

Right to strike in Croatia

LEGISLATIVE FRAMEWORK

The Constitution of the Republic of Croatia

The right to strike in Croatia is a constitutional right („Right to strike shall be guaranteed“) which may be may be restricted in the armed forces, the police, the civil service and public services as specified by law (Article 61).

Until 2012, the provisions which regulate the implementation of the right to strike were contained only in the Labour Act, however with the adoption of the Act on Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining in 2012 (Official gazette No 82/12) and the Act on Representativeness of Employers and Trade Unions 2014 (Official gazette No 93/14), the provisions need to be considered together.

Labour Act 2009

Labour Act (Official gazette No 149/09), fully harmonized with the EU acquis communautaire, was adopted in 2009, with application as of 1 January 2010. It stipulated that trade unions or their associations of a higher level have the right to call on strike and organize it with the purpose to promote and protect economic and social interests of their members or for wages, i.e. wage compensation if they are not paid within 30 days of their maturity date ¹.

A strike must be announced to the employer i.e. the employers' association against which the strike is directed, whereas a solidarity strike must be announced to the employer on whose premises strike is organized.

In case of a dispute which may lead to strike or some other form of industrial action, a conciliation procedure needs to be carried out, as prescribed by the Labour Act, if parties in the dispute have not agreed some other form of its peaceful settlement. Conciliation is carried out by a person (conciliator) who is selected by the parties in dispute from the list established by the Economic and Social Council or who is determined by their mutual agreement.

If parties in a dispute have not agreed otherwise, conciliation procedure needs to be terminated within five days from the submission of information about the dispute to

¹ Strike due to non-payment of wage, although it may be considered a legal issue, was introduced as a reason for strike in the Labour Act with amendments in 2001, having in mind the scope of such cases in Croatia but also slow work of judiciary, and the provision was as such valid until the adoption of the new Labour Act in 2014.

the Economic and Social Council or the office of state administration in a county or City of Zagreb responsible for legal affairs.

Strike may not start before the termination of the conciliation procedure when such procedure is foreseen by the Act, i.e. before carrying out the other procedure of peaceful dispute settlement which was agreed by the parties. A letter announcing the strike must state the reasons for strike, place, day and time of its commencement.

A solidarity strike may begin without conciliation procedure, but not before the expiration of two days from the date of commencement of the strike in whose support it is organized.

Dispute between the parties may be terminated also by concluding an agreement, which in case of dispute regarding conclusion, amendments or renewal of the collective agreement has a legal force and effects of the collective agreement, and in case of dispute because of the wage i.e. wage compensation which were not paid within 30 days of their maturity date has legal force and effects of the settlement.

The Trade union and the employer prepare and adopt, by agreement, the rules applicable to production maintenance assignments and essential assignments which must not be interrupted during a strike or a lockout, and their definition must not prevent or substantially restrict the right to strike.

If the employer proposed the definition of assignments which must not be interrupted during strike or lockout after the day when the conciliation procedure has commenced, the procedure for defining these assignments may not be instituted until the end of strike.

Labour Act 2014

The Labour Act of 2014 (Official gazette No 93/2014), which entered into force on 7 August 2014, stipulates that trade unions have the right to call on strike and organize it with the purpose of protection and promotion of economic and social interests of their members, as well as due to non-payment of wages, part of the wage, i.e. wage compensation, if they are not paid until maturity date.

Furthermore, in case of dispute on conclusion, amendments or renewal of the collective agreement, a strike may be called or organized by trade unions which have been determined representative, in line with special regulation, for collective bargaining and conclusion of collective agreements and which negotiated for the conclusion of collective agreement.

Therefore, unlike the previous Labour Act which explicitly stated that trade union associations of a higher level too have the right to strike, according to the new provision on strike, only trade unions have the right to call and organize strike to

protect economic and social interests of their members and due to non-payment of wages, part of wages i.e. wage compensation if they are not paid within maturity date. This withdrawal of the right to strike to trade union associations of a higher level is in our view unacceptable, also because we consider it in collision with the provision of the Act on Representativeness of Associations of Employers and Trade Unions which in Article 25(4) says: "Parties to the collective agreement which shall apply to workers employed with the employers affiliated to employers' association of a higher level may be at the side of employer association of employers' of a higher level, and on the side of trade unions, one or more association of trade unions of higher level who have been determined representative for participation in tripartite bodies at national level." Therefore, according to one law (Act on Representativeness of Employers' Associations and Trade Unions) trade union associations of a higher level are considered a party to the collective agreement, and according to the other (Labour Act), which regulates the implementation of the right to strike, it is no longer explicitly stated that they are entitled to call on strike.

