



FOURTH ITEM ON THE AGENDA

**Reports of the Committee on
Freedom of Association**

**347th Report of the Committee on
Freedom of Association**

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Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 24 and 25 May and 1 June 2007, under the chairmanship of Professor Paul van der Heijden.
2. The Committee examined a representation for the non-observance by Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made under article 24 of the ILO Constitution by Yapi-Yol Sen.
3. The Committee submits a report on this representation for the Governing Body's approval.

CASE NO. 2537

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Representation against the Government of Turkey presented by Yapi-Yol Sen under article 24 of the ILO Constitution alleging non-observance by the Government of Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Allegations: The complainant alleges that the Government of Turkey violated Convention No. 87 by unilaterally amending the branches of activity according to which public employees' trade unions may be established, so that the complainant automatically lost members and encountered consequent financial difficulties

4. In communications dated 28 March and 12 May 2006, Yapi-Yol Sen, an organization of public employees, made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by the Government of Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).
5. At its November 2006 session, the Governing Body declared this representation receivable and decided to refer it to the Committee on Freedom of Association for examination (Case No. 2537) [see GB.297/20/3].
6. The Government sent its comments on this case in a communication dated 26 September 2006.
7. Turkey has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

8. In communications dated 28 March and 12 May 2006, Yapi-Yol Sen alleges that the Government of Turkey violated Convention No. 87 by unilaterally amending the branches of activity according to which public employees' trade unions may be established so that the complainant automatically lost members and encountered consequent financial difficulties.
9. The complainant explains that it is a public employees' organization established under the Public Employees' Trade Unions Act No. 4688. Within the framework of this Act and the Regulation on the Determination of Branches of Activity of Organizations and Agencies, the classification of the branches of activity on the basis of which civil servants' trade unions may be organized are not based on objective criteria. Furthermore, the Ministry of Labour and Social Security can change unilaterally the branch of activity even if the activities performed within the workplace have not changed. Thus, both Act No. 4688 and the Regulation are contrary to the right of public employees to establish organizations of their own choosing, under Article 2 of Convention No. 87.
10. Through the "Act on the Liquidation of the Rural Services General Directorate and Amendments in Some Codes" enacted on 13 January 2005, the "Act on the Organization and Functions of the Rural Services General Directorate" No. 3202 of 9 May 1985 was replaced by the "Act on Services Aimed at Villages". With this Act, the Rural Services General Directorate has been liquidated and its personnel transferred to the Directorates of Services Aimed at Villages created mostly under the authority of local governments to carry out the same services as before. That is to say, the only difference is that the supervising organization has changed but the duties and functions remain the same.
11. After this transfer, the complainant's members did not resign from the union and did not affiliate to other trade unions. However, the Ministry of Labour and Social Security decided to change the branch of activity of the workplace. After the decision of the Ministry, the membership by previous members has been considered invalid, membership fees are no longer deducted and the check-off system is considered invalid. Therefore, the trade union has been forced into a financial squeeze. The complainant alleges that as a result of the above, the Ministry intervened in the exercise of the right to freedom of association in violation of Articles 2 and 3 of Convention No. 87 ratified by Turkey and thereby having the force of law in the country as per article 90 of the Constitution.

B. The Government's reply

12. In a communication dated 26 September 2006, the Government indicates that section 4 of the Public Employees' Trade Unions Act No. 4688 provides that public employees' trade unions may be established on the basis of branches of activity. Section 5 enumerates and specifies the branches of activity according to which public servants' unions are to be established. In the same section it is provided that these branches will be determined by regulations of the Ministry of Finance, the Ministry of Labour and Social Security and the State Personnel Department.
13. Under section 16 of the same Act, union membership of those who have lost their public servant status by reason of resignation or dismissal, etc., and of those who have been appointed to a post within a different branch of activity, is considered as terminated. Their duties in the union organs shall also end. Needless to add that public servants whose union membership ended in a particular branch of activity because of their transfer to a different branch of service have the right to form a new union or join any public servants' union already established in the latter branch of activity. Section 14 stipulates that public servants may only join the unions established in the branch in which they are employed. In

accordance with Act No. 4688, union dues are deducted at source from the salaries of the members of the unions established in the branch in which the public institution concerned is operating.

