

IOE NOTES FOR SONIA REGENBOGEN

Meeting between the Vice Chairpersons of the Committee on the Application of Standards (CAS) and the Members of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)

29 November 2018, 3-6 pm room VII

Thank you, Chairperson, for inviting me to represent the Employers at this session of your annual meeting.

The Employers very much appreciate once again having an opportunity for direct dialogue with the Experts where an IOE representative can also be present as an observer.

The constant and direct dialogue between the CAS and the Committee of Experts, along with representatives of the Office, is of the utmost importance, not only for ILO constituents to better understand standards-related requirements, but also – we hope- to facilitate the CEACR's understanding of the realities and needs of the ILO constituents and users of the supervisory system.

Our exchange this year is of special relevance. As the ILO will be celebrating its Centenary next year, your work - that will be reflected in your 2019 Report- will have particular visibility and will be viewed with particular interest.

The Centenary of the ILO will be an opportunity for introspection and reflection in terms of how transparency, relevance, impact and tripartite governance in standards supervision can be further improved.

I would like to start by giving a brief account of the discussions in the CAS earlier this year, as the Employers have perceived it.

1. 2018 CAS

Overall, the CAS demonstrated once again in 2018 its ability to lead a results-oriented tripartite dialogue. Where divergences on substantial issues existed among the tripartite constituents, they were as usual voiced in a spirit of mutual respect and understanding.

This year's list of cases was balanced in that it contained 15 cases relating to fundamental conventions, 6 cases relating to priority conventions, and 7 cases concerning technical conventions. All double footnoted cases by the Experts were part of the list of 24 cases.

The following cases discussed were of particular concern for the employers:

Bolivia, Convention 131 on Minimum Wage Setting: This is a very serious case of non-compliance with a technical convention. It concerned the failure by the government, between 2006 and 2018, to consult the most representative employers' organization and to consider

economic criteria in the setting of the minimum wage. It is alarming that to date, the Government has not yet accepted the direct contact mission recommended by the CAS.

El Salvador, Convention 144 on Tripartite Consultation: This case deals, among other matters, with the government's failure to reactivate the Higher Labour Council and significant deficiencies in social dialogue despite an ILO direct contact mission in 2017.

Greece, Convention 98 on Collective Bargaining: This was one of the most important cases for the Employers this year. As you may recall, Greek law grants collective bargaining to any party, the right to unilateral recourse to compulsory arbitration if the party considers the conclusion of a collective agreement is not possible. The consequent arbitration ruling is just as binding on the parties as a collective agreement. This conflicts with the principle of autonomous and voluntary negotiation under Art 4 of Convention 98, ratified by Greece. We trust that the Experts will follow up on the CAS conclusions and request the Government to comply with Convention 98.

Brazil, Convention 98 on Collective Bargaining: While the Experts issued an observation outside of the regular reporting cycle based on incomplete information, the discussion of the case and the numerous interventions from Government and Employers representatives clearly showed that the modernization of the outdated labour relations system in Brazil was positive and in compliance with Convention 98. Moreover, it was undertaken in full consultation with the social partners and starting to show positive results in terms of employment creation in the country.

The Employers would also have appreciated if the cases of progress had found their way on the final list of 24 cases. Unfortunately, this did not happen. Nevertheless, the ILO Centenary would be an opportunity for introducing a change, that is to say, to start systematically including cases of progress on the list and thus to give due attention to the element of encouragement in the ILO standards supervision. Based on the Employers' understanding, ILO standards supervision should not only call for improved application of ratified conventions but should also commend governments that make progress on this way and showcase exemplary practice in this regard. While discussions on the inclusion of cases of progress in the list are ongoing in the CAS working group on working methods, the Experts may also consider proposing particularly remarkable cases of progress amongst the double footnoted cases in their 2019 report.

The CAS also had a very rich and productive discussion on the General Survey on working time instruments. From the discussion it emerged, among other matters, that the organization of working time not only has a major impact on the physical and mental health of workers but also on the competitiveness, agility, productivity and sustainability of enterprises in an increasingly integrated and competitive economy. As the world of work becomes more dynamic, working time regulation must adapt accordingly and, in doing so, to maintain a fair balance between the protection needs of workers and the flexibility needs of enterprises.

2. Issues of concern in the 2018 Report

Despite these positive elements, a number of issues of concern emerged from the 2018 Experts Report. These concerns were voiced during the CAS General Discussion in a constructive spirit.

First, the Experts' **non-binding guidance on the "right to strike" in the context of C87** continues to be of fundamental concern to the Employers. Around two thirds of the observations on Convention 87, as well as most of its 52 direct requests on Convention 87 deal in one way or another with the "right to strike". According to these figures hardly any country fully lives up to the Experts' interpretations on the "right to strike". This reflects a significant discrepancy between the Experts' one-size-fits-all-type rules on the right to strike and the much more diverse reality of industrial relations systems.

Let me repeat once more that while Employers do recognize a right to industrial action in principle, we consider that the right level to set detailed rules on this sensitive matter is at the national level, not at the international level. In fact, that was also the point of view of the tripartite constituents at the International Labour Conference at the time of adoption of C87 and this position was in essence reconfirmed in the 2015 joint statement of employers' and workers' group, as well as the government group's statement.

