

# The right to strike in the public sector

## Hungary

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This factsheet reflects the situation in October 2018 and was elaborated by Diana Balanescu (independent expert), reviewed by EPSU/ETUI; comments received from the Hungarian EPSU affiliate, BDDSZ, were integrated.

## 1. Legal basis

### International level

Hungary has ratified:

#### UN instruments<sup>1</sup>

**International Covenant on Economic, Social and Cultural Rights**

(ICESCR, Article 8)

**International Covenant on Civil and Political Rights**

(ICCPR, Article 22)

#### ILO instruments<sup>2</sup>

**Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise**

(ratification on 6 June 1957);

**Convention No. 98 concerning the Right to Organise and to Bargain Collectively**

(ratification on 6 June 1957);

**Convention No. 151 concerning Labour Relations (Public Service)**

(ratification on 4 January 1994);

**Convention No. 154 concerning the Promotion of Collective Bargaining**

(ratification on 4 January 1994).<sup>3</sup>

### European level

Hungary has ratified:

**Article 6(4) (the right to collective action) of the Revised European Social Charter (ESC)**

with no reservations

(ratification on 20 April 2009, entry into force on 1 June 2009);<sup>4</sup>

Hungary has not yet ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (but signed it on 7 October 2004);<sup>5</sup>

**Article 11 (the right to freedom of assembly and association) of the European Convention on Human Rights**

(entry into force on 5 November 1992).<sup>6</sup>

## National level

### The Constitution of the Republic of Hungary

The **Constitution** of the Republic of Hungary (Basic Law of Hungary of 25 April 2011) – Article XVII(2) guarantees the right to bargain collectively and the right to strike: ‘Employees, employers and their organisations shall have the right, as provided for by an Act, to negotiate with each other and conclude collective agreements, and to take collective action to defend their interests, including the right of workers to discontinue work.’<sup>7</sup> Under the Constitution, *only* workers have the right to engage in a ‘work stoppage.’<sup>8</sup>

### Applicable laws

- In general – the Act on Strikes (Act VII of 1989 on Strikes) lays down the conditions for exercising the right to strike. Some commentators have criticised the Act on Strikes as being very laconic, brief (consisting of only seven short provisions), vague and somewhat outdated.<sup>9</sup>
- **Specific regulations for the public sector** – restrictions on the right to strike for specific sectors such as the judiciary, armed forces or specific services deemed to be essential for the community are provided for by the Act on Strikes and other relevant Acts<sup>10</sup> as detailed in section 4 below.

## **2. Who has the right to call a strike?**

In Hungary, both workers and trade unions have the right to call a strike. The right to strike is not subject to trade union membership, with one exception: a solidarity strike may be organised only by a trade union.<sup>11</sup> In practice, however, employees who are not organised in unions tend not to engage in strike action.<sup>12</sup>

In the civil service, a strike may be called only by a trade union that is party to the agreement concluded in 1994 between the Government and the trade unions concerned.<sup>13</sup> The right to strike of self-employed workers is not explicitly regulated in law.<sup>14</sup> Under the Labour Code, works councils are not authorised to call a strike. The term of office of a works councillor participating in a strike is suspended for the duration of the industrial action.<sup>15</sup>

### 3. Definition of a strike

Hungarian legislation does not provide for a precise definition of a strike; for example, a strike is defined in legal terms as a ‘temporary work stoppage of a group of workers aiming at the advancement of their own (or another group of workers’) economic and social interests’.<sup>16</sup> Some scholars have commented that there is a real need to draw up a coherent and clear legal concept of the right to strike in Hungary.<sup>17</sup>

More importantly, the right to strike may be exercised only for the protection of workers’ economic and social interests.<sup>18</sup> Strikes of a purely political nature are not protected, although they are not explicitly prohibited by the relevant legislation. The Act on Strikes itself fails to specify against whom a strike may be directed, thus leaving room for a broader interpretation of political strikes (i.e. strikes of a political nature that also have a socio-economic dimension).<sup>19</sup>

