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REPUBLIC OF HUNGARY
National ILO Council
Ministry of Employment and Labour

REPORT

for the period 1 June 2001 to 10 May 2003 prepared by the Government of the Republic of Hungary in accordance with article 22 of the Constitution of the International Labour Organisation on the measures taken to give effect to the provisions of the

RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949 (No. 98)

(ratification registered: 6 June 1957)

Budapest, September 2003

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I. Please indicate whether the articles of the Convention are given effect through
a) case law or practice, or
b) statutory provisions.
…

During the reporting period there was no comprehensive overview concerning the legislation on the right to organise or collective bargaining, there were, however, legislative amendments.

Act XIX of 2002 on the amendment of Act XXII of 1992 on the Labour code (Mt) discontinued the practice – to increase the weight of the trade union – whereby at employers on whose premises there was no trade union with representative power the works agreement could replace the collective agreement. However, the works agreements valid on the date on which the law entered into effect will remain valid until such date as the parties terminate them.

Act XIX of 2002 provides an exhaustive list of the issues that are subject to the right of opinion by trade unions with representative power on the employer's premises to replace the previous list phrased in only general terms. The employer must, prior to his decision, inquire about the opinion of the trade union representative on its premises regarding any draft action plans that are likely to concern a larger group of employees, thus e.g. tentative plans of restructuring of the employer's organisation, transformation, creation of an individual unit out of a section of the organisation, privatisation, or modernisation.

Act XIX of 2002 re-introduced the regulation whereby the employer must provide financial compensation for the unused part of such allowance, but for no more than half of it (previously it was subject to agreement by the parties).

In order to solve a practical problem related to the termination of the collective agreement Act XIX of 2002 provides that if the collective agreement was concluded by several trade unions at a particular employer, such trade unions shall agree on whether to exercise their right to terminate it.

Act XIX of 2002 further amended the provisions of Act XXIX of 1991 on the Voluntary nature of employees' payment of membership fees in a representative organisation. The employer must, following the legislative amendment, deduct from

the trade union member employee's wages the membership fee and transfer it. Previously this was only so if the parties so agreed.

Act XX of 2003 on the Amendment of the Labour Code (passed by Parliament on 31 March 2003, and effective since 1 July 2003) withdrew the right of the Government whereby it could, if the national collective bargaining mechanism failed at its attempt, determine the minimum wage.

Act XX of 2003 extends the protection of the trade union official under labour law. Apart from terminating their employment or redeploying them in a different job, with the new law now effective, the consent of the higher level trade union body is necessary also in cases of out-of-office assignments, transfer to another site at least 15 days long, transfer to a different position, or employment at another employer based on such agreement among employers, during economically slack periods. That measure also applies to members of the works council.

In the event of legal succession of employers, in order to promote the unbroken operation of employers' representative bodies, Act XX of 2003 regulated all those cases in which the process of legal succession would, on the basis of general rules, suspend the operation of works council. Now in such cases there are temporary regulations in place until the next works council elections, but for a period no longer than 1 year making it compulsory to delegate members in the works council under the successor employer.

2002 saw the establishment of the National Public Service Interest Reconciliation Council (OKÉT) serving as the collective bargaining forum for issues of labour, employment, wage and income policy, of interest to civil servants employed in publicly financed institutions, public servants, professional staff members of the military and other employees

II. Please provide all available information …

Question to article 1
Protection of employees against anti-trade union discrimination …

Proceedings related to the violation of the prohibition of discrimination on grounds of trade union affiliation may be conducted in the framework of an investigation concerning the compliance with anti-discrimination legislation. Such practices qualify as contravention in the meaning of Government Decree 218/1999 (XII. 28.) Korm. on Certain types of contravention. An employer unlawfully refusing the employment of an employee among other reasons for the latter's affiliation to an employees' representative organisation or some activity related to that or other circumstances unrelated to the employment relationship thereby commits negative discrimination among the employees, and may be fined up to 100,000 HUF. The contravention proceedings belong in the jurisdiction of the general contravention authority (notary), and/or that of the occupational safety and labour inspector.

On the basis of Act LXXV of 1996 on Labour inspection (Met) labour inspectors inspect whether employers' duties related to the organisation of the trade union are fulfilled, and whether the rules aimed at the protection under labour law of trade union

officials, works council members, occupational safety representatives are being complied with by the employer. All proceedings listed here are triggered by a report. Cases of the above type represent less than 1% of all cases inspected. Numbers vary: in 1999 there were 6 cases, in 2000 37, in 2001 22, and in 2002 7. The rising number in 2000-2001 does not necessarily reflect more such cases, but may be explained by a temporary increase of trade union activity.

