



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

20 April 2015

Case Document No. 1

Matica Hrvatskih Sindikata v. Croatia
Complaint No .116/2015

COMPLAINT

Registered at the Secretariat on 24 March 2015



Zagreb, March 16th 2015

COUNCIL OF EUROPE
European Committee of Social Rights
F-67075 Strasbourg Cedex

COLLECTIVE COMPLAINT

1. PURPOSE OF COLLECTIVE COMPLAINT

The Republic of Croatia is a signatory of the European Social Charter from 1961 and the Additional Protocol to the European Social Charter from 1995, providing for a system of collective complaints. The Charter and the Protocol were also ratified by the Republic of Croatia based on the Act on confirming the European Social Charter and the Additional Protocol to the European Social Charter, the Protocol on Amendments to the European Social Charter and the Additional Protocol to the European Social Charter providing for a system of collective complaints, and which Act entered into force on February 26th 2003 (Official Gazette (hereinafter referred to as: NN, MU-15/2002)).

MATICA - The Association of Croatian Trade Unions (hereinafter referred to as: Matica), based on the Act on Representativeness of Employers' Associations and Trade Unions, is a higher level trade union association, making it one of the full-fledged subjects in social dialogue, and its representative is a member of the Economic and Social Council. In this way trade unions joint in Matica are acting jointly with the goal of protecting material, social and trade union interests of their members more efficiently and successfully and enhancing the development of their sectors.

By its size Matica is the third representative higher level trade union association in the Republic of Croatia. It was established on February 27th 1993 and gathers more than 65.000 members in eleven trade unions. These trade unions represent employees from public sector and civil services (health system, preschool education, primary and secondary education, science and higher education, justice and police) as well as the banking system.

MATICA - The Association of Croatian Trade Unions, represented by its president Mr Vilim Ribić, is hereby filing to the European Committee of Social Rights, in accordance with Article 1 of the Additional Protocol to the European Social Charter, providing for a system of collective complaints, a Collective Complaint due to violation of Article 5 The right to organize and Article 6 The right to bargain collectively, guaranteed in Part II of European Social Charter, which occurred due to entering into force of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012).

Matica requests from the Committee to determine whether the Republic of Croatia is acting in accordance with Article 5 and Article 6 of European Social Charter.

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2. INTRODUCTION

2.1. Legal employment status of employees in public services in the Republic of Croatia

The legal employment status of employees in public services in the Republic of Croatia, in addition to the Constitution of the Republic of Croatia, international sources of labour law including the ratified conventions of the International Labour Organization, the European Social Charter and other, Labour Act, Act on Wages in Public Services, is also essentially determined by the Basic Collective Agreement for Civil Servants and Employees in Public Services and branch collective agreements for individual sectors as autonomous sources of rights in that area. In the Republic of Croatia collective bargaining is widespread in the area of public services since the large number of employees enables an effective use of this instrument with the goal of securing the interests of workers and employers in the work process.

The Basic Collective Agreement for Civil Servants and Employees in Public Service entered into force on December 12th 2012 (hereinafter referred to as: BCA dated December 12th 2012 (Official Gazette No. 141/2012)), concluded between six representative public service unions and the Government of the Republic of Croatia with validity period of four years. At the time of passing the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (hereinafter referred to as: Act on Withdrawal, Official Gazette No. 143/12, 159/13) referring to non-payment of Christmas bonus and vacation allowance, the following branch collective agreements were effective: Collective Agreement for Science and Institutions of Higher Education dated October 22nd 2010 (Official Gazette No. 142/2010) valid till October 23rd 2014, Collective Agreement for the Secondary School Employees dated December 21st 2010 (Official gazette No. 7/2011) valid till December 23rd 2014, Collective Agreement for the Elementary School Employees dated April 29th 2011 (Official Gazette No. 66/2011) valid till April 30th 2015, Collective Agreement for the Health and Health Insurance Sector dated October 27th 2011 (Official Gazette No. 126/2011) valid till October 28th 2015 and other. The aforementioned branch collective agreements were abruptly cancelled approximately one year before the expiry of their validity and new ones were concluded with a smaller scope of material rights of workers.

