



LIGA Newsletter

Democratic League of Independent Trade Unions

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Looking back to the past year

Since the change of government in April 2010, the governing right wing conservative party FIDESZ - led by Prime Minister Viktor

1. In 2010, certain civil servants were given the legal status of government officials, and the new law on legal status makes it

"The institutions of social dialogue has been practically neglected by the new government in other matters as well: it has failed to convene the National Interest Reconciliation Council, thus violating the law, and, in a questionable manner, on the basis of individual MPs motions, it amended several laws concerning workers' rights without any consultation, which resulted in causing serious disadvantages to workers."

Orbán- has been exploiting the situation resulting from the special characteristics of the electoral system, namely that they entered Parliament with a two-thirds majority – have introduced, amongst others, the following measures:

possible to terminate their employment without justification with a short, two-month notice period. The possibility of termination of employment without justification has since been expanded to the whole group of civil servants. The compliance of

Dear Colleagues,

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There has been a lot of interest in the Hungarian situation lately from our international partners; therefore we have prepared this analysing newsletter to keep you informed. Unfortunately in the last year, the Hungarian trade union movement has been struggling with the anti-employee and anti-trade unionist attitude of the Hungarian government. LIGA Trade Unions have been in the front line of the fight. Hamstringing the right to strike, abolishment of the tripartite reconciliation system and lately the draft Labour Code amendments announced on the website of the Ministry for National Economy, seriously infringing employees' and trade unions' rights leaves us with a lot of worries...

I would also like to use this opportunity to thank all of those who are on board with us in this hard time and have expressed their solidarity with the Hungarian employees and trade unions. I would like to express special thanks to Sharan Burrow, Bernadette Ségol, Patrick Itschert and Mark Levin for their help and effort.

Adrienn Hangonyi, LIGA IRC

this regulation with the Hungarian Constitution was examined by the Constitutional Court on the basis of LIGA Trade Unions' submission. The Constitutional Court later in the beginning of 2011 annulled this law.

2. The new government has introduced a flat personal income tax rate of 16% claiming it would make taxation system easier, decrease the employment rate in the informal economy, facilitate growth in employment and by increasing the internal consumption, it would boost economical growth. However in reality – as we had primarily drawn this to the attention of the government - the changes of income tax, as a result of narrowing the number of employees entitled to receive tax credit, has caused net wage decrease for all those earning less than one and a half times the average salary.

3. According to another new law announced by the

Hungarian government: When their employment ends, employees in the public sphere and of business associations that are two-thirds owned by the state are obliged to pay **98% tax on a certain part of the benefits** they get – typically on the basis of the law or of a collective agreement – following the termination of their employment. For example, the redundancy pay, the average wage due during the notice period, and also the payment defined in the court resolution determining the unlawfulness of the termination of employment, are included in the tax base (that is, the more serious the violation of employees' rights is, the bigger the amount that is taxable becomes). This law was already annulled once by the Constitutional Court. Parliament, however, has since re-enacted it, and – what makes it even worse – with retrospective effect (covering incomes received since 2005), and has also **restricted the powers of the Constitutional Court** in order to prevent it from examining whether the new regulations are in compliance with the Hungarian Constitution.

4. In December 2010, following the individual MP motion, amendments to the law on the **right to strike** was adopted by the Hungarian Parliament, in just one week. As a result of this unexpected Christmas present for the Hungarian trade unions, striking against an employer carrying out an activity serving the basic interest of citizens is unlawful, unless the parties agree on the minimum service level and its conditions, or, if there is no agreement, the level should be defined by the court. This is an infringement of the right to strike. Since this law was adapted, **LIGA has announced a strike for 29 June 2011.** Since the court has not yet (still today) made any decision, the strike had to be “postponed” and what concerns the 29th of June, we were left with demonstrations and half-lane road closures. We regret to come to the conclusion, that our test case on the new Strike Act has failed and the procedure proved that the new law makes strike impossible in Hungary.

