

**REPUBLIC OF HUNGARY
National ILO Council**

REPORT

**for the period 1 June 2002 to 1 June 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**

**FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO
ORGANISE CONVENTION, 1948 (87)**

(ratification registered: 6 June 1957)

Budapest, September 2003

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FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (No. 87)

(ratification registered: 6 June 1957)

Convention 87 adopted in 1948 at Session 31 of the International Labour Conference on the Freedom of association and protection of the right to organise (87) Convention was ratified by Hungarian Parliament in Act LII of 2000, whereby the provisions of the Convention became part of the Hungarian legislation.

I The articles of the Convention in Hungary are given effect by the Constitution and a set of other legislation. No changes in these have taken place since the last report.

The following changes have been effected in the legislation of the Republic of Hungary concerning the regulation of the freedom of association and the right to organise since the last report:

1. The provisions of § 15 of Act II of 1989 on the Freedom of association were modified by Act CVI of 2001. As a result of the amendment effective from 2002 onward the representative of the social organisation must submit the registration request to the competent court of justice. The amended regulation provides procedural rules regarding the registration procedure by the court (for deadlines to replace missing documents, failure to replace missing documents, deadline for decision making, date of inception of operation of social organisation, public/non-public status of information in the registry) that stipulate guarantees for the social organisation.
2. Procedural rules regarding registration changed following the amendment of Act II of 1989 on the Freedom of association. The provisions of Minister of Justice Decree 6/1989 (VI.8.) IM on the Procedural rules of the registration of social organisations and foundation was amended by Minister of Justice Decree 24/2001 (XII.26.) IM from 2002 onward, and by Minister of Justice Decree 15/2002 (VIII.30.) IM effective from 1 January 2003. The amendments concern the judicial process, but have no implications on the application of the Convention.

3. Act XIX of 2002 amending the Labour Code provides changes regarding the relationship of employees and their various organisations. The provisions of amendment effective from 1 September 2002 require more rigorous regulations regarding the cooperation of the employer and the representative organisations, whereby 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. The planned decision must be communicated to the representative of the trade union with representative power on the employer's premises at such time as is sufficient to allow the trade union at least 15 days prior to the decision entering effect to voice an opinion.

The regulation of working time allowance of trade union officials has likewise changed. The new regulation provides that the allowance of trade union officials is generally two hours per month, regardless of the size of the trade union's membership. At the request of the trade union the employer must compensate financially the unused part, but no more than half of such allowance.

II. Answers to questions on specific articles of the Convention:

1.) To article 2 of the Convention:

a) The general rules that apply to the establishment of organisations of employees and employers are the provisions of Act II of 1989 on the Freedom of association. The law states in general terms that the freedom of association is a basic freedom to which everybody is entitled, which is recognised as such by the Republic of Hungary, and guarantees the undisturbed exercise of that right. The freedom of association ensures every citizen the right of creating organisations or communities with other people, and participate in the activities of these.

The freedom of association allows for private individuals and legal personalities and the organisations of these without legal personality to create social organisations and operate these in accordance with the purpose of the organisation's declared activity, and the intentions of their founders. In the case of a trade union the law allows only private individuals to be members. Act II of 1989 on the Freedom of association provides the content and the legal format to be observed when establishing a social organisation. The following are essential requirements:

- There must be at least ten founding members stating the establishment of the organisation,
- The statutes must be adopted,
- An administrative/operative and a representative body must be elected,
- The registration of the organisation must be requested (the social organisation is created through registration)

Minister of Justice Decree 6/1998. (VI. 8.) IM on the Procedural rules of registering a social organisation provides the administrative conditions of registering a social

organisation. It states the types of data to be supplied by the social organisation in order to have the organisation registered or have any of the already registered details modified. (Please find attached the text of Act II of 1989 on the Freedom of association and Decree 6/1998. (VI. 8.) IM).

b) There is no statutory provision in the Hungarian legislation to apply a different treatment to the constitutional right of specific groups of employees, except the armed forces and law enforcement bodies, especially those of civil servants and employees of publicly owned enterprises, to establish a social organisation or more specifically a trade union.