The statutory law<sup>20</sup> explicitly prohibits strikes if they are called in response to measures taken or acts committed by the employer where the lawfulness of such measures or acts is to be decided by the courts. Accordingly, a strike may be considered unlawful if it relates not to a dispute over interests but to a legal dispute, which consequently should be decided by the courts.<sup>21</sup>

Only two types of strikes are referred to in Hungarian legislation,<sup>22</sup> namely:

- **The solidarity/sympathy strike**, which is the only form of strike that can be organised only by trade unions (not generally by workers, with or without trade union backing). In the case of a solidarity strike, prior conciliation is not compulsory.<sup>23</sup>
- **The warning strike**, which may not last longer than two hours. Only one warning strike may be held during the first seven days of the conciliation procedure, and it is the only type of strike that can take place during the conciliation (or ‘cooling-off’) period.<sup>24</sup>

**Other specific forms of industrial action** (e.g. go-slows, sit-ins, work-to-rule, rotating strikes, occupation of the enterprise’s premises, blockades, picketing) are not regulated by legislation and are therefore considered to be lawful.<sup>25</sup> Although these forms of industrial action have not been widely used in the past, and while the number of strikes has drastically declined, the use of other forms of industrial action (hunger strike, work-to-rule) is likely to increase significantly in the future.<sup>26</sup>

A few other **more unusual forms of strike** have been reported such as: surprise strike (formerly the trademark of the Railway Workers’ Free Trade Union), moving strike (in time and/or place), overtime ban (doctors refusing to work overtime), mosaic strike (one nurse from each hospital department stops working, while the others cover his/her shift).<sup>27</sup>

**Lockouts** are not regulated by Hungarian law and are not used in practice. The original wording of Article XVII(2) of the Constitution could have been interpreted to mean that employers and employers' organisations also had the right to declare a 'work stoppage' in defence of their interests, thus legitimising lockouts. However, as of 1 April 2013, the wording of this Article has been amended in order to clarify that *only* workers have the right to engage in a 'work stoppage'.<sup>28</sup>

#### 4. Who may participate in a strike?

- Participation in a strike is voluntary. Under the Act on Strikes, no one may be forced to participate or prevented from participating in a strike.<sup>29</sup> Persons who are members of a trade union other than the union which is party to the strike or who are not members of any trade union are entitled to participate in the strike.<sup>30</sup>
- Any intervention with the use of coercive measures aimed at bringing an end to the work stoppage in a legal strike by workers is not permitted. The rules governing the right to strike require that employers and employees cooperate with each other. Any abuse of the right to strike is strictly forbidden.<sup>31</sup>

#### Restrictions on the right to strike

- The right to strike is prohibited for **judicial bodies**, the **police** and **armed forces**, and **law enforcement agencies**, as well as for **civilian national security services**.<sup>32</sup> Staff members of the **National Tax and Customs Authority** also may not exercise the right to strike.<sup>33</sup> According to the Constitutional Court, the prohibition of strikes in the judiciary is provided for in the Constitution, since a strike by its members could potentially endanger the exercise of basic rights by third parties.<sup>34</sup>
- The Act on Strikes declares illegal any strike that could directly and seriously endanger human life, health or physical integrity or the environment, or could hamper natural disaster response efforts.<sup>35</sup>
- As for staff of **state** or **public administration bodies**, the right to strike may be exercised only in accordance with the special regulations outlined in the agreement concluded in 1994 between the Government and the trade unions concerned.<sup>36</sup> This agreement regulates the right to strike in the public sector and introduces a number of restrictions on the right to strike of civil servants. For example, only those trade unions that participated in the conclusion of the agreement concerned may call a strike. Furthermore, a trade union may call a strike only if it is approved by a majority of the civil servants concerned.<sup>37</sup> The right to initiate a solidarity strike is also restricted in the civil service. Hungarian labour lawyers consider that these limitations, which are based on a mere agreement instead of on an Act of Parliament, are unconstitutional.<sup>38</sup>
- **Strikes affecting services essential to the community**

In Hungary, in the case of employers who perform **activities of fundamental public concern** (in particular, public transport, telecommunications, the supply of electricity, water, gas and other utility services), the right to strike must be exercised in a way that will not impede the performance of the services at a minimum level of sufficiency.<sup>39</sup>