14. When the General Directorate of Village Services was closed down and its personnel transferred to the municipalities in the Provinces of Istanbul and Kocaeli and to the provincial administrations in other provinces, the name of the General Directorate of Village Services was deleted from the list appended to the abovementioned Regulation by a new Regulation dated 2 August 2005 (*Official Gazette* No. 25894). The said General Directorate had been included within the branch of activity entitled “Public works, construction and village services” before being deleted from the list. Its staff may now join the public employees’ unions established within the branch of activity relevant to the local governments by which they are employed.
15. The Government finally notes that trade unions should respect the law of the land in conformity with Article 8 of Convention No. 87 and notes that Yapi-Yol Sen filed a court case (No. 2005/3145) at the Second Chamber of the Council of State against the Ministry of Labour and Social Security; the judicial process is under way.

C. The Committee’s conclusions

16. *The Committee observes that this case concerns allegations that by reason of an administrative reorganization, the complainant automatically lost members who were deemed to be engaged in a different branch of activity, although their functions remained identical and encountered financial difficulties due to the automatic termination of membership fees and the check-off system.*
17. *The Committee notes that the complainant and the Government are in agreement as to the basic facts in this case. The closure of the General Directorate of Village Services and the transfer of its personnel to local governments (specifically, the municipalities in the Provinces of Istanbul and Kocaeli and to the provincial administrations in other provinces) led to the automatic termination of membership in Yapi-Yol Sen with regard to the transferred employees, regardless of the fact that they continued to perform identical tasks under a new administrative authority (according to the Government, they were taken off the branch of activity entitled “Public works, construction and village services” and were transferred to the branch relevant to local governments). Thus, membership fees are no longer deducted and the check-off system is considered invalid, leading the trade union to financial difficulties.*
18. *The Committee notes that the above situation is the outcome of the provisions of the Public Employees’ Trade Unions Act No. 4688 and in particular: (i) section 4 which provides that public employees’ unions may only be established on the basis of branches of activity; section 14 which provides that public employees may only join unions within the branches in which they are employed; (ii) section 5 which enumerates the branches and further provides that the Ministries of Finance, Labour and Social Security, and the State Personnel Department shall further determine these branches on the basis of regulations (i.e. the Regulation on the Determination of Branch of Activity of Organizations and Agencies); and (iii) section 16 which provides that trade union membership or office of those public employees who have been appointed to a post in a different branch shall be considered as terminated.*
19. *The Committee recalls that public servants, like all other workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests. With regard to restrictions limiting all public servants to membership of unions*

confined to that category of workers, it is admissible for first-level organizations of public servants to be limited to that category of workers on condition that their organizations are not also restricted to employees of any particular ministry, department or service, and that the first-level organizations may freely join the federations and confederations of their own choosing [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, paras 219 and 337].

20. Thus, the Committee observes that limiting first-level trade unions to specific administrative departments – like in this case, local authorities – enables the Government to interfere with the activities of a trade union and put into question its very existence and financial viability simply by changing the administrative departments within which public employees operate, thereby leading to an automatic termination of the union's membership and check-off facility. The Committee further notes with concern that according to the Government, the effect of the legislation (section 16 of Act No. 4688) would also mean that the duties of trade union officers would be terminated where changes occurred in branch classifications. The Committee considers that such acts constitute not only a violation of the right of public employees to join the trade union of their own choice, but also serious interference in trade union activities, including the right of trade unions to elect their own representatives and organize their administration, in violation of Articles 2 and 3 of Convention No. 87.
21. The Committee also observes with regret that this is the second case concerning Turkey where the Ministry of Labour and Social Security modified the branch of activity classification on the basis of questionable criteria – which do not relate to the nature of activity carried out but to the authority under which work is performed – with very serious consequences for the trade unions concerned (loss of membership and representation rights) [see Case No. 2126, 327th Report, paras 805–847]. The Committee recalls its conclusions and recommendations in that case and deeply regrets the recurrent unilateral interference in trade union membership and activities in particular through the narrow determination of categories of workers that may come together in a single trade union, which could, as a consequence, lead to excessive fragmentation.
22. The Committee emphasizes that the right of workers, including public employees, to establish and join organizations of their own choosing is one of the basic tenets of freedom of association. It also recalls that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided [see **Digest**, op. cit., para. 475]. It finally emphasizes that, given that workers' organizations are entitled to elect their representatives in full freedom, the dismissal of a trade union leader or simply the fact that a trade union leader leaves the work that he or she was carrying out in a given undertaking, should not affect his or her trade union status or functions unless stipulated otherwise by the constitution of the trade union in question [see **Digest**, op. cit., para. 411].
23. The Committee therefore requests the Government to take all necessary measures to ensure that the lost membership of Yapi-Yol Sen is immediately restored and that the check-off system reinstated and trusts that, pursuant to the appeal lodged by the complainant on this case, the court will take the relevant freedom of association principles embodied in Convention No. 87 into account in rendering its decision. The Committee requests the Government to keep it informed in this respect and to transmit any court decisions as soon as they are handed down.
24. The Committee also requests the Government to take all necessary measures as soon as possible to bring its legislation into conformity with Convention No. 87, ratified by Turkey and in particular: (i) to amend section 5 of the Public Employees' Trade Unions Act

