



Freedom of association standards and principles

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FOA is key

- Basic human right universally recognized and protected
- Core value for the ILO
 - Preamble to the Constitution, 1919
 - Declaration of Philadelphia, 1944
 - Declaration on Fundamental Principles and Rights at Work, 1998
 - Declaration on Social Justice for a Fair Globalization, 2008

FOA and civil liberties

- Interdependence reiterated in ILC Resolution concerning Trade Union Rights and Civil Liberties, 1970
- Civil liberties are essential to the normal exercise of freedom of association
 - The right to freedom and security of persons
 - Freedom from arbitrary arrest and detention
 - Right to a fair trial before an independent and impartial body
 - Freedom of assembly
 - Freedom of opinion and expression
 - Protection of trade union premises and property

ILO Fundamental Conventions

- C87 Freedom of Association and Protection of the Right to Organise, 1948
 - 153 ratifications (as of today)
- C98 Right to Organise and Collective Bargaining, 1949
 - 164 ratifications (as of today)

Other ILS

- C11 Right of Association (Agriculture), 1921
- R91 Collective Agreements, 1952
- C135 & R143 Workers' Representatives, 1971
- C141 & R151 Rural Workers' Organisations, 1975
- C151 & R159 Labour Relations (Public Service), 1978
- C154 & R163 Collective Bargaining, 1981

ILO key resources

- Digest of decisions and principles of the ILO Committee on Freedom of Association (2006)
- Giving Globalization a Human Face, General Survey by the ILO Committee of Experts on the fundamental Conventions (2012)
- Giving a voice to rural workers, General Survey by the ILO Committee of Experts (2015)
- Collective bargaining in the public service: a way forward, General Survey by the ILO Committee of Experts (2013)

C87: objective and scope

- Objective: autonomy and independence of organizations from public authorities, in establishment, functioning and dissolution
- Scope of application: employers and workers; armed forces and police not covered

C87 in a nutshell

Art. 2	Right of all workers and employers, without distinction, to establish and join organizations of their choosing, without previous authorization
Art. 3	Right of organizations to decide on their internal matters
Art. 4	Organizations not to be dissolved or suspended by administrative authorities
Arts. 5-6	Right of organizations to establish federations and confederations and to affiliate internationally

The right to organize

Right of workers and employers to establish and join organizations:

1. without distinction on those entitled to it
 - E.g., without distinction based on occupation, sex, colour, race, religion, nationality or political opinion
 - Only possible exceptions: armed forces and police, narrowly defined

The right to organize (Cont'd)

Right of workers and employers to establish and join organizations:

2. without previous authorization
 - Formalities acceptable, but not complex or long
 - Right to appeal before impartial and independent courts against refusal

The right to organize (Cont'd)

Right of workers and employers to establish and join organizations:

3. of their own choosing

- Freedom of choice on structure and composition
- Minimum membership acceptable
- Trade union pluralism
- Concept of most representative organization

Rights of organizations

1. Right of organizations to draw up their constitutions and rules
 - Only formal requirements
 - No prior approval

Rights of organizations (Cont'd)

2. Right of organizations to elect their representatives in full freedom
 - Intervention restricted to provisions promoting democratic principles within trade unions or ensuring proper conduct of the process
 - Elections and results not subject to acceptance or approval

Rights of organizations (Cont'd)

3. Right of organizations to organize their administration
 - Autonomy
 - Financial independence
 - Protection of assets and property

Rights of organizations (Cont'd)

4. Right of organizations to organize their activities and formulate their programmes
 - E.g. right to hold meetings, right of trade union officers to access to the workplace and communicate with management, the right to organize certain political activities, and the right to strike

Strike modalities

- Any work stoppage, however brief and limited
- Also sympathy strikes, if the initial one is lawful
- Purely political strikes do not fall within the scope of freedom of association

- Prerequisites admissible (e.g.: exhaustion of prior procedures like conciliation, mediation and voluntary arbitration; advance notice; quorum and majority)

Permitted restrictions

- Not absolute right, restrictions possible for:
 1. armed forces and police (narrowly defined)
 2. public servants exercising authority in the name of the State
 3. workers in essential services in the strict sense of the term
 4. acute national crisis (for a limited period and to the extent necessary to meet the requirements of the situation)
- Compensatory guarantees to be provided to workers deprived (conciliation, mediation, arbitration)

Essential services

- Services the interruption of which would endanger the life, personal safety or health of the whole or part of the population
- Not absolute concept
- E.g.: air traffic control, telephone services, services responsible for dealing with the consequences of natural disasters, firefighting services, health and ambulance services, prison services, security forces, water and electricity services

Negotiated minimum service

- Genuinely and exclusively minimum
- Workers' and employers' participation in definition
- Disagreements settled by a joint or independent body which has the confidence of the parties

Other rights and guarantees

- Organizations not to be dissolved or suspended by administrative authorities: **most extreme form of interference; right to appeal before independent court with suspending effect**
- Right of organizations to establish federations and confederations: **same rights of first-level organizations**
- Right of organizations to affiliate with international organizations: **international solidarity**

C98: objective and scope

- Completes C87, deals with relations between workers and employers
- Objectives: protection against anti-union discrimination and interference; promotion of collective bargaining
- Scope of application: all workers and employers and their organizations; armed forces and police (**interpreted narrowly**) and public servants engaged in the administration of the State (**strictly defined, on a case-by-case basis**) not covered

C98 in a nutshell

Arts. 1 & 3	Protection of workers against acts of anti-union discrimination
Arts. 2 & 3	Protection of workers' and employers' organizations against acts of interference
Art. 4	Promotion of collective bargaining

Acts of anti-union discrimination

WHAT?

- Acts calculated to make the employment of a worker subject to the condition that he/she shall not join a union or shall relinquish trade union membership; or 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
- E.g.: transfer, relocation, demotion, withdrawal of benefits or other restrictions

Acts of anti-union discrimination (Cont'd)

HOW?

- Specific legal provisions forbidding acts of anti-union discrimination
- Access to effective and rapid procedures to ensure application in practice
- Reversal of burden of proof
- Effective and sufficiently dissuasive sanctions

Acts of interference

WHAT?

- All acts, in particular those designed to promote the establishment of workers' organizations under the domination of employers/their organizations, or to support workers' organizations by financial or other means, with the object of placing them under the control of employers/their organizations

Acts of interference (Cont'd)

HOW?

- Specific legal provisions forbidding acts of interference
- Access to rapid and impartial procedures to ensure application in practice
- Effective and sufficiently dissuasive sanctions

Promotion of collective bargaining

- A fundamental right
- Nature: collective bargaining leading to collective agreements (precedence over individual contracts, with the exception of provisions in the latter more favorable to workers)
- Content: terms and conditions of employment (plus relations between employers and workers and relations between their organizations)
- Parties: workers' organizations; employers or their organizations

Scope of collective bargaining

- Free and voluntary negotiations
- Autonomy of the parties
- Possible at all levels, also for federations and confederations
- Negotiations in good faith: recognize representative organizations; endeavor to reach agreement; engage in real and constructive negotiations; avoid unjustified delays; mutually respect commitments made and results achieved

THANK YOU FOR THE
ATTENTION!