Article 4(3) of the Act on Strikes, as amended in 2010, provides that:

- (1) the level of service deemed sufficient and the related requirements may be defined by an Act of Parliament or;

- (2) in the absence of such an Act, they shall be agreed upon by the parties during the pre-strike negotiations or;
- (3) failing such agreement, they shall be determined by final decision of the Court of Public Administration and Labour.<sup>40</sup>

The Court of Public Administration and Labour considers the specific proposals submitted by the parties to the dispute.<sup>41</sup> The Court renders its decision within five days, in a non-trial procedure, if the need arises, after hearing the parties.<sup>42</sup> A strike is unlawful if the minimum level of essential services and the conditions under which such services are to be provided have not been stipulated by law, in an agreement between the parties or in a final court decision.<sup>43</sup> Following the entry into force of the amended Act on Strikes in January 2011, the number of strikes has decreased significantly.<sup>44</sup>

The above-mentioned list of services considered essential to the community is not exhaustive.<sup>45</sup> There is no general definition of 'essential services', and the specific levels of minimum services to be maintained are not stipulated by law. However, in some sectors such as public transport<sup>46</sup> and postal services<sup>47</sup>, the legislation has been amended in order to define the minimum level of service to be ensured in the event of a strike.<sup>48</sup> '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'.<sup>49</sup>

## 5. Procedural requirements

- A seven-day conciliation procedure must be followed before a strike can be called.<sup>50</sup> A strike may be initiated only where the obligatory pre-strike negotiations have failed to yield any substantial results within that period or where no negotiations have taken place for reasons not attributable to the initiators of the strike. If the employer refuses to negotiate during this period, a call for strike action is considered lawful. Only one warning strike lasting no longer than two hours may be held during the period of conciliation ('cooling-off period').
- There is no obligation to notify the other party of impending strike action. The absence of such an obligation is considered a shortcoming of the law by some legal experts.<sup>51</sup>
- The law does not specify a quorum or require that the decision to call a strike be taken by secret ballot. There is one important exception in the civil service: the agreement concluded in 1994 between the Government and civil servants' trade unions stipulates that strikes must be approved by a majority of the civil servants concerned.<sup>52</sup> Although this is not a requirement outside the civil service, in practice informal ballots are often organised by trade unions to gauge employees' 'willingness' to engage in strike action.<sup>53</sup>
- For the duration of the strike, the opposing parties must continue with the conciliation process in an effort to resolve the issues in dispute, and are obliged to ensure the protection of both persons and property.<sup>54</sup> In a ruling handed down by the Budapest Labour Court, the Court held that the right to strike must not infringe other constitutional rights such as the right to property, since employees do not have a say in how the employer's income is spent.<sup>55</sup>
- A strike is regarded as illegal if its organisers are seeking amendments to an existing collective agreement while that agreement is still in force. This constitutes an *ex lege* 'peace obligation' – one that stems directly from the agreement of the parties.<sup>56</sup>

## 6. Legal consequences of participating in a strike

### Participation in a lawful strike

- Calling a strike or participating in a lawful strike cannot be considered a breach of the employment contract.<sup>57</sup>
- A worker participating in a strike is not entitled to his/her salary or any other related benefits during the strike, nor can he/she benefit from health care services while on strike. However, the period in which the worker takes part in lawful strike action is counted towards his/her years of continuous service for social security purposes (i.e. pension), since employment rights (such as social security rights) are a legal consequence of the employment relationship.<sup>58</sup>
- Strike funds are not provided for in Hungarian strike law, but in practice they are widely used by trade unions.<sup>59</sup>
- The Supreme Court has held that an employer is entitled to order any non-striking employees to perform work which otherwise falls outside the scope of their activities. According to another decision of the Supreme Court, the employer enjoys the right to call on non-striking workers to work overtime in order to reduce any damages caused by the strike.<sup>60</sup>
- Lockouts are not regulated by Hungarian law and are not used in practice.<sup>61</sup>