5. In December 2010, the government has undertaken a pension system reform.

Keen to reduce public debt,



the Hungarian government decided to force savers to transfer their assets back to the state, by stripping them of a state pension if they did not. The Hungarian Parliament passed the measures and 2.9 million savers out of 3 million have chosen to do as the government wanted. The rest (100.000 people) choose the voluntary private pension system fund and thus were forced to give up their right to future state pension.

6. As for the way the above amendments were adopted,

it is especially damaging that there had been no previous consultations at all with the social partners. The institutions of social dialogue has been practically neglected by the new government in

other matters as well: it has failed to convene the National Interest Reconciliation Council, thus violating the law, and, in a questionable manner, on the basis of individual MPs motions, it amended several laws concerning workers' rights without any consultation, which resulted in causing serious disadvantages to workers. In 2011 June, the government of Hungary has **abolished the National Interest Reconciliation Council**, which proved its efficiency in the past twenty years as a tripartite forum amongst employees' organisations, employers' organisations and the government. The government claimed, that the outmoded system of interest reconciliation has to be reorganised as it was burdened with parallelisms with other forums, and proposed the establishment of a so called National Economic and Social Council, that would convene not only employees and employers, but chambers of commerce, NGOs, the academics and representatives of churches etc...The government sees it's role only as an observer in this

new council, whose task would be consulting on strategic issues affecting the country. This forum since has not been convened.

LIGA Trade Unions has continuously been deploring the anti-employee attitude of the Hungarian government in different actions and called the Prime Minister and the responsible ministers through all the formal and informal channels to fully respect the institutions of the social partners. This latter was especially necessary, as during the Hungarian Presidency of the Council of the European Union, Hungary should not have turned its back at the national level on the social partners, who play an important role in European law and institutions.

7. The Hungarian government uses very populist wording

when talking about "restructuring" rather than "austerity". (To our surprise, they even expressed their support for the ETUC Euro Demonstration which was

held in Budapest on 9 April 2011, as it was against austerity measures.) However the point hasn't changed: they are introducing huge amounts of budget spending cuts. The government claims to have the aim of creating 1 million workplaces and facilitate work-based society, "therefore" they reduced the duration for unemployment benefit for a maximum of three months and significantly decreased its rate by enforcing the principle of work rather than benefit. The government has also launched a public work program, involving 200-300 thousand people working

at construction sites, flood protection, etc... for lower fee than the minimum wage under the supervision of the law enforcement workers called back from service pension.

8. The government, by introducing changes to the Constitution, is taking full advantage of its 2/3 majority in the Hungarian Parliament and has created the possibility that pension benefits of those pensioners, who have not yet reached the old retirement age (including service, disability, early retirement pensions) can be reduced into a social care

benefit and in case of job suitability of the person, his or her pension can be terminated. Prior to this change, the pension benefit enjoyed constitutional protection as a received property right. The government would like to see 150 thousand people returning to the labour market by taking away their pension. In March 2011, LIGA Trade unions supported the demonstrations of the armed force workers to protect early retirement pension schemes.

Taking the Hungarian issues to the international arena:

István Gaskó, president of LIGA raised awareness about the Hungarian situation:

- On 24 March 2011 in Brussels at the **Tripartite Social Summit**
- On 9 April 2011 in Budapest at the **ETUC Demonstration**
- On 15 June 2011 in Geneva at the **100th ILO Conference**

On 19 May 2011, in Athens, the **XII. ETUC Congress** in a statement has expressed its solidarity with the Hungarian employees and trade unions and urged the Hungarian government to have consultation with the social partners.

On 15 June 2011, General Secretary of ITUC, Sharan Burrow has initiated a high-level meeting in Brussels under the title: **"Fall out of crises: legal and institutional effects of austerity policies"**. This meeting convened trade unions leaders for a discussion about European countries where the situation has become critical.



On 30 August 2011, in Budapest, LIGA Trade Unions, with the co-operation of MOSZ, has organised an **International Conference on the Draft Labour Code amendments**. The presence of high level guests gave a big impetus for our effort. The conference was addressed by Sharan Burrow, General Secretary of ITUC; Patrick Itschert, Deputy General Secretary of ETUC and Mark Levin, Director of ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe. To the conference we also invited our Romanian and Slovakian colleagues to present the situation in their own respective countries regarding Labour Code amendments.

