ILO conventions on collective bargaining

Bojan Popovič

Relevant conventions

- C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- C154 - Collective Bargaining Convention, 1981 (No. 154)
- C151 - Labour Relations (Public Service) Convention, 1978 (No. 151)

Freedom of Association Committee of the Governing Body of the ILO

- ***ILO Constitution:***
- ***Article 24: Representations of non-observance of Conventions***
- *1. In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.*

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Art. 2

- Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Art. 3

- 1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
- 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Art. 1

- 1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
- 2. Such protection shall apply more particularly in respect of acts calculated to--
  - (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
  - (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Art. 2

- 1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
- 2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

C154 - Collective Bargaining Convention, 1981 (No. 154)

Art. 1

- 1. This Convention applies to all branches of economic activity.
- 2. The extent to which the guarantees provided for in this Convention apply to the armed forces and the police may be determined by national laws or regulations or national practice.
- 3. As regards the public service, special modalities of application of this Convention may be fixed by national laws or regulations or national practice.

Art. 2

- For the purpose of this Convention the term collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for--
- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and workers; and/or
- (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

C154 - Collective Bargaining Convention, 1981 (No. 154)

Art. 5

- 1. Measures adapted to national conditions shall be taken to promote collective bargaining.
- 2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:
- (a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;
- (b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;
- (c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;
- (d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;
- (e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

C151 - Labour Relations (Public Service) Convention, 1978 (No. 151)

Art. 1

- 1. This Convention applies to all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them.
- 2. The extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations.
- 3. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

Art. 5

- 1. Public employees' organisations shall enjoy complete independence from public authorities.
- 2. Public employees' organisations shall enjoy adequate protection against any acts of interference by a public authority in their establishment, functioning or administration.
- 3. In particular, acts which are designed to promote the establishment of public employees' organisations under the domination of a public authority, or to support public employees' organisations by financial or other means, with the object of placing such organisations under the control of a public authority, shall be deemed to constitute acts of interference within the meaning of this Article.

Rulings (short excerpts from Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO - 5th edition, 2006, published at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf)

- 887. A distinction must be drawn between, on the one hand, public servants who
- by their functions are directly engaged in the administration of the State (that is,
- civil servants employed in government ministries and other comparable bodies), 179
- as well as offi cials acting as supporting elements in these activities and, on the
- other hand, persons employed by the government, by public undertakings or by
- autonomous public institutions. Only the former category can be excluded from
- the scope of Convention No. 98.

892. To sum up, all public service workers, with the sole possible exception of the armed forces and the police and public servants directly engaged in the administration of the State, should enjoy collective bargaining rights.

893. It is imperative that the legislation contain specifi c provisions clearly and explicitly recognizing the right of organizations of public employees and offi cials who are not acting in the capacity of agents of the state administration to conclude collective agreements. From the point of view of the principles laid down by the supervisory bodies of the ILO in connection with Convention No. 98, this right could only be denied to offi cials working in ministries and other comparable government bodies, but not, for example, to persons working in public undertakings or autonomous public institutions

894. The workers of state-owned commercial or industrial enterprises should have the right to negotiate collective agreements.

903. Persons employed in public hospitals should enjoy the right to collective bargaining.

911. In a case in which some collective agreements applied only to the parties to the agreement and their members and not to all workers, the Committee considered that this is a legitimate option – just as the contrary would be – which does not appear to violate the principles of freedom of association, and one which is practised in many countries

912. Measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with Convention No. 98; tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method of resolving these difficulties.

919. Legislation establishing that the ministry of labour has powers to regulate wages, working hours, rest periods, leave and conditions of work, that these regulations must be observed in collective agreements, and that such important aspects of conditions of work are thus excluded from the field of collective bargaining, is not in harmony with Article 4 of Convention No. 98.

927. Nothing in Article 4 of Convention No. 98 places a duty on the government to enforce collective bargaining by compulsory means with a given organization; such an intervention would clearly alter the nature of bargaining.

935. It is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confi dence between the parties

937. The principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustifi ed delay in the holding of negotiations should be avoided.

940. Mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and fi rm ground

950. Systems of collective bargaining with exclusive rights for the most representative trade union and those where it is possible for a number of collective agreements to be concluded by a number of trade unions within a company are both compatible with the principles of freedom of association.

951. In a case where the right to represent all the employees in the sector in question appeared to have been granted to organizations which were representative only to a limited extent at the national level, the Committee considered that, if national legislation establishes machinery for the representation of the occupational interests of a whole category of workers, this representation should normally lie with the organizations which have the largest membership in the category concerned, and the public authorities should refrain from any intervention that might undermine this principle.

