



**COVID-19 WATCH**  
**ETUC BRIEFING NOTES**

**HUMAN RIGHTS AND**  
**COVID-19**  
**7 APRIL 2020**

**HUMAN RIGHTS AND COVID-19**

**Table of contents**

**INTRODUCTION..... 1**

**I. RECALLING INTERNATIONAL AND EUROPEAN MESSAGES ON HUMAN RIGHTS AND (COVID-19) CRISIS... 4**

    UNITED NATIONS..... 4

    ILO ..... 6

    COUNCIL OF EUROPE ..... 8

**II. HOWEVER, EXPERIENCE SO FAR SHOWS A MIX PICTURE, INCLUDING SOME MOST WORRYING NATIONAL EXPERIENCES BUT TRADE UNIONS ARE FIGHTING BACK ! ..... 12**

**Introduction**

Due to the Covid-19 outbreak, a range of measures are being taken at EU and national level in different domains to protect public health, the economy but more importantly workers and their jobs and their income. Exceptional circumstances ask indeed for exceptional measures,

However, first signs already indicate that certain governments use the Covid-19 crisis, like it was done in the framework of the 2008 economic crisis, to “temporarily” undermine and curtail human rights in general and workers and trade union rights in particular. (see section II)

For ETUC this is unacceptable as it is in particular in times of crisis that human rights must be upheld and even enhanced in particular for vulnerable groups like the elderly, women, young persons, persons with disabilities, migrants/refugees but also all workers irrespective of their status (i.e. including self-employed workers, non-standard workers, free-lancers and gig/platform workers). ETUC therefore urges that in any response given now by international, European and national instances and authorities it should be ensured that the measures taken and/or envisaged do not infringe human rights standards, including workers and trade unions rights.

This briefing provides inputs on the impacts of such measures on human rights, including trade unions and workers’ rights in dealing with the Covid-19 crisis. It looks in particular at guidelines by international and European human rights bodies (UN, ILO and Council of Europe) to ensure the protection of particular rights (of particular groups) in times of crisis. This briefing also provides an outline of the fundamental principles, according to international and European human rights case law, that should be underlined and respected when governments elaborate



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

and adopt (emergency) measures in the framework of any crisis, including this Covid-19 crisis. (see Section I)

Finally, it is clear for ETUC and all its affiliates that vigilance will be key, as in previous emergency situations (remember what happened and is still happening in the wake of the 2008 financial/economic crisis)<sup>1</sup>. ETUC increasingly receives information on very worrying national developments whereby Governments use the Covid-19 crisis as an alibi for adopting and implementing (emergency) measures which clearly undermine civil and politic rights but, what is more, workers and trade union rights. Governments are indeed introducing legislative initiatives to reduce trade union rights and workers' rights and protections, particularly related to dismissals, working time, minimum wages, collective agreements and social dialogue. The action put in place by national trade unions with the support of [ETUC](#) has stopped so far these attempts, but it is far from sure that they will not be tried again.

Further information can be found on ETUC dedicated webpages sharing ETUC statements, the European social partner statement, and most importantly national bi-partite and tri-partite agreements on dealing with the impacts of the coronavirus emergency, see '[ETUC Covid-19 Watch](#)' (including different briefing notes) and ETUC '[Trade unions and Coronavirus](#)' website section.

This (and the other) briefing(s), regularly updated, is (are) only possible with the large and much supportive contribution and coordination of ETUC affiliates. Thanks for your solidarity!

*One note of caution, this briefing note captures a dynamic situation which is subject to ongoing change. We therefore kindly ask affiliates to provide us with further information on COVID 19-related measures that have been introduced in your country so that we can update this briefing note.*

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<sup>1</sup> For more information see amongst others ETUI Reform Watch and ETUI publications on the [economic crisis in general](#), [labour law reforms](#) and the [impact of the European Semester CSRs in the social policy field](#) in particular.



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

**For ETUC, Human Rights, including trade unions and workers' rights, should be the redline to respect and promote for the EU and Member States in particular in time of this Covid-19 crisis.**

The COVID-19 pandemic might legitimately prompt Member States to adopt radical measures to protect public health, the economy and workers jobs and incomes. However, these measures may restrict individual rights and liberties anchored in Member States constitutions and in international and European human rights instruments like the UN International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, ILO Conventions and the Council of Europe European Convention on Human Rights and European Social Charter.

