴⁹

6. Legal consequences of participating in a strike

Participation in a lawful strike

- According to the Labour Act, the organisation of or participation in a strike that is organised in compliance with the law, a collective agreement and trade union rules **does not constitute a violation** of an employment contract;⁵⁰
- Workers are protected from **discrimination** on grounds of their involvement in organising or participating in a strike that is organised in compliance with the law, a collective agreement and trade union rules;⁵¹
- The employer may reduce the **remuneration** and compensation of a worker who has participated in a strike. The reduction must be proportionate to the time spent on strike;⁵²
- Where the court establishes that a **dismissal was unlawful**, it orders the employer to reinstate the worker.⁵³ In the event that the worker does not wish to be reinstated or the court decides that continuation of the employment relationship is not possible, the worker shall receive compensation in an amount not less than three and not more than eight statutory or contracted monthly salaries that were paid to the worker over the preceding three months, depending on the tenure, age and maintenance obligations of the worker;⁵⁴
- **Lockout:** Employers may engage workers in a lockout only as a response to a strike already in progress. A lockout must not commence prior to expiration of eight days from the date of the commencement of a strike, and the number of workers locked out must not be higher than one half of the workers on strike. For those workers who are locked out, employers must pay contributions prescribed by specific regulations on the base equivalent to the minimum salary.⁵⁵

Participation in an unlawful strike

- According to the Labour Act, a worker may be **dismissed** only if he organises or participates in a strike that is not in compliance with the law, a collective agreement or trade union rules, or if, in the course of a strike, he commits some other grave violation of an employment contract.⁵⁶ This could be interpreted as meaning that a worker may be dismissed by an employer because a strike – while lawful – did not comply with trade union rules;⁵⁷
- An employer may claim **compensation for damages** suffered as a result of a strike organised and undertaken contrary to the provisions of the law;⁵⁸
- A trade union may claim **compensation for damages** suffered by this trade union or the workers as a result of a lockout organised and undertaken contrary to the provisions of the law;⁵⁹

- With regard to **judicial procedure**, an employer or an employer's association may move the court having jurisdiction to prohibit the organisation and undertaking of a strike which is contrary to the provisions of the law.⁶⁰ A trade union may move the court having jurisdiction to prohibit the organisation and undertaking of a lockout that is contrary to the provisions of the law.⁶¹ A first-instance decision on whether or not to prohibit a strike or lockout must be rendered within four days following the filing of the request.⁶² A decision on an appeal must be rendered within five days following the submission of the first-instance case.⁶³
- According to the Labour Act, a fine in an amount ranging from HRK 31,000.00 to 60,000.00 is imposed on an employer who is a legal person for: **discriminating against a worker** who has organised or participated in a strike organised in compliance with the law, a collective agreement and trade union rules (Article 215(2)).⁶⁴ An employer who is a natural person and the authorised representative of an employer who is a legal person is fined in an amount ranging from HRK 4,000.00 to 6,000.00 for an offence referred to in Article 228(1).⁶⁵
- According to Article 230 of the Labour Act,⁶⁶ a fine for an offence in an amount ranging from HRK 5,000.00 to 20,000.00 is imposed on trade unions or a trade union association at a higher level for: [...] (4) **failing to announce a strike** (Article 205(3)); (5) beginning a strike before the conclusion of the mediation procedure, where such a procedure is provided for by the Labour Act, or prior to the completion of other amicable dispute resolution procedures agreed upon by the parties (Article 205(4)); (6) failing to state in the letter announcing the strike the reasons for the strike, its location, the date and time of its commencement, as well as the method of its execution (Article 205(6));
- According to Article 231 of the Labour Act,⁶⁷ a fine for an offence in an amount ranging from HRK 5,000.00 to 20,000.00 is imposed on the employer association or the employer association at a higher level for: [...] (6) **organising or engaging in a lockout** which is not a response to a strike already in progress (Article 213(1)); (7) starting the use of a lockout prior to the expiry of a deadline laid down by the Labour Act (Article 213(2)); (8) locking out a greater number of workers than is allowed by the Labour Act (Article 213(3)); (9) locking out workers contrary to the provisions of the Labour Act (Article 213(5)); (10) failing to ensure the performance of activities which must not be interrupted during a lockout (Article 214).