Public administration measures resulting from labour inspections with reference to 2001

Subject of procedure	Number of warnings	Number of instructions to discontinue irregularities	Number of labour law fines	Amount paid in labour law fine (HUF)
Employer's obligations related to regulations allowing the establishment of a trade union in order to protect employees' economic and social interests	2	14	5	240,000
Violating rules concerning the protection under labour law or working time allowance of elected trade union officials or works council members	0	1	1	60,000
Violating rules concerning the delivery of the employer's obligations related to measures objected to by the trade union.	2	0	1	50,000

Distribution of effective contravention resolutions with reference to 2001 according to the subject of the procedure

Subject of procedure	Resolutions to impose fines		On-the-spot fines		Number of contravention cases	Amount paid in fines (HUF)
	No.	Sum (HUF)	No.	Sum (HUF)		

Employer's obligations related to regulations allowing the establishment of a trade union in order to protect employees' economic and social interests	0	0	1	5,000	1	5,000
Violating rules concerning the protection under labour law or working time allowance of elected trade union officials or works council members	0	0	0	0	0	0
Violating rules concerning the delivery of the employer's obligations related to measures objected to by the trade union.	0	0	0	0	0	0

Employment related measures from 1999 to 2002 related to trade union activity

Year	**Violating labour rules related to trade union activity**	
1999	6	
2000	37	
2001	22	
2002	7	In a breakdown according to subject in 2002:
		Employer's obligations related to regulations allowing the establishment of a trade union in order to protect employees' economic and social interests 2
		Violating rules concerning the protection under labour law or working time allowance of elected trade union officials or works council members 3

		Violating rules concerning the delivery of the employer's obligations related to measures objected to by the trade union. 2
As a % of total	0.02	

(source: National Inspectorate for Labour and Occupational Safety)

The employer may instigate a labour dispute in order to realise a due claim arising from his/her employment relationship, and a trade union, or the works council to realise a claim arising from the Labour Code, the collective agreement, or the works agreement. That provision in the Labour Code allows for a labour suit if the prohibition of negative discrimination was violated, however, the number of suits initiated for that reason is not too high. One may observe that labour disputes are undertaken mostly in order to settle employees' specific financial claims from breaches of law by the employer (e.g. unpaid wages, or severance pay), while litigated cases related to negative discrimination are much less numerous.

Question to article 2:
protection against interference of employers' and employee's organisations in each other's actions…

Act II of 1989 on the Freedom of association protects the independence of social organisations, including representative organisations of both employers and employees, and, as a result, it sets the basic requirement that a social organisation should be created voluntarily, and be managed on a self-governing basis.

With regard to the uninfluenced and independent establishment and operation of representative organisations the Mt. provides that employees, and employers may exercise their right to found organisations, or to join them without no discrimination whatsoever, observing exclusively the relevant regulations of that organisation. The requirements of independence and unbiassedness may be derived from this rule, which, however, is not explicitly integrated in labour legislation at an organisational level (only the *employee's* negative discrimination, forcing him to state his trade union affiliation, making his employment or dismissal dependent from his trade union affiliation are prohibited).

As regards the works councils, the Mt requires, in conjunction with their establishment that it should take place independently stating that the employer may not participate or affect the election committee created to handle the nomination and the election process itself.

Financial compensation for unused working time allowance to be granted to trade union officials should not be regarded as a tool for employers to pressurise their staff, which is proven by the fact that – among other things – trade unions were generally in favour of introducing the statutory system of making such financial compenstation compulsory mentioned in **I** above.

Finally it is worthwhile mentioning the requirement of exercising rights according to the legislative purpose, to be applied generally in the area of collective labour law. That principle provides that each measure which e.g. is aimed at or results in limiting other people's potential to realise their interests or at keeping them from voicing their opinion is against the legislative purpose.

The Mt provides the possibility of litigation in accordance with the general rules of labour suits as the trade union, and the works council may instigate a labour dispute in order to realise their interests arising from the Mt.

Questions to articles 3 and 4:

measures taken to give effect to articles 3 and 4

For the various procedures promoting the observance of the right to organise, and measures related to the issue of voluntary bargaining and the conclusion of collective agreements, and relevant to the legal regulation see **I** above.