On 2 September 2011, for the initiation of ETUC, a **meeting was held in Budapest with László Andor** - Commissioner responsible for employment,

Earlier in the summer Bernadette Ségol has already raised the Hungarian issues at her meeting with President Barosso and she also emphasized our problems in her short video calling for the ETUC demonstration as well, which was held in Wroclaw on 17 September.

social affairs and inclusion- Bernadette Ségol and the six presidents of the Hungarian trade union confederations. At the meeting throughout the discussion on the labour Code amendments, Mr. Andor has pointed out, that the European Union is based on the principle of social

dialogue and considered desirable that the Hungarian government follows this practise nationally as well. Mr. Andor emphasized, that the European Commission will examine the draft Labour Code amendments.

On 4 September 2011, the six Hungarian trade Union confederations have **asked for support from the ILO** to review the draft of the draft Labour Code regarding its harmony with the international law and practise. We have also asked the Budapest office of the ILO to initiate tripartite negotiations with the participation of the Hungarian government and the social partners as a first step of the technical assistance. According to their response, the ILO review will be ready for the beginning of October.

The “story” behind the Draft Labour Code Proposal

Some provisions of the announced draft Labour Code have sparked a great interest and outrage. The review of the main concept of the Hungarian Labour Code (hereafter LC) has been on the agenda for years but no real progress was made. In the middle of July 2011, the draft of the new act (hereafter the Proposal) was published on the website of the Ministry of National Economy which – in case it is passed – would change the foundations of the philosophy of labour law regulations. The Proposal was drafted without any consultation with the social partners; national employers’ and employees’ organisations.

The aim of the new LC is admittedly the flexibilisation of employment and the improvement of competitiveness. In line with these objectives, the Proposal increases the possibilities of the employer to support his market and production needs and pushes employees into a more subordinated and dependant position than they

are today. The Proposal decreases the protection of employees’ rights to such a degree that it does not even fulfil the ILO requirements of decent work.

There is hardly any paragraph in the new draft which would not – even to a small extent – result in negative impact on employees and the trade unions will have hardly any possibility to fight for better conditions for the employees through collective bargaining.

Since this draft has been announced in July at the website of the Ministry for National Economy, after a long summer having the media full of the protest voices, finally on the 6th of September 2011, the ice was broken when Sándor Czomba, Secretary of State of the Ministry for National Economy has invited both the employees’ organisations (first only 2 trade union confederations out of six) and the employers’ organisations (first only 2 organisations out of 9) for consultation. There have been two tripartite consultations in September so

far with the social partners, which has led to significant positive changes on the draft LC Proposal, although it is regrettably foreseen that the new LC will only be worse than the current one.



According to the State of Secretary, the draft will be updated with the proposed changes agreed by the social partners, specially considering the parts breaching international laws and ILO Conventions before the Ministry for National Economy will submit the text to the Parliament in October. Yet only oral agreements have been made and since the text of the LC Proposal has not been modified at the Ministry’s website either, the trade unions have serious reservations concerning the real outcome of the consultations.

LIGA Trade Unions will continue the consultations and do its utmost to reach the best possible outcome supporting the Hungarian

employees and protecting trade union rights. In case the consultations will not lead to satisfying outcomes by the end of October, LIGA Trade Unions will be taking the issue to the streets and demonstrate!

LIGA Trade Unions as a politically independent trade union confederation supports

actions taken by other organisations and trade unions with the aim of protesting against the introduced LC Proposal, but does not join those actions which are related to any political parties. I regret to inform you, that **on the 16th of September 2011, the government has banned two**

upcoming trade union demonstrations. LIGA Trade Unions deplore and find it unacceptable, that the government, in banning trade union demonstrations, is neglecting the citizens' Constitutional right for freedom of assembly.