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#### Principle

*All crisis responses need to be human rights-compliant and ensure respect for all human rights and the rule of law, including respect for fundamental principles and rights at work and for international labour standards*

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However, ETUC recalls that any derogation from or restriction of Human Rights are strictly regulated. They should respect the very essence of democratic principles and rule of law and can only be established under very clear and strict conditions and in limited circumstances.

High-level representatives and bodies of the UN, ILO and the Council of Europe recall that the Covid-19 crisis should not be used, even temporarily, to dismantle human rights and social rights, in particular trade unions rights. Such measures risk also to run against EU fundamental rights and Treaties provisions.



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

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#### Derogation from or restriction of Human Rights are strictly regulated

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##### *Such derogations or restrictions:*

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- *can only be invoked in time of war or other public emergency threatening the life of the nation,*
  - *should be consistent with the State's other obligations under international law,*
  - *can solely be established for the purpose of promoting the general welfare in a democratic society,*
  - *taken in full respect democratic principles and of the rule of law,*
  - *should only be adopted/implemented when necessary,*
  - *applied in a non-discriminatory way,*
  - *should be specific in focus,*
  - *should proportionate to the evaluated risk,*
  - *should be temporary and supervised/monitored on a regular basis,*
  - *using the least intrusive approach possible, and*
  - *elaborated and implemented following a permanent and intensive dialogue with the most representative workers' and employers' organization!*
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#### I. Recalling international and European messages on Human Rights and (Covid-19) crisis

##### United Nations

As for the UN High Commissioner for Human Rights Michelle Bachelet human dignity and rights need to be front and centre in all our responses to the Covid-19 crisis, not an afterthought. The UN Guidance on 'Covid-19 and human rights' is crystal clear in that "respect for human rights across the spectrum, including economic and social rights, and civil and political rights, will be fundamental to the success of the public health response" and that "although international law allows emergency measures in response to significant threats, measures should be proportionate to the evaluated risk, necessary and applied in a non-discriminatory way. This means having a specific focus and duration and taking the least intrusive approach possible to protect public health". As for the instalment of state of emergencies, emergency powers must be used for legitimate public health goals, not used as basis to quash dissent or silence the work of human rights defenders (and this includes trade unions of course) or journalists.



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

This call of the High Commissioner was echoed by 10 high-level UN experts (in different field of expertise) who *'encourage States to remain steadfast in maintaining a human rights-based approach to regulating this pandemic, in order to facilitate the emergence of healthy societies with rule of law and human rights protections,'*

The International Covenant on Economic, Cultural and Social Rights clearly spells out in its Article 4 that "(...) in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society".

For instance, in its General Comment on Article 7 on 'the right to just and favourable conditions at work' (including i.a. the right to fair (minimum) wages and healthy and safe working conditions, the Committee on Economic, Social and Cultural Rights, clearly stated that:

52. State parties should avoid taking any deliberately retrogressive measure without careful consideration and justification. When a State party seeks to introduce retrogressive measures, for example, in response to an economic crisis, it has to demonstrate that such measures are temporary, necessary and non-discriminatory, and that they respect at least its core obligations. A State party may never justify retrogressive measures in relation to aspects of the right to just and favourable conditions of work that are subject to immediate or core obligations. States parties facing considerable difficulties in achieving progressive realization of that right due to a lack of national resources have an obligation to seek international cooperation and assistance.

The core obligations referred to above in the field of just and favourable conditions entail the following:

#### C. Core obligations

65. States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to just and favourable conditions of work. Specifically, this requires States parties to:

- (a) Guarantee through law the exercise of the right without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, sexual orientation, gender identity, intersex status, health, nationality or any other status;
- (b) Put in place a comprehensive system to combat gender discrimination at work, including with regard to remuneration;
- (c) Establish in legislation and in consultation with workers and employers, their representative organizations and other relevant partners, minimum wages that are non-discriminatory and non-derogable, fixed by taking into consideration relevant economic factors and indexed to the cost of living so as to ensure a decent living for workers and their families;
- (d) Adopt and implement a comprehensive national policy on occupational safety and health;
- (e) Define and prohibit harassment, including sexual harassment, at work through law, ensure appropriate complaints procedures and mechanisms and establish criminal sanctions for sexual harassment;



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

(f) Introduce and enforce minimum standards in relation to rest, leisure, reasonable limitation of working hours, paid leave and public holidays. [Emphases added]

#### ILO

Over time, the ILO supervisory bodies have had to pronounce themselves on the application of standards in situations of crisis.

