

Analysis on the proposal on the legal status of public education employees; the "Status Law"

Hungarian Civil Liberties Union

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Executive summary

What's new?

After a year-long protest of teachers, students and parents, instead of listening to their demands concerning the education system, the government plans to introduce a comprehensive amendment to the employment status of the educators, called the Status Law.

Why does it matter?

The Status Law would further increase the obligations of teachers, while reducing their freedoms at the same time. The proposal was open for public consultation for 8 days altogether. This short time frame in itself violates the pledge the government made for the EU in exchange for a financial package of about 1.7 billion EUR for educational reform, but is currently jeopardised because of the government's actions.

What should be done?

The Draft Status Law must be withdrawn by the government. The government must call for a real and substantial public consultation before embarking on the inevitable reform of the educational system.

I. Introduction

I.1. Context

The Hungarian educational system is in crisis. Schools are understaffed, and the remaining teachers are overworked and struggle on a daily basis to provide students with sufficient education. In the meantime, teachers' wages are well below the national average and many leave their profession as they cannot make ends meet. To add insult to injury, schools are centralised under a central state institution that not only decides about curricula, available books, and teaching methods but also has to authorise even the smallest expenses that emerge in schools.

Widespread protests started in early 2022 to draw attention to the serious systemic problems of education as a whole¹. After teachers went on strike, the government quickly amended the legislation and made it technically impossible for teachers to strike legally.² Many carried on nevertheless, turning their strike into a civil disobedience movement. Students and parents organised too, independently and in support of the teachers' movement.

I.2. A movement is born

Key stakeholders are organising themselves to keep the issue on the national agenda and strengthen their movement. According to public opinion polls, an overwhelming majority supports the protest movement of teachers and their claims, and the support cuts across the political divide. The movement also enjoys the attention of the independent media which frequently runs reports about the stakeholders and their actions. The opposition political parties support the claims of teachers and students to reform the public education system. Members of the movement are also striving to keep the topic on the political agenda and gather support for their groups. The government responds by deploying three tactics. The first tactic is to divide and conquer: the government attempts to create a divide between the protesters using more radical tactics and those who do not, as well as between the cities and smaller settlements. The main leaders of the teachers' strike were dismissed from their jobs which sent a message to less radical teachers about the price of speaking up. The second tactic is to avert responsibility by blaming the opposition parties and the European Union for the lack of financial resources for teacher salaries. The government says that a significant rise in salaries in the education system is only possible from the EU cohesion funds, whose payment is being postponed based on serious rule of law issues in Hungary. The third tactic is discrediting, the government is using its propaganda media to delegitimize the teacher movement as well as student and parent groups.

¹ <https://hungarytoday.hu/teachers-warning-strike-concludes-hungary-20000-taking-part/>

² <https://hungarytoday.hu/teachers-strike-hungary-hungarian-education-decree-regulation-law/>

The movement consists of four types of stakeholders: teacher groups (trade unions and others), student and parent groups as well as civil society organisations, with approximately 40 actors all together, representing a significant segment of society. Formalising the movement was a rather slow process, but eventually, a general weekly meeting and three specialised working groups were set up in the so-called Civic Alliance for Teachers and Students or simply Civic Alliance.

I.3. European Union Funds

The government plans to introduce a comprehensive wage development in the education system, financed by the European Social Fund Plus (ESF+), through the Human Resources Development Operational Programme Plus (Emberi Erőforrás Fejlesztési Operatív Program Plusz, EFOP+). The government declared that all the programs delivered under EFOP+ would be in line with the Charter of Fundamental Rights of the European Union.³ It is also included in the EFOP+ that the government refrain from unilaterally introducing rules that can increase the workload of teachers, restrict their existing professional autonomy, or decrease the attractiveness of the profession. Consequently, the government pledges to carry out substantial public consultation when introducing such measures.⁴ In the meantime, the Hungarian Government pushes its own narrative in the public discourse that it is the fault of “Brussels” and the opposition that payments are withheld and wage growth for educators is delayed.

II. The proposed Draft Status Law

II.1. Timeline

The proposal on the legal status of public education employees (the so-called "Status Law") was published on the official government website on 2 March 2023 and was open for comments of the public until 10 March 2023 – for eight days.⁵

The proposal is a large-scale amendment that consists of three draft laws, representing a total of 260 pages of normative text and 17 pages of accompanying explanatory memorandum and impact assessment sheet. The new legislation applies to all those who work in education. According to the draft, "educational work" is defined as "direct pedagogical work with children and pupils in the context of nursery education, school education, dormitory education, and specialised pedagogical services".