The following are statistics of collective agreements in the period in question (based on the information stored in the collective agreement database):

Number of collective agreements valid for one employer and total number covered:

Year	Competitive sector*		Public sector **		Total	
	agreements	*number*	*agreements*	*number*	*agreements*	*number*
2000	1 358	730 107	2 079	272 051	3 437	1 002 158
2001	1 333	698 262	2 077	268 139	3 410	966 401
2002	1277	667800	2019	251 820	3 296	919 620

* size of workforce at employers employing more than 5

** Headcount only at employers where a collective agreement could be concluded

Deleted:

Number of collective agreements covering several employers:

Year	Competitive sector*		Public sector**		Total	
	agreements	*number*	*agreements*	*number*	*agreements*	*number*
2000	66	243 497	12	2 343	88	245 840
2001	73	245 802	11	2 177	84	247 979
2002	66	290 312	8	1 999	74	292 311

Changes in coverage (based on collective agreements valid for one and for several employers)***

Years	Competitive sector			Public sector **			Total		
	Size of workforce	*Number covered by c.a.*	*%*	*Size of workforce*	*Number covered by c.a.*	*%*	*Size of workforce*	*Number covered by c.a.*	*%*
2000	1 848 601	802 657	43,42	586 131	272 831	46,55	2 434 732	1 075 488	44,17
2001	1 868 148	785 769	42,06	585 813	270 202	46,12	2 453 961	1 055 971	43,03
2002	1 883 349	748 086	39,72	594 470	253 250	42,60	2 478 612	1 001 336	40,40

*** Headcount figures adjusted for overlaps

It is clear from the data above that the ratio of collective agreements concluded shifts gradually from agreements applicable to one employer to those applicable to employees of several employers. That phenomenon is more and more clearly observable in both the competitive and the public sector. At the same time the number of employees involved has somewhat reduced.

It is typical in Hungary that collective agreements are concluded mainly at large employers. Promoting the conclusion of branch level agreements may have a positive effect on the situation of employees of small and medium sized enterprises, and the Government and the employers' and employees' organisations concerned have concluded an agreement to create the institutional conditions to encourage that process. Even presently, the law enables the extension of collective agreements on the entire branch, and the three sides are jointly seeking possible ways of further development.

Questions to article 5:

guarantees provided by the Convention applying to members of armed forces and police

5.1 With respect to the right to organise, the provisions of Act XLIII of 1996 on the Service relationship of the professional members of armed organisations (Hszt) shall apply to the Border guard and the Police, both belonging to the armed forces. The Hszt enables the members of professional staff to create representative organisations, or associations to protect and promote their rights and lawful interests arising from the service relationship. The rights of such representative organisations are more limited than general rules provide: professional members may not organise industrial action, and none of their activities may hamper the normal operation of the armed organisation, or the performance of orders and measures.

The armed organisation must cooperate with the representative organisation, and ensure the conditions of its operation (free use of office space, right of publication).

The Hszt prohibits the armed organisation to force any member of the professional staff to make statements concerning their affiliation to representative organisations, or to terminate their service relationship as a result, or cause any damage to the person. The armed organisation must not make any entitlements or benefits conditional upon the member's affiliation to a representative organisation.

It is the right of the representative organisation to obtain information (concerning the financial, social, cultural, living, and service conditions of the members), to represent its members (facing the employer, facing a public organisation, or in court), to be asked to give an opinion, to be consulted, to inspect compliance of with regulations concerning service and working conditions, to submit trade union objection against an unlawful measure, or omission that directly affects the members of the professional staff or the organisation. The officials are entitled to working time allowance, extraordinary paid leave for educational purposes, and protection under labour law.

The Interministerial Interest Reconciliation Forum of Law Enforcement Organisations was established in November 2002 and has competence in questions of national significance concerning the service relationship. Their fundamental rights include the right of opinion in issues of basic remuneration, draft legislation applicable to them, the career promotion and salary system, and the further development of the assessment and performance evaluation system.

Apart from that there is the branch level body, the Police Interest Reconciliation Council, the Border Guard Interest Reconciliation Council, and the Ministry of the Interior Interest Reconciliation Council.