2.2. Social and political circumstances in the Republic of Croatia preceding the adopting of the Act on Withdrawal

Upon completion of parliamentary elections in 2012, the newly elected Government of the Republic of Croatia, liberal in orientation according to their own words (despite the social-democratic name) initiates the implementation of an economic concept based primarily on saving. In February 2012 the Parliament of the Republic of Croatia adopted a state budget providing insufficient funds for the fulfilment of Government obligations assumed in accordance with the then valid basic and branch collective agreements. Hereby the Government shows that it does not have the intention to respect the agreed rights of those employed in public services, especially as the state budget was adopted without any previous consultations with unions. Till June 2012, in implementing its concept of economic policy, the Government of the Republic of Croatia repeatedly stated the official position on the necessity to reduce the rights and salaries of employees in public services, completely ignoring the obligation of social dialogue.

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2.2.1. June 2012 – Start of negotiations between the Government of the Republic of Croatia and public service trade unions

The Government of the Republic of Croatia initiated negotiations with public service trade unions immediately after the end of the school and academic year, whereby the trade unions from the education sector were indirectly prevented from using their most effective means in fighting for the rights of their members – strike. The trade unions were given the choice, in the form of an ultimatum, between salary cuts for their members or cancellation of several allowances on salaries. Due to the economic situation and wishing to help the Government of the Republic of Croatia in their attempt of implementing their economic concept, all trade unions were willing to make sacrifices, but on condition that their rights are reinstated at a time when it will be possible. Four trade unions (Croatian Teachers' Union, Independent Trade Union of Workers in Secondary Education of Croatia, Independent Union of Research and Higher Education, Croatian Trade Union of Nurses and Medical Technicians) organizing more than two thirds of all members in the area of public services, didn't want to consent to unconditional waiver of rights without an affirmation of their members at a referendum. They requested that workers in public services, after overcoming the crises, when economic indicators are more favourable, receive back the funds for allowances and the rights arising from these allowance.

2.2.2. October 2012 – The Government of the Republic of Croatia illegally cancels the Basic Collective Agreement for Civil Servants and Employees in Public Service dated October 04th 2010

The Government did not accept the proposal of the trade unions but continued to insist on unconditional waiver and at the beginning of August it announced the cancellation of the Basic Collective Agreement for Civil Service. During the entire period preceding the cancellation, there were no negotiations between the Government and the trade unions as a process of reasoned dialogue and exchange of standpoints and attempts to reach a compromise. The Government of the Republic of Croatia was solely interested in enforcing its ultimatum and not in reasonable dialogue. Finally, the Croatian Teachers' Union, the Independent Trade Union of Workers in Secondary Education of Croatia, the Independent Union of Research and Higher Education and the Croatian Trade Union of Nurses and Medical Technicians, at the end of July 2012, refused to sign an unconditional waiver of rights of their members, a conciliation procedure with trade unions in dispute was conducted as well as a referendum among trade union members regarding the issue whether they agree to an irreversible waiver of their rights. The referendum was attended by 59.256 workers respectively 84% of trade union members, of which 91,1% opposed the Government proposal and gave their full support to the trade unions. Five days after the trade union referendum, the Government of the Republic of Croatia illegally cancelled the Basic Collective Agreement for Civil Servants and Employees in Public Service dated October 04th 2010.

2.2.3. December 2012 - The Government of the Republic of Croatia signs a new Collective Agreement for Civil Servants and Employees in Public Service with the minority of public service trade unions in the Republic of Croatia and Addendum I to the same and passes the Act on Withdrawal

On December 12th 2012 the Government of the Republic of Croatia signed with the minority of public service trade unions a new Collective Agreement for Civil Servants and Employees in Public Service (Official Gazette No. 141/2012) as well as its Addendum I, by which the contracting parties have agreed, temporarily, for the year 2013, the limitation of material rights of the employed in public services agreed by that same signed Basic Collective Agreement. Here we are emphasizing the illogicality present in the Croatian legislation of that time according to which the Government is allowed to conclude with the minority of public service unions gathering less than one third of all members of public service unions, a collective agreement applicable to all employees in public service. However, even though the Government succeeded in illegally cancelling the Basic Collective Agreement of October 04th 2010 and signing a new one with the minority of public service trade unions, branch collective agreements for certain public service sectors still remained in force, and they by content very similarly or almost identically as the cancelled Basic Collective Agreement defined the material rights of employees to which they refer. Employees in public services, by applying the principle „in favorem laboratoris“ (in favour of the worker), notwithstanding the cancellation of the Basic Collective Agreement, still had the right to receive payment of rights suspended by the agreed Addendum I to the Basic Collective Agreement (annual Christmas bonus and vacation allowance in 2012 and 2013). In order to deprive the employees of their aforementioned rights, the Government of the Republic of Croatia, contrary to obligations accepted in that same agreements, contrary to the nature and purpose of concluding collective agreements, contrary to international sources of labour law which are obliging it, without any negotiations and notifications whatsoever, on December 20th 2012 passed the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012).

