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Hungary (ratification: 1969)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
Convention (n° 98) sur le droit d'organisation et de négociation collective, 1949
Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98)

Written information provided by the Government

As Hungary explained in 2021–22, during the examination of Case No. 3399 before the ILO Committee on Freedom of Association, the implementation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Convention No. 98, were priority considerations in the development of the national legislation under examination.

Hungarian national regulatory frameworks for workers' collective rights are in line with international labour standards. Article VIII(2) and (5) of the Fundamental Law of Hungary guarantees freedom of association, and its article XVII declares the right to collective bargaining and the right to strike. Act VII of 1989 on strikes contains the detailed guarantee regulations accordingly. However, according to its provisions on unlawful strikes, there is no right to strike in certain public administrative bodies performing public service functions. Act C of 2020 on the Healthcare Service Relationship regulates in line with these provisions, which is also permitted by ILO Conventions. (It should be noted here that under article 298(4) of Act I of 2012 on the Labour Code, Hungary's general labour law code, a law may – with regard to sectoral and professional specificities – deviate from the provisions of the Labour Code, and this is also the basis for the establishment of rules that differ from the general rules, such as article 15(10) of the Healthcare Service Relationship Act for healthcare providers subject to the Healthcare Service Relationship Act.)

As has been explained earlier, the sectoral legislation is in line with the Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO which, inter alia, provides guidance for a more precise interpretation of Article 6 of ILO Convention No. 98 concerning the application of the principles of the right to organize and to bargain collectively, and which, in the case of the health sector, primarily considers paragraph 576 as a guide.

On this basis, the right to strike may be restricted or prohibited in the public service for public servants exercising authority in the name of the State; or in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). ILO Convention No. 98, Article 6, states that "This Convention does not deal with the position of public servants

engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way."

Article 15(1) of the Healthcare Service Relationship Act creates the possibility of reconciling the interests of healthcare providers and persons with a healthcare service relationship, negotiating the settlement of disputes and reaching appropriate agreements – taking into account the principle of safe healthcare provision – with the participation of the Government, the national sectoral interest representation organizations and the national employee interest representation organizations of persons with a healthcare service relationship in a negotiating group of the Health Service Interest Reconciliation Forum (hereinafter referred to as HSIRF). The competence of the HSIRF covers matters relating to the living and working conditions and terms and conditions of employment of persons with a healthcare service relationship working in the health sector.

In Hungary, collective agreements in the health sector used to be very heterogeneous. In drafting the Healthcare Service Relationship Act, the legislator's aim was, among others, to create a transparent, uniform system for healthcare workers and providers in state and municipal healthcare institutions by establishing a healthcare service relationship. For this reason, the heterogeneous collective agreements were replaced by a regulation at the level of legislation, as the implementing decree of the Healthcare Service Relationship Act incorporated the contents of the sectoral collective agreement for most hospitals. Chapter 6 of Government Decree 528/2020 (XI. 28.) implementing Act C of 2020 on the Health Service Relationship – "Specific rules concerning the working time of a person in a healthcare service relationship" – contains the provisions of the multi-employer collective agreement concluded by the National Healthcare Service Centre with the Democratic Trade Union of Social and Healthcare Workers in Hungary, thus facilitating the guaranteed enforceability of provisions favourable to healthcare workers and healthcare providers in a uniform manner, rather than varying from one institution to another.

The Government of Hungary continues to attach importance to and promote the representation of the interests of healthcare providers and healthcare workers, and will continue to provide opportunities for the representation of healthcare workers through interest reconciliation forums with the involvement of trade unions.

The approach set out in the Strategic Partnership Agreement between the Ministry of Human Capacities, the Democratic Trade Union of Social and Healthcare Workers in Hungary and the Independent Trade Union of Ambulance Workers serves as a guideline for negotiations and the further development of an appropriate legislative environment.

The Government of Hungary – upholding the commitments made in January 2022 in response to the recommendations of the ILO Committee on Freedom of Association – is currently examining possible directions for the revision of the existing legislation and will continue to ensure that the principle of consultation with the relevant workers' and employers' representative bodies is fully respected in any further planned measures.

It is important to note that there have been no changes to the legislation – particularly in view of the parliamentary elections in April this year, due to which the legislative process has been suspended since the recommendations were made. Nevertheless, the Government will keep the ILO informed of progress in accordance with the recommendations.

Discussion by the Committee

Government representative – I am the newly appointed State Secretary for Industry and Employment at the Ministry of Technology and Industry. I would like to start my intervention by informing the Committee that after the Hungarian Parliamentary Elections in April 2022, the new Government is being formed. The transformation of the Government structure is not completed and the employment policy portfolio is undergoing changes as well.

At the meeting of the Committee today, I am representing the Government of Hungary, I would like to ask the Deputy State Secretary for Employment Policy, to present the statement of the Hungarian Government.

Another Government representative – First of all, I would like to confirm the strong commitment of the Government of Hungary to effectively cooperate with the ILO Office as well as to completely fulfil its duties as a Member State of the ILO.

Hungary prepares its national reports on the implementation of ratified Conventions every year. However, regrettably, last year we have sent the reports later than the dedicated deadline. Consequently the Committee of Experts was not in a position to consider our reports and our comments on their previous notes and observation. In order to avoid this situation, we will make every effort to send our national reports in time in the future.

The national report on the implementation of the Convention, which is the issue of our discussion today, was prepared and submitted to the Office in writing on 5 December 2021. In the report, that was also discussed with the social partners in the National ILO Council, we provided detailed information on the latest developments with the relevant national legislation, and reacted to the comments of the Committee of Experts.

Today, in the framework of the Committee, I would like to present these views and comments.

The Committee of Experts has requested the comments of the Government on the observations of the Forum of the Cooperation of Trade Unions and the Public Collection and Public Culture Workers Union regarding the legislative process concerning the status of cultural workers. In this regard, we note that the changes in the world of work over the past 30 years, as well as the differentiation of some professions and the specific regulations governing them, have significantly emptied out the Act on the Legal Status of Public Servants, which in many respects has not kept pace with changes in the labour market and labour law.