Some provisions about the draft Labour Code



Since there is no written update of any of the “promises” of the consultations, there is a lot to loose. Hereafter are some quotes of the measures of the drafts Labour Code, that impair individual or collective workers' rights, will presumably result in income losses for employees or that are contradictory to international obligations.

1. Termination of employment by the employer becomes simpler: the

Proposal does not mention the employer having the burden of proof, therefore in case of a dispute the employee will have to prove that the dismissal was unfounded.

2. Legal consequences of wrongful termination of employment will result in negative changes for employees: Pursuant to the Proposal, in case the court decides that the termination of the employment by the employer was wrongful, the employer will only be obliged to recover a payment for maximum 18 months' absence. The general principle does not allow the request for restoring the employment; the reemployment of the employee is only mandatory if the termination of the

employment breached the requirement of equal treatment or if the employee is a trade union functionary, a member of the works council or the supervisory board.

3. Protection against dismissal is abolished: Pursuant to the Proposal, the employer has the right to notify the employees on their dismissal during these periods of incapacity to work due to illness; sick leave for the purpose of caring for a sick child; during pregnancy, for three months after giving birth, or during maternity leave; leave of absence without pay for the purpose of nursing or caring for children.

4. Legal protection of workers in/close to retirement age is abolished:

Pursuant to the Proposal, the employment of workers in retirement age can be terminated without particularly justified reasons as well, and the amount of severance payment is 1-3 months average wages in function of the active years.

5. Employees shall be provided with a detailed salary report sheet of the wages. Written reports of wages shall be provided annually, on request of the employee or on termination of the employment: The aim of the salary report is to enable employees to check the entitlements and the amounts of deductions. Monitoring and verification of the correct accounting of working time and payment is impossible if the report is made on annual basis only.

6. The upper limit of extraordinary imposed work is increased to 300 hours / year

7. The working time schedule of a given day can be changed by the employer at

least three days ahead in case of unforeseen events in production or operation:

Pursuant to the Proposal, neither overtime allowance nor downtime shall be paid. This will result in a loss of income and will make the balance of working life - family more difficult.

8. Less days for paid leave

9. Employer's liability for damages changes positively for employers: Pursuant to the Proposal, the employer is relieved from liability if he can prove that the damage was caused by an event beyond his field of control, he did not have to predict and he was not expected to avoid the damaging condition or the damage. This will decrease the employer's liability e.g. in case of work accidents.

10. The employee bears full liability for damages: The employee bears full liability for the compensation of damages in case he/she does not proceed as generally expected, except in case the damage was not to be foreseen or if it was caused by wrongful behaviour of the employer, or if the employer

did not fulfil his duty to mitigate loss.

11. Introduction of employee's surety: In case parties agree, the employee shall provide surety for the employer for the receipt of money or valuables, if he makes such payment or transfer or is directly controlling such an activity. The amount of the surety can be a monthly base wage of the employee. The surety can be used for the compensation of losses.

12. The supplement called „wage supplement for shift work” will disappear: Under the current LC employees shall be paid a fifteen per cent wage supplement for working in night shift. Employees working in alternating shift or in continuous shift shall be entitled to a 15% afternoon or 30% night shift supplement. Employees working in continuous shifts shall be entitled to an additional five per cent shift supplement for afternoon shifts, and an additional ten per cent shift supplement for night shifts. From the regulations currently in force only the supplement for night shift will be retained as a 15% supplement. This will result in

major income losses for the employees concerned.

13. For extraordinary work, the employee is entitled for between a 50% wage supplement or time off, decided by the employer. The time off shall not be less than the duration of the work performed. Under the LC in force until 21. July 2011, employees shall be entitled to a fifty per cent wage supplement for work performed in excess of the daily working time cycle or over and above the working time frame. Employment-related provisions or an agreement between the parties may stipulate the provision of time off in lieu of a wage supplement; the time off shall not be less than the duration of the work performed.