A novelty is that apart from the right to strike due to non-payment of wages and wage compensation, trade unions have the right to strike also because of non-payment of a part of the wage. It is also important to emphasize that trade union may start with the process of announcing and organizing a strike immediately after the maturity of wage, which is 30 days earlier as compared to the previous legal regulation because the deferral deadline has been cancelled.

The right to strike is also limited in case of dispute with the employer or employers' association on conclusion, amendments or renewal of the collective agreement or other similar dispute, because the right to strike is given only to trade unions whose representativeness is determined in line with the Act on Representativeness of Employers' Associations and Trade Unions.

The definition of assignments which must not be interrupted during strike or lockout, according to the new Labour Act, may be proposed by the employer until the day of termination of conciliation procedure, which makes the preparation of the strike significantly difficult.

Trade union proposal for the new Labour Act (2014)

During negotiations and work on the new Labour Act, trade union confederations demanded that the provisions which regulate the implementation of the constitutionally guaranteed right to strike also regulate the issue of general strike, both in terms of comprehensiveness in organizing strike due to economic and social reasons (related to employment relations) and in terms of strike against public policies of the Government of the Republic of Croatia. However, the Ministry of Labour and Pension System, as a proponent of the act, did not accept this demand, hence it is still not regulated through law, which indirectly means that the action

capacity of trade unions has been limited, and workers are not enabled nor ensured the right to general strike.

Due to their objection to submitting the non-agreed draft Labour Act (which has significantly disrupted the balance between flexibility and security, and has also lowered the EPL index from 2.69 to 2.3) to the parliamentary procedure for the first reading, in January all the trade union confederations carried out the poll among their members to state their support to organizing general strike, which was supported by 92 percent of members. Due to legal impossibility to organize general strike, on 25 February 2014, from 12 to 13.00, trade union confederations organized strike in the form of solidarity strike (with workers of the ZRC Lipik company/Sport recreation centre Lipik). 270,000 trade union members participated in the solidarity strike.

The experts characterized this action in expert magazines and journals as a political strike and strike against the legislative power, and as a political revolt and protest against the public authorities, and the representatives of employers' organizations publicly – in media - accused us that we want to use the general strike to cause the "Greek" scenario, and that general strike is supported only by public enemies.

Case law – disputes against prevention of strike and illegal activities by employers against strike *(see separate forms attached)*

On 21 March 2013 the employer started court proceedings against the Trade Union of Construction of Croatia (SGH) before the County Court in Zagreb to determine the strike as illegal. The proceedings were carried out as urgent procedure, and it was already on 29 March that the first-degree judgment was adopted in favour of the SGH trade union, which was subsequently confirmed by the Supreme Court.

By the beginning of April 2013 employer illegally dismissed workers who were on strike (around 40) due to, as stated in the explanation: "participation in strike without justified reason". On 3 April 2014, at the workers' assembly convened by the employer, employer openly said he would withdraw the decision on dismissal if workers signed the written statement that they are no longer on strike. Local union, based on the decision of members, immediately stopped the strike, however the employer did not meet his obligation. The employer withdrew the decision on extraordinary termination of employment contracts only after additional pressures by the SGH trade union – demand for the inspection, criminal charges, media...

Trajektna luka Split d.d. (Ferryport Split), 15 October 2014, prevention of strike using force by regular and intervention police

The employer Naftni terminali Federacije (Oil Terminals of the Federation) threatened workers with dismissal. However, none of the workers received notice on dismissal. The judgement of the County Court in Dubrovnik in relation to suspension of strike was given in favour of the trade union.

The European Court of Human Rights, in the case Hrvatski lječnički sindikat (Croatian Medical Union) v. Croatia (application no. 36701/09), on 27 November 2014 issued Judgement in which it concludes that the freedom of association of workers, collective bargaining and strike action are inextricably linked, the latter being an instrumental means of exercising the former. The Convention protects the right to strike as an essential, core right of workers' freedom of association, and any restrictions to that right must be lawful, pursue a legitimate aim stated in Article 11 § 2 of the Convention and be necessary in a democratic society. Therefore, the European Court of Human Rights finds that there has been a violation of Article 11 on account of the unlawful, illegitimate, disproportionate and unnecessary prohibition of the applicant union's Convention right to strike.