The **Committee on Freedom of Association (CFA)**, a tripartite body entrusted with the examination of complaints alleging infringements of freedom of association principles, has a long-standing record of decisions on the need to align structural adjustment programmes with in particular the respect to collective bargaining structures and agreements. For the CFA, the fundamental principles require that any restrictive measures in times of crisis, “should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers’ living standards”. The Committee also recalled that measures that might be taken to confront exceptional circumstances ought to be temporary in nature having regard to the severe negative consequences on workers’ terms and conditions of employment and their particular impact on vulnerable workers. It also highlighted the importance, in the context of an economic crisis, “of maintaining permanent and intensive dialogue with the most representative workers’ and employers’ organizations” in particular in the process of adopting legislation, which may have an effect on workers’ rights, including those intended to alleviate a serious crisis situation. (ILO, CFA Digest of Decisions, 2018, paras. 1434, 1437, 1456, 1461, 1463 and 1546).

Also the **Committee of Experts on Applications of Conventions and Recommendations (CEACR)** adopted in the context of the then global financial crisis a statement in which the importance of the role of international labour standards in dealing with the crisis and emphasised that the crisis must not be used as an excuse for lowering standards. Furthermore, it also made a general observation on the application of the ILO social security standards in which it emphasised the need to avoid the risk of social regression. The CEACR also underlined that in such unprecedented circumstances, governments must manage the skyrocketing levels of budgetary deficit in such a way not to endanger the social guarantees of the population and that measures taken by governments to salvage private providers could not be taken at the expense of cutting the resources available to public social security schemes (ILO, 2009, para. 68 ff.).

It should also be recalled that already in 2009 and in view of recovering from the crisis, the ILO adopted a Global Jobs Pact, in which it proposes a balanced and integrated set of policy measures that countries, can adopt in both the economic and social policy sphere to address the crisis and many of which are also still or will become even more relevant to combat (the aftermath of) the Covid-19 crisis.

As for the handling of the Covid-19 crisis in particular, reference could be made to the following recent ILO guidelines and documents:



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

- In a brief of 23 March on “[ILO Standards and Covid-19 \(Corona virus\)](#)”, the ILO brought together the provisions of international labour standards relevant to the evolving COVID19 outbreak relating to safety and health, working arrangements, protection of specific categories of workers (including nursing personnel, domestic workers, migrant workers, seafarers or fishers, who we know are very vulnerable in the current context), non-discrimination and equality, social security or employment protection and of course trade union rights including collective bargaining. The key message is that all crisis responses need to ensure respect for all human rights and the rule of law, including respect for fundamental principles and rights at work and for international labour standards. A particular reference is also made to the very recent [Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#) that outlines a strategic approach to crisis response, including the adoption of a phased multitrack approach implementing coherent and comprehensive strategies for enabling recovery and building resilience (in different areas like employment/income generation, social protection, labour law, labour market institution, social dialogue (including capacity building) and special groups like refugees and migrant workers).
- A [joint statement](#) issued by the Officers of the Special Tripartite Committee of the [Maritime Labour Convention \(MLC, 2006\)](#), representing **seafarers**, ship owners and governments, called on ILO member States (including labour supplying States and port and flag State authorities) for seafarers to be treated as ‘key workers’ and be exempted from travel restrictions during the COVID-19 pandemic” and “do all that they can to facilitate the delivery of essential medical supplies, fuel, water, spare parts and provisions to ships”.
- On 30 March, the ILO and UNICEF, with contributions from UN Women, formulated some [guidelines](#) formulated calling upon employers (organisations) to consider the impact of their decisions on **workers’ families**. A particular call relates also to the need to prioritise improved social protection where and whenever possible and to provide additional support, especially to those on low incomes.

The preliminary guidelines for employers, including examples, are as follows:

- Observe good practices when implementing policies based on social dialogue, national labour laws and international labour standards. Ensure that workplace support measures are available to all, without discrimination, and that all workers know, understand, and are comfortable with them,
- Monitor and follow national advice from local and national authorities and communicate it to the workforce,
- Combat discrimination and social stigma at work by ensuring that support measures are available to all, without discrimination, ensuring confidential and safe reporting mechanisms and support training,
- Adopt family-friendly working arrangements, in line with amongst others ILO Convention 156 on Workers with Family Responsibilities (1981) by ensuring flexible working arrangements and, if not possible, by considering other forms of support for working parents, such as childcare,



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

- Prevent and address workplace risks by strengthening occupational safety and health measures, including with guidance and training on occupational safety and health and hygiene, encouraging workers to seek appropriate medical care and better supporting workers coping with stress,
- Support government social protection measures in line with the ILO Social Protection Floors Recommendation No. 202. This can include subsidies for workers to access health, unemployment and inability to work insurance, maternity protection, and should extend to workers in the informal economy.
- Reference should also be made to the ILO and WHO joint manual on Occupational safety and health in public health emergencies: A manual for protecting health workers and responders to ensure a full protection of those workers who are now in the frontline to save lives. The manual is also intended to assist organizations and workplaces to better prepare and respond to the outbreak of infectious diseases and other public health emergencies.