7. Case law of international/European bodies

International Labour Organisation

Committee of Experts on the Application of Conventions and Recommendations (CEACR)⁶⁸

*Direct Request (CEACR) – adopted 2019, published 109th ILC session (2021)*⁶⁹

The Committee had previously requested the Government to provide clarifications on whether workers in the State administration and public services can effectively exercise in practice their right to strike under the Labour Act. The Committee took due note of the Government's indication that:

- (i) the collective agreement for civil servants expressly provides for the right to strike in the event of a dispute concerning the conclusion, modification or renewal of a collective agreement;
- (ii) all public servants, with exception of those employed in the health sector, can exercise their trade union rights without any special restrictions; and
- (iii) as regards the health sector, Section 198 of the 2018 Health Care Act prohibits strikes in emergency services and its Section 199(1) provides that in healthcare activities of healthcare institutions strikes must not begin before a mediation procedure.

With regard to the application in practice of Section 205(2) of the Labour Act, which provides for the right to call and undertake a strike of higher-level trade union organizations, the Committee took due note of the Government's indication that from 2016 to 2018, no industrial action had been carried out by a higher-level trade union organization and no industrial action had been questioned or challenged by the Government.

In its previous comments, the Committee had requested the Government to clarify whether the agreement on the maintenance of certain minimum activities during a strike or lockout under Section 214(1) of the Labour Act must be established in all public and private enterprises. The Committee noted that there is no obligation to conclude an agreement on the maintenance of production activities and essential services, but that most public services, such as elementary school, had concluded that type of agreement.

As to the application of Section 107 of the Labour Act, which provides for a worker's liability to indemnify an employer for any damage at the workplace intentionally caused or due to gross negligence, the Committee recalled that it had previously requested the Government to ensure that this provision is not used in a manner to penalize the lawful exercise of the right to strike. The Committee noted that according to the Government, Section 107 of the Labour Act should not be interpreted extensively, and the worker should not be held liable for participating in a lawfully organized strike. The Government added that only courts can decide on the worker's liability, the burden of proof falls on the employer and to be applicable, three conditions must be met, namely, the existence of damage, the work-related origin and the existence of either an intentional action (*dolus*) or gross negligence. The Committee took note of the information

provided and trusted that domestic courts will ensure that this provision will not be interpreted in a manner that restricts the lawful exercise of the right to strike.

*Direct Request (CEACR) – adopted 2017, published 107th ILC session (2018)*⁷⁰

The Committee noted the Croatian Government's indication that, in line with Article 15 of the Act on Service in the Croatian Armed Forces, active military personnel do not have the right to form trade unions or to strike, whereas clerks and employees in the armed forces can form trade unions in accordance with general labour regulations, but may not organise a strike in the event of a state of war or an immediate threat to the independence, unity or existence of the State, which is directly related to preparedness measures or to the combat readiness of the armed forces or which threatens the vital functions of the armed forces.

The Committee further noted the Government's statement that, pursuant to Article 40 of the Police Act, police officers have the right to form trade unions, but their right to strike can be limited under Article 39 in situations of war or during an immediate threat to the independence and unity of the State or other situations qualifying as an acute national or local crisis, and that, even when participating in a strike, police officers must apply their powers to protect the lives and safety of people, arrest persons caught in a criminal act or prevent the perpetration of crimes.

The Committee noted that, with regard to the state administration and public service, the Government indicated that no separate legislation which would limit the right to form trade unions or the right to strike had been enacted. Taking due note of this information, the Committee requested the Government to clarify whether, in the absence of specific legislation under Article 220 of the Labour Act, workers in the state administration and public service can, in practice, effectively exercise their right to strike under the Labour Act.

