



Governing Body

350th Session, Geneva, 4–14 March 2024

Institutional Section

INS

Date: 1 March 2024

Original: English

Seventeenth item on the agenda

Report of the Director-General

Third Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Poland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

► Contents

	Page
Introduction	3
Draft decision	4
Appendix	5
Report of the Committee set up to examine the representation	5
I. Introduction	5
II. Examination of the representation	5
III. The Committee's recommendations	9

► Introduction

1. By a communication dated 30 November 2020, the Trade Union of Engineers and Technicians LOTOS Group (ZZIT LOTOS Group) submitted a representation to the International Labour Office pursuant to article 24 of the ILO Constitution, alleging non-observance by the Government of Poland of 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 Collective Bargaining Convention, 1981 (No. 154).
2. Poland ratified Conventions Nos 87 and 98 on 25 February 1957. It has not ratified Convention No. 154.
3. The Governing Body declared the representation receivable with regard to Conventions Nos 87 and 98 at its 341st Session (March 2021) and decided that, as it relates to Conventions dealing with trade union rights, to refer it to the Committee on Freedom of Association for examination in accordance with articles 24 and 25 of the Constitution of the ILO.¹
4. The provisions of the ILO Constitution concerning the submission of representations are as follows:

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.

5. By a communication dated 17 May 2021, in accordance with article 4(1)(c) of the Standing Orders concerning the procedure for the examination of representations, the Office invited the Government of Poland to supply any observations it might wish to make on the elements of the representation regarding the non-observance by Poland of Conventions Nos 87 and 98.
6. The Government of Poland submitted its observations in a communication dated 3 November 2021.

¹ GB.341/INS/14/5, para. 5.

► Draft decision

7. In the light of the conclusions and recommendations set out in the report of the Committee contained in document GB.350/INS/17/3, the Governing Body:
 - (a) approved the report of the Committee;
 - (b) decided to make the report publicly available and to close the representation procedure.

► Appendix

Report of the Committee set up to examine the representation

I. Introduction

1. Following the decision taken by the Governing Body at its 341st Session (March 2021), the Committee on Freedom of Association designated the following members to examine the representation alleging non-observance of Conventions Nos 87 and 98: Ms Vicki Erenstein ya Toivo (Government member, Namibia), Ms Renate Hornung-Draus (Employer member) and Mr Magnus M. Norddahl (Worker member).
2. The Committee adopted the present report on 1 March 2024.

II. Examination of the representation

A. The complainant's allegations

3. In its communication dated 30 November 2020, the Trade Union of Engineers and Technicians LOTOS Group (ZZIT LOTOS Group), representing 360 members, alleges that following a court decision of February 2019, its registration number (REGON number), which was attributed to it since the union's first registration in 1990, was deleted and replaced with a new registration number, as a result of which the union became a different entity, lost its attribute of a representative organization, was disregarded as a party to a collective bargaining process and thus, could not be a party to the additional protocol to the company's collective bargaining agreement. According to the complainant, this represents a violation of Convention No. 87 as it restricts the union's freedom of choice by transforming the structure in which it intended to operate, and a violation of Convention No. 98 as the decision of the district court deprived the union of the status of a representative organization and of the possibility to conduct collective bargaining and participate in the internal dialogue.
4. The complainant explains that it was part of an internal structure of the nationwide Trade Union of Engineers and Technicians (ZZIT), operating within Grupa LOTOS since 3 December 1990 and registered under No. 191220785 since 1996. Following an unclear financial situation in the ZZIT, the internal structure was registered anew in April 2013 as the ZZIT LOTOS Group, the name it has been using since 2004, under the same registration number. The registration meant the continuation of activities within the nationwide ZZIT (also registered under the same number) – as one of its structures – with its elected leadership. The ZZIT LOTOS Group operated in this manner as an entity with legal personality for several years and, in line with the Trade Union Act, obtained the status of a representative organization. According to the complainant, it represented 12 per cent of the employees in most of the companies in which it operated. However, on 12 December 2014, the national board of the ZZIT adopted a resolution by which it deregistered the ZZIT LOTOS Group from its structure. The complainant indicates that since intra-union affairs are not subject to judicial review, this issue was not examined by the courts. Five years after the resolution was adopted, on 15 February 2019, the court registrar changed the data for the ZZIT LOTOS Group by deleting the existing registration number and replacing it with a new one, thus recognizing that the union was not part of the structure of the nationwide ZZIT. The complainant alleges that as a result, the union was deprived of its representative status and suffered far-reaching consequences on its trade union freedoms, its

bargaining ability, as well as the right to participate in the social dialogue. The complainant considers that the court decision was in favour of the employer – as it now has one less representative trade union organization – and made it more difficult for it to conduct trade union activities. The complainant points out that while the dialogue is taking place at the enterprise in the LOTOS Group it has been deprived of the possibility to conduct dialogue on the most important issues as could not be a party to the Additional Protocol to the Company Collective Bargaining Agreement.

