



Magyar Szakszervezeti Szövetség



7 May 2020

Mr. Guy Ryder
Director-General
ILO
Committee on Freedom of Association

Subject: Restricting the right to collective bargaining in Hungary

Dear Director-General,

Due to the coronavirus pandemic, the Hungarian Government has introduced several measures affecting employees within the framework of the event of emergency introduced in Hungary on the basis of Section 53 of the Fundamental Law of Hungary and the special legal order applicable during this period, stressing that the aim of these measures is to maintain jobs.

Several pieces of the legislation introduced under the special order have significantly affected the right to collective bargaining and the already concluded collective agreements. In the government decrees, in the case of provisions concerning employment relations, the law states that in the event of emergency, collective agreements contrary to them may not be applied.

We are aware that in the event of emergency, the possibility of collective bargaining or the application of already concluded collective agreements may be restricted to a justified and proportionate extent necessary to overcome the emergency situation and to deal with its harmful consequences. At the same time, we find it offensive that some of the emergency provisions in practice make voluntary collective bargaining totally impossible or impossible for significantly longer than justified in essentially all employment matters, despite the fact that it is not expressly prohibited by the government decrees.

1. The possibility of derogation from the Labor Code in an individual agreement between an employee and the employer

According to the Section 6 (4) of the Government Decree 47/2020 (III. 18.) on the immediate measures necessary to mitigate the impact of the coronavirus pandemic on the national economy, "the employee and the employer may deviate from the provisions of the Labor Code in a separate agreement".

By agreement between the employee and the employer, this provision allows derogations also from the provisions of the Labor Code guaranteeing a minimum level of protection for employees, (e.g. minimum wage; protection rules for termination of employment initiated by the employer; protection

rules regarding employees with special characteristics such as mothers with small children, single parents etc.) to a substantially unlimited extent.

This rule -indirectly -means, that employers can avoid collective bargaining in the event of emergency, and also avoid collective agreements that have already been concluded in order to achieve the measures they consider necessary in an event of emergency, through individual agreements. In such a precarious situation, employees are more easily persuaded to sign agreements that provide them with less protection in exchange for hoping to keep their jobs.

According to the Fundamental Law of Hungary (thereinafter: Fundamental Law), Hungary accepts the generally recognized rules of international law (Point Q of the Fundamental Law), from which it is not possible to deviate even in an event of emergency – unless international law itself allows it – (Section 54 (2) of the Fundamental Law). Hungary has ratified the ILO Convention No.98, which entered into force on 6 June 1957.

Article 4 of ILO Convention No.98 on the application of the principles of the right to organise and collective bargaining, imposes obligation on nations to promote voluntary collective bargaining between employers and employees. The provision of the referred government decree contrary to this obligation is not facilitating collective bargaining and application of collective agreements, but it act against it instead.

As interpreted by the Committee on Freedom of Association of the ILO -although in an emergency -, the scope of the right to bargain collectively and the collective agreements may be limited, but only as an exceptional measure, to the extent necessary and reasonable, and accompanied by adequate safeguards to protect employees' living standards.

Ensuring that employees and employers agree to fully derogate from the Labor Code not only restricts collective bargaining and the application of the already concluded collective agreements in practise, but even makes it completely unnecessary and thus impossible, which, in our view, goes beyond what is necessary. And the temporary nature of his situation essentially depends on the length of the event of emergency, which is not yet foreseeable today, and thus may even question the „temporary” nature of the restriction. Section 6 (4) of the government decree therefore violates the possibility of free and voluntary collective bargaining as set out in Article 4 of the ILO Convention No.98 concerning the application of the principles of the right to organise and collective bargaining.

2. Restriction of the right to collective bargaining when ordering a working time frame of up to 24 months

Section 4 of the 104/2020. (IV.10) Government Decree, which was accepted in the event of emergency, similarly to the above restricts the right to collective bargaining, allowing in emergency a unilateral order by the employer of a maximum of 24 months working time frame, or in accordance with Section 6 (4) of the government decree, which is otherwise written in the previous point, “employment under the agreed working time frame”, is not affected by the termination of the emergency. This provision means that the working time frame ordered during the emergency period, but still in progress at the time of its termination, will be maintained until the end of the working time frame, despite the termination of the event of emergency.

According to the current Labor Code, working time frame can be unilaterally ordered by the employer for 4, in some cases for 6 months, or more for a maximum of 36 months working time reference can be ordered only if the employer agrees on this with the trade union in a collective agreement. In addition, the statutory reference period of 4/6 months can only be increased by a collective agreement to a maximum of 12 months. (Section 94 (3) and Section 99 (7) of the Labor Code.)

In emergency, the unilateral order of a (maximum of 24 months) working time frame by the employer or the unilateral extension of an already ordered working time frame to a maximum of 24 months also limits the pre-existing (exclusive) right to collective bargaining. In our view, this restriction shall not go beyond what is necessary and proportionate to the purpose of the restriction, including its reasonable duration, even in an event of emergency. A working time frame of up to 24 months in emergency, or even beyond, can no longer be considered a temporary restriction, therefore it is violating the international law obligation set out in Article 4 of ILO Convention No.98. to promote free, voluntary collective bargaining.

Our request: The Committee on Freedom of Association of the ILO to examine the referenced clauses of the two government decrees for compliance with the requirement for free and voluntary collective bargaining set out in Article 4 of ILO Convention No.98, in the event of emergency due to the present coronavirus epidemic, and in the case of the working time frame thereafter as well.

In case the referred provisions violate the ILO Convention No.98, we ask the ILO to call on the Hungarian Government to urgently bring Hungarian law into line with the ILO Convention.

Sincerely,



Dr. Melinda Mészáros

president of LIGA,
Democratic League of
Independent Trade Unions



László Korösi

president of MASZSZ,
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Imre Palkovics

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