



Governing Body

312th Session, Geneva, November 2011

GB.312/INS/16/5

Institutional Section

INS

SIXTEENTH ITEM ON THE AGENDA

Reports of the Officers of the Governing Body

Representation alleging non-observance by Spain of the Labour Inspection Convention, 1947 (No. 81), submitted under article 24 of the ILO Constitution by the State Federation of Associations of Employment and Social Security Subinspectors (FESESS)

1. In letters received on 20 June and 22 October 2011, the State Federation of Associations of Employment and Social Security Subinspectors (FESESS) addressed a representation to the Office, in accordance with article 24 of the ILO Constitution, alleging non-observance by Spain of the Labour Inspection Convention, 1947 (No. 81). The summary of the text of the representation is appended.
2. In accordance with article 1 of the Standing Orders relating to the procedure to be followed for the examination of representations, the Director-General acknowledged receipt of the representation and informed the Government of Spain thereof.
3. In accordance with article 2(1) of the Standing Orders, the Director-General communicated the representation to the Officers of the Governing Body. Paragraph 3 of that article stipulates that the Officers shall report to the Governing Body on the receivability of the representation. Article 2(2) lays down the conditions for the receivability of a representation. In view of these conditions, the following observations can be made in the present case:
 - (a) the representation was communicated to the International Labour Office in writing;
 - (b) it emanates from an industrial association of workers;

- (c) it makes specific reference to article 24 of the Constitution of the Organization;
 - (d) it concerns a Member of the Organization: Spain;
 - (e) it refers to a Convention to which Spain is a party: Convention No. 81, ratified on 30 May 1960; and
 - (f) it indicates in what respect it is alleged that Spain has failed to secure the effective observance within its jurisdiction of the said Convention.
4. The Officers of the Governing Body therefore consider that the representation is receivable in terms of article 2(2) of the Standing Orders. In these circumstances, and according to the Standing Orders, it is for the Governing Body to reach a decision on the receivability of the representation, on the basis of the report of its Officers. Article 2(4) provides that, in reaching a decision concerning the receivability, the Governing Body shall not enter into discussion of the substance of the representation. Article 3(1) states that, if the Governing Body decides that a representation is receivable, it shall set up a committee to examine it composed of members of the Governing Body chosen in equal numbers from the Government, Employers' and Workers' groups.

5. *The Governing Body is accordingly invited:*

- (a) to take a decision on the receivability of the representation; and***
- (b) if it decides that it is receivable, to set up a committee for its examination.***

Geneva, 9 November 2011

Point for decision: Paragraph 5

Appendix

Summary of the communications of the State Federation of Associations of Employment and Social Security Subinspectors (FESESS)

The State Federation of Associations of Employment and Social Security Subinspectors (FESESS) alleges that Act No. 42/1997 of 14 November (the Framework Act on Labour and Social Security Inspection – LOITSS) violates ILO Convention No. 81.

FESESS alleges that, although the LOITSS provides that labour and social security inspection shall be carried out wholly by inspectors, in practice subinspectors carry out genuine inspection duties under the same conditions as inspectors, that is they carry out inspection visits, draw up reports, issue warnings and make recommendations, and instigate proceedings for the imposition of sanctions and/or liquidation. In this context, the LOITSS arbitrarily and without any justification fails to provide them with the guarantees set out in Convention No. 81.

The FESESS alleges in particular that:

- (1) The Act does not recognize the full technical and operational autonomy of subinspectors, and does not give them the protection afforded by Convention No. 81 against any undue outside influence, despite the fact that they carry out inspection duties, in their field of competence, that are analogous to those of the labour and social security inspectors.
- (2) The subinspectors are considered to be agents, rather than members of the public service, which may detract from the authority needed for the effective discharge of their principal duties. Subinspectors discharge their duties without it being possible to say, in the strict sense, that they are acting under the instruction of their superiors, as if they were agents of the authorities. This distinction results in an unjustified and unreasonable weakening of the legal protection enjoyed by the subinspectors in the performance of their inspection duties.
- (3) Because the LOITSS does not recognize labour and social security subinspectors as a competent authority for the purposes of Organic Act No. 1/82 of 5 May on civil protection of the right to personal integrity, privacy, etc., they incur the risk of committing acts of “interference” by revealing, in the course of their duties, confidential data concerning the entities inspected (for example, when recording details of wage payments, employment contracts, and levelling charges of administrative violations in their reports and other documents). This absence of protection is contrary to the conditions of service which should guarantee their independence from any undue outside influence, in accordance with Convention No. 81.
- (4) The subinspectors are not granted certain of the powers of inspectors for the performance of their duties (for example, being accompanied during inspections, taking or removing samples of substances or materials and registering enterprises and workers with the social security scheme).
- (5) In the various protocols governing the action of the inspection services, inspectors and subinspectors are given identical treatment in terms of the procedures they have to follow, which confirms that the inspectors and subinspectors in practice have the same “legal status”, which is denied by the LOITSS in a discriminatory manner.