



Governing Body

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Institutional Section

INS

SEVENTH ITEM ON THE AGENDA

Report of the Director-General

First Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Romania of the Protection of Wages Convention, 1949 (No. 95), made under article 24 of the ILO Constitution by the Federation of Free Trade Unions of the Chemical and Petrochemical Industries (FSLCP)

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I. Introduction

1. By a communication dated 19 May 2016, the Federation of Free Trade Unions of the Chemical and Petrochemical Industries (FSLCP) made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by Romania of the Protection of Wages Convention, 1949 (No. 95).
2. Convention No. 95 was ratified by Romania on 6 June 1973 and remains in force for that country.
3. The following provisions of the ILO Constitution relate to representations:

Article 24

Representations of non-observance of Conventions

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.

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

4. Representations are examined in accordance with the Standing Orders concerning the procedure for the examination of representations, as revised by the Governing Body at its 291st Session (November 2004).
5. In accordance with articles 1 and 2(1) of the Standing Orders, the Director-General acknowledged receipt of the representation, informed the Government of Romania thereof, and brought the representation before the Officers of the Governing Body.
6. At its 327th Session (June 2016), the Governing Body decided that the representation was receivable and set up a tripartite committee to examine the matter, composed of Mr D. Cano Soler (Government member, Spain), Mr K. de Meester (Employer member, Belgium), and Mr B. Thibault (Worker member, France).
7. The Government of Romania supplied information in reply to the representation, which was received by the Office on 30 September 2016.
8. The Committee met on 17 March 2017 to examine the representation. During the meeting, the Committee decided, in accordance with article 4, paragraphs 1(a) and (d), of the Standing Orders, to request the complainant and the Government of Romania to furnish further information within 30 days. The Office sent two letters to that effect on 21 April 2017. The complainant supplied information in reply to the request of the Committee, which was received by the Office on 2 May 2017 and communicated to the Government of Romania on 8 May 2017. The Committee regrets that the Government of Romania did not provide the additional information requested by the Committee in its letter dated 21 April 2017.

9. The Committee met on 6 June 2017 to examine the representation together with the additional information provided by the complainant and adopt its report.

II. Examination of the representation

A. The complainant's allegations

10. In its communication dated 19 May 2016, the Federation of Free Trade Unions of the Chemical and Petrochemical Industries (FSLCP) asserts that Romania has failed to take measures to ensure the satisfactory application of the Protection of Wages Convention, 1949 (No. 95).
11. The complainant indicates that despite the incorporation of Convention No. 95 in the Labour Code, the Government has failed to take effective measures in order to ensure protection of the legitimate right of workers to the timely payment of wages. The complainant considers that, over the last three years, wage arrears of several months have become the rule rather than the exception among Romanian companies. The representation refers to the particular cases of three companies from the chemical and petrochemical industries: SC Donau Chem SRL Turnu Măgurele, SC GA-PRO-CO Chemicals SA Savinesti and SC Interagro SRL.
12. Specifically, the representation focuses on three main allegations. First, the complainant states that, for the last three years, wages have been paid between three to eight months late in the above cited companies. These wage arrears, that reflect a common practice in the country, infringe upon Article 12, paragraph 1, of the Convention.
13. Second, the complainant indicates that numerous employees from the companies referenced have been discharged without having received their due wages or redundancy payments, which constitutes a violation of Article 12, paragraph 2, of the Convention.
14. Third, the complainant stresses that the three companies mentioned in the representation are in a situation of bankruptcy. For one of these companies, the complainant indicates that over 600 workers presented individual claims for the payment of their wage arrears and that the court ruled in their favour in March 2017. The complainant indicates however that these workers are unlikely to receive the payment of the sums granted by the court because this company filed for bankruptcy in February 2017. Wage claims are third in the order of priority of privileged debts under article 161 of Law No. 85/2014 on insolvency prevention procedures and on insolvency procedures, adopted on 25 June 2014. As a result of this priority rank and the length of the bankruptcy proceedings, the complainant alleges that workers entitled to wage claims are unlikely to recover their receivables, which breaches Article 11 of the Convention.
15. Additionally, the complainant stresses that although a Wage Guarantee Fund has been established by Law No. 200/2006, the workers who have been granted compensation in court in March 2017 are not authorized to solicit this institution while the bankruptcy proceedings of their employer are pending. The complainant also expresses concerns as to these workers' eligibility for compensation by the Wage Guarantee Fund because their employer has not paid a contribution to the fund.
16. The complainant mentions having reported the impugned practices to the Government in the context of the Social Dialogue Commission of the Ministry of Labour, Family, Social Protection and the Elderly. Despite these notifications, the complainant is of the view that the Government did not take action to prevent further breaches of the Convention in the future.

