



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## SECOND SECTION

### **CASE OF RÉKA KISS AND OTHERS v. HUNGARY**

*(Applications nos. 8412/23 and 33159/23)*

#### JUDGMENT

Art 11 • Freedom of association • Imposition by law of minimum services in public education sector during strikes • Respondent State's failure to demonstrate that the legislature sought to strike a fair balance between the competing interests and to point to any alternative means or safeguards designed to compensate teachers for the impugned restrictions • Lack of reasons concerning the relevance and necessity of the rules, initially intended to overcome the presumed difficulties in public education related to the COVID-19 pandemic, applying indefinitely • Severity of potential disciplinary sanctions likely to deter trade unions, their members, and any other person from participating in industrial action • Margin of appreciation overstepped • Interference not necessary in a democratic society • Art 35 § 2 (b) • Matter already submitted to another international procedure • Substantial differences between the complaint to the Committee on Freedom of Association and the applicants' Convention complaint

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 October 2026

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Réka Kiss and Others v. Hungary,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Péter Paczolay,

Oddný Mjöll Arnardóttir,

Gediminas Sagatys,

Stéphane Pisani,

Juha Lavapuro, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the applications (nos. 8412/23 and 33159/23) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Hungarian nationals, Ms Réka Kiss (“the first applicant”) and Ms Beáta Kiss-Berta (“the second applicant”), and two Hungarian organisations, Teachers’ Trade Union (Pedagógusok Szakszervezete, “the first applicant trade union”) and Teachers’ Democratic Trade Union (Pedagógusok Demokratikus Szakszervezete, “the second applicant trade union”, collectively “the applicant trade unions”), on the various dates indicated in the appended table;

the decision to give notice to the Hungarian Government (“the Government”) of the applications;

the parties’ observations;

Having deliberated in private on 8 September 2026,

Delivers the following judgment, which was adopted on that date:

## INTRODUCTION

1. The applicants complain under Articles 6 and 11 of the Convention about the imposition by law of minimum services that have to be provided in the public education sector during strikes.

## THE FACTS

2. The applicants’ details and those of their representatives, the dates on which they lodged their applications and the application numbers are set out in the appended table.

3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

## I. BACKGROUND OF THE CASE

5. On 8 February 2021, a “state of danger” (*veszélyhelyzet*) was declared in Hungary (Government Decree no. 27/2021 (I.29)) in relation to the COVID-19 pandemic. It lasted until 31 May 2022, when it was lifted by Government Decree no. 181/2022 (V.24).

6. In early 2022 the applicant trade unions formed a joint strike committee and planned various strike actions for 2022 seeking improved working conditions and increased salaries in the education sector. In the absence of an agreement with the Government about the level of minimum services that would have to be provided during those strikes, the applicant trade unions initiated non-contentious proceedings to have that question decided by a court.

7. On 11 February 2022 Government issued Government Decree no. 36/2022 (II.11) on certain emergency rules concerning public education institutions (hereinafter “Government Decree no. 36/2022”), determining the level of services to be maintained during any strikes which might occur while the state of danger was in effect. The decree entered into force on 12 February 2022.

8. On 24 March 2022 the applicant trade unions lodged a constitutional complaint asking the Constitutional Court to declare Government Decree no. 36/2022 unconstitutional. They argued that the determination of minimum services contained in the decree infringed their right to strike, as protected by Article XVII § 2 of the Fundamental Law. The constitutional complaint was declared inadmissible on procedural grounds.

9. On 31 May 2022 the state of danger declared in Government Decree no. 27/2021 (I.29) (see paragraph 5 above) came to an end and all relevant decrees adopted during the period of the state of danger became void, including Government Decree no. 36/2022 (II.11) (see paragraph 7 above).

10. On 23 March and 22 April 2022 the Forum for the Cooperation of Trade Unions (“the SZEF”), a trade union confederation bringing together trade unions from the public sector, including the first applicant trade union, brought a complaint before the Committee on Freedom of Association (“CFA”) of the International Labour Organization (ILO) alleging that Government Decree no. 27/2021 (I.29) and Government Decree no. 36/2022 (see paragraphs 5 and 7 above) constituted a breach of the right to strike in the public education sector under ILO Convention concerning Freedom of Association and Protection of the Right to Organise 1948 (no. 87). The Government argued that that the complaint was redundant because the relevant decrees had since been repealed. They submitted that section 14 of Act no. V of 2022 on issues regarding the termination of the state of danger (hereinafter “the 2022 Act”) re-regulated the level of minimum services (see paragraphs 14 and 23 below), but they emphasised that the SZEF’s complaint had not been directed against those provisions.

11. In March 2023 the CFA issued Report no. 401. It considered that certain services had been set beyond the notion of a minimum level, which might have considerably restricted the right to strike of those in the public sector. It also noted with concern that that Government Decree no. 36/222 had been adopted unilaterally and before ongoing consultations with the trade unions had been concluded, and that the 2022 Act had replicated the restrictions on the minimum service contained in Government Decree no. 36/2022.

12. Between 5 September and 15 December 2022, teachers engaged in acts of “civil disobedience” nationwide. As a consequence, the employment of 14 teachers was terminated and 31 teachers received disciplinary warnings.

## II. THE 2022 ACT

13. On 2 May 2022 Government introduced Bill no. T/27 to Parliament concerning the measures to be introduced after the termination of the state of danger. On 19 May an amended version of the Bill was presented to Parliament containing provisions on the minimum services to be provided in public education during strikes.

14. On 24 May 2022 Parliament enacted the 2022 Act on the regulatory issues regarding the termination of the state of danger; it entered into force on 1 June 2022. Section 14 of the 2022 Act re-regulated the level of minimum services to be provided in the public education sector during strikes. Section 15 set out the adverse legal consequences for failing to comply with service obligations (see paragraph 23 below).

15. On 11 July 2022 certain members of parliament lodged a constitutional complaint under Article 24 § 2 (e) of the Fundamental Law and section 24(1) of Act no. CLI of 2011 on the Constitutional Court (hereinafter “the Constitutional Court Act”). They requested that the Constitutional Court declare sections 14 and 15 of the 2022 Act unconstitutional and annul them with *ex tunc* effect. The Constitutional Court dismissed the complaint on 29 November 2022. Decision no. 1665/2022 of the Constitutional Court contains the following passages:

“...

(43) ... by determining the elements and the framework of minimum services, the provisions of [the 2022 Act] might limit both the duration and the content of a work stoppage in different institutions. However, the Constitutional Court emphasises that these limitations do not render the exercise of the right to strike impossible. It is not the case that teachers have been deprived of the right to strike by the challenged provisions.

(44) According to the explanatory memorandum to [the 2022 Act], ‘it is necessary to determine the levels and conditions of minimum services during a strike in a public education institution in the interests of the smooth operation of public education’. Apart from the purpose of the Act, the explanatory memorandum also specifies the fundamental rights that need to be protected: the fundamental right of children to education and to an adequate physical and mental development. The [relevant]

provisions of the Public Education Act also make it clear that the primary purpose of public education institutions is to guarantee these rights for children. Consequently, ensuring the proper functioning of the institutions and thereby securing children's rights are legitimate aims. The genuineness and credibility of this objective is also attested by the concrete provisions of [the 2022 Act]. These provisions determine the elements of minimum services in a differentiated manner. The various minimum service levels were determined having regard to children with various access needs (pupils preparing for their secondary-school leaving exams, schoolchildren, preschool children, children with special educational needs, etc.). Since the fundamental rights of children enshrined in Article XI § 1 and Article XVI § 1 of the Fundamental Law can be realised through the active contribution of the State, the operation of public education institutions is a constitutional value that justifies the application of objective institution protection ... [The complainants stated that] a strike as a collective work stoppage by employees [is] aimed at exerting pressure in order to promote their social and/or economic interests, [which is something that the court considers] can be implemented within the framework [described above].