The Employers would stress that the CEACR, while being independent, is not in isolation from the debates taking place in tripartite ILO bodies. On the issue of the right to strike, it is above all the Experts' responsibility with the support of the ILOS STANDARDS Department to find a constructive /non-controversial way out. In particular, referring the matter to a possible future ILO tribunal under Art 37 (2) of the ILO Constitution would not appear be a proper way of settling the problem. There is room for making things better and different by listening to ILO constituents.

Another concern for the Employers is the Experts' **differentiation between observations and direct requests** in the 2018 Report. The criteria in this regard, which are described in paragraph 41 of the Experts' report, are not fully clear in that they give too much latitude in classifying comments in either of the two categories. This particularly concerns the criteria "primarily of a technical nature" for direct requests and "important discrepancies" for observations. In our view, there are many cases where it is difficult to understand why the Experts have classified a comment in the one category rather than in the other.

This is not just of purely theoretical interest as direct requests are not included in the Experts' report and are therefore dealt with exclusively between the Experts and the respective government. By making substantial comments and recommendations to governments in the form of direct requests, a major part of the application problems related to ratified conventions is removed from tripartite scrutiny. It should be noted that direct requests are by far the more common form of Experts' comment: this year alone, the Experts made **1065 direct requests, as opposed to only 606 observations.**

Let me be clear, we are not calling for the abolition of direct requests. We call upon the Experts and the Office in its supporting role to the Experts to clarify the criteria for differentiation. For instance, it could be determined that any comments that contain assessments of compliance and respective recommendations and that are thus not just requests for information or clarification, will be made in the form of observations.

The third issue relates to the **relationship between the CAS conclusions and the CEACR recommendations.** Let me illustrate what I mean by referring to the case of Ireland, C. 98. In 2016, the CAS discussed this case and, in its conclusions, among other things "suggested that the Government and the social partners identify the types of contractual arrangements that would have a bearing on collective bargaining mechanisms". On 7 June 2017, the Irish

government adopted the Competition (Amendment) Act which concerns the subject of the CAS conclusions. While the Irish Employers' Confederation (IBEC) informed the CEACR in a submission, that "there was no consultation on the measures taken in this regard" by the government and raised a number of other serious concerns regarding the contents of this law and its compatibility with Convention 98, the Experts nevertheless noted "with satisfaction" and welcomed the adoption of this law. We would appreciate if in the future the Experts would avoid a similar situation and have due regard to tripartite assessments, as expressed in the conclusions of the CAS. We count on the Office to provide the adequate support in this regard.

We trust that the Experts will take the time to consider and respond in a constructive and balanced manner to these important issues before the end of this meeting.

3. Looking at 2019

Chair,

The CAS working group on working methods met twice this year in March and November and a number of concrete decisions were taken to make the work of the CAS more transparent, efficient and impactful. For example, the CAS reports as of 2019 will contain verbatim records of all discussions, including the general discussion reproduced in Part II. This will improve the accuracy by avoiding problems with misinterpretations or errors in the process of making summaries of statements and it will also save the Office costs and time in preparing these reports.

I would also like to take advantage of the presence of your Committee to seek some direct clarification from you - on the progress made in improving your working methods:

- ***What aspects of your working methods are you trying to improve? What decisions have been taken?***
- ***More specifically, what concrete measures are the Experts considering to implement the proposals made by constituents - for a number of years now - to make the report more user-friendly?***
- ***How do the Experts intend to ensure a better balance in their comments taking into account not only the needs of workers' protection, but also and at the same time, the needs of sustainable enterprises?***

Also we would like to bring some proposals for improvements to your attention made with a view to encouraging improvements in terms of transparency, impact and tripartite governance in the regular supervisory system:

- ***With respect to the double-footnoted cases, we suggest that the Experts elaborate on the reasons why a case has been double-footnoted and proposed for discussion in the CAS.***
- ***Where the Experts have made comments on a particular case outside the usual reporting cycle, we would appreciate having an explanation and justification for this in the 2019 report. We suggest that the Experts do so in the respective observation or in the General Report.***

- ***We would also welcome indications in the Report as to which experts have primary responsibility for the observations on particular Conventions, as well as for the General Survey.***
- ***Finally, we propose that where the Experts see a need for developing new - or adapting existing – explanations on the meaning of Conventions responding to new tendencies in the world of work, they should seek ways to consult the tripartite constituents before doing so.***

Thank you for giving due consideration to these proposals.

4. Concluding Remarks

In conclusion, let me reiterate that the ILO centenary year is not only an occasion to reflect on past work achieved, but also an opportunity to improve the transparency, efficiency, relevance and tripartite governance in the ILO regular standards supervision in the next century. We, collectively, should fully seize this moment with courage and ambition.

The Experts, for their part, should continue their efforts to fully understand constituents' needs and priorities, to be realistic and clear in their conclusions and observations, and to present their findings in their reports in a more user-friendly way.

The Office should continue assisting the Experts' work by providing complete, up-to-date and reliable information from constituents to ensure observations are based on solid ground. Moreover, the Office should improve its effectiveness in assisting governments that fail to comply with reporting obligations.

The Employers express their appreciation for the work that has been jointly achieved and look forward to continuing the open, constructive and supportive cooperation with the Experts and the Office to ensure the effective functioning of the ILO regular supervisory system in the next century.

Thank you for your attention.

For additional information, please contact Maria Paz Anzorreguy, Senior Adviser anzorreguy@ioe-emp.com