



INTERNATIONAL LABOUR OFFICE

Technical Note on the Application of Convention No. 135

In a communication dated 5 March 2020, the Confederation of Industry of the Czech Republic requested an informal opinion from the International Labour Standards Department on the following practical question related to the scope and extent of facilities to be accorded to workers' representatives under the Workers' Representatives Convention, 1971 (No. 135): *Is it considered to be an infringement of Convention No. 135 if the employer refuses to pay invoices from the trade union organization over whose content and final amount the employer has no influence and which include the costs related to renting the office of the trade union organization outside the premises of the employer, equipment and technical support of communication outside the premises of the employer, IT administration, administration of registrations, licenses and web domains, costs of legal advice to the trade union members on labour law, individual hourly rate related to any activities carried out by the trade union chairman, legal representative, health and safety representative and analyst, digitalization of documents, filing, legislative activities, international cooperation, communication with the public and media and communication with their members, despite the fact that the employer has offered the trade union organization room at its own premises, including all sufficient equipment (phone, fax, computer, locker, etc.) and the use of its printer and copy machine which was all refused by the said trade union organization?*

The request submitted by the Confederation of Industry of the Czech Republic refers to a concrete situation in the country with respect to a trade union active in a number of enterprises that are affiliated to the Confederation. The Confederation asks whether the scope and extent of facilities to be accorded to workers' representatives under Convention No. 135 can be unilaterally determined by the trade union or whether these should be decided otherwise, including through negotiation between the parties.

The International Labour Standards Department is pleased to provide the following technical note, which compiles relevant observations of the Committee of Experts on the Application of Conventions and Recommendations, as well as decisions of the Committee on Freedom of Association. This technical note is provided on the understanding that it is without prejudice to any determination that may be later made by the ILO supervisory bodies responsible for supervising compliance with international labour standards. It should also be recalled that this technical note does not interpret the scope of national legislation nor its application to the question raised, matters which correspond to the national competent authorities, in particular the courts.

Relevant provisions of international labour standards

The Czech Republic has ratified **Convention No. 135**, Article 2 of which stipulates in its paragraph 1 that “such facilities in the undertaking shall be afforded to workers’ representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently”. Paragraph 2 clarifies that “in this connection account shall be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned”. Paragraph 3 explains that “the granting of such facilities shall not impair the efficient operation of the undertaking concerned”. Furthermore, Article 6 of the Convention specifies that “effect may be given to this Convention through national laws or regulations or collective agreements, or in any other manner consistent with national practice”.¹

The Workers’ Representatives Recommendation, 1971 (No. 143) in its paragraph 16 adds that “the management should make available to workers’ representatives, under the conditions and to the extent which may be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation (national laws or regulations or collective agreements, or in any other manner consistent with national practice), such material facilities and information as may be necessary for the exercise of their functions (see also Compilation of Decisions of the Committee on Freedom of Association, sixth edition, 2018 (hereinafter “Compilation”), para. 1581).

Relevant comments of the Committee of Experts on the Application of Conventions and Recommendations, and relevant decisions of the Committee on Freedom of Association

Facilities to be accorded to representatives of trade unions

The ILO supervisory bodies have addressed the issue of facilities to be accorded to representatives of trade unions on a number of occasions. **The Committee on Freedom of Association** has repeatedly referred to the obligations arising for member States from the ratification of Convention No. 135 (see Compilation, para. 1579) and considered that the material facilities from which trade union representatives should benefit include, among others, the right to hold meetings, access to the workplace and the use of email (Compilation, paras 1585, 1589 and 1600). The Committee further underlined the need to strike a balance between two elements: on the one hand, facilities in the undertaking should be such as to enable trade unions to carry out their functions promptly and efficiently and, on the other

¹ **The Labour Relations (Public Service) Convention, 1978 (No. 151)**, applicable to all persons employed by public authorities, contains similar wording in its Article 9.

hand, the granting of such facilities should not impair the efficient operation of the undertaking (Compilation, para. 1580).²