5. The complainant calls for a recommendation to the Government to introduce new mandatory fields in the National Court Register (information on how the entity was established, previous name, data on earlier registration), which would allow the identity of a lower structure organization which operates within a nationwide organization, to be clearly reflected in the Register.

B. The Government's observations

6. In its communication dated 3 November 2021, the Government explains that the ZZIT LOTOS Group was part of the ZZIT, which, in turn, is associated to the trade union federation All-Poland Alliance of Trade Unions (OPZZ). The OPZZ is a representative trade union organization at the national level. The ZZIT LOTOS Group was entered into the National Court Register as an organizational unit of the ZZIT under the same registration number. However, on 12 December 2014, the ZZIT adopted a resolution by which it removed the complainant from its structure.
7. The Government indicates that the Act of 23 May 1991 on Trade Unions establishes the fundamental principle of freedom of association and self-governance of trade unions and gives workers full freedom to establish trade union organizations of their own choosing. According to article 1(1) and (2) of the Act, a trade union is an organization which, in its statutory activities, is self-governing and independent from employers, state administration and local self-government and from other organizations. A manifestation of self-governance and independence is the right of a trade union to specify in its statute, inter alia, the principles of acquisition and loss of membership and the organizational structure of a union, with the indication which organizational units of a union have legal personality (article 13 of the Act). In addition to the statute, the organizational structures of trade unions are also determined by trade union resolutions (article 9 of the Act). Trade unions are free from interference by the State and other entities, but they must observe the applicable legislation, including the requirement to ensure democracy in a trade union organization. A trade union may merge with another trade union or divide into other trade unions pursuant to its statutes. Trade unions also have the authority to interpret their own statutes. The division of a trade union is possible in two ways – by separation or by establishment of new trade unions and must be reflected in the National Court Register: a newly established union must be entered in the National Court Register (article 14(1) of the Act) and a dissolved union must be deleted (article 17(1)(1) of the Act). The entry in the National Court Register is only a consequence of the changes made; it is not initiated by the court. If there is a dissolution of a trade union, all related information must be reflected in the registry. Pursuant to the legislation in force, the ZZIT could become divided by having separated the ZZIT LOTOS Group from its structures. However, the Ministry of Family and Social Policy has no detailed information or documents on such a division. The Ministry also has no information whether persons belonging to the ZZIT LOTOS Group, after possible separation of the ZZIT LOTOS Group, as an organizational unit, from the ZZIT remain members of the ZZIT or have been deprived of this membership.

8. The Government further explains that the registration number as it appears in the National Court Register has been automatically generated and is not a result of a decision of the registry court. This number is informative and is assigned for statistical purposes only; it does not change the legal capacity of an organization and does not affect the ZZIT LOTOS Group status of a representative trade union organization. The deletion of the registration number and assignment of a new registration number reflected the changes in the ZZIT structure, of which the ZZIT LOTOS Group was no longer a part. The ZZIT LOTOS Group acts on the basis of its own statute and its own entry in the National Court Register, independent of the ZZIT. Since the ZZIT LOTOS Group is a separate entity from the ZZIT, both entities cannot have the same number. Therefore, the registry updated the data ex officio pursuant to article 24(6) of the Act on the National Court Register, which stipulates that in cases justified by safety of trading, the registry court may ex officio delete data inconsistent with the actual state of affairs or enter data corresponding to the actual state of affairs, if the documents constituting the basis for entry or deletion are in the registration files, and this data is important.
9. The Government further indicates that collective agreements and additional protocols are concluded by all trade union organizations which negotiated that agreement, or at least all representative trade union organizations within the meaning of article 25³ (1) and (2) of the Act on trade unions. It follows from the above that the only condition for the participation in social dialogue at the company level is to have the status of a company trade union organization. Pursuant to article 241¹⁹ of the Labour Code, which stipulate that in the event of a merger or division of trade unions, both the rights and obligations of a party to a collective agreement are transferred to organizations created as a result of these transformations.
10. With regard to the complaint's demands that the following fields be obligatorily introduced in the National Court Register: "information on how the entity was created", "previous name" and "date of previous registration", which will contain the name of the register, the name of the court keeping this register and the number in the register, the Government indicates that pursuant to para. 147 of the Regulation of the Minister of Justice of 17 November 2014 on the detailed manner of keeping registers included in the National Court Register and the detailed content of entries in these registers", which, pursuant to its section 1, regulates the registration of associations, other social and professional organizations, foundations and independent public healthcare institutions for foundations, associations and other social and professional organizations, the following information is entered: data on the previous registration, which includes: the name of the register, name of the court keeping the register, number in the register. In the case of the entry of an entity having the status of a public benefit organization, which is a legal person or a non-corporate unit other than those subject to entry in the National Court Register, data on previous registration is disclosed. The Government indicates that it is therefore not clear what the requested change would consist in as the circumstances whose inclusion is demanded by the complainant are subject to disclosure in the National Court Register.
11. The Government concludes by indicating that the transformation of the structures of the ZZIT does not constitute a violation of Convention No. 87; to the contrary, it is the expression of the freedom of choice and transformation of trade union structures provided for in the Convention – the ZZIT had the right to change its structures, including by removing the complainant from them. No organization or administrative body has interfered with the transformation of the structure of the ZZIT. The Government further indicates that it did not violate Convention No. 98 as all trade unions, without exception, may participate in collective bargaining. However, the participation of at least one of the representative organizations is a condition for conducting bargaining. Newly formed organizations can join bargaining.