In its previous comment, the Committee had also requested the Government to provide comments on the 2015 ITUC allegations, according to which the new Labour Act does not appear to recognise the right to strike of higher-level trade union organisations. The Committee noted that, according to the Government, this allegation was incorrect, as, pursuant to Article 205 of the Labour Act, the right to call and undertake a strike in the event of a dispute related to the conclusion, amendment and renewal of a collective agreement is given to the trade unions, determined, under specific provisions, as representative for the purposes of collective bargaining, which have negotiated the collective agreement. In this regard, Article 4(4) of the 2014 Act on Representativeness of Employers' Associations and Trade Unions specifies that representative higher-level trade unions participating in tripartite bodies at national level have the right to participate in collective bargaining covering employees who work for employers who are members of a higher-level employer organisation.

The Government thus affirmed that, since higher-level organisations can bargain collectively, they are entitled to call a strike in the event of a dispute related to the conclusion, amendment or renewal of a collective agreement which they have negotiated.

The Committee also observed that, under Article 168 of the Labour Act, federations and other forms of higher-level associations enjoy all the rights and freedoms granted to associations, which would also imply the right to strike. The Committee requested the Government to provide information on the application in practice of Article 205(2) of the Labour Act with regard to higher-level trade unions, and to indicate, in particular, whether any industrial action has been carried out by or with the participation of higher-level organisations, and whether any such industrial action has been questioned or challenged by the Government.

The Committee also noted that Article 214(1) of the Labour Act provides that, upon a proposal by the employer, the trade union and the employer prepare and adopt an agreement on rules applicable to the maintenance of production activities and essential activities which must not be interrupted during a strike or lockout. The Committee recalled in this regard that the maintenance of minimum negotiated services in the event of a strike should be possible only in essential services in the strict sense of the term, in services in which a strike of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population or in public services of fundamental importance.

The Committee requested the Government to clarify whether an agreement on the maintenance of certain minimum activities during a strike or lockout under Article 214 of the Labour Act must be established in all public and private enterprises and, that being the case, to take all necessary measures to review this provision so as to ensure that the maintenance of minimum negotiated services is ensured only in the above-enumerated situations.

Council of Europe

European Convention of Human Rights (ECHR)

The case *Hrvatski Liječnički Sindikat v. Croatia*⁷¹ concerned a ban on strike action by a trade union of medical practitioners who wished to enforce an annex to a collective agreement for the health-care sector. The applicant trade union complained that the national courts' decisions prohibiting it from holding a strike had breached its right to protect the interests of its members and had thus breached its trade union freedom guaranteed by Article 11 of the ECHR.

The Court found it 'difficult to accept that upholding the principle of parity in collective bargaining is a legitimate aim capable of justifying depriving a trade union for three years and eight months of the most powerful instrument to protect the occupational interests of its members' and considered that the interference in question cannot be regarded as proportionate to the legitimate aim it sought to achieve.

In his concurring opinion, Judge Pinto de Albuquerque emphasised that the freedom of association of workers, collective bargaining and strike action are inextricably linked, the latter being an instrumental means of exercising the former. He further stated that the ECHR protects the right to strike as an essential, core right of workers' freedom of association, and any restrictions to that right must be lawful, pursue a legitimate aim as stated in Article 11(2) of the Convention and be necessary in a democratic society.⁷²

European Social Charter

Collective complaints under article 6(4) ESC

*Collective Complaint No. 116/2015 Matica Hrvatskih Sindikata v. Croatia*⁷³

Through its complaint registered on 24 March 2015, the complainant organisation, *Matica Hrvatskih Sindikata*, Association of Croatian public sector unions, alleged that the situation in Croatia was in violation of Articles 5 and 6 of the 1961 Charter as a consequence of 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). The European Committee of Social Rights declared the complaint admissible on 9 September 2015.