(45) Based on the above, the Constitutional Court has held that the restriction of the right to strike in public education institutions has been introduced for legitimate aims, to the necessary extent, and having regard, in a balanced manner, to the competing fundamental rights and constitutional values to be protected, that is to say, in a proportionate way. The provisions of [the 2022 Act] regulating minimum services levels are in conformity with Article XVII § 2 of the Fundamental Law.

...

(47) Section 15 of [the 2022 Act] refers to [Article 56 of Act no. I of 2012 on the Labour Code] to establish the possibility of applying certain legal consequences to public servants and employees 'working in a public education institution subject to the National Public Education Act', that is, to public servants and employees who contribute to the performance of a mandatory State task arising from the Fundamental Law and who otherwise fail to fulfil their work obligations. Reference is made to a legal institution existing since 2012. Article 56 of the Labour Code governs the possible application of adverse legal consequences where an employee (public servant) culpably breaches an obligation arising from the employment relationship. Any situation where an employee culpably fails to fulfil his or her service obligation can be understood to be covered without being specifically listed in the Labour Code.

(48) All norms need interpretation, and the growing number and complexity of laws constantly increases the need for interpretation. Difficulties flowing from the wording of a norm may only give rise to a violation of legal certainty, and the annulment of a norm only becomes inevitable when the given piece of legislation is inherently uninterpretable and makes its application unpredictable and unforeseeable for the addressees of the norm ... Based on the arguments submitted in the petition, in the present case there is no sufficient basis to conclude that section 15 of [the 2022 Act] and the referenced norms would create a conflict which would violate legal certainty and could not be resolved by interpretation."

16. On 1 September 2022 the first applicant lodged a constitutional complaint under section 26(2) of the Constitutional Court Act (see paragraph 21 below). She argued that sections 14 and 15 of the 2022 Act (see paragraph 23 below) were unconstitutional as they defined minimum services in a disproportionality broad way, thus rendering any strike impossible, and foresaw the most severe legal consequences for work stoppages. She

maintained that she was directly affected by the legislation in question as a teacher. She argued that employment conditions and salaries afforded to teachers in Hungary were below the European average and that strikes were the only social action available to them to protect their interests. Depriving her of this possibility meant that she would need to have recourse to “civil disobedience” to protect her social and economic interests. The complaint was declared inadmissible on 14 February 2023 on the grounds that the first applicant had not been directly concerned by the impugned provisions.

17. On 7 November 2022 the second applicant and the applicant trade unions, together with a fourth complainant, lodged a constitutional complaint under section 26(2) of the Constitutional Court Act, claiming that the provisions of the 2022 Act governing the minimum level of services in educational institutions were not in conformity with Article XVII § 2 of the Fundamental Law of Hungary (right to strike). The complaint was rejected by the Constitutional Court on 25 April 2023 on the basis that the issues raised were *res judicata* (see paragraph 15 above).

### III. THE APPLICANTS’ INDIVIDUAL CIRCUMSTANCES

18. The first applicant is a teacher in Budapest. She is a member of the strike committee at her workplace and participated in the organisation of a nationwide strike on 31 January 2022. She also organised acts of “civil disobedience” for the first two hours of the school day on 2 March 2022 and participated in other acts of “civil disobedience” in late 2022.

19. The second applicant was a teacher and a trade unionist in a secondary school in Budapest until December 2022. At the material time she was a teacher for secondary-school students in their final year. As such, by virtue of the 2022 Act, she had been obliged to maintain 100% of regular classes as minimum service during strikes. She submitted that she had thus been unable to engage in strike action at all.

20. The first applicant trade union is the biggest trade union of teachers working in the public and private education sector in Hungary. It has a nationwide membership of about 5-6 thousand teachers. The second applicant trade union has a nationwide network and membership of teachers.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### I. THE DOMESTIC LEGAL FRAMEWORK

#### A. The Constitutional Court Act

21. The relevant provision of the Constitutional Court Act provides as follows:

**Constitutional Complaint**  
**Section 26**

“(1) Under Article 24 § 2 (c) of the Fundamental Law an individual or organisation involved in a case may lodge a constitutional complaint with the Constitutional Court where, owing to the application of a piece of legislation allegedly contrary to the Fundamental Law in the court proceedings conducted in that particular case,

a) their rights enshrined under the Fundamental Law have been violated; and

b) they have exhausted the available legal remedies or no remedies are available.

(2) Other than [by the procedure in] subsection (1), Constitutional Court proceedings may be initiated under Article 24 § 2 (c) ... of the Fundamental Law exceptionally also where

a) the grievance has occurred directly, without a court ruling, as a result of the application or the taking effect of a provision of the law [allegedly] contrary to the Fundamental Law; and

b) no remedy is available for redressing the injury, or the complainant has already exhausted the remedies.”

**B. The Strike Act**

22. The relevant provisions of Act no. VII of 1989 on Strikes (the “Strike Act”) read as follows:

**Section 4**

“ ...

(2) In the case of an employer that carries out activities that fundamentally affect the population – in particular in the field of public transport and telecommunications, as well as bodies providing electricity, water, gas and other energy services – a strike may only be carried out if it does not prevent the provision of a sufficient level of service.

(3) The extent and conditions of a sufficient service may be established by law. In the absence of legal regulation, the extent and conditions of [what represents] a sufficient level of service must be agreed upon during the consultation prior to the strike; in this case, the strike may be held if the parties have concluded an agreement or, failing that, if the extent and conditions of a sufficient level of service have been established by a final decision of a court [in a case brought by] either of the parties.

...”

**Section 5**

“ ...

(2) The court hearing the labour case shall give a decision within five working days, in a non-contentious procedure, if necessary after hearing the parties. An appeal may be filed against the decision of the court hearing the labour case within five days of its being notified. The appeal, together with all the documents of the case, shall be submitted to the second instance court on the day of its receipt.

The second instance court shall decide within five working days.

...”

### **C. The 2022 Act**

23. The 2022 Act reads, in so far as relevant:

#### **Section 14**

“(1) Minimum services under the Strike Act in public education institutions and in case of children having a pupil/student status in those public education institutions shall be set as described in the present section.

The supervision of children during the working day concerned by the strike should be ensured

a) in accordance with section 8(6) of Act no. CXC on public education when children in preschool are concerned;

b) from 7 a.m. to 5 p.m. where primary-school children are concerned; and

c) from 7 a.m. to 4 p.m. where any other school is concerned.

(3) Supervision shall be ensured in the educational facility where the child/student receives his/her education based on his/her student or pupil status.

...

(8) In the group or class where supervision is provided, at least one

(a) qualified nursery teacher;

(b) teacher;

(c) special needs educator;

(d) dormitory teacher, instructor; or

(e) teaching assistant or special needs teaching assistant

shall be made available.

(9) During the period of supervision, weather permitting, children and pupils shall be allowed to spend one hour in the fresh air in the morning and one hour in the afternoon.

(10) During the period of supervision, children and pupils shall be provided with meals in the same manner and at the usual time and place ...

(11) Apart from preparation classes for children starting school, it is not obligatory to maintain preschool classes during the strike.

(12) 100% of the statutory teaching hours of compulsory exam subjects shall be provided to secondary-school pupils who are about to take secondary-school leaving exams.

(13) For pupils not covered by subsection (12), 50% of the teaching hours shall be provided in respect of all subjects.

(14) Pupils accommodated in dormitories shall be provided with accommodation, supervision and meals in the dormitory where they were placed before the strike, to the same extent as the services provided before the strike.

