



The right to strike in the public services

Hungary



The right to strike in the public services: Hungary

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This factsheet reflects the situation in March 2021. It was elaborated and updated 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 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 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).³

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);⁴

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);⁵

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

(entry into force on 5 November 1992).⁶

National level

The Basic Law of the Republic of Hungary

Article XVII (2) of the Basic Law of Hungary of 25 April 2011 guarantees the right to bargain collectively and the right to strike as follows: ‘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.’⁷

Under the Basic Law, *only* workers have the right to engage in a ‘work stoppage.’⁸

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the Act on Strikes as being very laconic, brief (consisting of only seven short provisions), vague and somewhat outdated.⁹
- **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 Acts¹⁰ as detailed in section 4 below.

Status of public sector workers

There is no formal definition of the public sector as such but more clarity on services that are financed by the state, such as healthcare, social care, childcare, libraries, museums, military, police, fire services, education, ministries’ administration, municipalities’ administration and various several authorities relating to tax, health, etc.). The status of workers varies across these services:

- The Public Sector Act refers to social care workers (including child care), teachers, and educational workers (except tertiary education workers);
- Cultural sector workers (libraries, museums) were outsourced and have been covered by the Labour Code since November 2020;
- Civil servants are those who work at the ministries’ administration, municipalities’ administration;
- There is a separate legal status for the police, soldiers and tax officers; and
- Since 1 March 2021, there is separate status for healthcare workers who no longer have the right to collective bargaining.

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.¹¹ In practice, however, employees who are not organised in unions tend not to engage in strike action.¹²

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.¹³

The right to strike of self-employed workers is not explicitly regulated in law.¹⁴ 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.¹⁵

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’.¹⁶ 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.¹⁷

More importantly, the right to strike may be exercised only for the protection of workers’ economic and social interests.¹⁸ 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).¹⁹

The statutory law²⁰ 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.²¹

Only two types of strikes are referred to in Hungarian legislation,²² 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.²³
- **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.²⁴

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.²⁵ 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.²⁶

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).²⁷

Under the Act on Strikes, a strike is **unlawful** if²⁸:

- the goal of the strike is not about the assurance of the economic and social interests of workers;

- it is held in violation of the obligation for co-operation and the prohibition of the abuse of the right to strike;
- it is held in violation of the provisions on pre-strike negotiations;
- it is held in violation of the provisions on essential services;
- the aim of the strike violates the Fundamental Law;
- it is held against a measure or negligence of the employer, the decision on the change of which belongs to the competence of the court;
- it is held to have terms fixed in the collective agreement changed in the period when the collective agreement is in force.

Lockouts are not regulated by Hungarian law and are not used in practice. The original wording of Article XVII(2) of the Basic Law 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'.²⁹

Other forms of action are much more common in Hungary than strikes, such as protest meetings and rallies, demonstrations, petitions and collecting signatures. The first two are regulated by the Act LV of 2018 on the right of assembly. The new law is more restrictive than its predecessor: demonstrations must be notified within 48 hours or a maximum of three months earlier, and the police is given relatively broad discretion about banning assemblies. Petitions and collecting signatures are regulated by Act CLXV of 2013 on complaints and by Act CXXXVIII of 2013 on referendums, European initiatives and the procedure of the referendum.³⁰

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.³¹ 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.³²
- 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.³³

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**.³⁴ Excise officers of the **National Tax and Customs Authority** also may not exercise the right to strike.³⁵ According to the Constitutional Court, the prohibition of strikes in the judiciary is provided for in the Basic Law, since a strike by its members could potentially endanger the exercise of basic rights by third parties.³⁶
- 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.³⁷
- 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 (KSZSZ, MKKSZ, BRDSZ, NAVOSZ and TBDSZ).³⁸ This agreement regulates the right to strike in the public sector and introduces a number of restrictions on the right to strike for 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.³⁹ The right to initiate a solidarity strike is also restricted in the civil service, in the sense that solidarity action may not be initiated apart from the enforcement of the economic and social interests of civil servants, that is, the civil servants may participate in solidarity action in respect of the claims of each other.⁴⁰

According to the above-mentioned Agreement (points 1 and 2), participation in a strike is forbidden for civil servants exercising employer's rights which concern fundamentally the existence of the public service relationship (e.g. appointment, exemption, determination of remuneration, commencement of disciplinary proceedings).⁴¹

Hungarian labour lawyers consider that these limitations, which are based on a mere agreement instead of on an Act of Parliament, are unconstitutional.⁴² It has been reported that the Constitutional Court established that the interest in providing the

smooth and continuous operation of the state administration bodies performing the duties of the executive power is a justified reason for restricting the right to strike.⁴³