### Participation in an unlawful strike

- Calling and participating in an unlawful strike constitutes a breach of the employment contract in response to which the employer may impose appropriate sanctions (e.g. disciplinary measures, liability for damages and termination of the employment relationship).<sup>62</sup>
- In principle, the organisers, especially the trade union(s), of an unlawful strike may be held liable for any damages caused as a result of the strike action (at least in theory, on the basis of the general rules of civil law).<sup>63</sup> Workers may also be held liable for damages caused by an unlawful strike (according to the Civil Code, Labour Code and Criminal Code).
- Under the general rules of the Labour Code, employees are subject to liability for damages caused by any breach of their obligations arising from the employment relationship. The amount of compensation payable may not exceed four months' absentee pay. Compensation for damage caused intentionally or through grave negligence must cover the full extent of losses.<sup>64</sup>
- The liability of the employer for damages caused by employees is regulated by the Civil Code.<sup>65</sup> The employer is liable towards the injured person for damages caused by an employee in connection with his/her employment even if the damage is caused by the unlawful activity of the employee, such as unlawful strike action.

The employer may subsequently claim the sum from the employee in accordance with the relevant labour law provisions.<sup>66</sup>

- The Act on Strikes imposes no obligation on service providers to inform service users of any impending strike.<sup>67</sup>

## 7. Case law of international/European bodies on standing violations

### International Labour Organization (ILO):

#### Decisions of the Committee of Freedom of Association (CFA)

CFA, Case No. 2118, *the Trade Union of Hungarian Railwaymen v Hungary*, Report No. 327, March 2002<sup>68</sup>

In its complaint of 28 February 2001, the Trade Union of Hungarian Railwaymen alleged violation of the right to strike given by the fact that the courts, in various cases, had declared strikes unlawful in contradiction with the Act on Strikes and without hearing the trade union's arguments. The Act qualifies a strike to be unlawful if 'it has been declared during the term of a collective agreement for the purpose of altering the provisions fixed in that agreement' (Article 3(d)), but the judicial interpretation of that legal provision was that a strike was lawful if it was for the renewal of a collective agreement. According to the complainant, the judicial interpretation of the Act had changed following alleged interventions of the Government and pressure on the judicial authorities, and, consequently, such strikes were considered unlawful. To support this allegation, the complainant cited three cases in which strikes had been declared illegal.

The CFA, while noting the information provided by the Government regarding the independence of the judicial system, recalled that workers' and employers' organisations should be able to be heard and to present their arguments before a decision that affects them is taken. Furthermore, the CFA had always recognised the right to strike by workers and their organisations as a legitimate means of defending their economic and social interests (see Digest of decisions and principles of the Freedom of Association Committee, fourth edition, 1996, paragraph 474), and the interpretation of the Act should not impede the workers from exercising their right to strike for the renewal of a collective agreement. The CFA also recalled that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and, in any event, not such as to place a substantial limitation on the means of action open to trade union organisations (see Digest, op. cit., paragraph 498).

In its most recent Observation on the application of ILO Convention No. 87,<sup>69</sup> the Committee of Experts on the Application of Conventions and Recommendations (CEACR) took note of

- (i) the amendments introduced to Article 4(3) of the Act on Strikes with regard to the minimum level of service and;
- (ii) the legal requirements of the minimum level of service introduced by Act XLI of 2012 on Passenger Transport Services and Act CLIX of 2012 on Postal Services; and welcomed the fact that
- (iii) consultations were being undertaken on the modification of the Act on Strikes within the framework of the Permanent Consultation Forum of the Market Sector and the Government, whose efficiency and effectiveness were questioned by the workers' group of the National ILO Council.

The Committee recalled that, since the establishment of a minimum service restricts one of the essential means of pressure available to workers to defend their economic and social interests, workers' organisations should be able, if they so wish, to participate in establishing the minimum service, together with employers and public authorities.

The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service, and empowered to issue enforceable decisions.

The Committee further recalled that the minimum service must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and that, in the past, it had considered that a requirement of 50% of the volume of transportation may considerably restrict the right of transport workers to take industrial action.

The Committee therefore highlighted the need to amend the relevant laws (including the Act on Strikes, the Passenger Transport Services Act and the Postal Services Act), in order to ensure that the workers' organisations concerned may participate in the definition of a minimum service and that, where no agreement is possible, the matter is referred to a joint or independent body.

