



International Organisation of Employers
Organisation Internationale des Employeurs
Organización Internacional de Empleadores
The Global Voice of Business

Geneva, 31 August 2016

Committee of Experts on the Application of Conventions and Recommendations (CEACR)

International Labour Office (ILO)
4, Route de Morillons
1211 Geneva 22

Article 23.2 of the ILO Constitution. Application in law and practice of Convention 87 in:

Albania, Algeria , Angola, Anguilla, Antigua and Barbuda, Argentina, Armenia , Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin , Bolivia, Bosnia and Herzegovina, Botswana, British Virgin Islands, Bulgaria , Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China - Hong Kong Special Administrative Region, China - Macau Special Administrative Region, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Côte d'Ivoire, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial, Guinea, Eritrea, Estonia, Ethiopia, Faroe Islands, Fiji, Finland, France, French Polynesia, French Southern and Antarctic Territories, Gambia, Greenland, Guatemala, Guernsey, Guyana, Haiti, Indonesia, Ireland, Jamaica, Jersey, Kazakhstan, Liberia , Maldives, Malta, Mexico, Montserrat, Myanmar, New Caledonia, Nigeria, Norfolk Island, Papua New Guinea, Philippines, Rwanda, Saint Lucia, San Marino, Sierra Leone , Somalia, Suriname, Syrian Arab Republic, Timor-Leste, Trinidad and Tobago, United Kingdom, Vanuatu, Venezuela, Yemen and Zimbabwe

Introduction

Further to the submission made by the International Organization of Employers (IOE) to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2015 on the application in law and practice of Convention 87 in a number of ILO Member States (see Annex I), the IOE notes with concern the Experts interpretation of a “right to strike” into Convention 87 requesting governments to bring their law and practice in line with these interpretations in its 2016 Report.

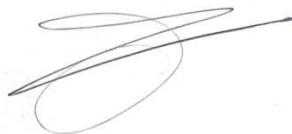
The IOE would like to underline that Convention 87 does not contain rules on the “right to strike”. IOE recalls once again the outcomes of the tripartite meeting “*concerning the question of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level*” in February 2015. The Government Group to this tripartite meeting adopted a statement in which, while recognizing “*that the right to strike is linked to freedom of association which is a fundamental principle and right at work of the ILO*”, it also noted “*that the right to strike ... is*

not an absolute right" and that "*The scope and conditions of this right are regulated at the national level*". It is important to point out that the Government Group Statement, which was later on confirmed by the Government Group in the ILO Governing Body, nowhere says that the scope and conditions of the "right to strike" are regulated in C. 87.

As a consequence, IOE wishes to stress that state parties to Convention 87 do not need to provide in their reports under Art. 22 information on their law and practice related to the "right to strike". Accordingly, the report form that the ILO sends to member States in this regard does not contain any question or request for information on the "right to strike". Neither do state parties to Convention 87 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". In line with this, also the conclusions made by the CAS on cases concerning Convention 87, as was the case in 2015 and 2016, do not make any requests for information or for changes of law and practice regarding the "right to strike". Consequently, IOE expects the Office, in following up comments made by ILO supervisory bodies regarding implementation of Convention 87, to refrain from making recommendations on the issue of the "right to strike".

The Employers trust that the CEACR will support a positive outcome of the Standards Initiative process in a constructive manner.

Kind regards,



Linda Kromjong

Secretary General

The International Organisation of Employers (IOE) is the largest network of the private sector in the world, with more than 150 business and employer organisation members. In social and labour policy debate taking place in the International Labour Organization, across the UN and multilateral system, and in the G20 and other emerging processes, the IOE is the recognized voice of business. The IOE seeks to influence the environment for doing business, including by advocating for regulatory frameworks at the international level that favour entrepreneurship, private sector development, and sustainable job creation. The IOE supports national business organisations in guiding corporate members in matters of international labour standards, business and human rights, CSR, occupational health and safety, and international industrial relations. For more information visit www.ioe-emp.org

Annex I - IOE SUBMISSION TO THE CEACR 2015

Geneva, 27 August 2015

Committee of Experts on the Application of Conventions and Recommendations (CEACR)

International Labour Office (ILO)
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1211 Geneva 22

RECENT IMPORTANT DEVELOPMENTS ON CONVENTION NO.87 IN RELATION TO THE RIGHT TO STRIKE

Introduction

The International Organisation of Employers (IOE) would like to start this submission by thanking the CEACR's clarification of its "Mandate" which is contained in para. 29 of the 2015 Report.