(15) In order to safeguard the life and physical and mental integrity of children and pupils with special educational needs or integration, learning and behaviour difficulties, care – including all activities and development and integration exercises – shall be provided in the same circumstances and at the same place where they were provided before the strike, and by the same persons, in accordance with the rules of the profession.

(16) The participation of children and pupils in a statutory dental, ophthalmological or general check-ups shall be ensured.

...

(20) The director may require a public servant or employee on strike to perform work obligations so as to ensure that minimum services are provided. A public servant or employee ordered to work so as to ensure that minimum services are provided shall be entitled to his or her [usual] salary or wages ... for that period.”

### Section 15

“The employer may apply the adverse legal consequences set out in Article 56 of Act no. I of 2012 on the Labour Code against public servants and employees working in a public education institution subject to the National Public Education Act who fail to fulfil their services obligations, within eight days following the breach of obligation.”

#### 24. The Explanatory Report to the 2022 Act notes the following:

“... In order to ensure the smooth operation of the public education system, it is necessary to determine the extent and conditions of the minimum services that are to be provided in the event of a strike in a public education institution. The Bill develops differentiated regulations that take into account the fundamental right of the child to education and to appropriate physical and mental development. Where the complexity of the fundamental rights involved requires increased protection, the provision of minimum services – in line with the protected fundamental rights of the child – is determined at a higher level.

In establishing the different levels of minimum services, the Bill links minimum services at a higher level than 50% to circumstances where the access of children to appropriate education is justified by the special right of children [to education, which must be protected to ensure] their appropriate development. This is especially true for children with special educational needs or those struggling with integration, learning or behavioral difficulties, or for students about to graduate, where it is no longer possible to make up for missed classes in the event of an indefinite strike.

Pursuant to section 4(3) of Act VII of 1989 on Strikes, the extent and conditions of minimum services may be established by law.

...

The Act confirms that, in order to ensure minimum services, the head of the institution may impose work obligations on a public servant or employee who is on strike, who in turn is entitled to remuneration proportional to the extent of the work.

The question arising in connection with [any particular] work stoppage is whether it can be considered a strike or civil disobedience. Civil disobedience is not a legal category, it is not regulated by the Hungarian legal system and, because of its nature, it is not a legal institution that can be linked to the world of work, but rather a means of political expression. The tool used by employees to assert their demands related to

work, working conditions and wages is the exercise of the right to strike, regulated by law. Refusal to accept work for any other reason entails legal consequences under labour law. The Act therefore also regulates the legal consequences applicable to public servants and employees employed in public educational institutions who fail to fulfill their work obligations.

...”

#### **D. The Labour Code**

25. The relevant provisions of Act no. I of 2012 on the Labour Code (“the Labour Code”) read as follows:

##### **33. Legal consequences of a culpable breach of duty by an employee**

###### **Article 56**

“(1) A culpable breach of an obligation arising from an employment relationship, a collective agreement or – if the employer or the employee is not covered by a collective agreement – an employment contract may entail adverse legal consequences proportional to the gravity of the breach of obligation.

(2) Such adverse legal consequences can only include disadvantages related to the employment relationship which modify its conditions for a fixed period of time and do not violate the employee’s personal rights and human dignity. The legal consequence establishing a pecuniary disadvantage may not, in total, exceed an amount equalling one month of the employee’s base salary at the time when the legal consequence is being applied.

(3) When applying such an adverse legal consequence, Article 78 § 2 shall be applied accordingly.

...”

##### **Immediate dismissal**

###### **Article 78**

“...

(2) The right to dismiss with immediate effect may be exercised within fifteen days of the employer becoming aware of the relevant fact, but no later than one year from the occurrence thereof, or until the expiry of the statute of limitations in the case of a crime. The date of [the employer] becoming aware, if the board is entitled to exercise the right to terminate with immediate effect, shall be considered to be when the board – as the body exercising the employer’s authority – is informed of the reason for the immediate termination.

...”

## **II. INTERNATIONAL LAW AND PRACTICE**

26. The relevant international material has been presented in *Humpert and Others v. Germany* ([GC], nos. 59433/18 and 3 others, §§ 53-55, 57-58, and 61-64, 14 December 2023).

27. Furthermore, the CFA considers that the establishment of minimum services in the case of strike action should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) in public services of fundamental importance (see Compilation of decisions of the Committee on Freedom of Association, 2018 (“CFA Compilation of Decisions, 2018”), § 866).

28. The CFA has published its conclusions in a number of cases pertaining to strikes in the education sector, in which it found that restrictions on the right to strike were not in conformity with ILO standards. In particular, the relevant extracts from its 356<sup>th</sup> Report (307<sup>th</sup> Session, Geneva, March 2010) read as follows:

**Case No 2696 (Bulgaria): Definitive report**

“...

308. In this regard, the Committee feels obliged to recall that education is not an essential service in the strict sense of the term. It points out, however, that minimum services may be established in certain sectors in accordance with the following principles: A minimum service may be set up in the event of a strike, the extent and duration of which might be such as to result in an acute national crisis endangering the normal living conditions of the population. Such a minimum service should be confined to operations that are strictly necessary to avoid endangering life or normal living conditions of the whole or part of the population; in addition, workers’ organizations should be able to participate in defining such a service in the same way as employers and the public authorities. The Committee has stated, for example, that minimum services may be established in the education sector, in full consultation with the social partners, in cases of strikes of long duration ...”

## THE LAW

### I. JOINDER OF THE APPLICATIONS

29. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

### II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

30. The second applicant and the applicant trade unions complained that the enactment of the 2022 Act (see paragraphs 14 and 23 above) had prevented any examination by the relevant courts of the terms of the minimum services that had to be provided during a strike and had resulted in a breach of their right of access to a court. They relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

### Admissibility

31. The Government raised an objection of non-exhaustion of domestic remedies. They argued that the constitutional complaint brought by the applicant trade unions and the second applicant (see paragraph 17 above) had not addressed the alleged violation of Article 6 of the Convention. In particular, they had not relied upon Article XXVIII of the Fundamental Law – guaranteeing the right to a fair trial – in their complaint to the Constitutional Court

32. The Government also submitted that the complaint was manifestly ill-founded as the contested legislation had not constituted an interference with relevant civil proceedings.

33. Further, the Government were of the view that the complaint was incompatible *ratione materiae* with Article 6 of the Convention. They maintained that, following the entry into force of the 2022 Act (see paragraphs 14 and 23 above), the applicants had no substantive right in terms of Article 6 to have the level of minimum services to be provided in case of a strike determined through negotiations. Moreover, the measures in question had had no pecuniary consequences, meaning the dispute could not be regarded as being over civil rights and obligations and thus coming within the scope of Article 6 § 1 of the Convention.

34. The second applicant and the applicant trade unions argued that Hungary had been presented with the opportunity of putting right the violations caused by the 2022 Act as they had been brought to the attention of the Hungarian Constitutional Court. In their understanding, section 32(1) of the Constitutional Court Act obliges the Constitutional Court to examine of its own motion the compatibility of domestic legislation with international treaties.

35. As to the Government’s objection *ratione materiae* (see paragraph 33 above), the second applicant and the applicant trade unions submitted that there had been ongoing negotiations concerning the minimum level of services in case of a warning strike and an indefinite strike and that the dispute as regards the warning strike had been resolved by a final judicial decision in favour of the employees and unions. The intervention by the legislature had clearly been aimed at preventing any future court proceedings.

36. The Court does not consider it necessary to examine all the objections raised by the Government because, for the reasons mentioned below, it considers that the applicants’ complaint about the lack of access to a court is in any case inadmissible for failure to exhaust domestic remedies.