14. Guaranteed minimum wages will most probably disappear. Social partners will play no role in setting the lowest mandatory wage level: The amount and the scope of the lowest mandatory wage level (minimum wage) will be set by the government. The Proposal makes no mention of defining guaranteed minimum wage and salary

levels on the basis of qualifications and degrees required by any job.

15. Break-time shall not be part of the working time, even if the CA or the parties agree otherwise. This will result in an increase of the time to perform work and in an income loss through a decrease of the contracted working time and a potential proportional decrease of wages.

16. Works council regulations: The Proposal does not guarantee works council members protection under the labour law (proposal); this is contradictory to the ILO Convention No.135 and to the EU directive on information and consultation.

It does not provide works council members any possibility for paid leave for training, although this is granted employee representatives at the workplace level by the ILO Convention No. 140, also ratified by Hungary.

Pursuant to the Proposal, works councils are

responsible for monitoring the enforcement of employment regulations - although this is a classical trade union responsibility. It breaches Art 5. of the ILO Convention No.135 which does not allow to use works councils to undermine the position of trade unions.

17. Consultation rights: Pursuant to the Proposal, the employer is not obliged to provide information or initiate consultation if the facts, information or data revealed jeopardised the rightful economic interest or the operations of the employer. This is contradictory to the EU Directive 2002/14/EC that establishes a general framework for informing and consulting employees, and defines possibilities for divergence in a more restricted form than the Proposal does. This provision of the Proposal also breaches the provision of the Directive that forbids a deterioration of the achieved level of protection. The Proposal sets a very short minimum deadline for information and consultation (7 days), but on the basis of the wording this can be in practice interpreted and applied as maximum – this again, is contradictory to the Directive.

18. Decreasing trade union rights:

- a. **The right to object is abolished** - this right provided the possibility to veto the employer's irregular measures.
- b. **The Proposal does not guarantee trade unions the right for information and consultation** through binding requirements for the employer. The Proposal reserves all information and consultation rights defined by relevant EU directives for works councils only.
- c. **Work time allowance** to guarantee the efficient representation of workers interests is **abolished**. **Trade union functionaries are not entitled to effective protection by the labour law proposal.**

According to the ILO Recommendation 143 workers representatives should be entitled to protection against all discriminatory measures including dismissal that are

based on their involvement in trade union activities. The Proposal does not consider this recommendation.

The elimination of the protection under the labour code is contradictory to the Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, too, which among other requires: „Member States shall ensure that employees' representatives, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties which have been assigned to them”

d. The right to represent members in court is abolished – this right guarantees the adequate and mainly free of charge representation of employees in court and helps labour disputes end positively for workers.

These measures will make the establishment and the operations of trade unions impossible.

19. Collective bargaining:

Pursuant to the Proposal the CA should be made by the trade union representing at least 10 % of the employees its scope covers. The employer is free to decide which of the eligible trade unions he wants to agree with. The employer may conclude several collective agreements. Works council can conclude a company agreement with the force of the CA if the employer has no CA or no eligible trade union to negotiate. This impairs the right of employees for the representation of interest and organisation. The works council is not a body or inexpedient for the protection workers interests.

20. Fixed-term employment:

Under the LC in force the fixed-term employment shall be considered as employment for indefinite period of time if the fixed-term employment is repeated or prolonged between the same parties without the related employer's rights and the agreement aims at the impairment of the employee's rights. The Proposal grants this protection only if the fixed-term contract is re-

established or prolonged within a period of 6 months.

21. Change of the employer by legal succession: The Proposal regulates the change of the employer by legal succession.

22. Posted workers: The Proposal does not provide necessary regulations for posted workers on the basis of directive 96/71/EC.

23. Working time regulations: The regulation of the weekly working time on the basis of the work pattern of the employee is not in line with the directive 2003/88/EC as the Proposal differentiates among the extraordinary working times. The terms ‘multi-shift’ and ‘continuous working pattern’ are also contradictory to the directive similarly to the provisions on the working time frame, the daily and the weekly rest periods.

In the absence of a working time frame, the Proposal introduces an institution similar to the working time frame but the weekly working time shall be performed during a so-called accounting period defined by the employer.