³ Emberi Erőforrás Fejlesztési Operatív Program Plusz, page 18

https://www.palyazat.gov.hu/emberi_eroforras_fejlesztési_operatív_program_plusz

⁴ Ibid. page 44

⁵ <https://kormany.hu/dokumentumtar/koznev-fogl-jogall-es-egyes-kapcs-tvk-mod-mo-2023-évi-kozp-ktgvét-sz-tv-modos>

Teachers and a group of people employed in jobs directly supporting education and training will be employed under the rules set up by the Status Act. This includes those employed in religious and private schools as well, not only the state organised public education.

The amendments directly affect the total number of public education staff (approximately 135,000 people) and indirectly affect public education pupils (approximately 1.4 million people) and their families (at least 3 million people).

The government opened the draft law for public consultation for a total period of eight days. This limited period fails to constitute a meaningful opportunity for a substantial public debate on a proposed sectoral reform. Given the importance and complexity of the proposed legislation, the government's prior pledge to a meaningful public consultation in the EFOP+ was clearly broken by the short timeframe itself.

The two major trade unions of educators (Teachers' Democratic Union, PDSZ⁶ and Teachers' Union, PSZ⁷) have been invited to comment on the draft legislation, however, no amendments have been published by the government thus far.

The government has not submitted the draft legislation to the Parliament yet. The wording of the draft legislation foresees the amendments to be enacted by 1 June 2023. To meet this deadline, the law may be adopted in a hurried manner. It is also possible, however, that the government is prolonging the consultation and the legislative process would be delayed. In the ordinary legislative procedure, a proposal would become law within two to four weeks after submission to Parliament. If a special procedure is followed the submission may be enacted within a matter of a few days.

II.2. Public consultation

In the case of such a complex and far-reaching legislation, public consultation should be a two-way process: it not only channels the views of independent stakeholders to the government but also includes the government reacting to the comments. As the government is revising the draft on the basis of these comments, an opportunity for further consultation arises. Clearly, this could not have been achieved in the eight-day period originally provided by the government.

What is more, the government pledged to the European Commission in the framework of the Human Resources Development Operational Programme Plus (HRDOP Plus, EFOP+ in Hungarian 2021-2027⁸), that it "[...] will not unilaterally introduce rules that increase the

⁶ <http://pdsz.hu/>

⁷ <https://pedagogusok.hu/>

⁸ [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10010&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10010&lang=en)

workload of teachers, restrict existing professional autonomy or reduce the attractiveness of the profession. Such measures should only be taken on the basis of a meaningful social dialogue with the main teachers' unions, in particular with a view to reaching a consensus on acquired rights."⁹. It is clear that the complex, comprehensive change that would be the result of the draft legislation when adopted, and the unreasonably short timeframe for the consultation, do not correspond to the commitment made under the EFOP+. The Civic Alliance argues that the introduction of the so-called Status Law violates both the Charter of Fundamental Rights and the agreement between the Hungarian Government and the European Commission as no meaningful public consultation was carried out regarding the draft legislation.

II.3. Main changes stemming from the Draft Status Law

II.3.1. It would move educators from a privileged, civil servant status to a new, more vulnerable status.

- Currently, educators enjoy a civil servant status. The draft legislation brings a complete overhaul to the labour rights protection of educators and provides a stricter regime, favouring the employer in many instances.
- Under the draft, the board of education (that consists of professionals of a given school) will lose its decision-making power on a number of issues, further reducing teachers' professional freedom and opportunities for advocacy.
- The new rules will also make teachers and institutions even more vulnerable to the authority of the school district centres, which have the sole power to employ teachers and maintain state education institutions. The head of the school district centre determines the posting of teachers and, if the place of work is determined to be more than one public education institution under the school district, the distribution of working time among the different public education institutions.
- The disciplinary procedure, long removed from the Civil Servants Act, would return, and with a serious disciplinary sanction: up to 20% reduction of monthly salary for six months.
- If a teacher wishes to quit their position, they are required to stay until the last day of the school term or year, with the possibility of staying for a maximum of six months after they expressed their wish. If the employer terminates the employment of an educator, a notice period of sixty days would be required. In the current regime, if an educator has been employed for more than thirty years a notice period of eight months is prescribed.

⁹ cf. 2.1.1.1.1. Interventions of the Funds; and explicitly repeated in the sections on the Teacher Career Model and the Teacher Career Model - for teachers of disadvantaged pupils

- The probation period is prolonged from the current maximum of 4 months. The draft proposal stipulates that a probation period shall be set until the end of the school term or year, for a maximum of 6 months.

