

CAS

Employers' Spokesperson

Comments on General Discussion

Proposed Employers' Position: CAS General Discussion
check against delivery

Tuesday May 31, 11-13 hs and 15-18 hs (if needed)

Basis: Report III (Part I A) - Report of the Committee of Experts on the Application of Conventions and Recommendations, Part I. General Report

Essence of the Employers' position:

1. Highlight a number of improvements made in regular supervision since last year and in the 2016 CEACR Report
2. Suggest further measures to make regular supervision more effective.
3. Comment on two concerns: one the naming of companies in experts' observations and second and most importantly on the continuous detailed CEACR's extensive interpretation of a "right to strike" into C. 87 in the 2016 CEACR Report.

Improvements made in regular supervision since last year and in the 2016 CEACR Report

- The mandate of the Experts has again been reproduced in para 15 of the Report. The sentence: The Committee's "*opinions and recommendations are non-binding, being intended to guide the actions of national authorities*" makes clear that the opinions and recommendations expressed by the Experts are non- legally binding for ILO Member States and that the Committee of Experts is therefore not comparable to a court of justice.
- The systematic and detailed reference made by the Experts in its observations to discussions in the CAS and conclusions adopted by the CAS is to be welcomed as it reflects growing integration of the activity of the two main supervisory bodies. This is even more important given that a new way for formulating CAS conclusions has been tested last year where Employers and Workers have autonomously drafted the operational part of these conclusions. The conclusions focused on key issues and are clear and straight forward. They contained only matters that were uncontentious and that had the full support of CAS members. Where no consensus was possible on an issue, there were no CAS conclusions on that issue. This represents genuine progress in tripartite governance of the supervisory work that should be continued and, where possible, be extended. With better use of technology this year, the drafting and adoption of conclusions will hopefully be expedited.
- Two General observations made by the Experts on: the Radiation Protection Convention (No. 115) and on the Seafarers' Identity Documents Convention (No. 185) contributing to a better understanding and implementation of the Conventions. General observations, in the absence of a General Survey, can be a helpful tool for the Experts to draw attention to matters/practices of relevance beyond a particular country or to discuss trends in the application of a Convention. In the future, it would be important for CAS to devote time to discuss the content of general observations.
- The constructive direct interaction between the Committee of Experts and the CAS. At the annual meeting of the Experts in November 2015, a substantial discussion on topical supervisory issues took place between members of the Committee of Experts and the Employers' and Workers Spokespersons of the CAS. Such direct interaction between the

two main supervisory bodies is of the essence for addressing successfully the challenges facing the standards supervisory system.

Need for further measures to make regular standards supervision more effective

- The Experts should consider further measures to make the report more reader-friendly: e.g observations could be presented in the printed version by country within a region and not by convention. Also for example a cover page could be inserted before the observations concerning a country with information about ratification, and reports and comments received from social partners. This would allow an overall consideration of the situation of application of ratified conventions for which reports are due a given year by ILO Member states. With this new and more user friendly format it would not be necessary to repeat this information in Report III (Part 2).
- The text of all submissions made by employers` and workers` organizations should be made available via a hyperlink in the electronic version of the Experts Report and on the NORMLEX website for those organizations that wish to have their submissions made public. To date NORMLEX contains information on which employers` or workers` organization made submissions but the text of the submission is not available e.g the IOE presented a detailed and well-structured 19-page submission for the General Survey last year which is referenced superficially in the General Survey but its detailed content is not accessible to other ILO constituents or the outside world.
- Slight decrease in the number of comments submitted by the social partners under Art 23.2 of the ILO Constitution. The Office should provide technical assistance to workers and employers organizations on how to make an effective use of the system and have an impact.
- Measures need to be taken to ensure the timely examination of all reports by the Committee of Experts. In view of the heavy workload, the Experts were unable to examine a number of reports this year (see para 35). This occurred despite the fact that the CEACR, for the first time since 2001, was able to function with its full membership and despite the fact that around 30 % of government reports requested were not received by the time of the meeting of the Experts. Had all government reports been received, the number of unexamined reports would have been even bigger. There is therefore a need for further measures to lower the Experts` workload. In order for these measures to have a sustainable effect, future developments need to be anticipated, in particular the increase of the number of reports resulting from additional ratifications. Measures need to be taken within and outside the supervisory system:
- Within the supervisory system it is necessary to focus reporting on essential regulatory issues in ILO Conventions. Further possibilities for streamlining and facilitating reporting obligations and widening reporting cycles should be considered. Also the Office could prepare -as a pilot test for consideration by the GB- a unified report form for Conventions covering a specific subject e.g Labour inspection
- Action outside the supervisory system may be even more important. This concerns the Conventions themselves and the new Standards Review Mechanism (SRM) has a major responsibility in this regard. What is required is both a modernization and consolidation of the body of Conventions and Recommendations. Wherever feasible, a consolidation should be sought whereby still relevant parts of existing Conventions in a thematic field should be lumped together in one new instrument. As this is a long-term solution, also action should be taken in the short-term. In particular, member States should more regularly review their ratification record and the ILO may provide to them more direct assistance in doing so. More precisely, outdated Conventions should be swiftly denounced and, if possible, newer Conventions ratified. It is not helpful when Conventions that were

classified as outdated by the ILO Governing Body 15 years ago continue to be ratified by tens of member States.

- In order to improve regular standards supervision, it is also important to review the ILO standards supervisory system as a whole to ensure consistency and efficiency. Judge Koroma and Professor van der Heijden recently submitted to the Governing Body a report containing an analysis of the ILO standards supervisory system and recommendations for reform. Among other things, they concluded that *“there may be too many different committees involved in the system which may have negative effects on the transparency and effectiveness of the procedures of those involved.”* This is reflected in para. 126 of their Report. The existence of too many supervisory committees makes their use and the understanding of their specific mandate unnecessarily difficult to constituents. Moreover, too many supervisory procedures require undue effort to coordinate the work of the individual committees and to ensure consistency of outcomes. A significant simplification, as far as permitted under the ILO Constitution, would allow more focus and a better pooling of resources. The Director-General should submit bold proposals in this regard to the Governing Body.

Issues of concern in the 2016 Report.

- The naming of companies in the Observations which we consider should be avoided in future reports. Naming of companies in submissions made by trade unions to put pressure on companies constitutes an abuse of the system; the Experts should not allow this to happen and should not reproduce company names in its report.
- The Experts continuous interpretation of a “right to strike” into C. 87 requesting governments to bring their law and practice in line with these interpretations continue to be of fundamental concern to the Employers. A major part of the CEACR’s comments on C. 87 concerns the right to strike. More precisely 40 out of the 56 observations, as well as 41 out of the CEACR’s 50 direct requests to governments, on C. 87 deal partly or wholly with the “right to strike”.
- The following consequences arising from the fact that the “right to strike” is outside the scope of C. 87 could be highlighted:
 - Firstly, governments are not required to provide in their Art. 22 reports on C. 87 information on their law and practice related to the “right to strike”. This is already clear from the fact that no questions or requests for information on the “right to strike” are contained in the respective report form.
 - Neither do governments have a duty to respond to requests made by the CEACR for information or for changes of their national law and practice regarding the “right to strike”.
 - The CAS, in its conclusions on cases concerning C. 87, will continue not to make any requests to governments for information or for changes of law and practice regarding the “right to strike”.
 - The Office, in providing legal advice to member States, should not refer to the “right to strike” as part of the obligations under C. 87.

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