As a result, in 2020, the Act on the Transformation of the Legal Status of Employees of Cultural Institutions as Public Servants was adopted (the Act), which converts the status of public servants in the cultural sector into an employment relationship regulated by the Labour Code, thereby creating a uniform legal status and working conditions for them. The new legislation also reformed their wages system, with the guarantee that the overall wage conditions of the employees concerned could not be less favourable than provided before.

Therefore, in parallel with the change of status of employees in the cultural sector, the Government granted cultural professionals a 6 per cent wage increase in 2020 with the aim of ensuring the financial recognition of their work.

Before the decision to change the legal status of employees in the cultural sector was made, the cultural sector made serious preparations for about one and a half years to raise the salaries of professionals employed in the sector to a higher level.

The Government pays special attention to the wage conditions of the employees affected by the legal change. The wage increases introduced in 2020, 2021 and 2022 have contributed to the effective performance of cultural tasks, helped to keep those working in the cultural sector on the career track and helped young people to find a profession in the sector.

I would like to highlight that several discussions were initiated with the involvement of the representatives of the cultural sector regarding this reform, during which it was established that the legal relationship of public servants is a burden for the heads of the institutions and needs to be reformed. On 27 May 2020, the National Council of Public Service and Reconciliation also held a discussion on the Act and the Government provided information on the transition of the legal status and the increase in wages.

Turning now to the issue of the representativity threshold and collective bargaining in Hungary, I would like to inform the Committee of the following.

In connection with the observations on trade union representation and the right to negotiate collective agreements, it should be emphasized that, with the entry into force of the Labour Code in 2012, the regulation of the ability to conclude collective agreements is based on a different concept compared to the previous regulations. Its aim is to simplify the rules governing the collective bargaining capacity of trade unions. To this end, the regulation is based on the threshold of 10 per cent, pursuant to said section of the Labour Code, which constitutes a unified requirement in terms of collective bargaining capacity. The objective was to ensure that a trade union with sufficient support could enter into a collective agreement, and to avoid the fragmentation of interest representation when performing collective bargaining and establishing collective agreements.

Relating to the comment on the legal restrictions on the coalition freedoms of trade unions, we note that the provisions regarding collective bargaining shall be taken into account. Pursuant to said section of the Labour Code, trade unions entitled to enter into a collective agreement may conclude a collective agreement jointly. Accordingly, if more trade unions have collective bargaining capacity at the employer, they shall be entitled to conclude the collective agreement jointly. It means that a legal declaration for conclusion of a collective agreement can only be validly concluded by all trade unions.

The threshold of 10 per cent for each trade union concerned is also a condition for joint collective bargaining, which serves to ensure sufficient support. The Labour Code therefore does not allow the collective bargaining of trade unions with a representation of less than 10 per cent, since this would increase the fragmentation of interest representation.

In addition, the Labour Code provides for the right of a trade union federation to conclude a collective agreement with an employer (or several employers) pursuant to a special provision. A trade union federation is therefore entitled to conclude a collective agreement if at least one of its member organizations represented by the employer meets the condition for concluding collective agreements and its member organizations authorize it to do so. Consequently, the Labour Code makes it possible for the trade union represented not to negotiate or conclude collective bargaining with the employer directly, but through a trade union federation to which the trade union represented by the employer belongs.

On the question of whether the representation threshold applies to collective agreements at both the company and sectoral levels, it should be emphasized that the Labour Code does not regulate the conclusion of collective agreements at the sectoral level. However, according to the relevant regulations of the Labour Code, it follows that in the case of a collective

agreement concluded at the workplace, corporate level or by several employers, such as in a sector or subsector, the threshold of 10 per cent applies as a legal condition.

Regarding the comment on the collective bargaining entitlements of the work council, it may be noted that work councils are not entitled to conclude collective agreements. They may conduct works agreements, which can regulate a right or obligation arising from or related to the employment relationship, except for remuneration. The purpose of this provision is to enable the works agreement to at least partially replace collective agreements, thus encouraging the regulatory role of agreements at the workplace level. However, the condition to conclude a so-called normative works agreement is that the employer does not fall within the scope of any collective agreement and there is no trade union representation at the employer.

With respect to the observation of the Committee of Experts on the Equal Treatment Authority, we would like to indicate that the function of the Authority was taken over by the Commissioner for Fundamental Rights as of 1 January 2021. Accordingly, the fight against violations of equal treatment is now carried out by a constitutional body with unchanged staff, without compromising the high level of expertise. The Commissioner acts in administrative procedures in matters specified in the Equal Treatment Act, in accordance with the relevant procedural rules.

It is important to emphasize that the Commissioner for Fundamental Rights has taken over all the responsibilities of the Equal Treatment Authority, including its administrative powers. Thus the Commissioner can take a binding decision and impose sanctions. The relevant sanctions, that have been set in line with the European Union directives concerned, have not changed.

Between 2017 and 2021, the Authority investigated 17 complaints, where the applicant complained that he/she had been discriminated against by his/her employer because of his/her trade union membership or activity. In most cases, the discrimination meant the termination of the employment relationship, and in several cases the harassment of trade union members and a disadvantage related to a benefit was also claimed. There was a case in which the applicant complained that he/she had not been employed by his/her employer because of his/her earlier trade union activity. Decisions on merits were made in eight out of the 17 cases, and no infringement could be established in any of them.

In connection with the competence of the Equal Treatment Authority, it is worth mentioning that it investigates discrimination based on protective characteristics, including the activities carried out in the trade union related to interest representation. However, the Authority does not have the competence to investigate all violations related to worker representation and the right to organize. In these cases, the Authority informs the applicants of the available remedies.

The Committee of Experts requested information on the sanctions and legal consequences determined by the Equal Treatment Authority. According to the consistent legal interpretation of the Authority, the legal consequence of ordering termination of the infringement does not extend to reinstatement in the position. This is clearly subject to judicial procedures in accordance with a certain paragraph of the Labour Code. The Authority may not provide for the payment of compensation pursuant to a certain paragraph of the Labour Code either. The Authority, however, may impose fines and may order the publication of its final decision.

During the procedures before the Authority, the parties may agree on a settlement, which may, where appropriate, provide for the restoration of the employment relationship or financial compensation. The parties shall request the Authority to approve the settlement by a decision. Settlements involving restoration of the employment relationship or compensation approved by the Authority are rare. It is more frequent for parties to reach a settlement outside the procedure and for the applicant to withdraw his/her application.