But also the **social partners within the ILO** already reacted. In a [joint statement, ITUC and IOE](#) call for urgent action in amongst others the following key areas:

- Ensure business continuity, income security and solidarity to prevent the spread and protect lives and livelihoods and build resilient economies and societies.
- Important role that social dialogue and social partners play in the control of the virus at the workplace and beyond, but also to avoid massive job losses in the short and medium term
- Ensure policy coordination and coherence whereby consideration must be given to the need for protecting employment and income through strengthening social protection measures in both the resolution of the pandemic and in setting the foundation for the employment and economic conditions for recovery
- Ensure strong and functioning health systems and governments are urged to deploy all possible resources.

Also the **ILO's Bureau for Workers' Activities (ACTRAV)** prepared a note on "[COVID-19: what role for workers' organizations?](#)" highlighting the importance of ILO Recommendation No 205 on Employment and Decent Work for Peace and Resilience (R205) (see above) as an effective instrument for governments, employers and workers organizations to address the Coronavirus (COVID-19) pandemic.

#### **Council of Europe**

Dunja Mijatović, the Council of Europe Commissioner for Human Rights launched on 26 March a call to "[respect human rights and stand united against the coronavirus pandemic.](#)" Although recognising that "*it is necessary to respond to the unprecedented challenge we are facing. At the same time, it is clear that the enjoyment of human rights is affected by the pandemic and the measures adopted to encounter it. The right to health, the broader range of economic and social rights, and civil and political freedoms, are all very relevant in the present context. It is*





## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

therefore crucial that the authorities take measures that do not lead to discrimination and are proportionate to the aims pursued.”

As for the **European Convention on Human Rights** in particular it grants ‘to the governments of the States parties, in exceptional circumstances, the possibility of derogating, in a temporary, limited and supervised manner, from their obligation to secure certain rights and freedoms under the Convention. The use of that provision is governed by the following procedural and substantive conditions’ (Article 15 ECHR regulating derogation in time of emergency):

- the right to derogate can be invoked only in time of war or other public emergency threatening the life of the nation.
- a State may take measures derogating from its obligations under the Convention only to the extent strictly required by the exigencies of the situation.
- any derogations may not be inconsistent with the State’s other obligations under international law.
- certain Convention rights do not allow of any derogation: Article 15§2 thus prohibits any derogation in respect of the right to life, except in the context of lawful acts of war, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and servitude, and the rule of “no punishment without law”; similarly, there can be no derogation from Article 1 of Protocol No. 6 (abolishing the death penalty in peacetime) to the Convention, Article 1 of Protocol No. 13 (abolishing the death penalty in all circumstances) to the Convention and Article 4 (the right not to be tried or punished twice) of Protocol No. 7 to the Convention;
- lastly, on a procedural level, the State availing itself of this right of derogation must keep the Secretary General of the Council of Europe fully informed.<sup>2</sup>

In relation to the **European Social Charter (ESC)**, Article 30 and 31 (and similarly Article G for the 1996 Revised ESC) state amongst others the following:

Article 30 –Derogations in time of war or public emergency

- 1) In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. (...)

Article 31 –Restrictions

- 1) The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a

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<sup>22</sup> For more detailed information on see the ECtHR Guide on Article 15 ‘Derogations in emergency times’ (for French version click [here](#)).



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

- 2) The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Also the President of the European Committee of Social Rights (ECSR), the main supervisory body to the European Social Charter, was clear when launching in March its Conclusions 2019 (in relation to the rights guaranteed by the ESC to young persons, families and migrant workers) that *“the COVID-19 crisis is a brutal reminder of the importance of ensuring lasting progress with respect to social rights enjoyment. It is crucial that the European Social Charter, also known as the Social Constitution of Europe, should be used to shape and analyse decisions during the COVID-19 crisis. The Charter serves as a key tool for states in ensuring that their responses to the Covid-19 pandemic is human rights-compliant – both in the short and the longer term.”*

In this framework it might be also more than appropriate to recall some of the (general) case law of the ECSR in relation to (austerity) measures taken following the 2008 economic crisis.