37. The general principles with regard to the exhaustion of domestic remedies may be found in *Vučković and Others v. Serbia* ((preliminary

objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014), *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-145, 27 November 2023), and *Duarte Agostinho and Others v. Portugal and 32 Others* ((dec.) [GC], no. 39371/20, § 215, 9 April 2024).

38. Turning to the circumstances of the present case, the Court observes that it is true that, in their constitutional complaint, the second applicant and the applicant trade unions focused on an alleged infringement of their right to strike (see paragraph 17 above) ; they did not expressly refer to a breach of their right of access to a court or expressly rely on Article 6 § 1 of the Convention or any specific domestic provisions protecting the same right.

39. As regards the second applicant's and the applicant trade unions' suggestion that the Constitutional Court should have examined of its own motion the compatibility of the 2022 Act with the Convention (see paragraph 34 above), the Court reiterates that if the applicant has not relied on the provisions of the Convention, he or she must have raised arguments to the same or like effect on the basis of domestic law, in order to have given the national courts the opportunity to redress the alleged breach in the first place (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 117, 20 March 2018). The mere fact that an applicant has submitted his or her case to the various competent courts does not itself constitute compliance with the requirements of Article 35 § 1 of the Convention as even in those jurisdictions where the domestic courts are able, or even obliged, to examine the case of their own motion, applicants are not dispensed from raising before them the complaint subsequently made to the Court (see, for example, *Van Oosterwijck v. Belgium*, 6 November 1980, § 39, Series A no. 40; *Dalipi v. Greece* (dec.), no. 51588/08, § 20, 26 June 2012, and *Trūps v. Latvia* (dec.), no. 58497/08, § 56, 20 November 2012). It is not sufficient that a violation of the Convention is "evident" from the facts of the case or the applicant's submissions. Rather, he or she must actually complain (expressly or in substance) of it in a manner which leaves no doubt that the same complaint that was subsequently submitted to the Court had indeed been raised at the domestic level (compare *Grosam v. the Czech Republic* [GC], no. 19750/13, § 90, 1 June 2023, with further references, and *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.), nos. 29426/08 and 29737/08, § 36, 10 December 2013). Therefore, the Court cannot – in the absence of an actual domestic complaint by the second applicant and the applicant trade unions about the restriction of their right to access to a court – accept their argument based on the Constitutional Court's duty to review, of its own motion, the compliance of national legislation with international treaties. Had it been the wish of the second applicant and the applicant trade unions at that stage to complain of the restriction of their right to access to a court, they should have stated so in their constitutional complaint.

40. In the light of the foregoing, the Court concludes that the second applicant and the applicant trade unions did not provide the national courts with the opportunity which is, in principle, intended to be afforded to a Contracting State by virtue of Article 35 of the Convention, namely the opportunity to address and thereby prevent or put right the particular Convention violation alleged against it (see, *mutatis mutandis*, *Kósa v. Hungary* (dec.), no. 53461/15, § 63, 21 November 2017). Accordingly, the Government's objection of failure to exhaust domestic remedies (see paragraph 31 above) must be upheld.

41. It follows that this complaint must be declared inadmissible, pursuant to Article 35 §§ 1 and 4 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

42. All of the applicants complained that the adoption of the 2022 Act (see paragraph 14 and 23 above) had violated their right to freedom of assembly as provided in Article 11 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

#### A. Admissibility

##### 1. *The first applicant's victim status*

###### (a) *The parties' arguments*

43. The Government argued that the first applicant could not claim to be a victim of a violation as she had not shown that she had been directly or indirectly affected by the provisions of the 2022 Act. The impugned provisions did not prescribe obligations, in particular such as providing minimum services during a strike, on individual teachers, but rather on educational institutions. The effect of the legislation on the first applicant could not be determined in the abstract, but only in the context of the particular circumstances of the educational institution where she was employed.

44. The first applicant considered that she had been directly wronged by the impugned legislation and that she was therefore a victim within the meaning of Article 34 of the Convention. She pointed out that the contested legislation had a deterrent effect given the severe sanctions envisaged in case

of a breach of employment obligations. Thus, she had been obliged to consider changing her conduct and to desist from participating in strikes.

**(b) The Court’s assessment**

45. The Court reiterates that, according to its case-law, an applicant can claim that a law breaches his or her Convention rights even in the absence of an individual measure of implementation – leaving aside the specific context of secret surveillance measures – where the individuals concerned have been required either to modify their conduct or risk being prosecuted or punished, or where they have adequately demonstrated that they belong to a class of people who risk being directly affected by the legislation in question (see *Communauté genevoise d’action syndicale (CGAS)*, cited above, § 110, and *Association of Civil Servants and Union for Collective Bargaining v. Germany*, nos. 815/18 and 4 others, § 37, 5 July 2022, with further references). In any event, whether or not the person concerned is a direct, indirect or potential victim, there must be a link between the applicant and the harm which they consider they have sustained on account of the alleged violation (see *Kovačević v. Bosnia and Herzegovina* [GC], no. 43651/22, § 171, 25 June 2025, with further references). The Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights set out therein or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention (see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 28, ECHR 2009).

46. In the present case the first applicant submitted that she was member of the strike committee at her workplace and had organised at least one strike prior to the introduction of the 2022 Act and had organised and participated in a number of “civil disobedience” actions in 2022 (see paragraph 18 above), facts that are not disputed by the Government.

47. With the entry into force of the impugned legislation, the first applicant, in accordance with the aim of that legislation, had to adapt her participation in industrial action to avoid the disciplinary sanctions foreseen in section 15 of the 2022 Act (see paragraph 23 above). Given her status as a teacher in a public education institution, the applicant had to perform the work required by the terms of the 2022 Act even during strikes, which, in her understanding, renders any work stoppage impossible and deprives strike action of its meaning. Accordingly, the first applicant is a member of a group of people who risk being directly affected by the 2022 Act as she is required to fulfil her employment obligations during strikes at the risk of losing her job. Since the first applicant was affected by the Act in question, the Court concludes that the measure has had a detrimental impact on her.

48. The Government’s objection as to lack of victim status is therefore dismissed.

## 2. *Non-exhaustion of domestic remedies*

### (a) **The parties' arguments**

49. The Government was of the view that the first applicant had not exhausted domestic remedies in that she had failed "to submit a properly drafted constitutional complaint". Consequently, the Constitutional Court had been unable to examine her complaints on the merits (see paragraph 16 above).

50. The applicant submitted that she had challenged the legislative provisions in question under section 26(2) of the Constitutional Court Act (see paragraph 21 above), which was the appropriate legal avenue to contest the constitutionality of directly applicable legal provisions.

### (b) **The Court's assessment**

51. The Court observes that the first applicant did try to bring her case before the Constitutional Court. She lodged a complaint under section 26(2) of the Constitutional Court Act (see paragraph 16 above). As the Court has noted in previous cases, this type of complaint is a relevant remedy where the rights of the person lodging the complaint have been violated through the application of an unconstitutional provision, in the absence of a judicial decision or a legal remedy to redress the alleged violation (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 77, 17 May 2016), which is the crux of the first applicant's complaint. Thus, the first applicant's grievance could, in principle, have been subjected to this type of constitutional scrutiny. The Court also notes that it has not been disputed by the parties that such a constitutional complaint represented an effective remedy in the circumstances of the present case. Rather, the Government contended that the first applicant had failed to submit her complaint in compliance with domestic law. In particular, the Government argued that in her constitutional complaint she had not sufficiently substantiated her contention that she had been directly affected by the contested legislation.