In its decision on the merits of 21 March 2018 (made public on 28 August 2018), the ECSR found by 12 votes to 2 that there was no violation of Article 6§4 of the 1961 Charter, however this was mainly because of lack of information. The assessment of the ECSR reads as follows:

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.⁷⁴

Follow up to the decision on the merits of Collective Complaint No. 116/2015

By **Resolution**⁷⁵ adopted on 24 October 2018 at the 1328th meeting of the Ministers' Deputies, the Committee of Ministers:

- (i) took note of the information that the Croatian authorities have communicated in this regard (see annex to the resolution), and in particular that the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Journal Official No. 143/2012) is no longer in force;
- (ii) invited the Croatian authorities to report, at the time of the submission of the next report concerning the relevant provisions of the Charter, on any new developments regarding their implementation.

In its **Findings 2019**⁷⁶, the European Committee of Social Rights took note of the information provided by the Government stating that:

- (i) all the conditions prescribed by the Article 31 were met at the time of the adoption of the contested measure;
- (ii) the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) was no longer in force. It was a short-term measure that no longer produces any legal effects. Its effect was limited to the period of the economic crisis;
- (iii) the Government signed a new collective agreement with trade unions representing workers from public sector. The new collective agreement contains all material rights which were suspended during the economic crisis. Therefore, the workers from the public sector are entitled to both Christmas bonus and bonus for holidays as agreed in the collective agreement. Since 2017, the basic salary for all workers in the public sector was increased three times, each time by 2%.

Noting that the Act of 2012 on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012), which gave rise to the complaint in question, was no longer in force, the Committee decided to bring its examination of the follow-up to the decision to an end.

Conclusions on Article 6(4) of the European Committee of Social Rights (ECSR)

*Conclusions XXI-3 (2018) – Croatia – Article 6(4)*⁷⁷

With regard to **entitlement to call a collective action**, the Committee had previously found the situation not to be in conformity with the 1961 Charter on the grounds that the right to call a strike is reserved to trade unions, the registration of which may take up to 30 days, which the Committee found excessive (Conclusions XIX-3 (2010)).

The Committee recalled its case law on this point: the decision to call a strike may be reserved to a trade union provided that forming a trade union is not subject to excessive formalities. It noted that in order to form a trade union, it had to be registered in the register of associations and that a decision on an application for registration had to be issued no later than 30 days following its filing. The Committee recalled that it had previously found that where the right to strike is reserved to trade unions, and the formation of the union may take up to thirty days this was not in conformity with the Charter (Portugal XVII-1). Therefore it concluded that the situation was not in conformity in this respect.

The report indicated that the situation had not changed in this respect however it repeated that in practice registration was being completed well under thirty days. Therefore the Committee reiterated its previous conclusion.

With regard to **specific restrictions to the right to strike** and **procedural requirements**, the Committee recalled that pursuant to Section 228 of the Labour Act, strikes in the armed forces, police, state administration and public services is regulated by a separate law. The report stated in this context that, although Article 60 of the Constitution allows the right to strike to be restricted in the armed forces, the police, the public administration and the public services, the legislator had not made use of this authorisation with respect to employees in public administration and the public services who therefore have an unrestricted right to strike in accordance with the provisions of the Labour Act. The Committee had asked previously whether this meant that all civil servants have the right to strike. No information was provided in this respect. The Committee further requested information on the right of the police to strike. The Committee recalled its question and underlined that should the next report not provide comprehensive information in this respect, there will be nothing to show that the situation is in conformity with the Charter on this point.

The Committee further recalled that pursuant to Section 222 of the Labour Act, upon a proposal by the employer, the trade union and the employer must agree on the provision of those services which must not be interrupted during a strike or a lock-out such as (i) production maintenance services with the aim of enabling the restoration of regular work immediately after the strike and (ii) essential services required for the prevention of risks to life, personal safety or health of the population. The Labour Act explicitly states that the imposition of such services may not prevent or substantially restrict the employees' right to strike.