The IOE would like to take the opportunity of the upcoming meeting of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to alert the CEACR to a number of very important developments. These have arisen from the discussions that took place in November 2014, and February, March and June 2015 among the ILO Governing Body (GB) tripartite constituents on Convention No. 87 in relation to the right to strike.

This submission aims to assist the CEACR in better understanding the current status of the constituents' discussion on Convention 87 in relation to the right to strike and in facilitating the Standards Initiative process, given the technical support the CEACR is called to provide in the regular supervision of ILO standards.

a. The Governing Body discussion in November 2014

It is important to recall that in the 2013 Committee on the Application of Standards (CAS), the following wording was inserted into the conclusions of all (discussed) cases in which the right to strike was commented by the CEACR (Bangladesh, Canada, Egypt, Fiji, Guatemala and Swaziland): "***The Committee did not address the right to strike in this case as the Employers do not agree that there is a right to strike recognised in Convention 87***".

In June 2014, the CAS, disappointingly, could not adopt conclusions for 19 cases discussed because of the Workers' refusal to insert the previously agreed sentence in three cases. The Employers did not propose a new approach in the 2014 CAS. At that time the non-recognition of a right to strike in Convention 87 and the extensive CEACR interpretation of this issue remained unresolved before the ILO Governing Body and the Employers expected the sentence adopted by the Committee in 2013 to remain valid and usable. Employers even made alternative proposals which were systematically rejected by the Workers (including wording that provided equivalent recognition to the Workers' position of the 2014 CEACR Report which states that the views of the two groups on the issue "*continue to be diametrically opposed*").

From the beginning of the GB session in November 2014, opinions were divided on the need to go immediately to the International Court of Justice (ICJ) to resolve the dispute around Convention 87 in relation to the right to strike. While the EU, GRULAC and the Workers' Group favoured immediate recourse to the ICJ; the USA, Canada, African and Asia Pacific Governments, and the Employers' Group did not, and highlighted the need to give social dialogue a chance before resorting to the ICJ. Finally, the GB agreed to convene a three-day tripartite meeting in February 2015, with a view to reporting to the March 2015 GB on the question of Convention 87 in relation to the right to strike, and the modalities and practices of strike action at national level.

b. The February 2015 Tripartite Meeting

The February 2015 tripartite meeting marked the turning point in resolving the crisis surrounding Convention 87 in relation to the right to strike. The Workers' and Employers' Groups agreed on a Joint Statement on the "ILO Standards Initiative", which was accompanied by two statements from the Governments' Group.

The Joint Statement states, among others, that "*the right to take industrial action by workers and employers in support of their legitimate industrial interests is recognised by the constituents of the International Labour Organisation*" and that this recognition required the Workers' and Employers' Groups to address a series of issues concerning the ILO Supervisory System. However, the Joint Statement did not recognize a right to strike within the scope of ILO Convention 87, nor did it legitimise the CEACR's long-standing, non-binding guidance and observations on this issue.

The Government statement set out, among others, that "*the right to strike, albeit part of the fundamental principles and rights at work of the ILO, is not an absolute right. The scope and conditions of this right are regulated at the national level*".