- Evidence: - Basic Collective Agreement for Civil Servants and Employees in Public Service dated October 04th 2010
- Basic Collective Agreement for Civil Servants and Employees in Public Service dated December 12th 2012
- Addendum I to the Basic Collective Agreement for Civil Servants and Employees in Public Service dated December 12th 2012

3. Circumstances and reasons for passing the Act on Withdrawal of Certain Material Rights of the Employed in Public Services – explanation of the Government of the Republic of Croatia

On December 19th 2012 the Croatian Parliament, as the legislative authority of the Republic of Croatia, passed the Act on Withdrawal depriving the employees in public service of payments of certain material rights based on the concluded collective agreements or other agreements whose signee is the Government of the Republic of Croatia. The aforementioned Act is a direct attack on the freedom of collective bargaining as well as the right to organize in the Republic of Croatia, granted by the European

Social Charter, which the Republic of Croatia ratified and which, based on Article 140 of the Constitution of the Republic of Croatia, it is an integral part of the Croatian legal order, by legal force above the law.

- Evidence: Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012)

The Ministry of Labour and Pension System, as the proposer of the controversial Act on withdrawal, in the Draft proposal from December 2012, states the following as the reasons for its adoption:

- a) reverse trend of macroeconomic development and
- b) necessity to implement further measures of fiscal austerity with the goal of reducing the public debt by reducing the cost of work in public services.

- Evidence: Draft proposal of Act on Withdrawal of Certain Material Rights of the Employed in Public Services from December 2012

The reasons of the Government of the Republic of Croatia for withdrawal of rights agreed by collective agreements are essentially irrelevant and unjustified.

Ad a) The quoted "reverse trend of macroeconomic development" was present in the Croatian economy for two years before agreeing the rights of employees in public services which they are deprived of by the Act on withdrawal. These rights were agreed in October 2010 and the "reverse trend" (or in economic terms recession) lasts since the end of 2008, whereby, after two years of decrease of the gross domestic product, the situation stabilized in 2011.

Ad b) The Ministry's claim on the causality of "reverse trend of macroeconomic development" and the requirement of reducing the costs of work exactly in public services is neither justified nor explained. In accordance with a growing number of economic standpoints, the aforementioned causality exists solely with an opposite sign i.e. fiscal austerity measures are worsening the crisis, and by no means solving it, which is clearly proven by the failure of rigid austerity measures all across Europe during the past five years. The aforementioned is also proven by scientific papers of renowned contemporary economic theorists, based on which institutions, till now blindly insisting on those measures, lately are changing or easing their standpoints (IMF, European Commission). Austerity measures are reducing the aggregate demand and thereby production as well and are thus causing new losses of workplaces and the decrease of all "macroeconomic indicators".

It is our standpoint that during the validity period of branch collective agreements there were no significant changes in relation to the time of signing the same, and that the Government of the Republic of Croatia concluded and subsequently derogated the same by the Act in almost identical or similar economic conditions. The Act on Withdrawal was adopted in December 2012 when the Government of the Republic of Croatia had at its disposal statistic data which in no way whatsoever indicated significantly changed circumstances. Moreover, the Government relied on its own data in official documents which predicted a growth of gross domestic product for 2012.

4. Contrariety of the Act on Withdrawal to the European Social Charter

The European Social Charter in Part II, amongst others, in Article 5 establishes that *"With a view of ensuring or promoting the freedom of workers and employers to form local, national or international organizations for the protection of their economic and social interests and to join these organizations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom."*

The Government of the Republic of Croatia did not consult its social partners, it passed such an Act on Withdrawal in this impious and illegal proceeding. Further to all sequence of events, it also intended to derogate the very essence and function of trade unions as organizations for the protection of workers' and social rights. Namely, in addition to the proposal of the new Labour Act aimed at significantly infringing the rights of workers, the Government of the Republic of Croatia submitted to its social partners the proposal of Act on Financial Transactions and Accounting of Non-Profit Organizations in which it was neither evident nor explained why the Act applies to trade unions and employers which are not funded from the state budget, and which also didn't have the purpose of alignment with the Community *acquis* since the same does not regulate this area. By the aforementioned Act it was intended to impose the obligation on trade unions to publish annual financial reports and audits of the same which would mean an unacceptable encroachment in the autonomy of trade unions. When drafting the Act Proposal the proposer did not take into account the fact that a trade union is a voluntary organization respectively that the membership in trade unions is not compulsory meaning that not all citizens of the Republic of Croatia are trade union members and that the responsibility of trade unions for their actions (as well as for business activities and management) exists solely towards their members. Ultimately, trade unions have no public authority whatsoever and the activities of trade unions aren't even partly financed from the state budget which is financed by all citizens (both those who aren't trade union members as well as those who are).