II.3.2. The Status Law would prohibit teachers from any form of criticism concerning the public education system.

- A public education employee would not be allowed to exercise their right to freedom of expression in a way that is contrary to the fundamental principles of the new legislation.
- The new legislation provides a broader framework for interpretation by including among the objectives of the public education employment relationship the right to freedom of education and the right to education of pupils, as guaranteed by the Fundamental Law. For example, teachers should not engage in conduct, even outside working hours, that jeopardises the realisation of these principles. The wording is vague and unclear, therefore it allows for a broad interpretation.

II.3.3. Teacher behaviour and communications may be monitored by technical means under the draft legislation.

- A teacher may be monitored by a camera, and their own personal devices may be surveilled. Educators process sensitive data related to their role in the educational system that should be safeguarded from undue interference. The legislation does not grant extra protection to the data of the parents and students, such as the communications and assessments which are stored on the devices of the educators. The employer (that is, a government body) would have full oversight over the educators' data, possibly creating a chilling effect on the communications between teachers, students, and their parents.

II.3.4. The status law would exploit teachers. The draft legislation might infringe on teachers' rights to fair and just working conditions.

- The maximum work time would be increased from 8 to 12 hours a day and from 40 to 48 hours a week.
- Currently, teachers are allowed to organise 8 working hours a week as informal working time at the place of their choosing and can dedicate to activities such as preparation for class, or reviewing tests. According to the Draft Status Law, during this time the educator can also be ordered by the employer to carry out work in the education facility. The head of the institution prescribes how many of the 32 hours must be spent in the institution, and has the discretion to order the free part to be spent at the workplace as well.
- Previously, extraordinary dismissal was only allowed for 15 days from becoming aware of its reason (for example, a serious breach of professional duties). Under the

Draft Status Law, the right of extraordinary dismissal can be exercised by the employer until August 1 of the school year in question. In January, the government amended the rules on dismissing teachers with an emergency government decree, creating a seriously unlawful regulation that extends the deadline for dismissals by months. This practice is now being made law. The original purpose of the immediate termination of employment was to allow for the quick removal of the employee if the employment relationship became unsustainable. If the Draft Status Law is passed and the employer believes a reason for extraordinary dismissal has arisen (for example, because an act of civil disobedience) now can make the decision to dismiss the teacher any time during the school year. In the time available, it might be easy to blackmail teachers with the prospect of dismissal, further increasing their vulnerability.

- The representativeness threshold of trade unions is set at a minimum of 10% of the total educational staff. Failing to reach this membership quota on a local or national level would result in trade unions losing their consultation rights at the local or national level, making unions practically powerless. Such a threshold is usually required to bargain a collective agreement with the employer, not for consultation. Due to the fragmentation of the Hungarian educational system, several groups of workers belong to different trade unions (for instance those working elementary art schools or vocational schools), making it harder to reach this quota. Trade union Teachers' Union (*Pedagógusok Szakszervezete – PSZ*) believes changing the rules of representativeness is a revenge on behalf of the government¹⁰.
- The Draft Status Law may be interpreted in a discriminatory way when it comes to bonuses. While in the current system, a bonus is paid to civil servants who have completed twenty-five, thirty, or forty years of service, the new system would be based on the time spent in "professional practice". The wording of the draft is vague and it may be interpreted that the period of paid sick pay, infant care, or childcare allowance may not be counted as a period of professional practice. This would result in those raising children (predominantly women) losing even the possibility of reaching this goal.

II.3.5. Brings uncertainty in the life of students

- Under the Draft Status Law, the school year would be at least 180 school days as opposed to the current regime under which the school year reliably ends in mid-June. The Minister has the power to extend the school year until 15 July.
- As an inadequate response to the country's teacher shortage, the draft legislation introduces "travelling teachers". A travelling teacher is an educator who is employed by a school district centre for at least 20 hours a week in a public school and who

¹⁰ <https://hirklikk.hu/kozelet/a-ner-nek-faj-hogy-egyeztetnie-kell-a-szakszervezetekkel/414809/>

also teaches in another public school managed by the same school district centre. This can also result in students being taught by a handful of different teachers even in the same course.

- Classes or groups can be dismissed because of a strike, and students can be transferred to another school within the school district. In such cases, the amendments allow for classes exceeding the current maximum class size and without the current legal requirements for staffing and equipment.