2.) To article 3 of the Convention:

The freedom of association enables of course the creation of not only organisations, but also communities that do not qualify as social organisations. Act II of 1989 on the Freedom of association provides as one of the basic principles of the freedom of association, deriving from the requirement of the rule of law, that **social organisations may be established with the aim of performing any such activity as is in harmony with the Constitution, and is not prohibited by legislation.** In this regard it specifies as a limitation of the freedom of association as a primary liberty that the freedom of association may not be exercised with the aim of committing a crime or instructing other people to commit such, and exercising the freedom of association may not result in the infringement on other people's rights or freedom, and that no armed organisation may be created on the basis of the freedom of association. In harmony with the requirement of independence of social organisations, the law provides those requirements concerning the organisational procedures and the statutes of social organisations that are indispensable to becoming a legal personality, and those that serve as a guarantee of the democratic, self-governed operation of the social organisation.

The statutes of the social organisation must specify the members' common objectives, the operational framework rooted in principles of democracy, and self-governance, and must likewise promote the exercise of the members' rights and obligations. The wording of the statutes is almost entirely up to the founders as the law provides hardly any requirements concerning the operation of the organisation, even for the legal content it only prescribes some points indispensable to becoming incorporated or to launch their operation. One of these is that **the statutes must establish the organisation's name, objective/mission, headquarters, and its structure.** No legislation specifies the purpose for which social organisations may be created, it only provides the restriction that the name of the social organisation should not suggest that a particular social organisation operates in tandem with the activities of another legal person (§§ 6-7 of Act II of 1989 on the Freedom of association).

3) To Article 4 of the Convention:

The law refers any decisions required to ensure the lawful operation of the social organisation to the jurisdiction of the county courts of justice or the Capital City Court

of Justice for guarantee purposes as such decisions constitute an interference of the state in the exercise of the freedom of association as a primary liberty.

The court of justice may, following the legal action of the prosecutor conducting an investigation as general control of legitimacy, or on the basis of legal action by the member of a social organisation objecting to an unlawful resolution, conduct proceedings, and make a decision necessary to restore legitimate conditions.

The law ensures the courts the authority for decisions suited to the gravity and the nature of the illegal practices in question. Thus the court may, on the basis of the prosecutors action, following the principle of the least interference in the exercise of the freedom of association, annul the unlawful resolution, and order the issue of a new one, or summon the top decision making body of the social organisation. If these measures prove ineffective, or are not likely to yield the expected result, the court may suspend the activity of the social organisation, or may assign a commissioner to control its activities. In the event that the exercise of the freedom of association under the social organisation involves criminal activity or instruction to commit a crime, or if it infringes upon other people's rights or limits other people's freedom, the court dissolves the social organisation. The court has the authority, in order to discontinue its uncertain legal status, to declare the dissolution of the social organisation, which takes place if the social organisation has ceased operating for at least one year, or if its membership has sunk and remains steadily below ten (§ 16 of Act II of 1989 on the Freedom of association).

4.) To article 5 of the Convention:

It follows from § 1 of Act II of 1989 on the Freedom of association, and the general provisions of paras (1) and (4) of § 2 that the social organisations, including employers' and employees' organisations may join other organisations, including international ones. It follows from the declarative rule of § 1 that anybody i.e. private individuals, legal persons, and organisations without legal personality, are ensured the liberty of creating organisations, associations/communities, or may contribute to the activity of existing ones. Based on that general liberty, social organisations, and the associations of these have the right to join other social organisations.

5.) To article 6 of the Convention

§ 13 of Act II of 1989 on the Freedom of association requires that all regulations concerning social organisations should be duly applied to the structure, operation, and registration, and the legal validity of the *association* of social organisations. In view of the fact that a social organisation is created through the act of registration, and that dissolution is one of the measures that may be taken if unlawful operation is reported, the general rules concerning dissolution must be applied in conjunction with the association of social organisations as well.

6.) To article 7 of the Convention

Para (4) of § 2 of Act II of 1989 on the Freedom of association requires that the social organisation, or association of social organisations, or, if the statutes so provide, also individual organisational units of the social organisation are legal personalities. The law only stipulates conditions concerning the legal personality of the *organisational unit* of the social organisation, namely that only such organisational units may be declared legal personalities as have their own administrative and representative bodies, and that have the requisite funding (a budget of their own) to stay in operation.