B. The Government's reply

17. In response to the allegations regarding wage arrears and settlement upon termination, the Government asserts that the Labour Code incorporates the dispositions of Article 12, paragraph 1, of the Convention (articles 159–174 of the Labour Code). The Government also contends that claims over the payment of wages, including claims about the termination of the contract of employment, fall under the category of labour disputes as defined in article 266 of the Labour Code and may be presented before domestic labour jurisdictions.¹ They are adjudicated under emergency procedures, within 15 days (article 271 of the Labour Code), and are exempt from procedural fees and court stamp fees (article 270 of the Labour Code). Employers in breach of their obligations on wages may be found liable to pay damages and penalties to the affected workers (article 166(4) of the Labour Code).
18. Additionally, the Government submits an abstract of a report established by a Territorial Labour Inspectorate (TLI) following an inspection in one of the three companies cited in the representation. The report shows that the TLI found an unjustified delay in the payment of wages and instructed the employer to promptly comply with the law.
19. In response to the third allegation on the lack of sufficient protection of workers' wage claims in the event of bankruptcy, the Government confirms that Law No. 85/2014 applies. The Government argues that this Law gives jurisdiction over the matter to courts, the syndic-judge, the judicial administrator and the judicial liquidator.
20. The Government also confirms that the issues under scrutiny were discussed by tripartite commissions. At the national level, the Government refers to central consultations conducted under the auspices of the Ministry of Labour, Family, Social Protection and the Elderly. At the county level, the Government indicates that tripartite committees for social dialogue involving the TLIs were established with the purpose of facilitating dialogue between the management of the companies cited in the representation and the trade unions.
21. The Government highlights that while these initiatives facilitated the development of solutions to improve the payment of wages, neither the tripartite committees for social dialogue nor the TLIs have jurisdiction over labour disputes. Wage claims must be presented before the competent courts, in accordance with the Labour Code and the Code of Civil Procedure. Last, the Government stresses that, in addition to the affected workers, the trade unions of the companies cited in the representation as well as the complainant, as a federation to which these unions are affiliated, had the right to bring the matter before the competent court in application of article 28 of the Law on Social Dialogue No. 62/2011.

III. The Committee's conclusions

22. In its representation, the complainant alleges that Romania has violated the provisions of Convention No. 95. The Committee notes that the FSLCP's claim focuses on the following three allegations: (a) the Government has failed to ensure that wage arrears do not become the rule among Romanian companies and in particular in the three companies referenced in the representation; (b) the Government has failed to ensure that workers from these companies receive all their due wages upon termination of their contracts of employment;

¹ Under *article 266 of the Labour Code*, labour jurisdictions are competent over labour disputes arising from the conclusion, performance, amendment, suspension and cessation of the individual employment contracts.

and (c) the national legislation does not adequately protect workers' wage claims in the event of the employer's bankruptcy.

23. The Committee notes that the allegations of the FSLCP concern the application of Articles 11 and 12 of the Convention, which read as follows:

Article 11

1. In the event of the bankruptcy or judicial liquidation of an undertaking, the workers employed therein shall be treated as privileged creditors either as regards wages due to them for service rendered during such a period prior to the bankruptcy or judicial liquidation as may be prescribed by national laws or regulations, or as regards wages up to a prescribed amount as may be determined by national laws or regulations.

2. Wages constituting a privileged debt shall be paid in full before ordinary creditors may establish any claim to a share of the assets.

3. The relative priority of wages constituting a privileged debt and other privileged debts shall be determined by national laws or regulations.

Article 12

1. Wages shall be paid regularly. Except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award.

2. Upon the termination of a contract of employment, a final settlement of all wages due shall be effected in accordance with national laws or regulations, collective agreement or arbitration award or, in the absence of any applicable law, regulation, agreement or award, within a reasonable period of time having regard to the terms of the contract.

A. Protection against wage arrears

24. The Committee notes the complainant's allegation that the Government has failed to ensure the application of Article 12, paragraph 1, of the Convention, as wage arrears have become the norm among Romanian companies and have ranged between three to eight months in the three companies referenced in the representation. The Government responds that Article 12, paragraph 1, has been adequately transposed in the Labour Code. The Committee notes that article 166(1) of the Labour Code provides that wages shall be paid at least once a month.

25. With regard to the effective application of the Convention, the Committee recalls that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and other tripartite committees established by the Governing Body to examine representations of a similar nature have consistently pointed out that the effective application of the Convention comprises three important aspects: effective supervision, appropriate penalties to prevent and punish infringements, and means to redress the prejudice suffered.²

² ILO: *Protection of wages, standards and safeguards relating to the payment of labour remuneration*, Report III (Part 1B), International Labour Conference, 91st Session, Geneva, 2003, ("ILO: Protection of Wages"), para. 368. See also ILO: *Report of the Committee set up to examine the representation alleging non-observance by the Republic of Moldova of the Protection of Wages Convention, 1949 (No. 95), made under article 24 of the ILO Constitution by the General Federation of Trade Unions of the Republic of Moldova*, Governing Body, June 2000, GB.276/17/2 and GB.278/5/1, para. 25; and ILO: *Report of the Committee set up to examine the representation alleging non-observance by the Russian Federation of the Protection of Wages Convention, 1949 (No. 95), made under article 24 of the ILO Constitution by Education International and the Education and Science Employees' Union of Russia*, Governing Body, Nov. 1997, GB.268/15/3 and GB.270/15/5, para. 37.

In the present case, the Committee notes that the Government refers to the adoption of measures relevant to these three aspects.