II.4. Human rights evaluation

The provisions of the Draft Status Law must be measured in the light of the Fundamental Law of Hungary and the EU Charter of Fundamental Rights.

- Human dignity; fair and just working conditions

The fact that the labour law rules of the Draft Status Law are largely about the fact that a worker can be transferred, redirected, forced to work extra hours, and can be required to remain in employment against their will for up to six months, can cause an infringement of human dignity. Humane working conditions mean that employees are not treated as objects but as partners.

- Right to a private life

Under the new draft law, workers can be transferred within a school district under much looser labour law rules. There are usually 2-3 school districts within a county, and there is no guarantee that a teacher will not have to commute hours every day in case transferred. The draft also allows increasing the maximum working time from 40 hours to 48 hours. The effect of these altogether could result in a violation of the right to privacy.

- Freedom to choose an occupation

According to Hungarian labour law, if an employer terminates an employee's employment contract, the employee is entitled to extra notice based on the length of service. In case of the termination by the employee the general rule for the notice period is thirty days. This situation is completely reversed by the new rules. Under the Draft Status Law, there is a fixed notice period of two months if the employer terminates the employment, while if the employee wants to leave the job, the employee is obliged to stay in employment for up to six months. The six-month notice period for workers raises the probability of a violation of the right to freedom to choose an occupation.

- Freedom of expression

Under the Draft Status Law, educators would be restricted from acting in ways that would jeopardise the principles of the Status Law even outside working hours. The principle in question is that "teachers are to ensure the continuity and smooth functioning of public

education in accordance with the general ethical standards laid down in the Fundamental Law". This vague wording can easily mean that teachers are stripped of their right to strike and freedom of expression in general. Public education is a public service sector where transparency is of paramount importance. It is essential for such personal services that those inside the system are able to express their views freely. These amendments would have a significant chilling effect and could easily lead to self-censorship.

- Non-discrimination

The new bonus rules of the draft legislation clearly discriminate against those raising small children – predominantly women – by requiring years of professional practice excluding time spent on childcare allowance.

- Children's rights

The Draft Status Law does not respond to the problems of education, and the changes to the status of teachers and the functioning of schools not only fail to protect the right of students to education, but actually undermine it. The student is lost in an education system where teachers and students can be moved to another school overnight. In the new system study groups and schools can be closed down because their teachers are protesting for better staffing, equipment or working conditions. Travelling teachers might mean that there is an educator for that day's course, but teaching is much more than just a person advancing with the curriculum. A bond between student and teacher relies on partnership and continuity. The draft law does not address this question, and by being extremely strict with educational staff it is the students too who might be the biggest losers of these changes.

II.4. Main advocacy efforts against the Draft Status Law

Since the release of the draft legislation teachers, trade unions, students and parents are struggling to have their words heard in shaping the outcome. Most demand the cancelling of the proposed changes¹¹, expecting the government to start a large-scale public consultation on the long present issues of the educational system. Former ministers, state secretaries, academics and intellectuals have signed a declaration in support of teachers.¹² Teachers' trade unions are organising strikes¹³ and calling for civil disobedience in the schools, putting pressure on the government. Students and parents lead protests hand-in-hand with teachers. While the protests remain peaceful, during the latest demonstration several students were teargassed by police.¹⁴ Civil organisations are organising forums for those involved to realise the threat the Draft Status Law poses. In a petition that was started by

¹¹ <https://szabad.ahang.hu/petitions/ne-modositsak-a-koznevelési-törvenyt>

¹² <https://www.valaszonline.hu/2023/04/18/oktatás-pinter-sándor-státusz-törvény-nyilatkozat/>

¹³ <http://pdsz.hu/cikk/38083>

¹⁴ <https://www.budapesttimes.hu/hungary/demonstration-held-against-law-on-teachers-status-in-budapest/>

the Civic Alliance, around 5000 educators pledged that they would leave their job in case the Draft Status Law was passed¹⁵.

III. Recommendations

The Draft Status Law must be withdrawn by the government. The government must call for a real and substantial public consultation. Research and analysis have already revealed the most serious problems in the Hungarian educational system, and members of the Civic Alliance, along with social scientists can present the government with a long-term solution that can benefit students, teachers, parents, and society in general. Setting up legislation and policy to meet high standards takes long and difficult professional conversations and a lot of time. Unfortunately, the Hungarian educational system only has two choices: a meaningful and future-minded reform, or an accelerated deterioration into a public childcare system with no educational component.

¹⁵ <https://ahang.hu/statusztorveny/>