7.) To article 8 of the Convention

The financial management of social organisations is governed by general financial, accounting, and taxation legislation, and as regards civil law related issues, the provisions of Act IV of 1959 on the Civil Code, and in criminal law related issues or if a case constitutes a breach of law, the provisions of Act IV of 1978 on the Penal Code shall apply, and, depending on the particular activity, the provisions of the legislation created to regulate that situation must be applied.

8.) To article 9 of the Convention

As regards the armed forces, chapter IV of Act XCV of 2001 on the Legal status of the professional and contracted staff of the Hungarian military (hereinafter Hjt) extends the freedom granted soldiers' – both by Convention 87 and 98 – to establish organisations and to represent their interests. One exemption is para (6) of § 33 of Convention 97, which, in the case of trade unions representing staff serving abroad – due to the dangerousness of the tasks – stipulates conditions to the exercising of certain rights by representative offices. § 245 of the Hjt, however, is essential, which, in the case of military home defense services introduces a closed system of interest representation from 1 January 2002 onward. This allows members of military home defense services to establish an interest representation body if its created through the stated intention by at least one third of the full staff as founding members. Such an organisation, however, must not join any international representative organisation, and has only limited authority to take representative action against military home defense services.

It is necessary to mention with regard to Convention 98 that § 246 of the Hjt grants the right of agreement to military home defense services in the area of welfare benefits. All other representative organisations (if they reach the threshold of representativeness) are granted the right of cooperation not reaching the right of veto (with the exception one veto right, i.e. the right of objection). The law requires the Hungarian military to cooperate with representative units.

III. Measures relevant to article 11 of the Convention

The provisions of Act XXII of 1992 on the Labour Code (hereinafter Mt) concerning trade unions have been amended. The Government of the Republic of Hungary re-created the National Council for the Reconciliation of Interests as the national forum of collective bargaining. Accordingly, the National Council for the

Reconciliation of Interests has been integrated under that name in the language of the Labour Code.

Act XIX of 2002 on the Amendment of the Labour Code provides more rigorous regulations regarding the cooperation of the employer and the representative organisations, whereby the employer must, prior to his decision, *inquire* about the opinion of the trade union having representative power 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 independent unit out of a section of the organisation, privatisation, or modernisation. This constitutes a serious change in relation to the previous state of affairs where the employer was only under obligations to *provide* such information. The planned decision must be communicated to the representative of the trade union having representative power on the employer's premises at such time as is sufficient to allow at least 15 days prior to the decision entering effect to voice their opinion. The deadline of 15 days must be counted from the date of receipt of the plan by the trade union representative.

The working time allowance of trade union officials has likewise changed. The new regulation provides that the total allowance of trade union officials shall be two hours per month, taking account of all officials, unless otherwise agreed by the parties, after each three trade union members employed by the employer. That allowance does not include the time spent negotiating with the employer. The use of the allowance is at the discretion of the trade union. Absence from work must be communicated in advance to the person exercising employer's rights. The new regulation provides that the allowance granted to trade union officials is generally two hours per month, as described in detail above, regardless of the size of the trade union's membership. At the request of the trade union the employer must provide financial compensation for the unused part of such allowance, but for no more than half of it. The employer must determine the amount of such financial compensation on the basis of the trade union officials' average earnings in the previous calendar year, and must disburse the gross sum to the trade union monthly on a retrospect basis. The trade union must use that sum exclusively for a purpose related to its representative function.

The law on the amendment restored the previous regulation whereby the employer must compensate the trade union financially for the unused part of the working time allowance. The new regulations grant further guarantees to promote the trade unions' representative functions.

IV. The question concerning the issue of judicial practices

The Supreme Court of the Republic of Hungary has provided the information that there were as many as 658 out-of-court cases submitted to the Supreme Court related to the registration of social organisations. There is information available on how many of these concern a representative organisation of employers and how many those of employees. The Supreme Court did not give information on any decisions of principle concerning the application of the Convention.

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