



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

SECOND SECTION

DECISION

Application no. 45299/22
TEACHERS' TRADE UNION AND TEACHERS' DEMOCRATIC
TRADE UNION
against Hungary

The European Court of Human Rights (Second Section), sitting on
1 September 2026 as a Chamber composed of:

Arnfinn Bårdsen, *President*,
Jovan Ilievski,
Péter Paczolay,
Oddný Mjöll Arnardóttir,
Gediminas Sagatys,
Stéphane Pisani,
Juha Lavapuro, *judges*,
and Andrea Tamietti, *Section Registrar*,

Having regard to the above application lodged on 9 September 2022,

Having regard to the observations submitted by the Hungarian
Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

INTRODUCTION

1. The application concerns the setting of minimum services during a strike in the public education sector during the COVID-19 pandemic. It raises issues under Articles 6 § 1 and 11 of the Convention.

THE FACTS

2. Teachers' Trade Union (*Pedagógusok Szakszervezete*; "the first applicant trade union") has its seat in Budapest and it is the biggest trade union of teachers working in the public and private education sector in Hungary. It has about 5,000 to 6,000 members. Teachers' Democratic Trade Union (*Pedagógusok Demokratikus Szakszervezete*; "the second applicant

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trade union”; collectively “the applicant trade unions”) has its seat in Budapest and has a nationwide network and membership. The applicant trade unions were represented by Ms I. Bieber, a lawyer practising in Budapest.

3. The Hungarian 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.

5. On 8 February 2021 a state of danger (*veszélyhelyzet*) was declared in Hungary on account of the COVID-19 pandemic (Government Decree no. 27/2021 (I.29)), which lasted until 31 May 2022 (Government Decree no. 181/2022 (V.24) on the lifting of the state of danger).

6. The joint strike committee of the applicant trade unions announced a warning strike for 31 January 2022 and a strike for an indefinite period, starting on 16 March 2022, to enforce strike demands related to improvements of the working conditions and salary increases in the education sector. During the conciliation procedure with the representative of the Hungarian government, the applicant trade unions submitted their offer related to the extent and conditions of sufficient minimum services, as, under section 4(2) of Act no. VII of 1989 on the Right to Strike (hereinafter “the Strike Act”), in respect of employers providing essential services to the population, a strike could only be held once the parties had reached an agreement on minimum services to be maintained during strike days.

7. On 22 December 2021 the applicant trade unions lodged an application with the Budapest Administrative and Labour Court concerning the level of services deemed sufficient during a two-hour strike planned for 31 January 2022.

8. On 28 January 2022 the Administrative and Labour Court ruled that the proposed strike was legal and accepted the applicant trade unions’ proposal for minimum services. The Hungarian government appealed against the decision and while the appellate proceedings were pending, the applicant trade unions held a warning strike on 31 January 2022. The second-instance court found that the warning strike had been unlawful because of the lack of previous agreement of the parties or a court ruling on minimum services. That decision was overturned by the *Kúria* on 15 June 2022, which found that the warning strike had been lawful.

9. On 2 February 2022 the strike committee initiated another round of conciliation proceedings with the Hungarian government to set minimum services for the strike scheduled to begin on 16 March 2022.

10. On 11 February 2022 the Hungarian government adopted Government Decree no. 36/2022 (II.11) on certain emergency rules concerning public education institutions (*a köznevelési intézményeket érintő egyes veszélyhelyzeti szabályokról*; hereinafter “Government Decree no. 36/2022”, see paragraph 18 below), determining the level of services to be maintained in the event of a strike during the state of danger (see paragraph 5 above)

11. On 18 February 2022 the strike committee lodged another application with the Administrative and Labour Court, requesting the determination of minimum services for the strike scheduled to begin on 16 March 2022. The application was dismissed by the first-instance court on 24 February 2022 on the grounds that the issue was to be regulated by Government Decree no.36/2022 and, therefore, the court had no jurisdiction in the matter. The second-instance court upheld the first-instance decision on 8 March 2022, reiterating its reasoning that the provisions of the decree were applicable and the courts could not have regard either to previous agreements between the parties or to the applicant trade unions' request.

12. On 22 February 2022 the applicant trade unions lodged a constitutional complaint asking the Constitutional Court to declare Government Decree no. 36/2022 unconstitutional pursuant to section 26(2) of the Constitutional Court Act. They argued that the determination of minimum services by the decree had infringed their right to strike, as protected by Article XVII § 2 of the Fundamental Law.

13. On 1 March 2022 the Hungarian Helsinki Committee submitted an *amicus curiae* brief to the Constitutional Court, arguing that the decree violated the right to a fair trial and especially the right of access to a court, as protected by Article 6 of the Convention.