The period set by the Equal Treatment Act for the administrative procedure assessing the conformity with the requirement of equal treatment is 75 days. Periods of suspension, adjournment of the procedure and the client's omission or delay are not included in this period. The Authority compiled statistics for the year 2017, according to which the average duration of administrative procedures in that year was 157 days, which does not include judicial remedy. Based on experience, the judicial review of an Authority's decision in employment matters usually takes between one to three years.

The Hungarian Government has taken note of the Committee of Experts' observations that specific legislative provisions are needed for prohibiting acts of interference on the part of the employer. As already stated by the Government, we believe that the current legislation, namely the provisions of the Fundamental Law and the Labour Code, ensure that all forms of unlawful intervention against trade unions are prohibited in Hungary. As to the sanctions applicable in cases of intervention against a trade union, the Commissioner for Fundamental Rights may apply the same sanctions as in the case of harming the principle of equal treatment, or a court may enforce the law based on the Labour Code.

Having said this, I would like to assure the Committee that we will consider the observations again and examine the practical experiences of the implementation of the relevant legal provisions.

Finally, the Committee of Experts invites the Government to provide information on the number of collective agreements signed, the sectors concerned and the proportion of the workforce covered by collective agreements. The regulation of 2004 on the detailed rules for the notification and registration of collective agreements obliges the contracting parties to take note of the conclusion, amendment or termination of collective agreements and to comply with the data reporting obligation relating thereto. The Information System of Labour Relations (ISLR) is the IT support system for notifications in connection with collective agreements and registering collective agreements.

Due to the need for clarifications and updates of the relevant data, which is currently in progress, we could present key information on the collective agreements for the years between 2017 and 2019. These data are included in detail in our report on the implementation of the Convention.

Employer members – We would like to begin by thanking the Government for the information provided here in our Committee session, as well as the written submission sent on 16 May 2022. While this is appreciated, we must also note that the Government did not send its regular report on the Convention to the Office, which led the Committee of Experts to repeat its earlier comments. The Government appears to have some problems with its reporting obligations and we note that the submission that the Government did provide on 16 May 2022 does not seem to be related to the issues raised by the Committee of Experts in its observations under the Convention. Therefore, we trust that the Government will in future send its regular report on the Convention in time and also in line with its stated commitment in its submission to the Committee today. Furthermore, we would encourage the Government to share the

information in writing with the Committee of Experts that it provided to our Committee just now.

Turning to the observations of the Committee of Experts, the Employers note that it contains, among others, requests to the Government for comments and information, including a request for comments on an observation by Hungarian trade unions alleging that a process concerning the status of cultural workers does not take into consideration the obligations of the Convention. A request was made by the Committee of Experts for comments on the observations made by the International Trade Union Confederation (ITUC) alleging acts of anti-union dismissals, as well as the observations made by the Workers' group of the National ILO Council denouncing restrictions on collective bargaining, for instance a 10 per cent representation threshold for trade union entitlement to collective bargaining. The Committee of Experts also requested information on the number of collective agreements signed, the sectors concerned and the share of the workforce covered by collective agreements.

Taking into account the submissions of the Government, the Employers note that there appear to be two main issues in our discussion today. The first issue concerns sections in the Labour Code regarding compensation for unlawful dismissal of trade union members or trade union officials, in particular, section 82 of the Labour Code which provides compensation not exceeding the workers' 12-month absence pay in the case of unlawful dismissal of trade union officials or trade union members.

Section 83, subsection 1, according to which reinstatement is granted in case of dismissals either violating the principle of equal treatment or violating the requirement for prior consent of the union's higher body before the termination of a union official, and the possibility for the Equal Treatment Authority in such cases to levy fines in the absence of provisions on penalties for acts of anti-union discrimination against union officials and union affiliates in the Labour Code. In this regard, the Committee of Experts, in its observation, noted with interest the Government's indication that a new law, Bill No. T17998, envisages to ensure by way of an amendment of the definition of "Worker representative" that, in the event of unlawful termination, union officers also have the possibility of requesting reinstatement. Taking into account the Committee of Experts' observations, the Employers express the expectation that the Government will take the necessary steps to ensure that union officials, union members and elected representatives enjoy effective protection against any act prejudicial to them on the basis of their trade union status or activity, including dismissal, and request the Government to provide information on developments in relation to the adoption of new legislative provisions in this regard.

Further, also taking note of the Committee of Experts' observations, the Employers call on the Government to indicate whether the Equal Treatment Authority could order a reinstatement in a case of anti-union dismissal of trade union officials and members, to provide information on whether the Authority may order compensation and to provide information on the average duration of the proceedings before the Authority related to anti-union discrimination, as well as on the average duration of judicial proceedings. We welcome some of the information answering some of these questions provided by the Government today and encourage the provision of that information in detail in writing before the Committee of Experts' next session.

The second issue concerns adequate protection against acts of interference, which is regulated pursuant to Article 2 of the Convention. While, according to the Government, the Constitution and the current national legislation are sufficient to protect and prevent acts of interference, the Committee of Experts expressed doubt, pointing out that the provisions of

the Labour Code and the Equal Treatment Act do not specifically cover acts of interference designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to place workers' organizations under the control of employers or employers' organizations through financial or other means. Noting this issue, the Employers request the Government to take all necessary measures to adopt specific legislative provisions prohibiting such acts of interference on the part of employers or employers' organizations with express appeal procedures coupled with effective and sufficiently dissuasive sanctions. The Employers consider that the way of implementing the above obligations of Article 2 of the Convention remains within the competence of the Government, as long as the Government ensures effective implementation. The Employers' view is that this flexibility is reflected in Article 3, which reads "Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles". In the Employers' view, "machinery appropriate to national conditions" could mean specific legislative provisions, but it also could mean other measures. Therefore, this flexibility must be taken into account by the Committee of Experts when considering Hungary's application of the Convention.

Given that the Government is of the view that the existing laws provide sufficient protection, it may be useful to hear from the Government on what it bases this assessment. Are there, for instance, court decisions that show that the existing legislation is sufficiently effective in protecting against acts of interference? The Employers note that some comments were made on this issue today and look forward to further analysing the Government's information in this regard. The Employers would appreciate having further information and clarification from the Government on this issue.