The right to freely establish trade unions also means that trade unions themselves are deciding on their rules of action, that they are independently electing their representatives and that they are independent in management and actions in accordance with their action plans.

The aforementioned also means that establishing trade unions is autonomous, that trade unions have the right to pass their own statutes and acts and formulate their programmes based on which they will organize their activities and manage the work of trade unions. When talking about autonomy, we refer to the free choice of workers whether to join a trade union or not, to freedom of opinion and speech, the right to freedom of organizing and the right to collective bargaining. By such Government policy towards trade unions as well as by adopting such legal solutions, the aforementioned autonomy would be endangered since the other side – the employer (which in some cases is the Government itself) would be given insight in the financial strength and power of trade unions, based on which unions are negotiating and initiating industrial actions which the goal of exerting pressure on the employer.

In addition, Article 6 establishes that *"With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:*

1. To promote consultations between workers and employers as partners with equal rights;

By the Conclusion of the European Committee of Social Rights from December 2010 Number XIX – 3 (2010), and regarding the Economic and Social Council in the Republic of Croatia, consisting of representatives of the Government, higher level employers association and higher level trade union associations, established with the goal of protecting and promoting economic and social rights respectively interests of workers and employers, pursuing a harmonized economic, social and development policy, as well as promoting, concluding and implementing collective agreements, it was established that the situation in the Republic of Croatia is not in accordance with Article 6 Paragraph 1 of the European Social Charter since the system of mutual consultations covering all areas of mutual interest is not yet established.

By the Agreement on the Establishment of the Economic-Social Council in Article 3, among others, it is regulated: "Signatories of the Agreement undertake that all public policies, national strategies, draft bills, regulations, programmes and other documents, based on the Annual plan of normative activities of the Government and the expressed interest of social partners, before being submitted to the Government, will be reviewed by the Council, respectively by the appropriate working committees, and all in accordance with the Work Programme of the Council.

The Work Programme of the Council will be established based on the Annual plan of normative activities of the Government which will be presented to the Council every year in January for that calendar year, as well as the initiatives and expressed interests of social partners.

The signatories of the Agreement agree that the Work Programme of the Council establishes the topics, deadlines and holders of preparations of the same, the participation level of social partners in implementing the Work Programme of the Council and other topics for which the social partners have shown initiative, respectively interest.

In case the Government proposes regulations not anticipated in the Annual plan of normative activities, it undertakes to inform social partners about the same with the purpose of their expressing interest for including experts in the work of the Councils body at appropriate levels."

That the situation in the Republic of Croatia did not change after passing the aforementioned Conclusion of the European Committee of Social Rights either, is proven by the fact that the Government of the Republic of Croatia on December 20th 2012 passed the controversial Act on Withdrawal of Material Rights as well as subsequently the Act on Withdrawal of Right to Salary Increase Based on Years of Service (Official Gazette No. 41/2014, 154/2014). Namely, by the Act on Withdrawal of Right to Salary Increase Based on Years of Service by 4, 8 and 10 percent, the Government once again, by its direct actions, derogated provisions of branch collective agreements in health system and primary, secondary and higher education and science with the same explanation as when passing the Act on Withdrawal. This time the Government went a step further and by the aforementioned Act it reduced the basic pay of workers with more than 20 years of service.

From all the aforementioned it is evident that in the Republic of Croatia the basic principles of the rule of law are not respected nor the bodies established with the goal of improving social dialogue as one of

the most important democratic values of the society and the basic precondition for joint actions in achieving defined goals and reaching consensus on the further development of the Croatian society.

The question arises, in accordance with the Conclusion of the Committee, why the Government does not discuss with its social partners all questions of influence and importance for all parties, regardless of the importance of individual topics for various parties, but the work of the Economic and Social Council is based solely on primary issues of economic and social policy, respectively, whether the trade unions have an influence on solving economic and social issues at tripartite level.