Both in the framework of the reporting and the collective complaint procedure, the ECSR expressed its views on the protection of social rights in times of economic crisis . In the general introduction to its Conclusions 2009<sup>3</sup>, the ECSR stated that the implementation of the social rights guaranteed by the Charter had acquired greater importance in a context of global economic crisis :

“The severe financial and economic crisis that broke in 2008 and 2009 has already had significant implications on social rights, in particular those relating to the thematic group of provisions ‘Health, social security and protection’ [...]. Increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while [...] revenues decline. [T]he Committee recalls that under the Charter the Parties have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realized. From this point of view, the Committee considers that the economic crisis should not have as a consequence the reduction of the protection of the rights recognized by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.”

In its Decision on the merits on the Greek “austerity” collective complaint n° 111/2014, the ECSR<sup>4</sup> stated amongst the following:

<sup>3</sup> Conclusions 2009: General introduction, <http://hudoc.esc.coe.int/eng>.

<sup>4</sup> ECSR Decision on the merits, Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, adopted 23 March 2017.



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

83. The Committee recalls that Article 31 indeed opens up a possibility for States to restrict rights enshrined in the Charter. Given the severity of the consequences of a restriction of these rights, especially for society's most vulnerable members, Article 31 lays down specific preconditions for applying such restrictions. Furthermore, as an exception applicable only under extreme circumstances, restrictions under Article 31 must be interpreted narrowly. Restrictive measures must have a clear basis in law, i.e. they must have been agreed upon by the democratic legislature, and need to pursue one of the legitimate aims defined in Article 31§1. Additionally, restrictive measures must be "necessary in a democratic society", they must be adopted only in response to a "pressing social need" (Conclusions XIII-1, Netherlands, Article 6§4, see also European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on the merits of 2 December 2013, §207

85. While, in a democratic society, it is in principle for the legislature to legitimize and define the public interest by striking a fair balance between the needs of all members of society, and while it from the point of view of the Charter has a margin of appreciation in doing so, this does not imply that the legislature is totally free of any constraints in its decision-making. Under public international law, States having ratified human rights treaties such as the 1961 Charter are bound to respect the obligations thereby undertaken including when defining the public interest. More particularly, obligations undertaken cannot be abandoned without appropriate guarantees of a level of protection which is still adequate to meeting basic social needs. It is for the national legislature to balance the concerns for the public purse with the imperative of adequately protecting social rights. and seq.).

87. Nevertheless, the Committee considers that States cannot divest themselves of their obligations by surrendering the power to define what is in the public interest to external institutions (see mutatis mutandis IKA-ETAM v. Greece, Complaint No. 76/2012, op.cit., §§50-52). In transposing restrictive measures into national law, legal acts must ensure proportionality between the goals pursued and their negative consequences for the enjoyment of social rights. Consequently, even under extreme circumstances the restrictive measures put in place must be appropriate for reaching the goal pursued, they may not go beyond what is necessary to reach such goal, they may only be applied for the purpose for which they were intended, and they must maintain a level of protection which is adequate.

Reference should also be made to a special note by the Special Representative of the Secretary General on Migration and Refugees of the Council of Europe, together with the EU Agency for Fundamental Rights (FRA) on the main fundamental rights safeguards for refugees, asylum seekers and migrants applicable at their member states' external borders and which aims to support EU and Council of Europe member states in their duties when taking protective measures, including to contain the spread of the Covid-19 virus, and addressing questions related to public order, public health, or national security challenges.



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

#### **II. However, experience so far shows a mixed picture, including some most worrying national experiences, but trade unions are fighting back!**

ETUC has been informed that at national level there unfortunately have been several attempts to put human rights and in particular workers and trade unions rights aside under the excuse of Covid-19 emergency measures and on the grounds of maintaining and relaunching economic activity. However such measures will also increase inequalities and put the burden of the pandemic outbreak on the shoulders of workers, including the most vulnerable ones and the ones working already under precarious working conditions, as well as citizens at large.