Finally, the Employers' group notes that the discussion of this case in the Committee, in our view, demonstrates a lack of social dialogue at the national level, which includes employers in the competitive sector. We note that long-term industrial peace, effective labour relations and the application in both law and practice of the Government's obligations pursuant to the Convention require social dialogue at the national level with the most representative employers' and workers' organizations. Therefore, we would take this opportunity to remind the Government of its obligations in this regard and to encourage effective national social dialogue with the representative employers' and workers' organizations in this respect and in compliance with its international labour obligations.

Worker members – This is the first time this Committee has discussed the application of the Convention in Hungary, which ratified the Convention in 1957. The Committee of Experts' report points out that the Government is not complying with its obligations under the Convention. More so, the Committee of Experts has not received the Government's reports and we must reiterate that the whole supervisory system rests on the timely submission of reports by the Government. So, we urge the Government of Hungary to comply with its reporting obligations in this regard.

The Committee's report raises several repeated and serious violations in law and practice which go to the heart of the protections afforded to trade unions and their members by the Convention. In practice, we find numerous cases of acts of anti-union dismissals, union busting and intimidation in several sectors and several enterprises. Trade union leaders are being dismissed, often during collective negotiations, and anti-union discrimination is rife. Workers lack adequate protection in law against acts of anti-union discrimination, contrary to Article 1 of the Convention. The Labour Code does not contain penalties for acts of anti-union discrimination against union officials and affiliates. While the Government has argued that the Equal Treatment Authority may in such cases levy fines, it has failed to provide the Office with

information with respect to the Authority's competence to order reinstatement and compensation in cases of anti-union dismissals.

Collective bargaining is a right and, together with the right to freedom of association, it enables the exercise of all other rights at work. Without effective and meaningful protection against anti-union discrimination, collective bargaining becomes meaningless. Determining the scope and meaning of the right to collective bargaining under the Convention without its human rights context and the safeguards intended to be afforded to workers when this right is exercised will lead to a race to the bottom regarding terms and conditions at work.

The Committee of Experts has been clear that the Government has to take the necessary steps to ensure that union officials, union members and elected representatives enjoy effective protection against any acts prejudicial to them, including dismissals based on their status or activities. Trade unions, their members and officials must enjoy effective protection against anti-union discrimination.

Moreover, under the current legislation, union officers are not covered by the definition of worker representatives. This definition covers only elected representatives. Accordingly, union officers cannot be awarded reinstatement in their original job in case of anti-union dismissals. The Government has expressed an intention to revise the definition of worker representatives contained in section 294-1(e) of the Labour Code in order to ensure its application to union officers. We expect that the Government will take the necessary measures in full consultation with the social partners to ensure the legislative revision of the respective provisions of the law.

Workers also lack effective protection in law against acts of interference. The provisions of the Labour Code and the Equal Treatment Act do not prohibit acts designed to place workers under the domination of employers or employers' organizations or to place workers' organizations under the control of employers or employers' organizations through financial or other means.

We recall that Article 2 of the Convention contains a fundamental principle of workers' organizations being able to enjoy adequate protection against acts of interference in their establishment, functioning or administration. And we urge the Government to adopt specific legislative provisions prohibiting such acts of interference and providing for sufficiently dissuasive sanctions.

The right to collective bargaining is also severely curtailed by the representativity thresholds provided in the national legislation. Trade unions with less than 10 per cent representation among the workers cannot negotiate collective agreements, even with respect to their own members. In such cases, national laws permit collective bargaining agreements to be entered into by workers councils. This undermines the position of trade unions. Besides, the law limits the scope of negotiation to rights arising out of the employment relationship.

In addition, employers have the power to unilaterally modify, annul or extend the scope and content of collective agreements, weakening and undermining every process of collective bargaining. This is clearly inconsistent with the Convention and undermines the effective recognition of collective bargaining as a right.

We must also draw attention to the COVID-19 legislation adopted by the Hungarian Parliament, that is Act C of 2020 regarding healthcare workers and Government Decrees 528/2020 and 530/2020. This regulation is also the subject of the complaint to the Committee of Freedom of Association in Case No. 3426. These regulations were adopted in the midst of the COVID-19 pandemic, but instead of protecting healthcare workers who were fighting at the

frontline of the pandemic, they restrict freedom of association and prohibit collective bargaining. From 1 January 2021, healthcare workers could not conclude collective agreements based on paragraph 15/10 of Act C. Further, all collective agreements in force expired as of 1 January 2021 based on article 6 of Decree 530/2020. These provisions seriously violate Article 4 of the Convention, which requires the State to facilitate voluntarily negotiations between the social partners with a view to regulating employment and working conditions by collective agreements.

Generally, the content of collective agreements is freely and mutually agreed between the parties to the agreement, except under special circumstances. Also, Article 4 of the Convention is clear that the machinery for encouraging and promoting the full development and utilization of collective bargaining appropriate to national conditions is the responsibility of the State. The Government must encourage and promote collective bargaining, instead of undermining it, and we call on the Government to repeal the above-mentioned regulations and to restore access for healthcare workers to the fundamental rights to organize and to bargain collectively.

Employer member, Hungary – Hungarian employers, as part of the European and International community of employers, strongly stand for the principles of social dialogue and act to put them into practice. Thus, we think that complying with ILO Conventions is an important foundation of our social dialogue and industrial relations system. Employers regret to realize that Hungary is shortlisted among the serious failures because of failing to comply with its reporting obligations to the ILO and is also on the agenda of the Committee today because of concerns related to the implementation of the Convention. Even though the social partners negotiated the report on the implementation of the Convention with the Government in the framework of the National ILO Council, for some reason the Government failed to submit it to the ILO. As far as we know, the report is ready for submission, and we encourage our Government to approve it and submit it as soon as possible.