- 2. To promote, when necessary and appropriate, the establishment of machinery for voluntary negotiations between employers or employers' organizations, on one side, and workers' organizations, on the other side, with a view to the regulation of terms and conditions of employment by means of collective agreements;*

A Collective Agreement is an important and valuable autonomous and professional source of law. In 2011 from total of 845 collective agreements 88% were concluded at the level of companies. Due to extended collective agreements (trade, catering industry, construction) and collective agreements in public sector, it is estimated that approximately 61% of employees in Croatia (44% in private and almost 100% in public sector) are covered by collective agreements. Since then till today we are witnessing drastic cutbacks in the number of concluded collective agreements.

The Republic of Croatia, abruptly and without a valid explanation, cancelled collective agreements in vital areas for the functioning of the state and thereby overthrew provisions on promoting the resolution of conditions of employment by means of collective agreements.

The culmination of the autocracy of the State lies in cancelling all branch collective agreements in the education system (primary and secondary education as well as science and higher education).

On its session of December 12th 2013 the Government decided to cancel collective agreements in education and science and thus, after seven months of intensive negotiations, for the first time since it was agreed in 1998, the Collective Agreement for Research and Institutions of Higher Education was cancelled, and negotiations are still ongoing.

As the primary reason for cancelling the aforementioned collective agreement in the science and higher education sector emphasized is the considerably worsened economic situation, and among other reasons the following are quoted: trade unions' refusal to delete all provisions which are already agreed by the Basic Collective Agreement, failure to reach an agreement on the list of jobs for employees in scientific-educational profession, failure to reach an agreement on the size of lecture groups, expenses payment problem, respectively tuition fee for postgraduate doctoral studies for assistants employed in the sector, failure to reach an agreement on special working conditions.

Every of the aforementioned reasons, apart from payment of expenses for postgraduate doctoral studies for assistants, is completely untrue. It is evident that the authorities had the intention to cancel the Collective Agreement, at all costs, so it even stated false reasons. The real reason for such a proceeding of the Government is the complete collapse of the economic politics with the consequence of a repeatedly poor filling of the state budget urging the Government to further cutting of indispensable expenses such as, for example, transport costs in education system as well as various fringe benefits. In this way the Government obviously endeavoured to achieve savings regardless of the severe damages

which are thereby caused to the education system, one of the vital functions of this society crucial for the further development of the Republic of Croatia, whereby savings achieved in this way are really minimal.

By such proceeding the current authorities have once again shown that the principle *pacta sunt servanda* is valid solely for the chosen ones and demonstrated their power by showing that the Government can negotiate and agree but that the agreed can also be unilaterally abolished by means of the law. The principle that agreements must be respected is valid solely when, for example, agreeing the purchase of official vehicles for the Government and the Parliament worth 271,1 million Kuna in the middle of the procedure of cancelling branch collective agreements, while in case of public servants it is no problem whatsoever to derogate the collective agreement by means of the law exactly due to lack of funds in the state budget. The seriousness of the situation is increased by the fact that salaries in the education sector are lower than salaries in all other sectors and by the Act on Withdrawal and the Act on Withdrawal of Right to Salary Increase Based on Years of Service that level is additionally lowered and this for employees who are giving the largest contribution to the society as a whole.

At the time of passing the Act on Withdrawal one of the aggravating factors for actions in accordance with Article 6 of the European Social Charter was the at that time valid Act on Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining (revised text of the Act, Official Gazette No. 82/2012 and 88/2012). Namely, by the aforementioned Act, passed shortly before the legal derogation of rights agreed by collective agreements, the Government completely destroyed the system of collective bargaining. By that Act the stability of collective agreements was completely excluded. It was anticipated that the procedure of establishing representativeness can be initiated by the employer as well which is an absolutely unacceptable interference with the rights of trade unions. Namely, by the aforementioned Act special, different criteria were set for establishing representativeness of a trade union gathering a certain percentage of member workers of the same profession and occupation (so called craft unions) meaning that unions in accordance with that Act did not have equal conditions for representativeness thus enabling unions with a small number of members to participate in collective bargaining. The result of these legal provisions is the conclusion of the Basic Collective Agreement dated December 12th 2012 and its Addendum I which, after the unjustified cancellation of the BCA of October 04th 2010, was signed by just six trade unions of public services representing solely one third of membership in public services and which due to the institute of extended application is obligatory for all employees in public services.