If the trade union and the employer do not reach an agreement on the determination of the services to be maintained within 15 days after the employer's proposal was forwarded to the trade union, the employer or the trade union may, within the next 15 days, request that these assignments be defined by an arbitration body. This arbitration body consists of one representative of the trade union, one representative of the employer and an independent chairperson who is appointed subject to an agreement between the trade union and the employer.

The arbitration body must render a decision on the services to be provided within 15 days following the institution of the arbitration procedure. In order to be able to assess whether the restrictions to the right to strike in connection with the determination of minimum services fell within the limits of Article 31 of the Charter and were in conformity with Article 6§4, the Committee asked for information in the next report on what are the criteria used to determine whether a minimum service has to be introduced and what would be its scope, what are the sectors concerned and what are the possibilities of appeal against a decision rendered by the arbitration board in this respect. No information was provided in this respect. The Committee concluded that it had not been demonstrated that the sectors in which the right to strike may be restricted are not overly wide and that these restrictions satisfy the conditions laid down in Article 31 of the 1961 Charter.

As regards **consequences of a strike**, the Committee recalled that pursuant to Section 223 of the Labour Act, the organisation or participation in a lawful strike does not constitute a ground for dismissal and may not trigger any other disadvantage for the worker.

Conclusion

The Committee concluded that the situation in Croatia was not in conformity with Article 6§4 of the 1961 Charter on the ground that the right to call a strike is reserved to trade unions, and the time frame for registering a trade union, which may take up to 30 days, infringes the right to strike.

8. Bibliography

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Notes

- 1 Status of ratification by Croatia of UN treaties: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en> (accessed on 13 January 2021).
- 2 Status of ratification by Croatia of ILO conventions: http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102700 (accessed on 13 January 2021).
- 3 Status of ratification of the 1961 Charter: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035/signatures?p_auth=85796KXD (accessed on 13 January 2021).
- 4 Status of ratification of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p_auth=F3KSQtYr (accessed 13 January 2021).
- 5 Status of ECHR ratifications: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=jPYjkVEL (accessed on 13 January 2021).
- 6 The Constitution of the Republic of Croatia was adopted on 22 December 1990, available (in English) at: https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf.
- 7 The Labour Act of 2014 was published in the Official Gazette No. 93/2014 and entered into force on 7 August 2014, available (in English) at: <https://mrosp.gov.hr/UserDocsImages/dokumenti/Uprava%20za%20rad/labour-act.pdf>; see also EUROFOUND, 'Living and working in Croatia', Industrial action and disputes, 14 October 2020, available at: <https://www.eurofound.europa.eu/country/croatia#industrial-action-and-disputes>.
- 8 ILO CEELEX, Croatia, Country Profile, '6.4.10 Categories of workers not allowed to strike', October 2018: https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:HRV,,2017:NO.
- 9 ETUI Report 103, p. 7.
- 10 See the 9th National Report on the implementation of the 1961 Charter submitted by the Government of Croatia, Cycle XXI-3 (2018), p. 21, 19 January 2018, available at: <https://rm.coe.int/9th-report-from-croatia/168078481e>.
- 11 *Ibid*
- 12 See the 9th National Report on the implementation of the 1961 European Social Charter, Cycle XXI-3 (2018), p. 24, available at: <https://rm.coe.int/9th-report-from-croatia/168078481e>.
- 13 Article 205(1) of the Labour Act.
- 14 Article 205(2) of the Labour Act.
- 15 See ILO CEELEX, Croatia, Country Profile, '2.1.4 Determination of representative trade union(s) and employers' organization(s) for tripartite social dialogue and/ collective bargaining', October 2018, available at: https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:HRV,,2017:NO.
- 16 9th National Report on the implementation of the 1961 European Social Charter, Cycle XXI-3 (2018), p. 24, available at: <https://rm.coe.int/9th-report-from-croatia/168078481e>.
- 17 9th National Report on the implementation of the 1961 European Social Charter, Cycle XXI-3 (2018), p. 24, available at: <https://rm.coe.int/9th-report-from-croatia/168078481e>.
- 18 *Ibid*.
- 19 See ECSR, Conclusions XXI-3 (2018) on Article 6(4), Croatia, available at: <http://hudoc.esc.coe.int/eng?i=XXI-3/def/HRV/6/4/EN> and ECSR, Conclusions XIX-3 (2010) on Article 6(4), Croatia, available at: <http://hudoc.esc.coe.int/eng?i=XIX-3/def/HRV/6/4/EN>.
- 20 Article 205(3) of the Labour Act.
- 21 Article 205(5) of the Labour Act.
- 22 Article 205(1) and (2) of the Labour Act.
- 23 Article 215(4) of the Labour Act.
- 24 See First Report on the implementation of the European Social Charter submitted by Croatia, pp. 140-141, Cycle XVIII-1 (2006); and ECSR, Conclusions XVIII-1, Croatia, Article 6(4), available at: [http://hudoc.esc.coe.int/eng#{"ESCArticle":\["06-04-000"\],"ESCDLanguage":\["ENG"\],"ESCDcType":\["Conclusion"\],"ESCStateParty":\["HRV"\],"ESCDcIdentifier":\["XVIII-1/def/HRV/6/4/EN"\]}](http://hudoc.esc.coe.int/eng#{) – “the Committee took note of information in the report stating that the legislator has not