52. The Court has considered in several previous cases that domestic remedies were exhausted for the purposes of Article 35 § 1 of the Convention, despite the fact that applicants' constitutional complaints had been dismissed as inadmissible, on the basis that the substance of their complaints had been sufficiently raised before the Constitutional Court of the relevant country (see, *inter alia*, *Gäffen v. Germany* [GC], no. 22978/05, § 144, ECHR 2010; see also *Uhl v. Germany* (dec.), no. 64387/01, 6 May 2004; *Storck v. Germany* (dec.), no. 61603/00, 26 October 2004; and *Schwarzenberger v. Germany*, no. 75737/01, § 31, 10 August 2006).

53. The Court observes that the first applicant has complained before it that her right to strike had been violated owing to the disproportionately wide scope of minimum services defined in the 2022 Act. She raised this issue specifically before the Constitutional Court, and gave a complete account of

her individual concern, maintaining that the legislation deprived her as a teacher of lawful means to protect her social and economic interests (see paragraph 16 above). She thus specifically contended in the constitutional complaint that her own right to strike had been infringed, supplementing this assertion with arguments pointing to the disproportionality of the impugned measure. Under these circumstances, the Court finds that the first applicant raised in substance the complaint about the infringement of her right to strike before the Constitutional Court and thus provided the domestic courts with the opportunity to put right the alleged violation.

54. The Court further observes that the Constitutional Court examined the constitutionality of the legislative provisions in question in decision no. 1665/2022 on 29 November 2022 (see paragraph 15 above) and that subsequent complaints raising the same issue were declared inadmissible as *res judicata* (see paragraph 17 above).

55. The Court finds that, by using the only domestic remedy available to her in respect of her complaint, the first applicant exhausted domestic remedies as required by Article 35 § 1 of the Convention.

56. The Government's objection of non-exhaustion of domestic remedies must therefore be dismissed.

3. *Compliance with Article 35 § 2 (b) (whether the application has been submitted to another procedure of international investigation or settlement)*

(a) **The parties' arguments**

57. The Government referred to the complaint the SZEF had submitted to the CFA of the ILO alleging an infringement by Hungary of freedom of association (see paragraph 10 above). They argued that the complaint lodged with the Court about the restriction of the right to strike was inadmissible within the meaning of Article 35 § 2 (b) of the Convention because it was substantially the same as a matter that has already been submitted to another procedure of international investigation or settlement. Even if the complaint lodged with the CFA had formally concerned rules of a different legal source (a government decree instead of an Act of Parliament), the substance of the provisions was nevertheless identical and so the complaint against the substantive content of the government decree was essentially the same as the present complaint.

58. The second applicant and the applicant trade unions asserted that the complaint lodged with the CFA had concerned Government Decree no. 36/2022 (see paragraph 7 above), a piece of emergency legislation with a limited temporal scope that had been enacted during the state of danger declared because of the COVID-19 pandemic. Their complaint before the Court concerned an Act of Parliament, subject to ordinary legislative procedures and review, and regulating strike-related matters indefinitely.

59. Furthermore, the second applicant had not been a party in the proceedings before the CFA.

**(b) The Court's assessment**

60. The Court recalls that the purpose of Article 35 § 2 (b) of the Convention is to avoid a plurality of international proceedings relating to the same cases. The Court has no jurisdiction over such cases. For this reason, while the Government did not raise this issue in respect of the first applicant, it is necessary for the Court to examine it of its own motion (see, *mutatis mutandis*, *POA and Others v. the United Kingdom* (dec.), no. 59253/11, § 27, 21 May 2013). In determining whether its jurisdiction is excluded by virtue of this Convention provision the Court would have to decide whether the case before it is substantially the same as a matter that has already been submitted to a parallel set of proceedings and, if that is so, whether the simultaneous proceedings may be seen as “another procedure of international investigation or settlement” within the meaning of Article 35 § 2 (b) of the Convention (see *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 520, 20 September 2011, with further references).

61. The Court first reiterates that it has previously held that the CFA constitutes “another procedure of international investigation or settlement” for the purposes of Article 35 § 2 (b) (see *Cereceda Martin and Others v. Spain*, no. 16358/90, Commission decision of 12 October 1992, Decisions and Reports (DR) 73, p. 134; *Fédération hellénique des syndicats des employés du secteur bancaire v. Greece* (dec.), no. 72808/10, §§ 34-38, 6 December 2011; and *POA and Others*, cited above, § 28).

62. For this admissibility criterion to apply, the application to the Court must be “substantially the same” as the complaint to the CFA (see *POA and Others*, cited above, § 28). The application is considered to be “substantially the same” when the facts, the parties and the complaints are identical (see *Selahattin Demirtaş v. Turkey* (no. 2) [GC], no. 14305/17, § 181, 22 December 2020; see also *Folgerø and Others v. Norway* (dec.), no. 15472/02, 14 February 2006, with further references).

63. With respect to the subject matter of the two proceedings, the Court first notes that it is clear from the documents submitted by the parties that the factual background of the complaint to the CFA was the particular circumstances of the applicant trade unions – specifically, they had formed a joint strike committee for industrial actions foreseen for 2022 in the context of the adoption and impact of Government Decree no. 36/2022. Furthermore, what was at issue in that complaint was the legal provisions meant to regulate the conditions for strike action during a state of danger (see paragraphs 5-7 and 10 above), whereas the subject matter of the present complaint before the Court is the level of minimum services prescribed during strikes that do not occur during a state of danger, which has been set by an Act of Parliament

(notably the 2022 Act) and will apply indefinitely (see paragraphs 14, 23 and 40 above).

64. Furthermore, in their application to the Court all of the applicants also complained about the legislative process leading to the enactment of the 2022 Act, which was necessarily different from the process leading to the adoption of a government decree related to the state of danger.

65. Having regard to the above, the Court discerns substantial differences between the complaint to the CFA and the complaint submitted under the Convention. The Court also notes in this respect that the Government themselves emphasised before the CFA the distinction between the two legal provisions and argued that the complaint by the SZEFG had been directed only against the government decree (see paragraph 10 above).

66. Based on the above, it cannot be held that the present application is substantially the same as a matter that has already been submitted to “another procedure of international investigation or settlement and contains no relevant new information.”

67. Having regard to the foregoing considerations, the Government’s objection under Article 35 § 2 (b) of the Convention must be dismissed.

#### *4. Conclusion as to admissibility*

68. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

### **B. Merits**

#### *1. The parties’ submissions*

##### **(a) The applicants**

69. The second applicant and the applicant trade unions submitted that the impugned provisions had not been enacted in a manner that would have guaranteed the foreseeability and accessibility required under the Court’s case-law, as the legislative process had not included any consultation with the affected stakeholders.

70. They called into question the Government’s assertion that the legitimate aim of the measure was to safeguard children’s right to education (see paragraph 80 below). In their view the aim was rather to undermine trade unions’ ability to engage in effective strike action. Similarly, while the first applicant accepted that the stated reason for adopting the 2022 Act was to overcome the difficulties in public education related to the COVID-19 pandemic, she was of the view that the legislature’s undisguised intention had been to put an end to the strikes of January 2022 and to make teachers’ strikes impossible. Thus, what had been meant as a temporary measure had led to

the indefinite restriction of her right to strike years after the termination of the pandemic.

71. Relying on international law and practice (see paragraphs 26-28 above), the applicants questioned whether public education could be considered an essential service requiring the provision of minimum services in case of a strike. They thus also questioned whether the authorisation in section 4 of the Strike Act to set minimum services through an Act of Parliament (see paragraph 22 above) was applicable to the sector.

72. As to the proportionality of the interference, the first applicant maintained that the services teachers were required to perform during strikes under the contested legislation went beyond what could be considered essential, and restricted her right to strike to an extent that deprived it of its essential content. The 2022 Act had made it impossible for her to suspend teaching activities in case of a strike, as it obliged teachers to teach 100% of subjects that were compulsory for final exams and 50% of every other subject.