After overcoming the changes in the Government based on the elections on 3 April 2022, we believe that national social dialogue is the proper way of treating the cases on the agenda of the Committee today. We would like to draw the attention of the Committee to the fact that employers have not come across the issues covered by the case in the relevant national tripartite forum. When it comes to negotiating the necessary modification of the law, mainly the Labour Code, which is the main legal source of collective rights, the relevant body is the Permanent Consultation Forum of the Competition Sector and the Government. As Members of this entity, we have encountered these issues for the first time here on the agenda of the Committee and in the report of the Committee of Experts. This is a message to our Government and to trade unions as well, if any modification of the law is necessary, employers, as the representatives of the business sector, the Hungarian members of the International Organisation of Employers (IOE), are open to engaging in in-depth negotiations in the relevant form of social dialogue. Even if we have different interests and different opinions regarding the constant cases, we think that speaking today could have been avoided by meaningful national social dialogue, either in the National Tripartite Council or the National ILO Council.

In conclusion, we would like to encourage our Government to intensify national social dialogue on the concerned legal cases and processes, which is a prerequisite for long term industrial peace. I would like to emphasize again that employers stand for fundamental rights and we are open to negotiate at the national level.

Worker member, Hungary – The case of Hungary on the application of the Convention already has a history which goes back to 2012, when the new Labour Code was adopted. This

new Code decreased the collective rights of workers to the possible minimum level that is regulated in international law, mainly by the ILO fundamental Conventions.

Throughout the years, these minimum level rights have been further weakened in practice as well as in legislation. Our collective rights, such as the right to collective bargaining and social dialogue, the right to protection against anti-union discrimination and the right to strike, are not really promoted and protected in Hungary. There are no effective and dissuasive sanctions set out in law against violations of these rights and even the organization of a new trade union is rather difficult because of the many administrative burdens prescribed by the law to be registered as a trade union.

The aim of the Convention is to support and protect the collective rights of workers, particularly their rights against anti-union discrimination, and to promote collective bargaining.

I would like to highlight some examples of the weakening of collective bargaining possibilities and the current state of anti-union discrimination in Hungary. Concerning the promotion of collective bargaining, according to Article 4 of the Convention, measures have to be taken to encourage and promote the development and utilization of machinary for voluntary collective bargaining. In Hungary, the level of collective bargaining coverage is rather low, as only about 10 per cent of workers are covered by collective aggreements. Therefore the promotion of collective bargaining is sorely needed for us.

Some legal provisions, instead of promoting collective bargaining at the workplace level, which is the traditional collective bargaining level in our country, raise obstacles to the application of this right. Traditionally, in Hungary, several trade unions operate in many enterprises, particularly larger companies.

If these trade unions do not reach separately the representativity threshold to entitle them to collective bargaining, they are not entitled by the law to bargain and conclude collective agreements, even if they form a coalition or a legally formed federation to exceed this threshold together. In this situation, there are no legally recognized trade unions for collective bargaining in the enterprise, even if the trade unions together reach the representativity threshold. The consequence of this, according to the law, is that works councils, instead of trade unions, are entitled to negotiate and agree with the employer on working conditions. This situation weakens the position of and respect for trade unions and undermines their position at the workplace. This regulation does not therefore promote collective bargaining as a traditional right and exclusive prerogative of trade unions.

At the sectoral level, there are currently hardly any collective agreements concluded, which shows that sectoral collective bargaining is also not really promoted.

It was very harmful for trade unions when, in the case of cultural workers and public healthcare workers, there was no social dialogue before the adoption of new laws which basically changed their legal status and affected almost every element of their working conditions. Moreover, public healthcare workers, under the new law, have been deprived of the right to bargain collectively, and have a new legal status as some kind of public servants. However, this new status is a special employment relationship in law, without any rights. Therefore, the total removal of public healthcare workers' right to collective bargaining seriously violates the Convention, as well as Convention No. 87. The Secretary-General of the trade union of cultural workers, the Public Collection and Public Culture Workers' Union, asked many times by letter for a conciliation meeting with the Minister about renumeration and the new draft law, but the request was not answered by the competent Ministry, even though

negotiaton was a legal obligation of the Minister, according to the valid law. Only after the adoption of the new status law by Parliament, during Easter holidays, was the text of the new Act sent to the representative trade unions asking their opinion about it. Under these indecent circumstances, only half hour of working time was left for them to analyse the regulations and elaborate their opinon on it. In view of the limitation on the right to collective bargaining in these sectors, social dialogue has a crucial role in the determination of working conditions, and therefore has to be taken very seriously.

During the COVID-19 pandemic, collective bargaining rights were also weakened by the emergency legislation that was also adopted without social dialogue. Concerning anti-union discrimination, according to Article 1 of the Convention, workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Hungarian law does not provide adequate protection against anti-union discrimination for trade union officers, so is not in line with this Article.

The new Hungarian Labour Code, adopted in 2012, modified the regulation of the protection of trade union representatives against dismissal or other detrimental measures imposed on them by the employer based on anti-union discrimination. Without the consent of higher trade union officers to the dismissal, trade union officers cannot be dismissed at all. However, according to the law, a court can replace the higher trade union's consent, if the higher trade union has misused the right. The consequence of this regulation is that the court examines the case, not as an anti-union discrimination case, but what is examined by the court is rather the behaviour of the higher trade union whether it was lawful or whether it engaged in any unlawful action when it refused to agree with the dismissal.

In conclusion, I would like to highlight that there are no real sanctions against the violation of collective rights of workers. We would therefore like to ask the Committee to urge the Government to bring our legislation and practice into line with the Convention and, as it is necessary, we ask for ILO technical assistance too.

Government member, Serbia – The Republic of Serbia has taken note of the report of the Committee of Experts and has listened with interest to the distinguished representative of Hungary on the implementation of the Convention. What we have noticed and what we commend is the constructive approach Hungary is demonstrating in cooperation with the ILO. We would like to underline the argument stated in Hungary's representation that changes in the world of labour require constant adaptation, including in the regulatory framework.

The Republic of Serbia welcomes the guarantees in the national regulatory framework for workers' collective rights, which should meet international labour standards. We reiterate that any change in the legal status of workers should not lead to less favourable conditions. In the case presented by Hungary, Serbia, as a neighbouring country, is pleased to hear that the new legislation has come with reformed and increased wages after consultation with the representatives of the relevant sectors.

We believe that Hungary has taken steps to meet the recommendations made by the Committee of Experts and the Republic of Serbia would like to encourage Hungary to continue open and inclusive social dialogue, as well as its constructive cooperation within the framework of the ILO. We look forward to receiving further reports from the Committee of Experts on the continued implementation of the relevant ILO Conventions.