3. *"To promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; ...*

In the Republic of Croatia there is a normative framework and technical conditions for peaceful settlement of collective labour disputes as well as individual labour disputes. However, past experience in conducting conciliation procedures in collective labour disputes are pointing at the necessity to eliminate the causes for the occurrence of such labour disputes, first of all, timely and preventive action, compliance with all laws and regulations relating to the terms and conditions of business operations, the rights and obligations of the management and the workers, as well as the necessity of training and education for representatives of parties in dispute which are participating in that procedure in the name of their organizations.

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It often seems that the conciliation procedure in collective labour disputes is conducted more for the sake of appearance and not with the goal of achieving a sustainable and fair agreement with the mediation of a third neutral party. In addition, the Labour Act establishes a short period for mediation of no longer than five days, including non-working days and holidays. The aforementioned deadline does not favour the conciliation procedure, respective conducting the required consultations and finding a mutually acceptable solution.

It is by all means positive that in 50 percent of initiated procedures for peaceful settlements of labour disputes an amicable settlement was achieved but it is also worrying that a significant number of disputes still ends unsuccessfully, respectively that, during the year, identical situations are recurring in a certain number of cases. The Labour Act also defines the possibility of arbitrary resolution of labour disputes, but till now this option remained without an apparent effect, and this situation is not to be accepted as a permanent condition.

The aforementioned solution should be encouraged more in such a way that the provisions on arbitrary settlement of labour disputes are included in collective agreements or special agreements between parties. Such a way of resolving contentious issues is very efficient and acceptable for both sides, but in the Republic of Croatia it is still not sufficiently fostered. With an agreed procedure of arbitrary resolution of disputes, cases of solely formally conducting conciliation procedures in accordance with the Labour Act (which is the most often case in the Republic of Croatia), unnecessary lawsuits would be substantially reduced, which due to duration are additionally elevating the tension between a trade union and an employer, thereby directing parties to waste their energy on consequences instead on basic issues of solving the cause of the problem.

We are emphasizing that by the proposal of the new Labour Act which entered into force in August 2014 only one conciliation procedure on the same dispute was foreseen. In this way the Government, instead of encouraging the possibility of mediation for all the aforementioned reasons, intended to limit the conciliation procedure and thereby risked the possibility of resolving disputes solely through industrial actions which, ultimately, are not the best way of dispute resolution. It is in the interest of the Government to allow better conciliation possibilities, even a multiple repetition, instead of risking the discontent of trade unions resulting in industrial actions.

4. "The right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into"

In the Republic of Croatia there is a relatively high density of trade union organizing but almost 80 percent of that structure are employees in large or medium-sized enterprises and public services. The Croatian real sector consists predominantly of small entrepreneurs and there is a huge number of work organizations. When it comes to the private sector, extraordinary problems are the minimum trade union organization and the fragmentation of trade unions. It is without any doubt that the organization and efficiency of unions in small enterprises is most questionable. In case workers in small enterprises go on strike, the employer can easily replace workers in strike with other workers. Unlike the public sector, the stability of workers' employment in private sector is much weaker. A private sector union isn't sufficiently organized, not even for an elementary expression of discontent with rights based on labour rights or social rights. In that way, along with appreciating the fact that the right to collective bargaining is conditioned by union organization, the possibility of expressing, articulating collective interests of

workers is considerably reduced, and strike, as a special form of fighting for achieving workers' collective interest, is eliminated. In the Report of the International Labour Organization the Croatian Government is also criticized because of the slowness and inefficiency of the legal system in solving disputes against employers which are preventing trade union organization. But, even outside this legal sphere, there are still many examples when the organization and activities of trade unions at private employers is made impossible by applying coercion methods and layoffs.

Even in those situations when a trade union is authorized to initiate and undertake a strike, there are many difficulties. An example for the aforementioned is the Croatian Medical Union which on September 18th 2013 initiated the strike of physicians in health institutions. On November 14th 2013 the Government of the Republic of Croatia adopted the Decision on the introduction of work obligation for medical doctors in hospital health care facilities. That decision is unconstitutional and illegal, because it has no legal basis and there is a clear constitutional limitation which was ultimately confirmed by the Constitutional Court of the Republic of Croatia in its explanation that the Government, by introducing work obligation for medical doctors, illegally interfered with the strike of health care workers and thereby prevented them in exercising their constitutional right.