26. As to the supervision, the Government indicates that the TLIs supervise the payment of wages and that one of the companies listed in the representation was in fact investigated and instructed to promptly comply with the Law. The Government also points out that TLIs facilitated the dialogue between the management of these companies and the trade unions, in the context of tripartite committees for social dialogue, which led to concrete solutions regarding wage payments. With regard to penalties, the Government refers to article 161(4) of the Labour Code providing that the employer may be obligated to pay damages to cover the loss resulting from unjustified delays in the payment or the non-payment of wages. Concerning the means to redress the prejudice, the Government signals that wage claims may be brought to labour courts, in application of articles 266–275 of the Labour Code.
27. The complainant confirms that over 600 workers of one of the companies cited in the representation have sought remedies before the competent jurisdiction, which decided in their favour in March 2017. The Committee takes note of the concern of the complainant that the compensations granted by the court are unlikely to be paid due to the bankruptcy of the employer and addresses this issue further below under the examination of the application of Article 11 of the Convention.
28. The Committee observes that the Government has adopted measures to protect the workers' right to timely payment of wages and trusts that the Government ensures that these measures exert a sufficiently deterrent effect against wage arrears, in conformity with Article 12, paragraph 1, of the Convention.

B. Final settlement of wages upon termination

29. The Committee notes the allegation of the complainant that employees from the companies referenced in the representation have been discharged without having received their due wages. The Committee notes the Government's observation that labour jurisdictions are competent over disputes arising from the termination of contracts of employment pursuant to article 266 of the Labour Code. The Committee understands that the Labour Code does not otherwise include provisions specific to the settlement of wages upon termination of the contract of employment but that claims on that matter may be presented to labour jurisdictions pursuant to article 266 of the Labour Code and are adjudicated under the emergency procedure of article 271(1) of the Labour Code.
30. The Committee recalls that the CEACR stated that when the national legislation does not regulate directly the final settlement of wages, other than by providing for settlement procedures applicable in cases of unpaid wages, the obligation placed on the employers to pay wages in a timely manner is assumed to effectively ensure prompt settlement of wages upon termination.³ Based on its assessment that Romanian legislation fits the situation contemplated by the CEACR, the Committee considers that the remedies provided for in the Labour Code give effect to Article 12, paragraph 2, of the Convention.

³ ILO: Protection of Wages, op.cit., para. 390.

C. Protection of workers' wage claims in the event of the employer's bankruptcy

- 31.** The Committee takes note of the complainant's allegation that article 161 of Law No. 85/2014 on insolvency prevention procedures and insolvency procedures – in providing that wage claims are ranked third in the order of privileges, after debts resulting from the expenses related to the insolvency procedure and debts from loans granted to the debtor during the observation period – often deprives the privilege granted to workers from its practical value. The Committee also notes the complainant's allegation that the workers who have been granted compensation for wage arrears by a court in March 2017 are unlikely to be paid because of their employer's bankruptcy. The Committee notes that the Government confirmed that Law No. 85/2014 applies to wage claims in the event of the employer's bankruptcy.
- 32.** The Committee recalls that Article 11 of the Convention requires that workers be treated as privileged creditors and that the relative priority of wages constituting a privileged debt and other privileged debts shall be determined by national legislation. Therefore, the Convention does not mandate that wage claims be given first-ranked privilege. Hence, article 161 of Law No. 85/2014, in providing third-ranked privilege to wage claims, does not constitute a breach of the Convention.
- 33.** More generally, recalling that the CEACR considers that the suspension of wage payments directly threatens the means of subsistence of workers and their families⁴ and affects the national economy in its entirety,⁵ the Committee wishes to refer to the direct requests adopted by the CEACR in 2013 and 2012 concerning the protection of workers' wage claims by a guarantee institution and a sufficiently high ranking preference.⁶ The CEACR noted with interest the adoption of Law No. 200/2006, establishing a Wage Guarantee Fund and invited the Government to provide detailed information on the operation of the fund in practice. The Committee trusts that such information will be made available to the CEACR in the context of the regular supervision of the application of the Convention.

IV. The Committee's recommendations

- 34. *In light of its foregoing conclusions the Committee recommends that the Governing Body:***
- (a) approve the present report;***
 - (b) invite the Government and the complainant to provide the Committee of Experts on the Application of Conventions and Recommendations with detailed information on the application of articles 11 and 12 of the Convention***

⁴ *ibid.*, para. 299.

⁵ *ibid.*, para. 366.

⁶ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 103rd Session, Geneva, 2014, p. 641, full text of the direct request on Convention No. 95 available on NORMLEX; see also ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 102nd Session, Geneva, 2013, p. 707, full text of the direct request on Convention No. 95 available on NORMLEX.

and on the functioning of the Wage Guarantee Fund, in the context of the supervision of the application of Convention No. 95 in 2017;

- (c) make this report publicly available and close the procedure initiated by the representation made by the Federation of Free Trade Unions of the Chemical and Petrochemical Industries (FSLCP).*

Geneva, 7 June 2017

(Signed) Mr Diego Cano Soler
Mr Kris de Meester
Mr Bernard Thibault