In a Direct Request on the application of ILO Convention No 87<sup>70</sup>, the ILO CEACR requested the Government to take the necessary steps to ensure that, failing agreement of the parties, applications to the courts for determination of the minimum service level are expeditiously decided upon so as not to unduly impede the exercise of the right to strike.

## **European Social Charter**

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

The ECSR concluded that the situation is not in conformity with Article 6(4) of the Charter on the following grounds:

- In the civil service, the right to call a strike is restricted to trade unions which are parties to the agreement concluded with the Government; the ECSR criticised the fact that, in the civil service, a strike may be called only by a trade union that is party to the agreement concluded in 1994 between the Government and the trade unions concerned (Conclusions 2014, Conclusions XVIII-1 (2006) and Conclusions XVII-2 (2005)).<sup>71</sup> According to the ECSR, this condition unduly restricts the right to strike of trade unions not having acceded to the 1994 agreement. The Committee noted that the agreement is, in principle, open to all civil service trade unions, but accession is possible only if the union wishing to join accepts the rules of procedure laid down in the agreement as binding (despite the fact that these rules were negotiated and agreed by the initial signatories to the agreement only); this may in practice deter the union from joining, thereby making it impossible for it to initiate a strike.<sup>72</sup>

- Civil service trade unions may call strikes only with the approval of the majority of the staff concerned; the ECSR considered that the threshold established by the agreement concluded between the Government and the civil servants' trade unions was so high as to unduly restrict the right of workers organised in such trade unions to take collective action (Conclusions 2014, Conclusions XVIII-1 (2006), Conclusions XVII-2 (2005) and Conclusions XVI-2 (2004)).<sup>73</sup>
- The criteria used to define civil servant officials who are denied the right to strike go beyond the scope of Article G of the Charter; the ECSR noted that, under the same 1994 agreement, officials with a 'fundamental function' are not permitted to strike, essentially those exercising management functions, that is with the power to appoint and dismiss staff and initiate disciplinary proceedings. The Committee recalled that restrictions to the right to strike are permitted only if they fulfil the conditions laid down in Article 31 of the Charter (Article G of the Revised Charter). Under this provision, restrictions are to be prescribed by law, pursue a legitimate purpose and be necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of the public interest, national security, public health or morals. Accordingly, the right to strike of civil servants may only be restricted e.g. on the ground that they perform duties affecting the public interest or national security (see *inter alia* Conclusions 2004, Estonia) (Conclusions XVII-2 (2005), Hungary).<sup>74</sup>

## 8. Recent developments

Hungary's law on the right to strike was amended in December 2010 after a long debate among political parties and following a series of strikes in 2009 and January 2010, in particular at a number of public companies in the public services. Under the new act which came into force in January 2011, strikes will be considered lawful only if employers and trade unions agree in advance on the minimum level of services to be provided. Should they fail to agree, the Labour Court will have the final decision.

According to reports, nine strike initiatives were launched in the first half of 2011, and they were referred to the Labour Court for a ruling on the nature of 'minimum services'.<sup>75</sup> None of the strike initiatives were able to proceed. For example, in the case of a strike in the public transport sector against the withdrawal of early retirement schemes, the higher court ruled that strikes against government measures could not be deemed lawful. In the case of a strike planned at Hungary's nuclear power station in Paks, the courts referred the case to a higher level, and the highest court referred it back to the local court where the process had started almost a month before. As a result of these delays, the scheduled date for the strike had passed, and so it had to be called off.<sup>76</sup>