73. The second applicant and the applicant trade unions were of the view that the legislative provisions had reduced the right to strike to a purely illusory one and deprived trade unions of the possibility of exerting leverage during collective bargaining.

74. The second applicant and the applicant trade unions argued that the very concept of a strike presupposed the disruption of the normal functioning of an employer in order to exert pressure on it – an aim that was scarcely conceivable if the employer’s operations were to continue undisturbed. They contested the Government’s argument that the aim of strikes was to harm the employer (see paragraph 81 below); it was rather to bring about change, which was only possible if the interruption of work had a perceptible impact on the public. That aim was undermined if strikes were constrained to such an extent that they ceased to have any real impact on the employer’s operations. The relevant sections of the Strike Act (sections 4 and 5 – see paragraph 22 above) were sufficient to ensure a balance between the right to strike and the protection of fundamental services carried out in the public interest.

75. Relying on international practice, all of the applicants maintained that minimum services in education should be limited to the provision of food to pupils and school cleaning. If it was necessary to set minimum services in the education sector beyond those two services, that should be achieved by an agreement between the parties or by a judicial decision. The legislative approach adopted by Hungary differed from the above-cited international practise and called into question the trade unions’ right to seek to persuade the employer.

76. The first applicant also pointed out that the restriction of strike rights had not been accompanied by measures to enhance teachers’ employment conditions, including wages. She also submitted that the legislation in question had had a chilling effect, which was demonstrated by the fact that

since its entry into force, teachers' strikes had no longer been able to mobilise the numbers necessary to achieve strike objectives.

77. The second applicant and the applicant trade unions observed that in certain circumstances the 2022 Act demanded a higher level of service from teachers during a strike than was normally applicable, which was inconsistent with the very logic of work stoppage. They went on to argue that the limitation of the right to strike in the education sector was unparalleled in Hungarian legislation; such limitation had not affected, for example, health sector workers. Furthermore, minimum services were only defined by legislation in three other sectors, namely postal, rail and passenger transport.

**(b) The Government**

78. The Government submitted that the Strike Act authorised Parliament to regulate the level of minimum services to be provided during strikes in sectors providing essential services to the population, thus creating a foreseeable framework for strikes (see paragraph 22 above). In their view, the events preceding the enactment of the legislation in question demonstrated the divergence in the domestic jurisprudence and the need for more precise regulation (see paragraph 6 above).

79. The fact that the conditions and content of minimum services were set by a legislative act was not contrary to the Fundamental Law and could not be regarded as voiding the right to strike. In the Government's view, it was in any case difficult to envisage that minimum services could be set by an agreement between the parties, given that trade unions denied in principle the relevance of the children's right to education.

80. The Government emphasised that the primary purpose of the legislation was to ensure the smooth functioning of public education and to protect the fundamental rights of children to education and development. Furthermore, the purpose of regulation should be assessed in the context of the Covid pandemic and the fact that schools had been operating on a digital platform outside the classrooms for lengthy periods. That form of education had caused major challenges for disadvantaged pupils and pupils with special educational needs, and was not sustainable on a long term. To mitigate the consequences of the economic and social crises of the pandemic, the Government had taken steps to ensure that pupils could return to in-person classes. Thus, when balancing children's right to education with the right to strike, regard had to be had to the fact that children had already been severely affected by the pandemic.

81. In the Government's understanding, the purpose of strikes was "not to harm the public but to harm the employers" – they could thus only have a collateral effect on the public. The decision to have required minimum services set by legislation had been taken in order to limit the effect of strikes on the public.

82. The Government submitted that the legislation had introduced differentiated rules, taking into account the complexity of the fundamental rights involved. The requirement to teach 100% of classes only concerned classes of pupils with special educational needs and pupils in their final school year. For the remainder of the pupils, 50% of classes were to be maintained, which could not be considered an excessive level of minimum services, especially in comparison to other sectors of public service. Moreover, the setting of minimum services meant that pupils were entitled to attend a certain percentage of their classes, not that individual teachers were obliged to teach a certain percentage of their classes.

83. The Government also argued that the effectiveness of strike actions was not determined solely by the extent of work stoppages, but by other factors as well, including the rate of participation and the level of societal support for the strike.

84. The Government questioned the relevance of interpretations given by the CFA, as, in their view, the Committee, by its very mandate, was partial to the rights of workers and did not consider other international obligations, including those pertaining to the rights of the child.

## 2. *The Court's assessment*

### (a) **General principles**

85. The Court's approach to trade-union freedom and the right to strike are set out in *Humpert and Others v. Germany* ([GC], nos. 59433/18 and 3 others, §§ 98-112, 14 December 2023).

86. The Court finds it important to note that the disputed restrictions placed on teachers' strike actions was not a matter of individual decision by the domestic courts, but was contained within the scheme set up by the legislature in the 2022 Act (see paragraphs 14 and 23 above). The provision of minimum services required under the disputed legislative provisions applied to all public educational institutions and teachers employed in those institutions. Furthermore, the applicants' complaint also related to the legislative process leading to the adoption of the contested legislation (see paragraphs 69-71 above). It is recalled that a State can, consistently with the Convention, adopt general measures which apply to pre-defined situations regardless of the individual facts of each case even if this might result in individual hard cases (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 106, ECHR 2013 (extracts), with further references).

87. Against this background, the Court considers it appropriate to examine whether the chosen statutory scheme remained within the State's margin of appreciation in the light of the competing interests at stake. It therefore finds it instructive for its examination to refer to the principles

applied in the context of general measures, as summarised in the case of *L.B. v. Hungary* ([GC], no. 36345/16, § 124-26, 9 March 2023).

**(b) Application of those principles to the present case**

*(i) Whether there was an interference*

88. The parties did not dispute the existence of an interference with the rights protected by Article 11 of the Convention. The Court sees no reason to hold otherwise.

89. The right to strike is one of the means whereby a trade union may attempt to be heard and to bargain collectively in order to protect employees' interests, and strike action is clearly protected by Article 11 (see *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, no. 31045/10, § 84, ECHR 2014). In the present case the applicants' complaint does not relate to a ban or refusal to authorise the exercise of the right to strike, but to the extent of minimum services to be provided in the public education sector during strikes. The Court accepts that the setting of minimum services restricted the possibility of holding strike action and thereby interfered with the applicants' rights under Article 11 of the Convention.

*(ii) Whether the interference was justified*

*(α) "Prescribed by law"*

90. The applicants argued that the interference with their right to strike was not based on legal provisions that were foreseeable and accessible in terms of the Court's case-law (see paragraph 69 above).

91. The Court notes that section 4(3) of the Strike Act (see paragraph 22 above) foresees that required minimum services can be established by legislation, as was in fact done in section 14 of the 2022 Act (see paragraph 23 above). It therefore accepts that the impugned interference was "prescribed by law" for the purposes of Article 11 § 2 of the Convention. As regards the applicants' argument concerning the failure to engage in consultation with the relevant stakeholders and the argument that minimum services could not be set by an Act of Parliament in the education sector (see paragraphs 69 and 71 above), the Court considers that those issues rather fall to be examined in terms of the necessity of the impugned interference.

*(β) Legitimate aim*

92. It is a matter of dispute between the parties as to whether the impugned legislation served the interest of pupils or whether it simply aimed to prevent strike action by teachers (see paragraphs 70 and 80 above).

93. In this connection, the Court observes that restrictions on the right to strike may serve to protect the rights of others, which are not limited to those

on the employer's side in an industrial dispute (see *National Union of Rail, Maritime and Transport Workers*, cited above, § 82, and *Association of Academics v. Iceland* (dec.), no. 2451/16, § 30, 15 May 2018).