No. 4688 as well as the Regulation on the Determination of Branches of Activity of Organizations and Agencies, which determine the branches of activity according to which public employees' trade unions may be established, so as to ensure that these branches are not restricted to any particular ministry, department or service, including local governments; (ii) to amend the Regulation of 2 August 2005 (which amends the Regulation on the Determination of Branch of Activity of Organizations and Agencies) so as to maintain Yapi-Yol Sen members concerned by this complaint within the branch of activity entitled "Public works, construction and village services" in conformity with the nature of their functions, and their willingness to remain affiliated to Yapi-Yol Sen; (iii) to amend section 16 of the Public Employees' Trade Unions Act No. 4688 so as to ensure that trade union offices are not terminated by reason of the transfer of a trade union leader to another branch of activity, or his/her dismissal or simply the fact that a trade union leader leaves the work. The Committee requests the Government to keep it informed in respect of all the above.

25. *The Committee reminds the Government that it may avail itself of the technical assistance of the Office in respect of the matters in this case if it so wishes.*

The Committee's recommendations

26. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) *The Committee requests the Government to take all necessary measures as soon as possible to bring its legislation into conformity with Convention No. 87, ratified by Turkey and in particular:*
- (i) *to amend section 5 of the Public Employees' Trade Unions Act No. 4688 as well as the Regulation on the Determination of Branch of Activity of Organizations and Agencies, which determine the branches of activity according to which public employees' trade unions may be established, so as to ensure that these branches are not restricted to any particular ministry, department or service, including local governments;*
 - (ii) *to amend the Regulation of 2 August 2005 (which amends the Regulation on the Determination of Branch of Activity of Organizations and Agencies) so as to maintain Yapi-Yol Sen members concerned by this complaint within the branch of activity entitled "Public works, construction and village services" in conformity with the nature of their functions and their willingness to remain affiliated to Yapi-Yol Sen;*
 - (iii) *to amend section 16 of the Public Employees' Trade Unions Act No. 4688 so as to ensure that trade union office is not terminated by reason of the transfer of a trade union leader to another branch of activity, or his/her dismissal or simply the fact that a trade union leader leaves the work.*

The Committee requests the Government to keep it informed in respect of all the above.

- (b) *The Committee requests the Government to take all necessary measures to ensure that the lost membership of Yapi-Yol Sen is immediately restored and that the check-off system reinstated and trusts that pursuant to the appeal*

lodged by the complainant on this case, the Court will take the relevant freedom of association principles embodied in Convention No. 87 into account in rendering its decision. The Committee requests the Government to keep it informed in this respect and to transmit any court decisions as soon as they are handed down.

(c) The Committee reminds the Government that it may avail itself of the technical assistance of the Office in respect of the matters in this case if it so wishes.

Geneva, 1 June 2007.

(Signed) Professor Paul van der Heijden,
Chairperson.

Point for decision: Paragraph 26.