The new law has triggered mixed reactions from the social partners. While employers' organisations agree with the new regulations, the trade unions have criticised them as undermining their role.<sup>77</sup> The International Trade Union Confederation (ITUC) has alleged that, as a result of the 2010 amendment of Act VII of 1989 (the Act on Strikes), there were growing difficulties in exercising the right to strike in practice.<sup>78</sup> The new regulations have had a major impact, especially on workers in public service-sectors such as energy, waste, public transport, postal services and water supply companies.<sup>79</sup> These employees provide essential public services, so agreeing on a level of minimum service could be difficult. These sectors were previously among the few allowed to strike, so they have lost their bargaining power due to the introduction of new requirements on the level of minimum services.<sup>80</sup> For example, with regard to public transport, the view of the workers' group of the National ILO Council is that Act XLI defines minimum services during a strike, but in such a manner that it calls into question the pressure a strike can exert.<sup>81</sup> Statistics from 2011 show only one warning strike by pilots of Malév Hungarian Airlines and one strike by bus drivers of the international bus company OrangeWays. The latter action was declared unlawful due to its non-compliance with the minimum service requirements.<sup>82</sup>

There has been only one strike following the above rules on minimum services since this amendment was introduced in December 2010. Before the above amendment, there were three to four such strikes per year. Thus, it can be concluded that the number of strikes has been decreasing, especially after the 2010 amendment on minimum services.<sup>83</sup>

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## Notes

- <sup>1</sup> Status of ratification by Hungary of UN instruments: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>, (accessed 6 September 2017).
- <sup>2</sup> Status of ratification Hungary of ILO conventions: [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102679](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102679) (accessed 6 September 2017); 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, p. 72.
- <sup>3</sup> ILO Recommendations No. 159 and No. 163 are also relevant to labour relations in the public sector; see ETUI Report 105, Annex 3, pp. 87-91.
- <sup>4</sup> Status of ratification of the Revised European Social Charter: [http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures?p\\_auth=imjQ1Ex3](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures?p_auth=imjQ1Ex3) (accessed 6 September 2017).
- <sup>5</sup> 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](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p_auth=F3KSQtYr) (accessed 6 September 2017).
- <sup>6</sup> Status of ECHR ratifications: [http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p\\_auth=ywvbQS9g](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=ywvbQS9g) (accessed 6 September 2017).
- <sup>7</sup> ETUI, Reforms Watch, Strikes in Hungary: background summary (last updated in September 2016), available at: <https://www.etui.org/ReformsWatch/Hungary/Strikes-in-Hungary-background-summary>.
- <sup>8</sup> As of 1 April 2013, the wording of Article XVII(2) of the Constitution has been modified in order to clarify that only workers have the right to engage in a 'work stoppage', in Waas, B. (ed.), 'The Right to Strike. A Comparative View', 2014, p. 286.
- <sup>9</sup> Waas, B., p. 286.
- <sup>10</sup> For example, Act XLI of 2012 on Passenger Transport Services and Act CLIX of 2012 on Postal Services provide definition and rules on the minimum level of services which need to be ensured in the event of a strike in these sectors.
- <sup>11</sup> Prior conciliation is not a condition for the legality of a solidarity strike; see Warneck, W. (2007), *Strike rules in the EU27 and beyond: A comparative overview*, Report 103, Brussels: ETUI-REHS, p. 36.
- <sup>12</sup> Waas, B., p. 294.
- <sup>13</sup> ETUI Report 103, p. 37.
- <sup>14</sup> Waas, B., p. 288.
- <sup>15</sup> ETUI Report 103, p. 36.
- <sup>16</sup> Waas, B., p. 285.
- <sup>17</sup> *Idem*.
- <sup>18</sup> Article 1(1) of the Act on Strikes; ETUI Report 103, p. 36.
- <sup>19</sup> Hungarian practice in regard to political strikes is similar to that prescribed by the ILO, although regulations to ensure uniformity in the practice are lacking. A 2010 decision of the Budapest Labour Court declared that it was possible to go on strike in protest against proposed legislative amendments. In Waas, B., p. 289.
- <sup>20</sup> Article 3(1) of the Act on Strikes.
- <sup>21</sup> Waas, B., p. 289.
- <sup>22</sup> ETUI Report 103, p. 36.
- <sup>23</sup> Article 1(4) of the Act on Strikes; see also ETUI Report 103, p. 36.
- <sup>24</sup> ETUI Report 103, p. 36.
- <sup>25</sup> ETUI Report 103, p. 36.
- <sup>26</sup> Waas, B., p. 295.
- <sup>27</sup> Waas, B., p. 294.
- <sup>28</sup> Waas, B., p. 300.
- <sup>29</sup> Article 1(2) of the Act on Strikes, in Waas, B., p. 288.
- <sup>30</sup> Waas, B., p. 289.
- <sup>31</sup> Article 1(3) of the Act on Strikes.
- <sup>32</sup> Article 3(2) of the Act on Strikes on the limits of and exclusions to the right to strike.
- <sup>33</sup> Waas, B., p. 292.
- <sup>34</sup> Hungarian Constitutional Court, 88/B/1999, in Waas, B., p. 292.
- <sup>35</sup> Article 3(3) of the Act on Strikes.
- <sup>36</sup> ETUI Report 103, p. 37.
- <sup>37</sup> Clauwaert, S. and Warneck, W. (eds) (2009), *Better defending and promoting trade union rights in the public sector, Part II: Country reports*, Report 108, Brussels: ETUI, p. 90: 'approval by a majority of the civil servants concerned' means the majority of civil servants at the respective workplace.
- <sup>38</sup> Waas, B., p. 292 – It was noted that indeed the Constitution ordered that the right to strike must be regulated by an Act, but this agreement (concluded in 1994 between the Government and trade unions concerned) is on much lower level of normative force.
- <sup>39</sup> Article 4(2) of the Act on Strikes.
- <sup>40</sup> Article 4(3) of the Act on Strikes as amended in December 2010.
- <sup>41</sup> In practice, judges have emphasised that, without a precise and detailed petition, they are unable to judge the merits of a case. A petition must contain all the facts and evidence, attaching the strike call and indicating when, in which sector and for what reason the strike was called. The petition must be very precise in terms of the level of minimum service. It is not