made use of this authorisation with respect to employees in public administration and the public services who therefore have an unrestricted right to strike in accordance with the provisions of the Labour Act. The Committee asked confirmation that this principle applies not only to all employees in the public administration and the public service but also to all civil servants.”

25 Direct Request (CEACR) – adopted 2019, published 109th ILC session (2021), Convention 87, available at:

https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4023176,102700,Croatia,2019 .

26 See Act on Service in Croatian Armed Forces, at ILO CEELEX, Croatia, Country Profile, ‘6.4.10 Categories of workers not allowed to strike’, October 2018:

https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:HRV,,2017:NO

27 Article 15 of the Act on Service in Croatian Armed Forces; see also Direct Request (CEACR) adopted 2017, published 107th ILC session (2018) on the implementation of ILO Convention No. 87, available at: Direct Request (CEACR) – adopted 2017, published 107th ILC session (2018), Convention 87, available at:

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3343684,102700,Croatia,2017 .

28 Article 39(1) of Act on Police, at ILO CEELEX, Croatia, Country Profile, ‘6.4.10 Categories of workers not allowed to strike’, October 2018:

https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:HRV,,2017:NO; see also Direct Request (CEACR) adopted 2017, published 107th ILC session (2018) on the implementation of ILO Convention No. 87.

29 Article 214(3) of the Labour Act.

30 Compilation of decisions of the Committee on Freedom of Association (ILO CFA), 6th edition, 2018, Chapter 10, paras. 836 - 841 – ILO CFA has defined and listed as “*essential services in the strict sense of the term*” where the right to strike may be subject to restrictions or even prohibitions, the following: the hospital sector, electricity services, water supply services, the telephone service, the police and armed forces, the fire-fighting services, public or private prison services, the provision of food to pupils of school age and the cleaning of schools, air traffic control. The ILO CFA has stressed that compensatory guarantees should be provided to workers in the event of prohibition of strikes in essential services, see paras. 853 - 863; See also Clauwaert, S. and Warneck, W. (2008) *Better defending and promoting trade union rights in the public sector. Part I: Summary of available tools and action points*, Report 105, Brussels: ETUI, pp. 79-81.