94. The Court is therefore ready to accept that the impugned restrictions on teachers' right to strike could serve the purpose of maintaining an effective educational system, thereby ensuring pupils' right to education.

(γ) Necessary in a democratic society

95. It remains to be determined whether the interference with the applicants' right to freedom of association was "necessary in a democratic society".

96. The Court reiterates that the question whether a ban on strikes affects an essential element of trade-union freedom because it renders the latter devoid of substance is context-specific in a number of ways and requires an assessment which takes into account all the circumstances of the case (see *Humpert and Others*, cited above, §§ 109-10 and 122). The Court considers that the same approach should be applicable to the present case (see, *mutatis mutandis*, *Trade Union of Social Sector Workers and Others v. Hungary*, no. 33144/21, § 33, 12 May 2026). In the case of *Humpert and Others*, the Grand Chamber identified specific aspects as being relevant for the concrete assessment of a ban on strikes by civil servants (see *Humpert and Others*, cited above, § 122). The present case is different in that it relates to the setting of required minimum services in case of strikes and the alleged restrictive impact on industrial actions flowing from that (see paragraph 89 above), and does not involve the pivotal element of civil-servant status. Nonetheless, the Court considers that several elements identified in the case of *Humpert and Others* are relevant for the assessment of the interference in the present case.

– The nature and extent of the restriction on the right to strike

97. In the applicants' view, the services teachers were required to perform during strikes under the contested legislation went beyond what could be considered essential, and restricted the right to strike to an extent that deprived it of its essential content (see paragraphs 72-74 above). They also contested whether public education could be considered an essential service and, as a consequence, whether minimum services could be set by an Act of Parliament under the terms of section 4(3) of the Strike Act (see paragraphs 22, 71 and 75 above). They relied in that respect on international labour law (see paragraph 26-28 and 71 above).

98. The Court acknowledges that the practice of the competent monitoring bodies set up under the specialised international instruments, as well as that of other international bodies, shows a tendency to consider that the notion of essential services, despite some divergence as to its precise definition, is to be understood in the strict sense and as not including public

education (see *Humpert and Others*, cited above, § 55, and CFA Compilation of Decisions, 2018, §§ 842 and 844-46). The Court notes that the approach taken by the Government, namely of considering education an essential service (see paragraph 78 above), is thus not in line with the current understanding of specialised international instruments, as interpreted by the competent monitoring bodies.

99. Nonetheless, the Court considers that public education certainly constitutes an important public service in the interest of the population and that establishing an obligation to provide minimum service in this sector in case of a strike is not in itself contrary to the principles of freedom of association, as protected by Article 11.

100. The Court notes that section 14 of the 2022 Act requires, in particular, educational institutions to provide care for children from 7 a.m. until 5 p.m. for primary schools and until 4 p.m. for any other school, and to hold 100% of classes in certain subjects for students in their final year and 50% of classes for other students (see paragraph 23 above).

101. To demonstrate the proportionality of the contested measure, the Government maintained that the legislation had introduced differentiated rules depending on the status of the pupils (see paragraph 82 above). However, they failed to show how the services described above were genuinely minimum in the sense that they were restricted to operations which were necessary to satisfy the basic needs of pupils or the minimum requirements of the relevant service. The Court also finds it relevant that, under the terms of the 2022 Act, the level of minimum services required does not vary depending on the necessities of a given situation, the extent and duration of a strike or its impact on the life of the population.

102. The Court finds convincing the applicants' arguments that, if minimum services are set too broadly, the disruption in the functioning of the employer, which is the aim of any strike, goes unperceived (see paragraphs 73 and 74 above). This necessarily limits the impact of strike actions, which could end up being ineffective in practice as a tool for exerting pressure on the employer (see *Veniamin Tymoshenko and Others v. Ukraine*, no. 48408/12, § 42, 2 October 2014).

103. The Court also reiterates that, prior to the adoption of the legislation in question, teachers had a long-standing right to engage in strike action, conditional on prior agreement being reached between the parties about minimum services or, failing that, a court decision on the issue (see paragraph 22 above). Under the terms of the Strike Act – which involved setting minimum services in the public sector through pre-strike negotiations or arbitration – teachers' organisations had been able to participate on an equal footing with public authorities in defining the scope of such services. The Court considers that this allowed for a careful exchange on the interests at stake, a corollary to trade unions' right to be heard.

104. In contrast, the introduction of a unilaterally determined level of minimum services rendered any pre-strike consultation with the social partners obsolete, depriving the relevant teachers' organisations of their ability to participate in a genuine dialogue. This is particularly striking in the light of the fact that, although the 2022 Act concerned social and labour matters and affected the interests of both teachers and their labour organisations, no social consultation was held during the preparation, adoption or application of the 2022 Act, as argued by the applicants (see paragraph 69 above) and not refuted by the Government.

105. The Court also reiterates that it must assess the legislative choices which lay behind the adoption of the general scheme and the question whether the legislature weighed up the competing interests at stake. In that context, the quality of the parliamentary review of the necessity of the interference is of central importance in assessing the proportionality of a general measure (see *Animal Defenders International*, cited above, §§ 108 and 113).

106. Thus, the Court finds it important to point out that, even though the 2022 Act was passed to complement existing rules on teachers' strike actions, the Government did not provide it with any information concerning assessment of the likely impact of sections 14 and 15 on strike actions (for instance, regarding the Act's legislative history or relevant parliamentary debates), nor does the explanatory report to the 2022 Act (see paragraph 24 above) reveal that any such assessment took place (contrast *National Union of Rail, Maritime and Transport Workers*, cited above, §§ 89 and 99). More broadly, there is no evidence that consideration was given to the potential effect of the legislation on the ability of trade unions to protect the occupational interests of their members and, in turn, the ability of trade-union members to defend their interests through collective strike action.

107. In short, the respondent State did not demonstrate that the legislature sought to strike a fair balance between the relevant competing interests with a view to ensuring the proportionality of the interference.

– *Measures taken to enable teachers' trade unions and teachers in public education to defend their occupational interests*

108. The Court emphasises that, while the ability to strike represents one of the most important means by which trade unions can fulfil their function of protecting the occupational interests of their members, they also have other means of achieving this (see *Federation of Offshore Workers' Trade Unions and Others v. Norway* (dec.), no. 38190/97, ECHR 2002-VI). Thus, consideration needs to be given to whether other rights compensated for the limitation on the freedom of strike action and whether adequate protection was put in place to enable trade unions and employees themselves to defend the relevant occupational interests effectively (see *Humpert and Others*, cited above, § 128).

109. The first applicant submitted that the restriction of the right to strike had not been accompanied by measures to enhance teachers' employment conditions (see paragraph 76 above). The Government did not point to any other effective alternative means or safeguards, either introduced with the impugned legislation or otherwise granted to the applicants, that would have been designed to compensate teachers for the restrictions on their right to strike. For example, the CFA requires conciliation and arbitration proceedings by way of such safeguards (see *Ognevenko v. Russia*, no. 44873/09, § 78, 20 November 2018).

– *The objectives pursued by the restriction on teachers' strikes*

110. The Court reiterates that it accepts the Government's submission that the restriction on strikes by teachers in the public education sector pursued the overall aim of maintaining an effective educational system in order to ensure pupils' right to education (see paragraph 94 above).

111. The explanatory report of the 2022 Act (see paragraph 24 above) does not give any reason why the measures that were in place before the enactment of the disputed legislation were deemed insufficient to achieve the intended legislative purpose of protecting children's right to education. As explained above, the legislative framework in force prior to the 2022 Act foresaw the provision of minimum services in case of a strike by teachers, the level of which was to be decided in an agreement between the parties or by a judicial decision (see paragraphs 22 and 103 above).