Determining the scope of the facilities to be afforded

In several cases, the **Committee on Freedom of Association** also pronounced itself on the manner of determining the scope of the facilities to be afforded. For example, the Committee suggested that the modalities for the use of the email system by the trade union should be a matter of negotiation between the parties and that the employer and the workers' organization should strive to reach agreement on this issue (see 367th Report, Case No. 2910 (Peru), para. 1072; 362nd Report, Case No. 2816 (Peru), para. 1221 and 367th Report, Case No. 2816 (Peru), para. 998). Similarly, the Committee considered that it was for employers' and workers' organizations to agree on the modalities for exercising the right to hold meetings (see Compilation, para. 1585). When examining the issue of facilities to be afforded to trade union representatives in these and other cases, the Committee requested the governments to take the following measures:

- Invite the parties to negotiate with a view to achieving agreement on the modalities for the exercise of the right to hold meetings, including the place for such meetings, as well as on the granting of facilities provided for under Article 6 of Convention No. 151 (see 348th Report, Case No. 2499 (Argentina), para. 198).
- Conduct negotiations with a view to reaching an agreement on arrangements for exercising the right to hold meetings (see 349th Report, Case No. 2532 (Peru), para. 1169).
- Promote an agreement between the parties concerning the facilities to be provided to the trade union, in accordance with the Convention ratified (see 355th Report, Case No. 2617 (Colombia), para. 201).
- Bring the parties together with a view to finding a mutually acceptable solution to the issue of trade union premises, bearing in mind the importance of ensuring both the effective functioning of the union and of the enterprise (see 357th Report, Case No. 2748 (Poland), para. 1058).
- Initiate a dialogue in order to seek a negotiated solution to the problem of trade union leave (see 358th Report, Case No. 2661 (Peru), para. 794).
- Take steps to promote dialogue between the parties concerned in order to find an appropriate solution to the union leave issue (see 370th Report, Case No. 2932 (El Salvador), para. 399).

² For instance, access to employers' facilities should not be exercised to the detriment of the efficient functioning of the enterprise concerned (see Compilation, para. 1588).

Financial contributions of employers

The Committee of Experts on the Application of Conventions and Recommendations considered, with regard to the contribution of employers to the financing of trade unions or affording trade union organizations certain facilities, that while there is no objection in principle to a public or private employer expressing its wish to promote the capacity of a trade union as a social partner in this manner, this should not have the effect of allowing the employer control over the trade union, or of favouring one trade union over another. It is essential for workers' and employers' organizations to maintain their independence so that they can defend the interests of their members effectively (see the 2012 General Survey on the fundamental Conventions (hereinafter "the 2012 General Survey", para. 196). The Committee also considered that, if the parties so agree, it should be possible for issues relating to the deduction of trade union dues, as well as to facilities in favour of trade union representatives, to be included in negotiations and not to be determined solely by law (see the 2012 General Survey, para. 217).

Concluding remarks

It follows from the above that a member State having ratified Convention No. 135, as is the case for the Czech Republic, has an obligation to ensure that such facilities are afforded to workers' representatives to allow them to carry out their functions promptly and efficiently and that the granting of such facilities does not impair the efficient operation of the undertaking concerned. The characteristics of the industrial relations system of the country, as well as the needs, size and capabilities of the undertaking concerned should also be taken into account. Convention No. 135 and Recommendation No. 143 both stipulate that the facilities to be accorded to workers' representatives can be determined through legislative measures, regulations, collective agreements or other measures in line with national practice.

It may be further noted that these instruments in themselves do not provide workers' organizations with a right to unilaterally determine – and impose on the employers concerned – the specific facilities to be enjoyed by workers' representatives. It is for the ratifying States to decide those facilities that should be provided by the employer and the manner in which such facilities should be determined.

In line with these instruments, and beyond what may be explicitly required by national law, the nature, number and scope of facilities, as well as the modalities for their exercise, can be determined through negotiations between the employer or employers' organization and the workers' organization. Negotiations in this regard are encouraged by the ILO supervisory mechanisms. Indeed, on a number of occasions, the supervisory mechanisms have emphasized the importance of bargaining in good faith, including in relation to facilities granted to trade union representatives, and have requested

governments to initiate or promote social dialogue between the parties to a dispute with a view to reaching an agreement on the facilities to be afforded to workers' representatives and the modalities for their exercise.

International Labour Standards Department
31 March 2020