31 Article 214(4) of the Labour Act.

32 Article 214(5) of the Labour Act.

33 Article 214(6) of the Labour Act.

34 Article 214(7) of the Labour Act.

35 Article 214(8) of the Labour Act.

36 Article 214(9) of the Labour Act.

37 ITUC Report, ‘The right to strike in Croatia’, 9 February 2015, available at: https://www.ituc-csi.org/IMG/pdf/strike_croatia.pdf.

38 Article 205(4) of the Labour Act.

39 Articles 206(1) of the Labour Act.

40 Article 206(2) of the Labour Act.

41 Article 205(5) of the Labour Act.

42 ETUI Report 103, p. 10.

43 Article 205(3) of the Labour Act.

44 Article 205(6) of the Labour Act.

45 Article 214 of the Labour Act.

46 Article 215(4) of the Labour Act.

47 ETUI Report 103, p. 10.

48 Article 205(2) of the Labour Act

49 ILO CEELEX, Croatia, Country Profile, ‘6.4.5 Strike restrictions during the lifetime of a collective agreement (social peace clause)’, October 2018, available

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- 50 Article 215(1) of the Labour Act.
- 51 Article 215(2) of the Labour Act.
- 52 Article 216 of the Labour Act.
- 53 Article 124 of the Labour Act.
- 54 Article 125 of the Labour Act.
- 55 Article 213 of the Labour Act.
- 56 Article 215(3) of the Labour Act.
- 57 ITUC 'Survey of violations of Trade Union Rights', Croatia, available at: <https://survey.ituc-csi.org/Croatie.html#tabs-2>.
- 58 Article 217(2) of the Labour Act.
- 59 Article 218(2) of the Labour Act.
- 60 Article 217(1) of the Labour Act.
- 61 Article 218(1) of the Labour Act.
- 62 Article 219(4) of the Labour Act.
- 63 Article 219(5) of the Labour Act.
- 64 Article 228(1)(31) of the Labour Act.
- 65 Article 228(2) of the Labour Act.
- 66 Article 230(4), (5) and (6) of the Labour Act.
- 67 Article 231(6) to (10) of the Labour Act.
- 68 See 'Supervising the application of International Labour Standards' for Croatia, available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID,P11110_CONTEXT:102700,SC (accessed on 14 January 2021).
- 69 Direct Request (CEACR) – adopted 2019, published 109th ILC session (2021), Convention 87, available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4023176,102700,Croatia,2019.
- 70 Direct Request (CEACR) – adopted 2017, published 107th ILC session (2018), Convention 87, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3343684,102700,Croatia,2017.
- 71 ECtHR, *Hrvatski Lijecnicki Sindikat v. Croatia*, Appl. No. 36701/09, Judgment of 27 November 2014, paragraphs 56-60 (final on 27 February 2015).
- 72 *Ibid.*, Concurring Opinion of Judge Pinto de Albuquerque, paragraphs 8-16.
- 73 *Matica Hrvatskih Sindikata v. Croatia*, Complaint No. 116/2015, Decision on the merits of 21 March 2018, paragraphs 114-118, available at: <http://hudoc.esc.coe.int/eng/i=cc-116-2015-dmerits-en>.
- 74 See Decision on the merits and all case documents at: <https://www.coe.int/en/web/european-social-charter/processed-complaints>.
- 75 Resolution CM/ResChS(2018)10 *Matica Hrvatskih Sindikata v. Croatia*, Complaint No. 116/2015 (Adopted by the Committee of Ministers on 24 October 2018 at the 1328th meeting of the Ministers' Deputies), available at: <http://hudoc.esc.coe.int/eng/?i=reschs-2018-10-en>.
- 76 Follow-up to decisions on the merits of collective complaints, Findings 2019, Croatia, available at: <https://rm.coe.int/follow-up-cc-2019-fr-findings-2019-on-the-follow-up-to-collective-comp/16809cf9a5>.
- 77 ECSR, Conclusions XXI-3 (2018) on Article 6(4), Croatia, available at: <http://hudoc.esc.coe.int/eng/i=XXI-3/def/HRV/6/4/EN>.