Governments are indeed introducing legislative initiatives to reduce trade union rights and workers' rights and protections, particularly related to dismissals, working time, minimum wages, collective agreements and social dialogue. The action put in place by national trade unions with the support of ETUC has stopped so far these attempts, but it is far from sure that they will not be tried again. Therefore, [ETUC](#) has addressed on 30 March all EU institutions asking amongst others :

- Member States to refrain from any initiative aimed at reducing wages, rights and protections of workers, or to undermine social dialogue.
- Member States to put urgently in place measures for short-time work and income compensation arrangements, covering all workers including non-standard/self-employed/precarious/undeclared workers – and all companies of any size and in all sectors.
- Member States to provide access to unemployment benefits without restrictions or waiting periods, extend sick leave duration, extend its coverage to all workers and increase the level of income compensation.
- The European Commission to urgently establish a European Scheme for Unemployment Reinsurance (SURE) to intervene not only in support of unemployment systems, but particularly for short-time work and income compensation arrangements, to enable such measures to be established, operational and universally accessible in all Member States.
- The European Council, the Eurogroup and the European Commission to make sure that such a European Scheme is supported by sufficient financing, through the establishment of a common debt instrument.
- The ECB, all EU and national financial institutions, the European Commission and Member States to set clear conditionalities for all types of funding provided to companies, the banking and financial sectors and services of general interest: no worker lay-offs, no reduction of wages and rights, no distribution of dividends to beneficiaries of public funding.



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

Some examples in the area of workers' and trade union rights:

- **Croatia:** The Croatian Ministry of Labour and Pension System was end of March in the mid, without informing let a lot consulting the trade unions, drafting an Act on regulating labour relations in the circumstances of the COVID-19 epidemic and by which bring some important changes to fundamental social rights as they are currently enshrined in the Croatian Labour Code.

The law would “temporarily“ amongst others:

- Enable employers to cut wages through company by-laws up to the level of the minimum wage, and to abolish workers' rights to payment of one-off material rights, but in practical terms it would thus abolish collective agreements and allow the employers to unilaterally exclude certain provisions /material rights from collective agreements,
- Temporarily suspend certain provisions of the Labour Code by allowing a different regulation of the entitlement to wage compensation in case of termination of work due to the COVID-19 epidemic, i.e. reductions in the amount of compensation,
- Enable employers to unilaterally shorten workers' working time (and thus lowered wages) by simply putting an annex to their employment contracts,
- Enable employers to organize annual leave without further notice of 15 days and an obligation of periodic medical check-ups of workers employed on jobs with specific working conditions would also be abolished,
- Enable employers to unilaterally decide to organize work on a dislocated place of work; and no sanctions will be put on employers who have already organized telework, but who have not ensured OSH protection,
- and finally, the law would abolish the obligation to consultation of the employer with the works council prior to adopting any such decisions.

Following immediate and strong reactions of ETUC affiliates, SSSH/UATUC and NHS, and with the full support of ETUC (as well as EPSU and ITUC), however, the Croatian government announced those reform plans will be abandoned.

- **France:** The French government has adopted a series of decrees allowing derogations to labour law for the food, energy, transport and logistics sectors for the (not yet determined) time of emergency to increase regular working time of 48 hours/week to 60h/week, reducing rest time to 9h instead of 11h, and suspending the rest day of Sunday, so that business can operate 7/7, as well as unilaterally modifying of the use of RTT (reduction of working time). Derogations to such an extent of the maximal working and rest times constitute a clear breaches of ILO conventions and the



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

European Social Charter, and endanger workers' health and safety, which is particularly at stake in the present crisis. In addition, these measures are not taken with complementary measures that would reinforce the safety for workers, be it in terms of additional sanitary equipment or with security measures. This is particularly true when it comes to logistics and transport, sectors particularly affected already with poor working conditions and work environment. The transport workers suffer dramatically during the crisis, as truck drivers e.g. do not have any possibility to rest or even to eat during their missions, due to the shut-down of most motorway service stations.

- **Hungary:** Next to the fast track law adopted on 10<sup>th</sup> March 2020 to flexible labour law during the pandemic crisis, Hungary had also declared a state of emergency on March 11 to fight the Covid-19. On 21 March, four Hungarian Trade Union confederations (LIGA, MASZSZ, SZEZ and ÉSZT) published a press release regarding those government measures introduced in the state of emergency. Although trade unions welcome some of the measures mentioned above in safeguarding jobs, they express concern that the Labour Code changes endanger employees unproportionally. The new measure states that "The employee and the employer may deviate from the provision of the Labor Code in a separate agreement" is basically eliminating the entire Labour Code and autonomous collective agreements. The trade unions also find it unacceptable that such decisions regarding working life have been unilaterally made by the government without any consultation with the social partners.

