Case no. 18-3279
Our ref. PWA
16 September 2019

Comments from FH – Danish Trade Union Confederation – on the government's report regarding ILO Conventions 87 and 98

In the following FH – Danish Trade Union Confederation – present its comments to the Danish government's report on Conventions 87 and 98 regarding the right to organise and the right to collective bargaining.

By way of introduction, FH refers to earlier contributions from LO – The Danish Confederations of Trade Unions to reports on the DIS-Act – most recently in September 2016 and the subsequent comments/updates regarding the government's comments to the ILO to this date.

The independent Committee of Experts in its 2016 report **requested** the Danish government to make every effort to ensure full respect of the principles of free and voluntary collective bargaining so that Danish trade unions could freely represent all their members in collective bargaining process – Danish or equated residents as well as non-residents, working on ships sailing under Danish flag – and that collective agreements concluded by Danish trade unions may cover all their members working on ships sailing under Danish flag regardless of residence.

The Committee of experts also **requested** the Danish government to engage in national tripartite national dialogue and to take the necessary measures to enable all the relevant worker's and employer's organisations to participate therein, if they so wish, so as to find a mutually satisfactory way forward, and to indicate in its next report its outcome and any contemplated measures.

FH finds it deeply regrettable that the Danish government for more than 30 years now, based on varying arguments, has refrained from taking seriously the criticism of the Committee of Experts and the call to bring article 10 of the DIS-Act in accordance with the ILO's conventions.

Convention 98

In the report on Convention 98, the government refers to a recent amendment to the DIS-Act. FH recognises the importance of this change.

However, the amendment to the DIS-Act referred to in the government's report is in no way a sufficient answer to the requests in the report from the Committee of Experts.

The scope of the amendments are limited to vessels operating in Danish territorial waters or continental shelf whereas the amendment will have no effect to vessels already covered by the DIS-Act.

The case regarding the Danish International Ships' Register (DIS) has been ongoing since 1988, at which time FH's predecessor, LO, brought the legislative intervention to the attention of the ILO, and in 1989, when the Committee of Experts decided that article 10, 2 and 3 of the Act is not in accordance with ILO-Conventions 87, 98 and 111.

Convention 87

Regarding the report on Convention 87, FH reiterates that the Danish government's reference to the fact that a seafarer may, in accordance with the DIS-general agreement, but as an employee in accordance with article 10, 3 of the Act, choose to be a member of a Danish trade union is insufficient and must therefore state the following:

In accordance with article 7 of the DIS-general agreement, only the trade union organisations who are parties to the general agreement may assist seafarers cf. article 10, 3 of the DIS-Act in matters that originate from Danish legislation. Such a membership of a Danish trade union organisation is therefore immaterial to the collective agreement coverage, which is the fundamental precondition to a membership.

The DIS-general agreement is therefore not of importance to FH's criticism of article 10 of the DIS-Act because it clearly appears from the DIS-General agreement, article 1, that the parties' participation to the agreement generally presupposes that they "observe the right to conclude DIS-collective agreements with foreign trade union organisations and observe such concluded agreements in accordance with the DIS-Act."

FH reiterates that, in the construction of article 10 of the DIS-Act, with its division of negotiating powers to Danish and foreign seafarers, a labour law vacuum has been created which does not provide any actual right to collective bargaining for any trade union organisations. A Danish industrial dispute in the form of a strike against ships manned by seafarers without residence in Denmark, in accordance with article 10,3, is illegal since such workers are not covered by a collective agreement concluded in Denmark.

FH finds it urgent that the Danish government initiates actual dialogue on article 10 of the DIS-Act with all parties from the worker-side with a view to bringing it in accordance with the ILO's Conventions.