Worker member, Italy – I am taking the floor today on behalf of the three Italian trade union confederations affiliated to the International Trade Union Confederation (ITUC). We believe that freedom of association and the right to collective bargaining are not only

enshrined in the core ILO Conventions, but also part and parcel of the European Social Model, and that the European social partners are given a unique prerogative by European Union Treaties: they can even participate in co-legislation by jointly submitting European social partners agreements to be transposed into Directives.

We are at a very tragic moment these days, when war has come back to the European continent. European Union Member States should do everything they can to promote dialogue and be proud of the high standards for the protection of fundamental rights, including freedom of association, and the enhancement of collective bargaining at all levels.

This is why we are highly concerned about the reiterated lack of action by the Hungarian Government to amend sections 8 and 9 of the 2012 Labour Code and the other provisions highlighted by the Worker spokesperson. This is a long-standing demand by the Committee of Experts, which has so far been ignored. It is unacceptable that free trade union action is undermined by possible allegations of jeopardizing the employers' reputation or their economic interests when exercising industrial action. This undermines freedom of expression, also connected to the over-regulation imposed in light of the COVID-19 pandemic restrictions, and is also misused to limit the right to industrial action in many Member States, including in Hungary, where it has been introduced unilaterally and excessively by the Government.

It is also very worrying to note in the Committee of Experts' report that the Hungarian Government has failed again to provide the real numbers of unions denied registration, and we fully endorse the demand for transparency. This is also contrary to the spirit of the European Union Directive, which is being finalized these very same hours, which will further strengthen collective bargaining by requiring, among others, the social partners to jointly draft national action plans to cover at least 70 per cent of the workforce with a collective agreement.

In concluding, I would like to say that the action by the Hungarian Government so far does not seem to go in this direction. This is why we strongly encourage a sincere dialogue with the social partners, as demanded by the unions and employers in the country, to amend the legislation, as suggested by the Committee of Experts

Interpretation from German: **Worker member, Germany** – I am speaking on behalf of workers in Germany and in the Nordic countries. We have observed with concern for years now how the right to collective bargaining, guaranteed by the Convention, has been successively and deliberately eroded in Hungary. The labour reforms associated with the radical austerity policy were aimed at deregulation and greater flexibility of the labour market. In this connection, collective labour rights were severely restricted and social dialogue at the national level was largely destroyed.

The number of collective agreements concluded has fallen from 145 in 2006 to ten in 2019. Trade unions are denied effective legal remedies with dissuasive sanctions to defend themselves against interference in their activities.

Inferior working conditions and income have become the Hungarian business model to attract foreign investors. National labour law offers a number of opportunities for employers to adjust working conditions unilaterally to the disadvantage of employees. This deliberate undermining of the procedures for the collective bargaining of working conditions reinforces economic and social dependency and thus the vulnerability of each worker. At a time when workers are particularly weakened by the COVID-19 pandemic, we need strengthened mechanisms, networking and solidarity to carry together what cannot be carried alone. This is what the founding of this Organization aimed at more than 100 years ago, to respect and

promote the rights and freedoms of a collectively organized workforce, which in this way develops the necessary power to negotiate humane working conditions.

The Hungarian labour law reforms in recent years have systematically eroded the foundations of this power. The idea of self-responsibility has become the guiding principle of social policy. Thus, Hungary has become another negative example of everything that is wrong with the idea of "a workfare society".

We therefore call on the Government to immediately amend, in full consultation with the social partners, its legislation and bring it into line with Hungary's obligations under the Convention to create an enabling environment for collective bargaining.

Observer, International Transport Workers' Federation (ITF) – I am speaking on behalf of the ITF, the European Transport Workers' Federation (ETF) and its affiliate the Hungarian Air Traffic Controllers' Union. I wish to raise with the Committee an example of state intervention in collective bargaining resulting in a severe restriction on the principle of free and voluntary bargaining protected under Article 4 of the Convention.

In 2013, the state-owned enterprise responsible for air traffic control concluded a collective agreement with the union. Among other things, the collective agreement stipulated the minimum service requirements in the event of industrial action. This measure, negotiated voluntarily by the parties, provided for mutually agreed service levels, including a service percentage for commercial aircraft and full air navigation services for search and rescue and medical flights. Over the years, these requirements were strictly adhered to by the union in conformity with the collective agreement.

On 27 July 2021, the Government promulgated Decree No. 446 prohibiting industrial action in air traffic control services in the interests of national defence and security. Following a breakdown in negotiations with its employer in the summer of the 2021, the union announced its intention to take collective action in full respect of the agreement. Before taking action, the union sought legal assurances from the Metropolitan Court of Justice. The Court ruled that the action would be lawful and recognized the minimum service provisions negotiated between the parties.

Nevertheless, the union did not pursue the action so as not to fall foul of the Decree. This had an immediate impact on the collective bargaining process. The employer effectively withdrew from the collective agreement by refusing to bargain over wages, in violation of the principle of good faith bargaining. The employer has instead resorted to negotiating directly with employees and even rejected a union request for conciliation and arbitration.

While the Decree in question was repealed on 31 May 2022, the minimum service requirements have now been enshrined in Law 136. This Law was introduced without providing any compensatory guarantees to air traffic controllers. This, coupled with the termination of the collective agreement, has deprived these workers of two intrinsically linked fundamental rights.

In line with ILO jurisprudence, workers' and employers' organizations must be able to participate in determining minimum services. Where there is disagreement, the matter should be resolved by an independent body. The complete opposite has happened in Hungary. We contend that the Decree and the subsequent Law 136 amount to a restriction on free and voluntary collective bargaining, which has completely destabilized labour relations in the sector.

We call on the Government to repeal the relevant sections of Law 136 and to ensure that it no longer interferes in free and voluntary collectively bargaining.

Observer, Public Services International (PSI) – I am speaking on behalf of PSI and also the European Public Services Union (EPSU) and our Hungarian affiliates.

In the middle of the COVID pandemic, the Hungarian Parliament adopted legislation that removed collective bargaining and the effective right to strike from health workers in the public sector. Act C on the health service legal relationship and its implementing Decree No. 530, adopted on 6 October 2020 and in force from 18 November 2020, made all collective agreements already concluded with state healthcare workers expire on 1 January 2021, prohibited collective bargaining for health workers in state-owned facilities and made it almost impossible to exercise the right to strike for these workers.