In general, trade unions in the Republic of Croatia were damaged to a great extent for initiating and conducting a strike, taking into consideration solely the common basis for conducting the same, which was also crystalized through case law. Even though by the Labour Act (Official Gazette No. 149/2009, 61/2011, 82/2012, 73/2013), Article 269, it is stated that trade unions or their higher level associations have the right to call and undertake a strike in order to, among other, promote and protect the economic and social interests of their members, practice has proven that the sole legitimate reason for initiating a strike is salary, respectively salary compensation in case of their non-payment within 30 days of their maturity date. The valid Labour Act, by Article 205, is additionally limiting the right to initiate a strike, in which higher level trade union associations are no longer cited along with the trade union as a subject authorized to call a strike.

6. Finally

The Act on Withdrawal, which was in force in 2012, 2013 and 2014 (the Government of the Republic of Croatia, by the Regulation on Amendments of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 159/2013) prolonged the validity of the Act to 2014 as well) is in total contradiction with the aforementioned European Social Charter and in the same proclaimed and established universal values of international law, and which principles and values are a part of the legal order of the Republic of Croatia. The same deprives the right to organizing and collective bargaining of all meaning because its message is that the executive authority, when it is a participant in negotiations for concluding collective agreements, does not consider itself to be bounded by these negotiations or the signed collective agreements, but it can annul the results of negotiations by an arbitrary decision and deny employees their rights, past stipulated conditions and procedures. In such conditions every trade union activity loses its meaning and the right to union organizing and collective bargaining becomes an empty phrase without content.

Before passing the Act on Withdrawal, by which it denied the previously by the collective agreement agreed rights of public service employees, the Government of the Republic of Croatia did not fulfil several essential conditions listed below:

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- **Condition of negotiating before suspension of rights guaranteed by collective agreements**

Namely, the Government of the Republic of Croatia negotiated about the Basic Collective Agreement for Civil Servants and Employees in Public Service (Official Gazette No. 141/2012) and the same was signed along with Addendum I to BCA, by which the temporary suspension of payments of Christmas bonus and vacation allowance in public services in 2013 was agreed. However, as previously mentioned, Christmas bonus and vacation allowance are also agreed in branch collective agreements for individual public services, and at the time of signing the BCA and Addendum I, the Government of the Republic of Croatia didn't even try to open negotiations about amending respectively suspending branch collective agreements.

The fact that some of the trade unions did not want to sign nor conclude the Basic Collective Agreement for Civil Servants and Employees in Public Service, does not release the Government from its obligation to negotiate about the rights guaranteed by branch collective agreements with every single one of these trade unions. The Government of the Republic of Croatia neither can nor is it allowed to be released from the obligation of preceding negotiations for branch collective agreements because some of the unions didn't want to conclude the Basic Collective Agreement. Moreover, the Government of the Republic of Croatia did not even attempt to negotiate about the suspended rights contained in those branch collective agreements whose trade unions concluded the Basic Collective Agreement. Hence, even for those trade unions which agreed to temporary suspension of payment of Christmas bonus and vacation allowance by signing Addendum I to the Basic Collective Agreement, by means of the law, the provisions of branch collective agreements regulating those rights were derogated, even though with these trade unions there were no reasons stated for such an action.

Also, the Government of the Republic of Croatia was obliged to try to negotiate about branch collective agreements even with those trade unions who did not agree to the new Basic Collective Agreement. The Government of the Republic of Croatia could not and was not allowed to assume that the refusal to accept the Basic Collective Agreement at the same time meant the refusal to amend the branch collective agreement. Branch collective agreements have a substantially different content than the basic one and there is always the possibility that all that couldn't be solved at the level of Basic Collective Agreement can be solved at the level of branch collective agreements.

- **Condition of equal approach towards all**

The Government of the Republic of Croatia did not act in accordance with another condition set by the Committee of Experts of International Labour Organization, and that is equal approach towards all. Namely, by the Act on Withdrawal the Government prevented the payment of material rights to employees in public services, but it didn't proceed in the same way with employees in the other part of the public sector which is owned by the State, i.e. in trading companies and other legal persons majority-owned by the Republic of Croatia. These legal persons are very often users of state budget due to their expenses and losses, hence they are a budgetary cost just like public services. By withdrawing material rights to employees in trading and other companies owned by the state, the funds of those legal persons would increase and the burden for the budget, due to costs and losses they have, would be reduced. Accordingly, the Government of the Republic of Croatia selectively reduced the rights solely in public services.