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sufficient to ask the court to set the level of minimum service; the parties must accurately specify the level of the service to be provided during the strike (i.e. exact percentage, conditions), but also point out when, where and how the parties negotiated and what was the outcome. In Waas, B., pp. 293-294.

<sup>42</sup> Waas, B., p. 293.

<sup>43</sup> Waas, B., p. 293.

<sup>44</sup> See Eurofound, 'Amended strike law one year on', published on 11 July 2012, available at:

<https://www.eurofound.europa.eu/observatories/eurwork/articles/industrial-relations/amended-strike-law-one-year-on>.

<sup>45</sup> Waas, B., p. 292.

<sup>46</sup> Article 39 of the Act XLI of 2012 on Passenger Transport Services.

<sup>47</sup> Article 34 of the Act CLIX of 2012 on Postal Services.

<sup>48</sup> ETUI, Reforms Watch, 'Strikes in Hungary: background summary', available at: <https://www.etui.org/fr/Reforms-Watch/Hungary/Strikes-in-Hungary-background-summary> (last updated in September 2016); see also Waas, B., p. 293.

<sup>49</sup> Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, fifth (revised) edition, 2006, Chapter 10, paragraphs 581-627. The Committee of Freedom of Association (CFA) lists the following as '*essential services in the strict sense of the term*' where the right to strike may be subject to restrictions or even prohibitions: hospital and ambulance services, electricity services, water supply services, telephone services, the police and armed forces, firefighting services, public or private prison services, the provision of food to pupils of school age and the cleaning of schools, and air traffic control. The Committee also states that restrictions on the right to strike in the above-mentioned services should be accompanied by compensatory guarantees. See also ETUI Report 105, pp. 79-81.

<sup>50</sup> Article 2 of the Act on Strikes.

<sup>51</sup> Waas, B., p. 290.

<sup>52</sup> *Idem*.

<sup>53</sup> *Idem*.

<sup>54</sup> Article 4(1) of the Act on Strikes.

<sup>55</sup> Waas, B., p. 291.

<sup>56</sup> Article 3(1) of the Act on Strikes, in Waas, B., p. 291.

<sup>57</sup> ETUI Report 103, p. 37.

<sup>58</sup> ETUI Report 103, p. 37; see also Waas, B., p. 299.

<sup>59</sup> Waas, B., p. 299; strike funds are financed from trade union membership fees, so they tend to provide very limited financial resources in practice, which limits the real potential of trade unions to organise effective, long-lasting strikes.

<sup>60</sup> Waas, B., pp. 295-296.