On 30 March, a further step was taken when the Hungarian Parliament gave the green light for a law that offers Prime Minister Orban the opportunity to extend the state of emergency for an indefinite period of time, without requiring the consent of Parliament and, through special decrees, suspend certain laws and take exceptional measures to guarantee "public health, the safety of citizens and the economy". Also, prison sentences are provided for the dissemination of "fake news" about the virus and government measures. This new demarche by the Hungarian government has already strongly condemned by the Council of Europe Secretary General Marija Pejčinović Burić, recalling that *"an indefinite and uncontrolled state of emergency cannot guarantee that the basic principles of democracy will be observed and that the emergency measures restricting fundamental human rights are strictly proportionate to the threat which they are supposed to counter."* Also [ETUC](#) has expressed and addressed its serious concern about these new developments to both Prime Minister Orban and the (President of the) European Commission highlighting thereby in particular that those developments put in danger Hungary's respect of and commitment to the EU values and EU (employment) secondary law as well several ILO Conventions and the Council of Europe European Social Charter. ETUC also



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

called upon the Commission To note also is the reaction of the [European Parliament Committee of Civil Liberties, Justice and Home Affairs](#) of 24 March in which they call upon the Commission to “ to assess if the [then proposed] bill complies with the values enshrined in Article 2 of the Treaty on European Union and to remind member states of their responsibility to respect and protect these common values”.

- **Lithuania:** Our ETUC' Lithuania affiliates LPSS (LDS) "Solidarumas" and LPSK informed end of March ETUC about the unacceptable proposals recently laid down in the Tripartite Council by the employers' organisations on how to apply the Labour Code during the quarantine period which would amongst others considerably increase working time, and allow for laying-off workers without paying them severance packages.

The employers' proposals for changing the Labour Code provisions for a period of at least 6 months include amongst others the following:

- to suspend forfeitures for workers when payments are late and to leave valid only the provision on the interest of late payments (article 147);
- to introduce a principle that all employees, irrespective of the length of service, would be warned only 14 days before terminating their employment agreements (article 57);
- to renounce payments of 2 months salaries worth severance compensations when employees are fired (article 57). Alternative suggestion in this regard had been: to leave this provision valid but in that case, all severance compensations should be financed from the 'Long-term Job Benefit Fund (lt. Ilgalaikio darbo išmokų fondas) or by other financial means provided by the State;
- to give a right to employers to change work functions of their employees unilaterally (salaries would stay the same). Employers' organisations state that this change would give them an opportunity to assign alternative tasks instead of announcing downtimes (article 45);
- to permit that a workday could reach 12 hours (agreements on additional work or ordinary overtime are not included) and the workweek could be extended to 48 hours on average;
- to reduce current restrictions for signing fixed-term contracts; • to set that the new summarized working time accounting period would be 6 months (with some exceptions);



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

- to permit employers to force their employees to take a vacation (their agreement would not be needed); these employees would be warned only 3 days before;
- to suspend the duty of employers to pay a severance compensation, if an employee terminates his/her work agreement during a downtime period (article 56). Alternative suggestion had been: to leave this provision valid but in that case compensations should be financed from the 'Long-term Job Benefit Fund' or by other financial means provided by the State;
- to lengthen a pay period to settle with a fired employee to 30 days (article 146).
- **Poland:** On 31 March the Polish Parliament 'Sejm' voted a bill which seriously restricts the independence of social partners and even allows the Prime Minister to dismiss members of the Social Dialogue Council; ETUC Polish affiliates consider this as the possible end of social dialogue in Poland.
- **Portugal:** In the Portuguese declaration of State of Emergency issued by the Portuguese President and implemented by the Law- Decree of the Socialist Party government foresees the limitation of workers' fundamental rights. The new measures allow the Prime Minister government to restrict movement of people, temporarily suspend the right to strike in vital sectors — such as health care units, civil protection, security and defence as well as 'economic sectors vital to the production and supply of essential goods and services to the population' — and ban protests and social or religious meetings. The Emergency Decree was renewed on 3<sup>rd</sup> April for another 15 days and contains two new elements: suspension of the right to strike for all essential public services and the suspension of the right to participate in the drafting of new labour legislation (enshrined in Constitution for trade unions and in the Labour Code for trade unions and employers associations) insofar as the exercise of such right may delay the entry into force of urgent legislative measures for the purposes provided for in this Decree. The law also provides for the possibility of forced mobilities of public sector workers, in particular in the health sector, to reinforce help in some sectors. Also, prohibition to terminate work contracts for health staff in the national health service is now in force<sup>5</sup>. The UGT-P has expressed publicly some concerns regarding