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Datum osnivanja / Date of Founding: 27. 2. 1993.

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According to the Organization for Economic Co-operation and Development (OECD) which recently conducted a research regarding annual earnings in the education sector, Croatian high school teachers are positioned at the very bottom of the scale. As a result of all the aforementioned, further reducing of material rights of employees in public services results not only in a drop in living standards but the same is, ultimately, manifested in all aspect of social life and leads to general reduction in consumption. According to currently available Eurostat data on median average salary per hour for 2010¹ on the example of the education sector, Croatia was positioned 19th within Europe with a median salary per hour amounting 6,13 EUR. The average median of EU 27 countries amounts 14,9 EUR and 40 percent of that average is 5,96 EUR. This means that in 2010 Croatia was only slightly above 40 percent of average median salary in EU 27, i.e. median salary in the education sector was higher by just 0,17 Cent than the 40-percent threshold average of EU 27. Taking into consideration that the aforementioned data refer to 2010, it is absolutely logical that, after entering into force of the controversial Act on Withdrawal of Rights, that average diminished even further.

Median salary per hour in EUR in education sector – 2010



It is most inappropriate that the Government of the Republic of Croatia as the employer in public service, by means of laws it proposes itself and for the passing of which it has a secured parliamentary majority, as well as by unfounded adoption of ordinances regarding an issue which primarily falls within the responsibility of legislative power, is strengthening its negotiating position and thereby de facto imposing its will in the area of collective bargaining. Such conduct of the Government is contrary to the European Social Charter which is protecting the right of organizing and collective bargaining from prohibited interference by authorities, and based on which legal derogation of rights guaranteed by Collective Agreement is inadmissible.

This move of the Government of the Republic of Croatia represents not only an attack on employees in public services but also a direct attack on the freedom of collective bargaining granted by the European Social Charter as well as the Conventions of the International Labour Organization, which were ratified by

¹ http://epp.eurostat.ec.europa.eu/cache/ITY_SDDS/EN/earn_esms.htm

the Republic of Croatia, and which are by legal force above the law, but also an attack on the Charter of Fundamental Rights of the European Union as well as the Constitution of the Republic of Croatia and Labour Act.

Following all the aforementioned as well as the attached documents, we are asking the addressed Committee to review the issue whether the Government of the Republic of Croatia, by adopting and implementing the Act on Withdrawal of Certain Material Rights of the Employed in Public Services, acted in accordance with the provisions of Article 5 and Article 6 of the European Social Charter, respectively whether the same was implemented in a satisfactory manner.

MATICA - Association of Croatian Trade Unions
Vilim **Ribić**, President



A handwritten signature in blue ink, appearing to read "Vilim Ribić", is written over a horizontal line.

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Attachments:

- *Act on Denial of Payment of the Substantive Rights of Public Service Employees (Act on Withdrawal of Certain Material Rights of the Employed in Public Services) (Official Gazette No. 143/2012)*
- *Regulation on Amendments of the Act on Denial of Payment of the Substantive Rights of Public Service Employees (Act on Withdrawal of Certain Material Rights of the Employed in Public Services) (Official Gazette No. 159/2013)*
- *Draft proposal of Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Draft proposal of Act on Denial of Payment of the Substantive Rights of Public Service Employees) dated December 2012*
- *Relevant provisions of the Basic Collective Agreement for Civil Servants and Employees in Public Services (Basic Collective Agreement for the Officers and Employees in Public Services) dated October 04th 2010*
- *Relevant provisions of the Basic Collective Agreement for Civil Servants and Employees in Public Services (Basic Collective Agreement for the Officers and Employees in Public Services) dated December 12th 2012*
- *Addendum I of the Basic Collective Agreement for Civil Servants and Employees in Public Services (Appendix I to the Basic Collective Agreement for the Officers and Employees in Public Services) dated December 12th 2012*
- *Relevant provisions of the Draft Proposal of Act on Financial Operations and Accounting of Non-Profit Organizations*
- *Draft Proposal of Act on Withdrawal of Right to Salary Increase Based on Years of Service*
- *Act on Withdrawal of Right to Salary Increase Based on Years of Service (Official Gazette No. 41/14)*
- *Regulation on Amendments of the Act on Withdrawal of Right to Salary Increase Based on Years of Service (Official Gazette No. 157/2014)*
- *Act on Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining (Official Gazette No. 82/2012 and 88/2012)*

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