

International Labour Conference, 100th Session, 2011

Report of the Committee of Experts on the Application of Conventions and Recommendations

(articles 19, 22 and 35 of the Constitution)

**Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations**

Report III (Part 1A)

General Report
and observations concerning particular countries

Decree No. 5/2010 of 16 June 2010 now provides that collective agreements may be published on the Ministry of Labour's website.

In its previous comments the Committee noted that very few collective agreements had been concluded. It noted that the Government had sent a copy of two collective agreements (telecommunications and private security), and pointed out that collective bargaining must be voluntary and that the role of the Government was to promote it without forcing it. The Government added that technical assistance from the Office for building the capacity of the social partners in collective bargaining techniques would contribute to improving the situation. The Government indicated that the social partners agreed to a request for such assistance.

The Committee notes in this connection the comments of 19 February 2010 by the National Workers' Union of Cape Verde–Trade Union Confederation (UNTC-CS) and the Cape Verde Confederation of Free Trade Unions (CCSL). According to the UNTC-CS, there are various reasons for the drop in the number of collective agreements concluded and these include a lack of commitment on the part of the institutions engaged in the promotion of collective bargaining, and a lack of resolve in enforcing the few collective agreements that do exist. The CCSL, for its part, asserts that the Government has been unable to raise awareness and promote collective agreements as measures consist only of seminars or workshops that produce nothing concrete in terms of collective agreements. The main sectors of the economy (air transport, dock work, insurance, water and energy supply, health, education, public administration) are in the charge of the Government, which lacks the legitimacy and credibility to promote and order the conclusion of collective agreements in other sectors.

The Committee also notes the information from the Government that despite a slight increase in the number of collective conventions concluded, the total number of agreements is still low. As regards the economic sectors referred to by the CCSL, it notes the Government's statement that a collective agreement has been adopted with the enterprise ELECTRA SA and that an agreement concluded with the enterprise TAP-Air Portugal is to be published shortly.

The Committee expresses *concern* that so few collective agreements have been concluded. It notes that the Government has asked for technical assistance from the ILO Dakar Office to promote voluntary collective bargaining and that it has already planned a series of conferences to this end, which are now under way. *The Committee expresses the firm hope that the Government will pursue its efforts and requests it to indicate any developments in this area. It hopes that the technical assistance requested will be forthcoming in the very near future.*

Congo

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1960)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the comments from the International Trade Union Confederation (ITUC) on the application of the Convention. *The Committee requests the Government to provide its observations on the ITUC comments, dated 26 August 2009 and 24 August 2010.*

The Committee recalls that in its previous comments it requested the Government to amend the legislation on the minimum service organized by the employer to be maintained in the public service that is indispensable for safeguarding the general interest (section 248-15 of the Labour Code), in order to limit the minimum service to operations which are strictly necessary to meet the basic needs of the population, within the framework of a negotiated minimum service. In this regard, the Committee noted that the Government had indicated that section 248-15 had indeed been amended but that it was not in a position to produce the copy of the text amending the provisions of the said section. The Committee recalls that, since the definition of a minimum service restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 161). *The Committee again expresses the hope that the text amending section 248-15 of the Labour Code takes account of these principles and requests the Government to send a copy of the text as soon as possible.*

The Committee requests the Government to send a copy of the draft revised Labour Code.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Croatia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1991)

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 24 August 2010.

Article 3 of the Convention. In its previous comments, the Committee recalled that since 1996, it has been commenting over the issue of the distribution of trade union assets and urged the Government to determine the criteria for the division of trade union assets in consultation with workers' organizations and to fix a specific time frame for completing the division of the property. The Committee had noted the Government's indication that for the division of trade union assets to be addressed, it was first necessary to establish the criteria for determining the representativeness of trade unions. The Committee notes that the Government indicates in its report that, in April 2009, the Minister of the Economy, Labour and Entrepreneurship issued a decision specifying the names of the associations meeting the requirements laid down in article 2 of the Act on the Method of Determining the Representation of Trade Union Associations of a Higher Level in Tripartite Bodies at the National Level (OG 18/99) and the number of trade unions affiliated to these associations. ***In these circumstances, taking into account that the representativeness criteria has been defined, the Committee hopes that the Government will take the necessary measures in the very near future to address the issue of the distribution of trade union assets and requests the Government to provide information thereon in its next report.***

The Committee is raising other points in a request addressed directly to the Government.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1991)

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 24 August 2010 on the application of the Convention, in particular as regards the impact on collective bargaining of the 2009 Act on the Basis for Wages in Public Services. It also notes the comments made by the Trade Union of State and Local Government Employees (TUSLGE) dated 16 August 2010. ***The Committee requests the Government to provide its observations thereon in its next report.***

Article 1 of the Convention. In its previous observation, the Committee, referring to allegations of excessive court delays in dealing with cases of anti-union discrimination, had noted that a comprehensive process of reform had been initiated to enhance the efficiency of the judicial process and reduce the backlog of cases and that a pilot project on mediation in courts showed positive results. The Committee notes that, while the Government does not provide further information in this respect, the ITUC indicates that there has been an important reduction of the backlog of cases but that procedures remain too long, that monitoring and follow-up by the State Inspectorate and the judicial system of violations of workers' rights remain weak, and that trade unions call for the establishment of genuine labour courts in order to expedite the resolution of labour conflicts. ***The Committee requests the Government to provide information in its next report on the progress made with respect to the measures aimed at improving the efficiency of the legal protection, as well as a copy of the instruments adopted as a result of the reform process.***

Articles 4 and 6. In its previous observation, the Committee had requested the Government to comment upon the allegations that the Act on Salaries in Public Services limits collective bargaining rights in the public sector by setting coefficients for the workplace, with the result that public sector workers can negotiate on their basic salaries only. The Committee notes the information provided by the Government in its report regarding salaries' adjustment clauses, in particular, that certain collective agreements include clauses on adjustment of wages according to the economic policy in place, and that others may vary contingent on the level of non-taxable income. The Committee further notes that the TUSLGE indicates that the Local and Regional Self-Government Wage Act of 19 February 2010 restricts the rights to organize and bargain collectively of employees of local and regional self-governments, in particular their right to bargain collectively over the wage formation basis. ***The Committee requests the Government to provide information thereon in its next report.***

Furthermore, the Committee had noted the allegations that the Act on the realization of the Government's budget of 1993 allows the Government to modify the substance of a collective agreement in the public sector for financial reasons. It had requested the Government to provide a copy of the legislative provisions allowing the Government to modify the substance of collective agreements in the public service and information on their application in practice. ***Recalling that, in general, a legal provision which allows one party to modify unilaterally the content of signed collective agreements is contrary to the principles of collective bargaining, the Committee once again requests the Government to provide, with its next report, a copy of the said legislative provisions, as well as information on their application in practice.***

Czech Republic

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1993)

The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 24 August 2010 and the Government's reply thereon. The Committee further notes the comments made by the Czech-Moravian Confederation of Trade Unions (CMKOS) concerning the application of the Convention. ***The Committee requests the Government to provide its observations thereon in its next report.***

Articles 1 and 2 of the Convention. Protection against anti-union discrimination and interference. The Committee's previous observation concerned measures taken to increase the efficiency of the system of protection against