14. On 24 May 2022 the applicant trade unions' constitutional complaint was declared inadmissible on the grounds that they had relied on an erroneous legal basis.

15. On 23 March and 22 April 2022 the Forum for the Cooperation of Trade Unions (SZEF), a trade union confederation bringing together trade unions from the public sector, including the first applicant trade union, lodged a complaint with the Committee on Freedom of Association (CFA) of the International Labour Organization (ILO), alleging that Government Decree no. 36/2022 constituted a breach of the right to strike, guaranteed under ILO Convention No. 87 in the public education sector.

16. The SZEF submitted that the joint strike committee of the applicant trade unions had announced a strike, to start on 16 March 2022 and last for an indefinite period, and that the parties had begun discussions on the extent and conditions of sufficient minimum services (see paragraph 9 above). The SZEF further alleged that before the discussions could be concluded, Government Decree no. 36/2022 had been adopted. The subsequent non-contentious proceedings initiated by the applicant trade unions to define sufficient minimum services had been rejected by the domestic courts in view of the fact that the matter had been regulated by a decree and therefore the courts could not decide on them (see paragraph 11 above). The Government, in their response, submitted that the complaint had become redundant because the decree in question had been repealed and the SZEF's complaint had not been directed against the legislation, namely section 14 of Act no. V of 2022,

reregulating the issue of the minimum service level in the public education sector.

17. In Report no. 401 of March 2023, the CFA considered that the requirement of holding 50% of classes and up to 100% of classes in the relevant subjects for senior students appeared to go beyond the notion of minimum services limited to the operations which were strictly necessary to meet the basic needs of the population and might considerably restrict the right to strike. It noted with concern that the decree in question had been adopted before the ongoing discussions could be concluded. It requested the Hungarian government to consult workers' and employers' organisations with a view to determining the definition of a minimum service level and, if an agreement was not possible, for the matter to be brought before an independent body.

RELEVANT LEGAL FRAMEWORK

18. Government Decree no. 36/2022, in so far as relevant, reads as follows:

“...

(2) The supervision of children in the education institution concerned by the strike should be ensured

(a) every working day concerned from 7 a.m. until 4 p.m.; until 5 p.m. in primary schools; and until 6 p.m. in kindergartens;

(b) in the educational facility where the child/student receives his or her education and on the basis of his or her student or pupil status;

(c) in view of the pandemic, in such a way that each child and student only stays in the same room, with supervision, as those peers whom they were allowed to be with before the strike; while observing the measures related to the pandemic, the mixing of children and students belonging to different groups and classes must be avoided as much as possible during the strike in order to prevent the spread of the pandemic, and supervision must be provided in the room where the children and students were staying before the strike;

(d) with the presence in every group of at least one qualified nursery teacher, teacher, special needs educator, dormitory teacher, instructor, teaching assistant or special needs teaching assistant; and

(e) weather permitting, with the children and pupils being allowed to spend one hour in the fresh air in the morning and one hour in the afternoon.

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

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

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

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(6) For pupils not covered by subsection (5), 50% of the teaching hours shall be provided in respect of all subjects.

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

(8) 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.

(9) The participation of children and pupils in statutory dental, ophthalmological or general [medical] check-ups shall be ensured.

...”

COMPLAINTS

19. The applicant trade unions complained before the Court that they had been deprived of their right of access to a court as guaranteed by Article 6 § 1 of the Convention. They maintained that by defining the content of essential services, the Hungarian government, through its Decree no. 36/2022, had effectively frustrated their right to have a court ruling on the matter. The second applicant trade union further complained under Article 11 of the Convention that the decree had not been sufficiently foreseeable, did not serve a legitimate aim and infringed the very essence of its right to strike.

THE LAW

A. Complaint under Article 6 § 1 of the Convention

20. The applicant trade unions alleged that Decree no. 36/2022, determining the level of services to be maintained in the event of a strike during the state of danger, has violated their right to access to a court.

They invoke Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

21. The Government raised an objection of non-exhaustion of domestic remedies. They argued that the constitutional complaint brought by the applicant trade unions (see paragraph 12 above) had not addressed the alleged violation of Article 6 of the Convention and the *amicus curiae* brief submitted by the Hungarian Helsinki Committee (see paragraph 13 above) had not exempted the applicant trade unions from the obligation of bringing a constitutional complaint for their grievances concerning their right of access

to a court. They further submitted that the applicant trade unions' constitutional complaint had been declared inadmissible because of a procedural error, namely that of relying on an erroneous legal basis (see paragraph 14 above).