- **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.⁴⁴

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.⁴⁵

The Court of Public Administration and Labour considers the specific proposals submitted by the parties to the dispute.⁴⁶ The Court renders its decision within five days, in a non-trial procedure, if the need arises, after hearing the parties.⁴⁷ 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.⁴⁸ Following the entry into force of the amended Act on Strikes in January 2011, the number of strikes has decreased significantly.⁴⁹

The above-mentioned list of services considered essential to the community is not exhaustive.⁵⁰ 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 transport⁵¹ and postal services⁵², the legislation has been amended in order to define the minimum level of service to be ensured in the event of a strike (e.g. Act XLI of 2012 on Passenger Transport Services and Act CLIX of 2012 on Postal Services, see the Comments of the ILO CEACR in this sense in section 7 below.)⁵³

While the Act on Strikes does not provide for a specific notice period before undertaking a strike in certain essential public services, Section 4(2) of the Act requires social partners to negotiate and agree on the minimum services required prior to carrying out a strike if there are regulatory guidelines already in place. Strikes may not be initiated until the agreement is reached, this is implied in Section 4(3) of the Strikes Act as the extent and conditions of such as strike have to be agreed on by the parties prior to the strike taking place.⁵⁴

‘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’.⁵⁵

5. Procedural requirements

- A seven-day conciliation procedure must be followed before a strike can be called.⁵⁶ 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. The government must appoint a representative to participate in conciliation within 5 days if the employer targeted by the strike cannot be defined. For strikes targeting several employers, employers must appoint a representative if so requested.⁵⁷
- 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').⁵⁸
- 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.⁵⁹
- 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.⁶⁰ 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.⁶¹
- 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.⁶² 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.⁶³
- Strike restrictions during the lifetime of a collective agreement (social peace clause): 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.⁶⁴
- Employers are not allowed to assign temporary agency workers to replace workers on strike.⁶⁵

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.⁶⁶
- The employer shall be liable to provide compensation for damages resulting from the wrongful termination of an employment relationship under the Labour Code.⁶⁷
- 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.⁶⁸
- Strike funds are not provided for in Hungarian strike law, but in practice they are widely used by trade unions.⁶⁹
- 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.⁷⁰
- Lockouts are not regulated by Hungarian law and are not used in practice.⁷¹

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).⁷²
- 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).⁷³ 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.⁷⁴

- The liability of the employer for damages caused by employees is regulated by the Civil Code.⁷⁵ 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.⁷⁶
- The Act on Strikes imposes no obligation on service providers to inform service users of any impending strike.⁷⁷

7. Case law of international/European bodies

International Labour Organization (ILO):

Committee of Freedom of Association (CFA)

Two complaints were submitted to the CFA by the Democratic League of Independent Trade Unions (LIGA) on 7 May 2020, respectively on 13 January 2021, the allegations of which are confidential on this date (cases nos. 3381 and 3399).⁷⁸

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

*Observation (CEACR) - adopted 2017, published 107th ILC session (2018)*⁷⁹

Article 3. Right of workers' organizations to organize their administration

The International Trade Union Confederation (ITUC) alleged that trade union activity was severely restricted by the power of national prosecutors to control trade union activities. They could do this by, for instance, reviewing general and ad hoc decisions of unions, conducting inspections directly or through other state bodies, and enjoying free and unlimited access to trade union offices. The ITUC further alleged that, in the exercise of these broad capacities, prosecutors questioned several times the lawfulness of trade union operations, requested numerous documents (registration forms, membership records with original membership application forms, minutes of meetings, resolutions, etc.) and, if not satisfied with the unions' financial reporting, ordered additional reports, thereby overstepping the powers provided by the law.

The Committee noted the Government's indication that, while public prosecutors no longer had the right to control the legality of the establishment of civil society organizations, they retained the power to control the legality of their operation. The Committee generally recalled that acts as described by the ITUC would be incompatible with the right of workers' organizations to organize their administration enshrined in *Article 3* of the Convention. The Committee requested the Government to provide its comments with respect to the specific ITUC allegations above.

Right of workers' organizations to organize their activities

The Committee had previously noted that: (i) the Strike Act, as amended, 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 agreement, they shall be determined by final decision of the court; and (ii) excessive minimum levels of service are fixed for passenger transportation public services by Act XLI of 2012 (Passenger Transport Services Act), both at the local and suburban levels (66 per cent) and at national and regional levels (50 per cent); as well as with regard to postal services by Act CLIX of 2012 (Postal Services Act), for the collection and delivery of official documents and other mail. The Committee trusted, in view of the consultations undertaken on the modification of the Strike Act, that due account would be taken of its comments during the legislative review.