In line with the Employers' position and the Governments' statement, the tripartite meeting discussion on the modalities and practices of strike action at national level clearly showed that there is a wide variety of diverging rules, practices and perceptions regarding industrial action in ILO Member States, which are not necessarily in line with the CEACR's long-lasting non-binding guidance.

c. The Governing Body discussion in March 2015

The March 2015 GB endorsed the Joint Statement by Employers and Workers, as well as the Governments' statements. It was decided for the time being not to pursue any action in accordance with Article 37 of the ILO Constitution (referral to the ICJ or establishment of an

internal tribunal) to address the interpretation of Convention No. 87 in relation to the right to strike. In addition, a package of measures was proposed to improve the whole supervisory system.

d. The CAS in June 2015

30 of the CEACR's 45 observations and almost all of the CEACR's 45 direct requests under C. 87 in 2015 deal partly or wholly with the "right to strike". The Employers made it clear in the CAS that the CEACR's non-binding guidance on the "right to strike" in the context of C. 87 requesting governments to bring their law and practice in line with these guidance continues to be of fundamental concern. Furthermore, as Governments also underlined in their February and March statements, the scope and conditions of the right to strike are regulated at the national level, therefore the Governments concerned can legitimately determine at national level a different approach regarding the right to strike.

Within the framework of the Joint Statement and the Government statements, the work of the CAS ran smoothly in June. Perhaps one of the most important and positive steps taken in the CAS was the way in which conclusions were drafted. In line with the February agreement, Workers and Employers played an active role. The CAS experienced real tripartite ownership of the outcomes, which reflected only consensus recommendations. This is now clear with the insertion of a new paragraph at the beginning of the section on individual cases which states: **"CAS has adopted short, clear and straightforward conclusions. Conclusions identify what is expected from Governments to apply ratified conventions in a clear and unambiguous way. Conclusions reflect concrete steps to address compliance issues. CAS has adopted conclusions on the basis of consensus. CAS has only reached conclusions that fall within the scope of the convention being examined. If the employers, workers and/or governments have divergent views, this has been reflected in the CAS record of proceedings, not in the conclusions"**.

Controversial issues or fundamental disagreements, such as the one on whether Convention 87 contains a right to strike, were not reflected in – and thus not covered by - the conclusions. The divergent views on this issue in the CAS are set out in the CAS record of proceedings, both in Part One, the General Report, and in Part Two, the Report on the discussion of individual cases. In their operational part, the conclusions adopted are short, clear and straightforward - requesting Governments to take concrete measures. We should be proud of the active and constructive engagement of the social partners in this regard.

Concluding remarks

In light of these developments, the Employers call once more upon the CEACR to facilitate the "Standards Initiative " process by reconsidering and suspending its non-binding guidance on the "right to strike" vis-à-vis C 87, whether in observations, direct requests or other CEACR documents.

In particular, the Employers respectfully call on the CEACR to suspend at its forthcoming meeting all references and concrete requests in observations and direct requests on Convention 87 for amendments of law and practice with regard to strike action concerning Algeria, Angola, Anguilla, Argentina, Bangladesh, Belarus, Bermuda, British Virgin Islands, Burundi, Cambodia, Cameroon, Comoros, Congo, Croatia, Cuba, Curacao, Dominica,

Ecuador, El Salvador, Equatorial Guinea, Falkland Islands (Malvinas), Fiji, French Southern and Antarctic Territories, Gabon, Gambia, Ghana, Gibraltar, Grenada, Guatemala, Guernsey, Guinea, Guyana, Haiti, Hungary, Ireland, Isle of Man, Jamaica, Jersey, Kiribati, Liberia, Luxemburg, Madagascar, Maldives, Malta, Mauritania, Mexico, Mongolia, Montserrat, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, St Helena, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Tanzania, United Republic of The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom, Uruguay, Vanuatu, Venezuela, Yemen, Zambia, Zimbabwe and any other Member States that have ratified Convention 87.

The IOE kindly requests the CEACR to be receptive and take into consideration recent developments on Convention 87 in relation to the right to strike, considering that if a spilt of opinion between the CAS and the CEACR becomes more visible, the credibility and authority of the whole ILO supervisory system may be compromised – and all the more so given the recent discussions that have taken place on this important issue at the Governing Body among the ILO tripartite constituents. Therefore we call upon the CEACR to facilitate the implementation of the agreed Joint Statement by the Workers and Employers on the “ILO Standards Initiative” mindful at the same time of the Governments statements all of which were endorsed by the March 2015 GB.

Yours sincerely,

Linda Kromjong

Secretary General