112. In their submissions to the Court, the Government sought to cast doubt on the feasibility of setting minimum services through negotiations in case of a strike (see paragraph 79 above). In support of that contention they pointed to the strike negotiations preceding the adoption of the disputed rules (see paragraph 78 above). Although the Government criticised trade unions for "den[ying] in principle the relevance of the children's right to education" (see paragraph 79 above), they did not suggest that strikes held under the previous legislative framework had led to prolonged work stoppages, complete interruption of school services or any other damage in the education sector that would require legislative intervention (contrast *Federation of Offshore Workers' Trade Unions and Others*, cited above).

113. The Government also argued that the impugned measure had to be assessed in the context of the COVID-19 pandemic and the effect of the prolonged lack of in-person classes on pupils' rights (see paragraph 80 above).

114. The Court notes in this regard that the Government initially responded to the impact of the pandemic on the continuity of public education by adopting Government Decree no. 36/2022 (see paragraph 7 above), having already declared a state of danger (see paragraph 5 above). That decree had a time-limited application and became void with the termination of the state of danger on 31 May 2022 (see paragraph 9 above). The relevant provisions of

the 2022 Act essentially repeated the provisions of the government decree and elevated rules meant to temporarily regulate an emergency situation to permanent policy, independent of the state of danger.

115. Thus, even if it could be said that the restriction of strike action were meant to remedy the deficiencies in public education caused by the COVID-19 pandemic, there is no indication that the legislature contemplated how those rules were still relevant and necessary to the extent that they should apply indefinitely, years after the pandemic.

– *The severity of the impugned disciplinary measures*

116. The Court is mindful of the fact that no sanction has been applied to the applicants. Moreover, the main issue in the current case is the effect that the 2022 Act had on strikes, and, more generally, on the applicants’ ability to protect teachers’ occupational interests. Nonetheless, the Court cannot but note that the legislature treated any work stoppage going beyond the terms of section 14 of the 2022 Act as “civil disobedience” and an unlawful action (see paragraph 24 above). Section 15 of the 2022 Act (see paragraph 23 above), read in conjunction with Articles 56 and 78 § 2 of the Labour Code (see paragraph 25 above), enables employers faced with such action to impose disciplinary sanctions, including immediate dismissal.

117. The Court considers that measures taken to ensure the performance of essential services should not be out of proportion to the ends pursued. It also finds that the sanctions at issue are likely to deter trade unions, their members, and any other person from participating in industrial action that does not comply with the terms of section 14 of the 2022 Act (see, *mutatis mutandis*, *Enerji Yapı-Yol Sen v. Turkey*, no. 68959/01, § 32, 21 April 2009).

(iii) *Conclusion*

118. The Court reiterates that Contracting States are in principle free to decide what measures they wish to take in order to ensure compliance with Article 11 as long as they thereby ensure that trade-union freedom does not become devoid of substance as a result of any restrictions imposed (see, amongst others, *Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers’ Union (NTF) v. Norway*, no. 45487/17, § 94, 10 June 2021). However, having regard to the above considerations, the Court cannot but conclude that the respondent State overstepped the margin of appreciation afforded to it in the present case. In consequence, the interference was not necessary in a democratic society within the meaning of Article 11 § 2 of the Convention.

119. There has accordingly been a violation of Article 11 of the Convention.

#### IV. OTHER ALLEGED VIOLATION OF THE CONVENTION

120. The first applicant complained that the relevant restrictions on strike action did not pursue the aim of protecting children's right to education, but rather of exercising pressure on teachers. She relied on Article 18 of the Convention.

121. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the admissibility and merits of the remaining complaint (see, *mutatis mutandis* and amongst many other authorities, *F.S. v. Croatia*, no. 8857/16, § 75, 5 December 2023; in general, on the Court's power of non-examining overlapping or peripheral complaints, see *Tsaava and Others v. Georgia* [GC], nos. 13186/20 and 4 others, §§ 225-229, 11 December 2025).

#### V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

##### A. Damage

123. The first applicant did not submit a claim for damages. The Court is therefore not called upon to make any award under this head.

124. The second applicant claimed 7,500 euros (EUR) and the applicant trade unions claimed EUR 30,000 each in respect of non-pecuniary damage.

125. The Government considered the claims excessive.

126. As to the claim submitted in respect of non-pecuniary damage by the applicant trade unions, the Court would draw attention to its case-law to the effect that the frustration felt by members of an organisation that has been prevented from acting can be taken into account in this connection (see, for example, *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, no. 25141/94, § 78, 10 December 2002, and *Presidential Party of Mordovia v. Russia*, no. 65659/01, § 37, 5 October 2004). The Court observes that, at the material time, the applicant trade unions were the principal unions of teachers (see paragraph 20 above). The restriction on their ability to organise strikes must have caused feelings of frustration among their members, as they were thus deprived of their means of defending their occupational interests (see, *mutatis mutandis*, *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 180, ECHR 2008). Making its assessment on an equitable basis, the Court awards the applicant trade unions the sum of EUR 8,000 each, plus any tax

that may be chargeable, in respect of non-pecuniary damage. Turning to the second applicant, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage that she sustained (see *Trade Union of Social Sector Workers and Others v. Hungary*, no. 33144/21, § 46, 12 May 2026).

## **B. Costs and expenses**

127. The first applicant claimed EUR 5,600 plus VAT for the costs and expenses incurred before the Court, corresponding to 28 hours of legal work at an hourly rate of EUR 200.

128. The second applicant and the applicant trade unions jointly claimed EUR 7,300 plus VAT in respect of the expenses incurred before the Court, corresponding to 73 hours of legal work at an hourly rate of EUR 100.

129. The Government contested those claims.

130. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full sums claimed by the applicants, covering costs under all heads, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Holds* that there is no need to examine the admissibility and merits of the first applicant's complaints under Article 18 of the Convention;
3. *Declares* the complaint concerning Article 11 of the Convention admissible and the remainder of the applications inadmissible;
4. *Holds* that there has been a violation of Article 11 of the Convention;
5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained by the second applicant;
6. *Holds*
  - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be

converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 5,600 (five thousand six hundred euros) to the first applicant, plus any tax that may be chargeable to her, in respect of costs and expenses;
  - (ii) EUR 8,000 (eight thousand euros) each to the applicant trade unions, plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (iii) EUR 7,300 (seven thousand three hundred euros), jointly, to the second applicant and the applicant trade unions, plus any tax that may be chargeable to them, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti  
Registrar

Arnfinn Bårdsen  
President

## APPENDIX

List of cases:

| No. | Application no. | Case name                                         | Lodged on  | Applicant<br>Year of Birth /<br>Registration<br>Place of Residence                                                                                                                                                                                                                                                 | Represented<br>by |
|-----|-----------------|---------------------------------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 1.  | 8412/23         | Réka Kiss v.<br>Hungary                           | 31/01/2023 | <b>Réka KISS</b><br>1993<br>Budapest<br>("the first applicant")                                                                                                                                                                                                                                                    | Evelyn<br>FRANK   |
| 2.  | 33159/23        | Teachers' Trade<br>Union and Others<br>v. Hungary | 30/08/2023 | <b>Beáta KISS-BERTA</b><br>1977<br>Budapest<br>("the second<br>applicant")<br><br><b>PEDAGÓGUSOK<br/>SZAKSZERVEZETE</b><br>1989<br>Budapest<br>("the first applicant<br>trade union")<br><br><b>PEDAGÓGUSOK<br/>DEMOKRATIKUS<br/>SZAKSZERVEZETE</b><br>1989<br>Budapest<br>("the second applicant<br>trade union") | Tamás<br>SZIKLAI  |