957. For a trade union at the branch level to be able to negotiate a collective agreement at the enterprise level, it should be sufficient for the trade union to establish that it is suffi ciently representative at the enterprise level.

958. In relation to a provision under which a majority union in an enterprise cannot engage in collective bargaining if it is not affiliated to a representative federation, the Committee recalled the importance to be attached to the right to bargain collectively of the majority union in an enterprise.

960. If a union other than that which concluded an agreement has in the meantime become the majority union and requests the cancellation of this agreement, the authorities, notwithstanding the agreement, should make appropriate representations to the employer regarding the recognition of this union.

963. While the public authorities have the right to decide whether they will negotiate at the regional or national level, the workers, whether negotiating at the regional or national level, should be entitled to choose the organization which shall represent them in the negotiations.

966. Participation in collective bargaining and in signing the resulting agreements necessarily implies independence of the signatories from the employer or employers' organizations, as well as from the authorities. It is only when their independence is established that trade union organizations may have access to bargaining

967. In order to determine whether an organization has the capacity to be the sole signatory to collective agreements, two criteria should be applied: representativeness and independence. The determination of which organizations meet these criteria should be carried out by a body offering every guarantee of independence and objectivity

974. The Committee has recalled the position of the Committee of Experts on the Application of Conventions and Recommendations that, where the law of a country draws a distinction between the most representative trade union and other trade unions, such a system should not have the effect of preventing minority unions from functioning and at least having the right to make representations on behalf of their members and to represent them in cases of individual grievances

975. The granting of exclusive rights to the most representative organization should not mean that the existence of other unions to which certain involved workers might wish to belong is prohibited. Minority organizations should be permitted to carry out their activities and at least to have the right to speak on behalf of their members and to represent them.

976. Where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members.

989. The determination of the bargaining level is essentially a matter to be left to the discretion of the parties. Thus, the Committee does not consider the refusal by employers to bargain at a particular level as an infringement of freedom of association.

991. The best procedure for safeguarding the independence of the parties involved in collective bargaining is to allow them to decide by mutual agreement the level at which bargaining should take place. Nevertheless, it appears that, in many countries, this question is determined by a body that is independent of the parties themselves. The Committee considers that in such cases the body concerned should be truly independent.

996. In certain cases, the Committee has regretted that the government has not given priority to collective bargaining as a means of regulating employment conditions in a non-essential service, but rather that it felt compelled to have recourse to compulsory arbitration in the dispute in question.

999. In any case, any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the workers' and employers' organizations in an effort to obtain their agreement.

1000. In a case in which the government had, on many occasions over the past decade, resorted to statutory limitations on collective bargaining, the Committee pointed out that repeated recourse to statutory restrictions on collective bargaining could, in the long term, only prove harmful and destabilize labour relations, as it deprived workers of a fundamental right and means of furthering and defending their economic and social interests.

1008. The suspension or derogation by decree – without the agreement of the parties – of collective agreements freely entered into by the parties violates the principle of free and voluntary collective bargaining established in Article 4 of Convention No. 98. If a government wishes the clauses of a collective agreement to be brought into line with the economic policy of the country, it should attempt to persuade the parties to take account voluntarily of such considerations, without imposing on them the renegotiation of the collective agreements in force.

1033. The reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with collective agreements entered into by, or on behalf of, that authority.

1035. A fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the bargaining parties, on the one hand, and measures which must be taken by governments to overcome their budgetary diffi culties, on the other

1036. In so far as the income of public enterprises and bodies depends on state budgets, it would not be objectionable – after wide discussion and consultation between the concerned employers' and employees' organizations in a system having the confi dence of the parties – for wage ceilings to be fi xed in state budgetary laws, and neither would it be a matter for criticism that the Ministry of Finance prepare a report prior to the commencement of collective bargaining with a view to ensuring respect of such ceilings

1038. The Committee has endorsed the point of view expressed by the Committee of Experts in its 1994 General Survey: While the principle of autonomy of the parties to collective bargaining is valid as regards public servants covered by Convention No. 151, the special characteristics of the public service described above require some fl exibility in its application. Thus, in the view of the Committee, legislative provisions which allow Parliament or the competent budgetary authority to set upper and lower limits for wage negotiations or to establish an overall “budgetary package” within which the parties may negotiate monetary or standard-setting clauses (for example: reduction of working hours or other arrangements, varying wage increases according to levels of remuneration, fi xing a timetable for readjustment provisions) or those which give the fi nancial authorities the right to participate in collective bargaining alongside the direct employer, are compatible with the Convention, provided they leave a signifi cant role to collective bargaining.