22. The applicant trade unions argued that the respondent State had been given the opportunity of putting right the violations caused by the government decree, as the violations had been brought to the attention of the Constitutional Court by the *amicus curiae* brief of the Hungarian Helsinki Committee, which had expressly and extensively argued that there had been a violation of Article 6 of the Convention (see paragraph 13 above). Furthermore, in the applicant trade unions' understanding, section 32(1) of Act no. CLI of 2011 on the Constitutional Court obliged the Constitutional Court to examine, of its own motion, the compatibility of domestic legislation with international treaties.

23. 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).

24. Turning to the circumstances of the present case, the Court observes that it is true that, in their constitutional complaint, the applicant trade unions focused on an alleged infringement of their right to strike (see paragraph 12 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.

25. As to the applicant trade unions' argument that the alleged breach of their right of access to a court had been duly raised in the *amicus curiae* brief submitted by the Hungarian Helsinki Committee (see paragraph 13 above), the Court notes that the Hungarian Helsinki Committee was not party to the proceedings before the Constitutional Court. According to the Court's case-law, even public-interest litigation cannot exonerate an individual applicant from bringing his or her own domestic proceedings if the former did not correspond exactly to the applicant's individual situation (see *Kósa v. Hungary* (dec.), no. 53461/15, §§ 52-63, 21 November 2017).

26. Therefore, the *amicus curiae* brief of the Hungarian Helsinki Committee has not exempted the applicant trade unions from bringing an individual complaint so as to exhaust domestic remedies.

27. As regards the applicant trade union's suggestion that the Constitutional Court should have examined, of its own motion, the compatibility of the decree with the Convention (see paragraph 22 above), the Court reiterates that if an 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, the applicant must have actually complained (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 complaint by the applicant trade unions of the restriction of their right of access to a court – accept their argument that the Constitutional Court had a duty to review, of its own motion, the compliance of national legislation with international treaties. If the applicant trade unions at that stage wished to complain of the restriction of their right of access to a court, they should have stated so in their constitutional complaint.

28. In the light of the foregoing, the Court concludes that 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*, cited above, § 63). Accordingly, the Government’s objection of failure to exhaust domestic remedies (see paragraph 21 above) must be upheld.

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

B. Complaint under Article 11 of the Convention

30. The second applicant trade union further complained under Article 11 of the Convention that the government decree had set a disproportionately broad level of services to be maintained in the event of a strike in the public education sector during the state of danger, infringing the very essence of the right to strike.

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Article 11 of the Convention 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.”

31. The Government referred to the complaint which the SZEF had submitted to the CFA of the ILO in which it had alleged that the Hungarian State had infringed the right to freedom of association (see paragraph 15 above). They argued that the complaint concerning the restriction of the right to strike had been inadmissible within the meaning of Article 35 § 2 (b) of the Convention because it had been substantially the same as a matter that had already been submitted to another procedure of international investigation or settlement.

32. The second applicant trade union pointed out that it had not been a member of the trade union confederation SZEF, which had submitted the complaint to the ILO (see paragraph 15 above).

33. The Court reiterates that the purpose of Article 35 § 2 (b) of the Convention is to avoid a plurality of international proceedings relating to the same cases. 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 (compare *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 520, 20 September 2011, with further references).

34. As mentioned above, the subject matter of this application has already been raised before the CFA of the ILO (see paragraph 15 above). The Court firstly reiterates that it has already 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 v. the United Kingdom* (dec.), no. 59253/11, § 28, 21 May 2013).

35. The Court must then examine whether the application to the Court is “substantially the same” as the complaint submitted to the CFA (see *POA and Others*, cited above, § 28).

36. 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).

37. Having regard to the detailed examination of the SZEF’s complaint conducted by the CFA (see paragraph 17 above), whose report on the matter the second applicant trade union appended to its observations, it is clear to the Court that the second applicant trade union’s complaint under the Convention is the same in substance. Indeed, the two complaints arise from the same facts and the essence of the arguments in both sets of international proceedings is that the same provision of domestic law, namely Government Decree no. 36/2022, contravenes the international obligations of Hungary under both Article 11 of the Convention and the relevant provisions of ILO Convention No. 87.

38. This is not sufficient, however, to settle the issue under Article 35 § 2 (b). According to the principles established in the Court’s case-law, the complainant before the other international organ should also be the same as the applicant before the Court (see *Folgerø and Others v. Norway* (dec.), no. 15472/02, 14 February 2006, with further references, and *POA and Others*, cited above, § 29).

39. The Court observes that the second applicant trade union and the SZEF, the latter being the “author” before the UN Committee, all complained, at the outcome of the same national proceedings to which the first applicant trade union (a member of the SZEF) and the second applicant trade union had all been parties, about the restriction on strike rights following the adoption of Government Decree no. 36/2022 setting an overly broad scope of minimum services (see paragraph 18 above).