5.2 A separate piece of legislation, Act XCV of 2001 on the Legal status of the professional and the contracted staff of the Hungarian Military (Hjt), the latter likewise part of the armed forces, enables soldiers to found organisations and represent their interests as provided by Convention 98. The Hjt, similarly to the Hszt, provides that the members of the staff may establish organisations, associations, and enter these, and have representation at various interest representation forums to promote their rights and lawful interests arising from the service relationship. Such representative organisations may not organise industrial action, and none of their activities may hamper the normal operation of the armed organisation, or the performance of orders and measures.

The Hjt requires that the Hungarian military should cooperate with the representative organisation, and that it must ensure the operative conditions to the representative organisation.

The Hjt names the Interest Reconciliation Forum of the Military as the organisation for branch level interest reconciliation.

A closed representative system was introduced on 1 January 2002 in the case of military home defense services. The relevant provision of the Hjt provides that members of military home defense services may establish a representative organisation if such establishment involves at least one third of the staff as founding members. That organisation may not join an international representative association, and its room for action facing military home defense services is also more limited than the authority granted by general regulations. The Hjt grants the right of agreement to the representative organisation with regard to welfare services.

III Any resolutions concerning issues of principle by courts of justice ...

There have been no decisions of principle (at a principle level, compulsory for all courts prepared by the Supreme Court) over the period since the last report related to provisions on the right to organise.

The Supreme Court made the following occasional decisions relevant to the Convention in the reporting period:

Concerning collective agreements:

- The lack of a trade union at a legal successor does not constitute an obstacle to applying a collective agreement concluded with the legal predecessor if the legal successor terminated the agreement with the trade union operating at the legal predecessor. (Court decisions database, decision 2002/30)
- Inernal labour regulations may not modify the collective agreement as its content is unilaterally determined by the employer. (Court decisions database, decision 2002/30)
- Those trade unions, representing employees, are entitled to amend the collective agreement that have themselves concluded the collective agreement. In line with the general principles of agreements, a collective agreement may be amended by the same party that also contributed to its conclusion. (Court decisions database, decision 2002/128)

Concerning works councils:

- In the event of works council elections held at an employer or at one of his sections/sites, a trade union with members having an employment relationship with that section/site may nominate at the employer (section/site) a member from among the members of the union. Trade union associations are not entitled to the same for lack of pre-conditions. (Court decisions database, decision 2002/242)

IV General observations …

The legal framework of the requirements contained in the Convention have been in place in Hungary for years. The legal conditions are provided for restructuring, consultation, and for concluding agreements. However, legal conditions, and the various institutions of labour law operate mostly in the national bargaining process, and at large employers because collective agreements are less numerous than would be justified, and because there are very few collective labour disputes in comparison to classic labour suits, and for the same reason, the deficient guiding role of judicial practice in this area. This relates, on the one hand, to limited proficiency at the local level on both employers' and employees' (trade unions') side, and, on the other, to the special history of trade union movement as in the political structures prior to the change of régime the trade union operated primarily at a political level. The resulting skepticism that is still palpably with us with respect to trade unions, and to representative organisations in general may be claimed to be a realistic factor in the Hungarian society. Increasing the effectiveness of branch level interest representation may be a way to eliminate that scepticism as it may raise the

confidence in the system of collective bargaining. The Government would like to emphasise, however, that governmental efforts in themselves are not sufficient to reach that objective, and that the activity level of representative organisations' and the culture of collective bargaining must be further improved.

CONSULTATIONS WITH ORGANISATIONS OF EMPLOYERS AND WORKERS

The tripartite National ILO Council consulted this Report on its session of 25 September 2003 and unanimously adopted the content of the Report.

The National ILO Council is a consultative national forum for social dialogue. Its function is to conduct tripartite consultations as provided by Convention No. 144 on tripartite consultations (International Labour Standards), to promote national measures related to the activity of the International Labour Organisation, to perform other functions defined in the Statutes of the Council. Employer and employee members and deputy members of the National ILO Council are delegated from the following national interest representation organisations:

Employers' organisations:

Union of Agrarian Employers
National Federation of General Consumer Co-operatives
National Association of Industrial Corporations
National Federation of Traders' and Caterers
Confederation of Hungarian Employers and Industrialists
Hungarian Industrial Association
Hungarian Confederation of Utility Companies
National Federation of Agricultural Co-operators and Producers
National Association of Entrepreneurs and Employers

Workers' organisations:

National Federation of Autonomous Trade Unions
Trade Union Group of Intellectuals
Democratic League of Independent Trade Unions
National Confederation of Hungarian Trade Unions
National Federation of Workers' Councils
Co-operation Forum of Trade Unions