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<sup>5</sup> Free translation: *It can be determined by the competent public authorities that any employee of public or private entities or the social sector, regardless of the type of contract, have to present themselves to the service and, if necessary, start to perform functions in a different place, in a different entity and under conditions and working hours different from those corresponding to the existing contract, namely in the case of workers in the health care, protection and civil defense, security and defense and other activities necessary for the treatment of patients, support for vulnerable populations, elderly people, people with disabilities, children and young people at risk, in residential structures, home or street*



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## ETUC BRIEFING NOTES



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## HUMAN RIGHTS AND COVID-19 7 APRIL 2020

the suspension of the right to participate in the drafting of new labour legislation in order to prevent abuses and not to undermine our capability of influencing (a priori and a posteriori) new legislation that is coming out all the time. Nevertheless, in practice the national social dialogue body is functioning and informal communications with the Government to and we are confident that, even if formalities are suspended, we still have a word to say. Also regarding the limitation on the right to strike, in practice it will not add much to what already existed and so far no issues arose because trade unions in those sectors are not initiating any strikes at the moment given the situation although a public sector strike that was to take place in March 20th was cancelled. However, ETUC's Portuguese affiliates, CGTP-IN and UGT, informed us however that remaining vigilant on how these measures will indeed apply in practice remains key for the moment.

In addition, across Europe restrictions on **civil and political** fundamental rights and freedoms are increasing. Bans on assembly, traffic subject to authorization, limited movement of individuals, use of drones to track offenders, collection of geolocation data, governing by emergency laws, etc. The state of health emergency decreed in several Member States of the European Union puts clearly severe tests to those fundamental freedoms and rights which are at the heart of our democracies.

- **Belgium:** A minority government, although with the support of a large majority of the opposition is allowed to govern by emergency laws without involving properly the federal Parliament. Drones are being used (e.g. in Brussels) to detect eventual trespassers of the isolation measures and telephone operators tracking mobile phones to inform the public authorities about the extent of traffic and movements of individuals.
- **Italy:** Telephone operators tracking mobile phones (e.g. in Milan) to inform the public authorities about the extent of traffic and movements of individuals

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*support, prevention and fight against the spread of the epidemic, production, distribution and supply of essential goods and services, the functioning of vital sectors of the economy, the critical networks and infrastructures and the maintenance of public order and the democratic rule of law, the possibility of terminating the respective industrial relations or cumulating functions between the public and private sectors may be limited.*

*The regime of temporary reduction of the normal period of work or suspension of the employment contract can be extended and simplified. The right of workers' commissions, trade unions and employers' associations to participate in the drafting of labour legislation is suspended, insofar as the exercise of such right may delay the entry into force of urgent legislative measures for the purposes provided for in this Decree. The exercise of the right to strike is suspended insofar in the exact measure not to jeopardize the functioning of critical infrastructures or of units providing essential health care and public services, as well as in economic sectors vital to the production and supply of goods.*



## COVID-19 WATCH ETUC BRIEFING NOTES

### HUMAN RIGHTS AND COVID-19 7 APRIL 2020

In some countries, however and following strong reactions and interventions by parliamentarians as well as trade unions, it could be avoided that emergency laws/measures became even more detrimental to the respect of human rights:

- **Bulgaria**: President Roumen Radev (socialist) vetoed part of the project adopted by the conservative majority in Parliament, as part of the state of emergency thereby holding back the proposal to toughen the sanctions for "spreading false information", which could have been punished by three years in prison and which would have led to a self-censorship by experts, journalists and citizens at large.
- **Denmark**: Corrections were also necessary where the initial text of the emergency law provided for authorizing the police to enter the homes of citizens, suspected of being contaminated, without the authorization of a magistrate. This paragraph has since been deleted. The law still allows to take care, under duress, of people infected with the virus and, if necessary, to impose vaccination of the entire population. On March 24, the Directorate of Patient Safety, which encouraged the citizens to denounce suspicious behaviour of an infected person, also backtracked on this measure after facing a surge of criticism.
- **Norway**: Whereas the initial draft foresaw to give full powers to the government, a series of safeguards were built in after the adoption of the emergency law on 21 March such as that the law only being applicable for one month, with the possibility of extension. The supervision exercised by the courts has been strengthened; and most importantly, it takes just one third of members of Parliament to oppose a government initiative to make it obsolete.