This was not a simple modification of the legislation; the public servant status of healthcare workers was terminated, and all healthcare workers were required to sign a new contract by 1 March 2021, giving them a new legal employment relationship with a so-called "health service status", which deprived them of the rights and benefits that all other public servants enjoy.

At the same time, workers in other state-owned utility companies were set to receive a 15 per cent pay rise over three years. This would be implemented at different rates in different companies with, for instance, national water company employees receiving 4 per cent in 2021, 7 per cent in 2022 and an extra 4 per cent in 2023.

Although this was the object of a complaint filed with the Committee on Freedom of Association, which had already issued recommendations to the Government, I am also bringing the issue to the attention of the Committee on the Application of Standards because, in the written communication submitted by the Government on 16 May, the Government says it has not taken any measures in regard to the recommendations of the Committee on Freedom of Association, and this is a clear example of the situations mentioned by the Committee of Experts in the General Survey that we have discussed, namely the growing precariousness in health and social care work and the cruel conditions that health and care workers have faced during the COVID-19 pandemic.

We think it is disgraceful that this has been done to the workers, the same people who might have saved the lives of friends, family or colleagues of the lawmakers who adopted this law, when at the same time it has been demonstrated by the ILO and other research that collective bargaining played an important role in mitigating the impact of the COVID-19 crisis on employment and on economic activity.

Observatrice, Internationale de l'éducation (EI) – Je m'exprime au nom de l'EI, la fédération mondiale des syndicats d'enseignants qui représente 383 syndicats dans 178 pays, dont les syndicats Union démocratique des enseignants hongrois (PSZD) et le Syndicat des enseignants de Hongrie (SEH). Je vais centrer mon intervention sur les nombreuses, et malheureusement vaines, tentatives syndicales dans le secteur de l'éducation pour entrer en négociation avec les représentants du gouvernement.

La commission d'experts note dans son dernier rapport «les limites excessives du champ d'application de la négociation collective». Effectivement, dans le secteur de l'éducation, les demandes syndicales portant sur les salaires, sur la réduction de la charge de travail dans l'éducation ou sur les mesures liées à la COVID-19 qui obligent les travailleurs des écoles publiques à prendre un congé sans solde s'ils n'ont pas été vaccinés contre le coronavirus,

n'ont pas été considérées par les autorités et aucune vraie négociation de bonne foi n'a été entamée.

En octobre 2020, le gouvernement a empêché les négociations entre le syndicat de l'enseignement supérieur et les autorités d'une université. En novembre 2021, aucun accord n'a pu être conclu sur les augmentations de salaire, le gouvernement s'en tenant à l'augmentation de 16 500 forints (environ 45 euros) décidée unilatéralement.

En janvier 2022, le ministère a de nouveau, sans négociation, augmenté par décret les heures à prester par les enseignants. Le secrétaire d'État déclara également une grève des enseignants illégale, ce qui fut contredit par la cour de première instance le 28 janvier. Trois jours plus tard, le 31 janvier, un enseignant sur cinq protestait contre l'absence de dialogue social. Plusieurs établissements scolaires religieux, écoles d'enseignement professionnel et plusieurs écoles maternelles se sont jointes à l'action syndicale, qui, comme nous le savons, est le dernier recours pour pousser les gouvernements à la négociation.

Le 11 février 2022, le gouvernement a émis un nouveau décret rendant l'interruption collective du travail impossible dans l'enseignement. Les deux syndicats d'enseignants ont demandé à la Cour constitutionnelle de se prononcer sur la validité constitutionnelle de ce décret qui impose un service minimum.

Government representative – On behalf of the Government of Hungary, we have taken note of the comments made by the members of the Committee and we will take them into due consideration. However, we would like to indicate that we focus our response on the remarks of the Committee of Experts with regard to the Convention. I would like to express my deep regret once again for not being able to send to the Committee of Experts our national reports within the deadline, in which we explain our position in much more detail.

In our final reactions, I would like to emphasize that the Government of Hungary considers effective social dialogue at the national, sectoral and company level as an important element of the world of work. On a legislative level, our fundamental law provides the general framework, as well as guarantees of the freedom of the right to organize. Our national regulatory frameworks for workers' collective rights are in line with international labour standards. Articles 8, 2 and 5 of the Fundamental Law of Hungary guarantee freedom of association and also declare the right to collective bargaining and the right to strike.

Since 2010, we have been working on the development of a more effective framework for social dialogue and a new approach to reconciling interests. The National Economic and Social Council has been operating as the main cross-sectoral institution for social dialogue and a macro-level forum for social consultation for more than ten years. The main aspects of the working methods of the Council are openness, transparency and wide consultation. Additionally, the Permanent Consultation Forum of the Competition Sector and Government was established in 2012 to consult the intentions of employees and employers in the private sector with the Government and to conclude agreements and discuss regulatory proposals.

Reconciliation of the interests of the social partners in the public sector takes place on several platforms at the same time. In matters of sectoral importance affecting the civil service, the competent ministers consult in sectoral consultative forums. A Health Service Reconciliation Forum operates with the participation of the representatives of workers in healthcare service relationships.

Public employees also have their own national level conciliation forum: the National Labour Council for Public Employees. In addition to this Council, there are other intersectoral and inter-ministerial consultative forums in place to discuss issues related to the living and

working conditions of public sector employees. Foremost among these are the Civil Service Reconciliation Forum and the National Civil Service Stakeholder Council. The latter serves as the main national tripartite forum dedicated to discussing common issues and regulations related to the public sector. The effectiveness of the system is clearly demonstrated by the fact that the forums, both at the national and sectoral levels, have been actively involved in tackling the challenges of recent years.

Well-functioning social dialogue is characterized by the fact that tripartite social forums operated effectively at the national level, even during the pandemic. The Permanent Consultation Forum of the Competition Sector and Government met regularly, holding 24 meetings in 2020, 12 meetings in 2021 and one meeting this year. The National Labour Council for Public Employees met three times in 2020, twice last year and once this year. The National Civil Service Stakeholder Council held three plenary sessions in 2020 and also in 2021, of which two were held with the participation of the National Labour Council for Public Employees. The National Economic and Social Council held four online meetings in 2020 and two in 2021.