The Committee noted that the Government referred again to the relevant provisions of the Strike Act (section 4(2) and (3)) and to the Passenger Transport Services Act and Postal Services Act. In the Government's view, by regulating the extent of sufficient services in respect of two basic services that substantially affect the public and thus clarifying the situation in advance, the legislature promoted legal certainty in the context of the exercise of the right to strike. The level of sufficient services was determined seeking to resolve the potential tension between the exercisability of the right to strike and the fulfilment of the State's responsibilities to satisfy public needs.

The Government further indicated that negotiations on the amendment of the Strike Act took place in the framework of the VKF tripartite body throughout 2015 and 2016, in the course of which the trade unions considered that the extent of sufficient services in the passenger transport sector was excessive. The employees' and employers' sides managed to agree on a few aspects of the amendment of the Strike Act, but failed to reach an agreement regarding, inter alia, which institution should be authorized to determine the extent of sufficient services in the absence of a legal provision or agreement.

Stressing the importance of a compromise of the social partners on the amendment proposals of the Strike Act, the Government added that, since the trade unions had announced proposals at the end of 2016 but had not submitted them during the first half of the year, no further discussions took place in 2017. The Committee further noted that the workers' group of the National ILO Council reiterated that the strike legislation contains an obligation to provide sufficient service during strike action which in some sectors virtually precludes the exercise of the right to strike (for example by requiring 66 per cent of the service to be provided during the strike and ensuring the feasibility of this rate through extremely complicated rules).

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' organizations should be able, if they so wish, to participate in establishing the minimum service, together with employers and public authorities; and emphasizes the importance of adopting explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services. Moreover, any disagreement on such services should be resolved by 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 per cent of the volume of transportation may considerably restrict the right of transport workers to take industrial action. The Committee therefore once again highlighted the need to amend the relevant laws (including the Strike Act, the Passenger Transport Services Act and the Postal Services Act) in order to ensure that the workers' organizations 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. The Committee expected that the consultations on the modification of the Strike Act

undertaken within the framework of the VKF will continue. It requested the Government to provide up-to-date information on the status or results of the negotiations with particular regard to the manner of determining minimum services and the levels imposed in the postal and passenger transport sectors, and expected that the Committee's comments will be duly taken into consideration during the legislative review.

European Social Charter

Collective complaints under article 6(4)

Hungary did not accept the Collective Complaints Procedure Protocol.

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

Conclusions 2014⁸⁰

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)).⁸¹ 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.⁸²
- 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)).⁸³
- 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).⁸⁴

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Notes

- 1 Status of ratification by Hungary of UN instruments:
<https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>, (accessed 28 February 2021).
- 2 Status of ratification Hungary of ILO conventions:
https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102679 (accessed 28 February 2021); 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.
- 3 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.
- 4 Status of ratification of the Revised European Social Charter: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures?p_auth=jmQ1Ex3 (accessed 28 February 2021).
- 5 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 28 February 2021).
- 6 Status of ECHR ratifications: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=ywvbQS9g (accessed 28 February 2021).
- 7 Basic Law of Hungary of 2011 (with the amendments of 2013) available at: https://www.constituteproject.org/constitution/Hungary_2013.pdf?lang=en.
- 8 As of 1 April 2013, the wording of Article XVII(2) of the Basic Law 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.
- 9 Waas, B., p. 286.
- 10 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.
- 11 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.
- 12 Waas, B., p. 294.
- 13 ETUI Report 108, p. 87 ; see also the 8th National Report on the implementation of the European Social Charter, pp. 102-103, available at: <https://rm.coe.int/8th-national-report-on-the-implementation-of-the-european-social-chart/1680902fdb>
- 14 Waas, B., p. 288.
- 15 ETUI Report 103, p. 36.
- 16 Waas, B., p. 285.
- 17 *Idem*.
- 18 Article 1(1) of the Act on Strikes; ETUI Report 103, p. 36.
- 19 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.
- 20 Article 3(1) of the Act on Strikes.
- 21 Waas, B., p. 289.
- 22 ETUI Report 103, p. 36.
- 23 Article 1(4) of the Act on Strikes; see also ETUI Report 103, p. 36 and ILO CEELEX, Country Profile: Hungary, 6.4.1.3 Sympathy / Solidarity Strikes
- 24 ETUI Report 103, p. 36.
- 25 ETUI Report 103, p. 36.
- 26 Waas, B., p. 295.
- 27 Waas, B., p. 294.
- 28 Act on Strikes, Sections 1(1) and 3(1), see ILO CEELEX, Hungary, 1.2.10 Strike, available at: https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:HUN,,2019:NO
- 29 Waas, B., p. 300.
- 30 EUROFOUND, 'Living and Working in Hungary', Industrial action and disputes, 15 March 2021, available at: <https://www.eurofound.europa.eu/fr/country/hungary#industrial-action-and-disputes>.
- 31 Article 1(2) of the Act on Strikes, in Waas, B., p. 288.