<sup>61</sup> Waas, B., p. 300.

<sup>62</sup> Waas, B., p. 296.

<sup>63</sup> *Idem*.

<sup>64</sup> *Idem*.

<sup>65</sup> Article 348(1) of the Civil Code.

<sup>66</sup> Waas, B., p. 297.

<sup>67</sup> *Idem*.

<sup>68</sup> Case No. 2118, CFA Report No. 327, March 2002, available at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:50002>.<sup>69</sup>

See Observation (CEACR) – adopted 2015, published 105th ILC session (2016), available at:

<http://www.ilo.org/dyn/normlex/en/f?p=1000:50002>.

<sup>70</sup> See Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), available at:

<http://www.ilo.org/dyn/normlex/en/f?p=1000:13100>.

<sup>71</sup> ECSR, Conclusions on Article 6(4), Hungary, available at: [http://hudoc.esc.coe.int/eng#{"ESCArticle":\["06-04-000"\],"ESCDcLanguage":\["ENG"\],"ESCDcType":\["Conclusion"\],"ESCStateParty":\["HUN"\]}](http://hudoc.esc.coe.int/eng#{); see also ETUI Report 108, p. 90.

<sup>72</sup> See ECSR, Conclusions XVIII-1 (2006) on Article 6(4), Hungary.

<sup>73</sup> *Idem*.

<sup>74</sup> See ECSR, Conclusions 2014, Conclusions XVIII-1 (2006) and Conclusions XVII-2 (2005) on Article 6(4), Hungary.

<sup>75</sup> Eurofound, EurWork, 'Amended strike law one year on', published on 11 July 2012, available at:

<https://www.eurofound.europa.eu/observatories/eurwork/articles/industrial-relations/amended-strike-law-one-year-on>.

<sup>76</sup> *Idem*; as mentioned, in a Direct Request, the ILO CEACR requested the Government to take the necessary steps to ensure that, failing agreement of the parties, applications to the courts for determination of the minimum service level are expeditiously decided upon so as not to unduly impede the exercise of the right to strike; see Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015); see footnote 70.

<sup>77</sup> Eurofound, EurWork, 'Amended strike law one year on', published on 11 July 2012, available at:

<https://www.eurofound.europa.eu/observatories/eurwork/articles/industrial-relations/amended-strike-law-one-year-on>.

<sup>78</sup> ILO, Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), available at:

<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100>.

<sup>79</sup> See also ITUC Global Rights Index on Hungary where the following is reported: "National workers' representatives have reported that the high minimum service levels imposed by statute in the public transport and postal service sectors make it practically impossible to organise or maintain a lawful strike in these sectors. Section 3(3) of the Act on Strikes, as amended in 2010, states that the degree and condition of the minimum level of service may be established by law, and that, in the absence of such regulation, they shall be agreed upon by the parties during the pre-strike negotiations; or, failing such

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agreement, they shall be determined by final decision of the court. The Passenger Transport Services Act 2012 sets the minimum level of service for local and suburban passenger transportation public services at 66 per cent, and the minimum service for national and regional passenger transportation public services at 50 per cent. The Postal Services Act 2012 states that in case of a strike, official documents must be collected at least four days a week and shall be delivered within a period no more than 50 per cent longer than the specified time frame; and other mail shall be collected at least on every second working day and delivered within a period no more than twice as long. (...) In practice the employer and the trade union have to agree on minimum services to be maintained. If they cannot agree, the question is posed to the courts which, the LIGA submits, are not really competent to make such a decision. As the issue goes from one court to the other, the date of the strike which had originally been set expires. As a consequence this prerequisite makes it very hard for these workers to go on strike. (see <https://survey.ituc-csi.org/Hungary.html#tabs-2> and <https://survey.ituc-csi.org/Hungary.html#tabs-3> )

<sup>80</sup> Eurofound, EurWork, 'Amended strike law one year on', published on 11 July 2012.

<sup>81</sup> Observations of the workers' side of the National ILO Council at its meeting of 3 September 2014 in ILO, Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), see footnote 70.

<sup>82</sup> Waas, B., p. 301.

<sup>83</sup> *Idem*.