C. The Committee's conclusions

12. *The Committee notes that the Government agrees with following facts reported by the ZZIT LOTOS Group in its representation. The ZZIT LOTOS Group was part of the ZZIT and were both registered under the same registration number. On 12 December 2014, the national board of the ZZIT adopted a resolution by which it removed the ZZIT LOTOS Group from its structure. On 15 February 2019, the ZZIT LOTOS Group registration number was replaced by another to recognize that the union was not part of the structure of the nationwide ZZIT. The Committee notes that while the ZZIT LOTOS Group alleges that as a result, the union was deprived of its representative status and suffered far-reaching consequences on its trade union freedoms, its bargaining ability, as well as the right to participate in the social dialogue, the Government indicates that the transformation of the structures of the ZZIT does not constitute a violation of Convention No. 87; rather it is the expression of the exercise by the ZZIT of its rights provided by the Convention. The Government further indicates that it did not violate Convention No. 98, as all trade unions, without exception, may participate in collective bargaining and refers in this respect to article 25³ (1) and (2) of the Act on trade unions.*¹
13. *The Committee recalls that under Article 2 of Convention No. 87, free exercise of the right to establish and join trade unions implies the free determination of the structure and composition of unions.*² *The Committee further recalls that under Article 3 of Convention No. 87, workers' organizations have the right to organize their administration without interference by public authorities. This right also implies that matters such as the right of a trade union organization to determine its membership and to settle any internal dispute should be left to the discretion of the members of the trade union, without any intervention by the public authorities.*³ *The Committee observes that the ZZIT decision with regard to the ZZIT LOTOS Group was an internal decision taken autonomously, without interference by the public authorities. The Committee moreover recalls that Article 2 of Convention No. 98 is designed to protect workers organizations against employers' organizations or their agents or members and not against other workers organizations or the agents or members thereof. Inter-union rivalry is outside the scope of the Convention.*⁴ *The Committee notes that the complainant does not refute that the matter is of an intra-union nature when it indicates that as intra-union affairs are not subject to judicial review, this issue was not examined by the national courts. The Committee notes that the complainant organization remains registered, under its own registration number and continues to operate. The Committee understands from the information provided by the complainant organization that collective bargaining does take place at the enterprise in question and that, as indicated by the Government, pursuant to the legislation in force, ZZIT LOTOS Group can join it. The Committee thus considers that this matter does not call for further examination.*

¹ Article 25³. Trade unions.

Representative trade union organization

1. A representative trade union organization is a trade union organization:

- (1) Which is an organizational unit or a member organization of a trade union organization recognized as representative within the meaning of the Act on the Council for Social Dialogue, which comprises at least 8 per cent of persons engaged in paid work for the employer, or
- (2) Which is an organization which comprises at least 15 percent of persons engaged in paid work for the employer.

2. If none of the trade union organizations meets the requirements referred to in paragraph 1, the representative trade union organization shall be the organization with the largest number of persons engaged in paid work for the employer.

² ILO: *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, ILC.101/III/1B, 2012, para. 89 and also *Compilation of decisions of the Committee on Freedom of Association*, sixth ed. (2018), para. 502.

³ ILO, 2012 *General Survey*, para. 113.

⁴ ILO. *Compilation*, para. 1617.

III. The Committee's recommendations

14. **The Committee recommends that the Governing Body:**

- (a) approve the present report;**
- (b) make this report publicly available and close the present representation procedure.**

Geneva, 1 March 2024

(Signed) Ms Vicki Erenstein ya Toivo
(Government member)

Ms Renate Hornung-Draus
(Employer member)

Mr Magnus M. Norddahl
(Worker member)