- 32 Waas, B., p. 289.
- 33 Article 1(3) of the Act on Strikes.
- 34 Article 3(2) of the Act on Strikes on the limits of and exclusions to the right to strike.
- 35 Waas, B., p. 292.
- 36 Hungarian Constitutional Court, 88/B/1999, in Waas, B., p. 292.
- 37 Article 3(3) of the Act on Strikes.
- 38 ETUI Report 103, p. 37.
- 39 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.
- 40 See the 8th National Report on the implementation of the European Social Charter, pp. 102-103, available at: <https://rm.coe.int/8th-national-report-on-the-implementation-of-the-european-social-chart/1680902fdb>
- 41 *Idem*, p. 102
- 42 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.
- 43 See the 8th National Report on the implementation of the European Social Charter, p. 108, available at: <https://rm.coe.int/8th-national-report-on-the-implementation-of-the-european-social-chart/1680902fdb>
- 44 Article 4(2) of the Act on Strikes.
- 45 Article 4(3) of the Act on Strikes as amended in December 2010.
- 46 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 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.
- 47 Waas, B., p. 293.
- 48 Waas, B., p. 293.
- 49 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>.
- 50 Waas, B., p. 292.
- 51 Article 39 of the Act XLI of 2012 on Passenger Transport Services.
- 52 Article 34 of the Act CLIX of 2012 on Postal Services.
- 53 ILO CEELEX, Hungary, '6.4.4.2 'Essential service'', available at: https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:HUN,,2019:NO; see also Waas, B., p. 293.
- 54 ILO, Timo Knäbe and Carlos R. Carrión-Crespo, 'The Scope of Essential Services: Laws, Regulations and Practices', Working paper, 2019, available at: https://ilo.userservices.exlibrisgroup.com/discovery/delivery/41ILO_INST:41ILO_V2/1267249440002676?lang=en
- 55 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.
- 56 Article 2 of the Act on Strikes.
- 57 ILO CEELEX, 6.3.3.1 Conciliation / Mediation, https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:HUN,,2019:NO

- 58 ILO CEELEX, 6.3.3.1 Conciliation / Mediation,
https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:HUN,,2019:NO .
- 59 Waas, B., p. 290.
- 60 *Idem*.
- 61 *Idem*.
- 62 Article 4(1) of the Act on Strikes.
- 63 Waas, B., p. 291.
- 64 Article 3(1) of the Act on Strikes, in Waas, B., p. 291.
- 65 Labour Code, Article 216 (1)(b), see ILO CEELEX, Hungary, '6.4.6 Legislation on the requisition or replacement of workers holding a strike', available at:
https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:HUN,,2019:NO
- 66 ETUI Report 103, p. 37.
- 67 the 8th National Report on the implementation of the European Social Charter, pp. 108-110, available at:
<https://rm.coe.int/8th-national-report-on-the-implementation-of-the-european-social-chart/1680902fdb>
- 68 ETUI Report 103, p. 37; see also Waas, B., p. 299.
- 69 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.
- 70 Waas, B., pp. 295-296.
- 71 Waas, B., p. 300.
- 72 Waas, B., p. 296.
- 73 *Idem*.
- 74 *Idem*.
- 75 Article 348(1) of the Civil Code.
- 76 Waas, B., p. 297.
- 77 *Idem*.
- 78 See ILO CFA, Cases Nos. 3381 and 3399, Complaints submitted by the Democratic League of Independent Trade Unions (LIGA), Confidential allegations on 28 February 2021,
https://www.ilo.org/dyn/normlex/en/f?p=1000:20060:12023871264682:::P20060_REPORT_TYPE:A .
- 79 Observation (CEACR) - adopted 2017, published 107th ILC session (2018), Convention No. 87, Hungary, 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:3343707,102679,Hungary,2017
- 80 The latest Conclusions of the ECSR in respect of Hungary were adopted in 2014, available at:
<http://hudoc.esc.coe.int/eng?i=2014/def/HUN/6/4/EN> .
- 81 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.
- 82 See ECSR, Conclusions XVIII-1 (2006) on Article 6(4), Hungary.
- 83 *Idem*.
- 84 See ECSR, Conclusions 2014, Conclusions XVIII-1 (2006) and Conclusions XVII-2 (2005) on Article 6(4), Hungary.