40. The Court held in *Folgerø and Others* (cited above) that the application before it could not be regarded as substantially the same as the complaint brought before the United Nations Human Rights Committee under the Protocol to the 1966 International Covenant on Civil and Political Rights. Notwithstanding the common features between the application lodged under the Convention and the communication filed under the UN Covenant and the fact that the complainants were parties to the same domestic proceedings, the Court laid emphasis on the detail that the complainants before the two institutions were not identical.

41. In *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, (no. 20641/05, §§ 38-39, ECHR 2012 (extracts)), it was not the applicant union, but a confederation of unions – with which the applicant union was associated – which had lodged a complaint before the CFA of its own initiative. Although the confederation had lodged the complaint on behalf of the applicant union, the latter had not joined the proceedings. The Court found that the interests of the applicant union and the confederation had not necessarily been the

same and concluded that the applicant before it had been different from the author of the application lodged with the CFA.

42. The Court would further refer to the decision of the Commission in *Cereceda Martin and Others* (cited above) and the decision of the Court in *POA and Others* (cited above). The first application, lodged by 23 individual trade union representatives, was rejected as inadmissible in the light of a prior complaint to the CFA. The Commission held that, while, formally, the applicants had not been the complainants, the complaint – supported by the applicants' respective trade unions – had referred to precisely the same situation, namely the termination of their employment following industrial action. It concluded that the complaint had been, in substance, submitted by the same complainants.

43. In *POA and Others* (cited above, §§ 30 and 32-33), the applicants were members of the trade union introducing a complaint before the CFA of the ILO, but they had not been and could not be parties to the complaint themselves. Although, unlike in *Cereceda Martin and Others*, the proceedings before the CFA had not concerned any specific measure taken in respect of the applicants, the Court found that their situation had simply exemplified the effects of the statutory ban on industrial action, which was the subject of the complaint before the ILO and before the Court. Accordingly, the Court rejected the application before it in accordance with Article 35 § 2 (b).

44. In *Komisja Zakładowa NSZZ "Solidarność" at Frito Lay Poland Ltd v. Poland* (no. 56270/07, 2 February 2016), the applicant trade union, an enterprise-level unit of the Solidarność Trade Union, had not been and could not be party to the proceedings before the CFA, initiated by Solidarność Trade Union. The Court nonetheless noted that Solidarność Trade Union had acted in the interest of its subordinate unit and the case before the Court referred to the same situation, in the context of a company, as that complained of by Solidarność Trade Union before the CFA. The Court therefore considered that the complaint had been, in substance, submitted by the same complainant (*ibid.*, § 45).

45. Turning to the second applicant trade union in the present case, it is evident that it was not party to the complaint to the ILO, nor was it a member of the SZEF, the national trade union federation which had lodged the complaint with the CFA. The Court, however, notes that the first applicant trade union was a member of the SZEF (see paragraph 15 above) and is directly involved in the present proceedings.

46. The Court also points out that the two trade unions formed a joint strike committee, they lodged a joint application with the domestic courts to define minimum services and their application was decided on in a single decision (see paragraphs 6-8 above). The Court therefore considers that the applicant trade unions coordinated their actions and that the second applicant

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trade union must have been aware of the proceedings before the CFA of the ILO.

47. Furthermore, the complaint before the ILO addressed the general legislative measure and its restrictive impact on industrial action, which affected the applicant trade unions in the same manner and which is the subject matter of the present case. Moreover, it dealt with the particular situation of the Teachers' Trade Union and the Teachers' Democratic Trade Union and the impact of the disputed decree on the strike planned jointly by them in 2022 (see paragraph 16 above). Accordingly, the SZEZ acted in the interest of both of the applicant trade unions. Thus, the second applicant trade union must be seen as closely associated with the proceedings and the complaints before the CFA by virtue of being part of the joint strike committee and the same domestic proceedings.

48. Based on the above, the Court cannot but note that, although the Teacher's Democratic Trade Union was not formally a member of the trade union confederation SZEZ who brought the case before the CFA of the ILO, the two associations had a close organic link. Moreover, they acted to a large degree jointly in pursuing common interest in the domestic and international proceedings which substance is now brought before the Court. Accordingly, and notwithstanding the fact the second applicant trade union could have been party to the proceedings before the CFA (see, *a contrario*, *Komisja Zakładowa NSZZ "Solidarność" at Frito Lay Poland Ltd*, cited above), to permit the second applicant trade union to maintain its action before the Court would be tantamount to circumventing Article 35 § 2 (b) of the Convention (see, *mutatis mutandis*, *POA and Others*, cited above, § 32).

49. The Court therefore finds that this 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". It must therefore be rejected in accordance with Article 35 §§ 2 (b) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 8 October 2026.

Andrea Tamietti
Registrar

Arnfinn Bårdsen
President