At these meetings, the most important measures and initiatives of the Government were discussed, including the budgetary implications of the situation caused by the COVID-19 pandemic, the programmes developed to save jobs and the possibilities for supporting those who became unemployed due to the crisis. At these forums, one of the most important elements of the negotiations is the annual tripartite agreement on the minimum wage with the aim of improving the economic situation of workers. We continuously make efforts to channel the opinions and practical suggestions of the social partners accordingly.

Finally, I would like to emphasize that, in our view, we have succeeded in achieving an inclusive recovery from the COVID-19 crisis with the right combination of well-functioning social dialogue tools and targeted public intervention. The Hungarian Government is committed to continuing and improving the effectiveness of social dialogue so that the social partners can play a meaningful role in economic and social governance in the future too. To this end, the Government is also providing financial and infrastructural support to the social partners, through its own and European Union financial resources. Cooperation and partnership with the social partners are important for us, as the constantly increasing minimum wage and the introduction of significant tax cuts are largely due to the social partners' active, constructive support, on which we will continue to rely in the future

Employer members – I would begin our closing comments by noting that some of the submissions made by speakers, in the Employers' view, go outside the scope of the discussion of the Convention, and will not be addressed in our closing remarks. We also note in particular one speaker's focus exclusively on the right to strike, which in our view, falls entirely outside the appropriate scope of this discussion regarding the Convention. In addition, we would like to remind all speakers that the mandate of this Committee is to examine Government conduct regarding the application in law and practice of international labour standards and we are not present to discuss individual employers' situations or conduct. We would ask that any references to individual employers made by speakers today be struck from the record.

Taking into account the observations of the Committee of Experts, the Employers reiterate our expectation that the Government will take the necessary steps to ensure that union officials, union members and elected representatives enjoy effective protection against any prejudicial acts based on their status or activities, including dismissal, and we restate our call to the Government to provide information on developments in relation to the adoption of the new legislative provisions discussed today in this regard.

We encourage the transparency of the Government in this process and we also note the call by the Committee of Experts to the Government to provide information on whether the Equal Treatment Authority could provide reinstatement as a remedy in cases of anti-union dismissals of trade union officials and members, to provide information as to whether the Equal Treatment Authority may order compensation, and for the Government to provide information on the average duration of proceedings before the Equal Treatment Authority related to cases of anti-union discrimination.

We call on the Government to provide this information to the Committee of Experts prior to its next session. In addition, as discussed with respect to the issues related to protection against acts of interference, which is regulated by Article 2 of the Convention, the Employers call on the Government to provide further information related to the issue of protection against acts of interference and how this is codified in existing or contemplated new laws.

We appreciate, in closing, the Government's comments today, as well as its stated commitment to social dialogue. The Employers' group calls on the Government to commit itself, in both law and practice, to full compliance with the Convention, and we also call on the Government to commit itself to true national social dialogue with the most representative employers' and workers' organizations, and to provide information on these measures to the Committee of Experts before its next session

Worker members –We have taken note of the comments of the Government of Hungary and we must emphasize that the Government of Hungary has an obligation to protect international labour standards, including those contained in the Convention. The Workers' group is concerned at repeated violations of the right to organize and collective bargaining in Hungary, in both law and in practice. Instead of prohibiting anti-union discrimination and promoting and encouraging collective bargaining, the laws appear to promote anti-union discrimination and demote collective bargaining, and this situation calls for action.

In line with the requests by the Committee of Experts for information, the Government must provide information on the number of collective agreements signed, the sectors concerned, and the share of the workforce covered by collective agreements.

We urge the Government to immediately take comprehensive action to make the laws in Hungary fully compatible with the Convention. Specifically, we call on the Government: to adopt specific legislative provisions in full consultation with the social partners; to prohibit acts of interference in the part of the employer and make express provision for rapid appeal procedures coupled with effective and dissuasive sanctions to allow trade unions with less than 10 per cent representation among the workers to negotiate collective agreements with respect to their own members; to repeal the provisions allowing workers' councils to conclude collective bargaining agreements where trade unions are present in the workplace; to extend the scope of negotiation beyond the rights arising out of the employment relationship, as it should be left to the parties concerned to decide on the subjects for negotiation; to repeal provisions allowing employers to have the power to unilaterally modify, annul or extend the scope and content of collective agreements; to repeal the provisions of Act C of 2020 and Government Decrees 528/2020 and 530/2020; and to ensure adequate protections in law against acts of anti-union discrimination and make provision for effective and dissuasive sanctions.

We also request the Government to provide information on the average duration of both the judicial proceedings as well as the proceedings before the Equal Treatment Authority related to anti-union discrimination, as requested by the Committee of Experts.

And finally, we would ask the Government to ensure that union officials, union members and elected representatives enjoy effective protection against any acts prejudicial to them including dismissal based on their status or activities, and to make express provision for rapid appeal procedures coupled with effective and dissuasive sanctions.

To conclude, the Government must make every effort to take the necessary action without further delay and avail itself of the technical assistance of the ILO to ensure that the law and practice in Hungary are fully compatible with the provisions of the Convention.

Conclusions of the Committee

The Committee took note of the oral and written statements made by the Government and the discussion that followed.

The Committee regretted the failure of the Government to report on the application of the Convention to the Committee of Experts.

The Committee noted with concern the significant compliance gaps in law and practice regarding the protection against anti-union discrimination, the scope of collective bargaining permitted under the law and interference in free and voluntary collective bargaining with respect to the Convention.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **review relevant labour legislation to ensure that the representativity threshold for negotiating collective bargaining is not set in a manner that prevents workers from exercising their right to collective bargaining;**
- **ensure that union officials, union members and elected representatives enjoy effective protection, in law and practice, against any act prejudicial to them, including dismissal, based on their status or activities;**
- **ensure protection in law and practice against acts of anti union discrimination, coupled with effective and dissuasive sanctions;**
- **ensure no undue interference in the establishment, functioning and administration of trade unions; and**
- **provide information on the average duration of both judicial proceedings and proceedings before the Equal Treatment Authority related to anti-union discrimination.**

The Committee requests the Government to avail itself, without delay, of ILO technical assistance, to ensure compliance with the provisions of the Convention in law and practice.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.