

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

**CORE LABOUR STANDARDS IN SWITZERLAND
AND LIECHTENSTEIN**

**REPORT FOR THE WTO GENERAL COUNCIL'S EXAMINATION OF
THE TRADE POLICIES OF SWITZERLAND AND LIECHTENSTEIN**

(Geneva, 15 - 17 December 2008)

EXECUTIVE SUMMARY

Switzerland has ratified the eight ILO core labour standards. Liechtenstein, which is not a member of the ILO, has not ratified any of these conventions. In each area of legislation and practice, Switzerland and Liechtenstein need, however, to adopt measures to implement the commitments they made in Singapore, Geneva and Doha in the WTO Ministerial Declarations between 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work adopted in June 1998.

Whilst Switzerland has ratified both of the ILO core conventions protecting trade union rights, the legal protection provided to trade unionists in the country is inadequate. In practice, collective bargaining is sometimes undermined by bad faith and problems of interference. Restrictions on the right to strike have persisted for several years, to the extent that strikes are actually banned in law by certain cantons and municipalities. The government does not undertake efforts to promote the freedom of association Conventions.

Switzerland has ratified the two ILO core conventions against discrimination. Despite several federal initiatives aimed at combating such discrimination women's situation on the labour market remains inferior to that of men. More women than men have poor quality jobs. A substantial degree of the wage disparities between men and women is the result of discrimination. Many non-European workers are discriminated against in recruitment and they are over-represented in insecure and poor quality jobs.

Switzerland has ratified the two ILO core conventions against child labour. The minimum legal age for child labour is set at 15 and school is compulsory up to that age. Swiss legislation on child prostitution is not in conformity with the Convention, however. In practice, child labour is not a major problem in Switzerland.

Switzerland has ratified the two ILO core conventions against forced labour and it is banned in law. The public authorities are trying to eradicate trafficking of women for purposes of prostitution. In practice, the working conditions of certain domestic workers may be similar to forced labour.

Liechtenstein has introduced laws in all the areas covered by the eight core labour standards. In practice workers' rights are respected, but there are discrimination problems on the labour market that the government has been trying to address.

SWITZERLAND AND INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS

Introduction

This report on the respect of core labour standards by Switzerland and Liechtenstein is one of a series of reports produced by the ITUC based on the Ministerial Declaration adopted by the first Ministerial Conference of the World Trade Organisation (Singapore, 9-13 December 1996) and ratified at the 2nd Ministerial Conference of the WTO (Geneva, 18-20 May 1998), in which the ministers reaffirmed their commitment to respect of the “internationally recognised core labour standards”. The 4th Ministerial Conference (Doha, 9-14 November 2001) reiterated that commitment. These standards were again affirmed in the Declaration of the International Labour Organisation (ILO) on Principles and Fundamental Rights at Work, adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The Union Syndicale Suisse (Schweizerischer Gewerkschaftsbund) is affiliated to the ITUC.

The Swiss economy is one of the most developed and prosperous in the world, despite the country’s lack of raw materials or access to the sea. The unemployment rate is structurally low, as is the rate of inflation. The country’s industry, which is focused on exports, is mainly specialised in products with high added value, whilst its services are dominated by the banking sector. Agriculture represents around 1.5% of the GDP, while industry represents 34% and services 64.5%. Switzerland is a safe haven for investors, partly owing to its maintenance of banking secrecy. Switzerland has also managed to maintain the long-term value of its currency.

Switzerland’s general approach is to import raw materials and export high-quality manufactured goods. According to estimates in 2007, exports are worth around 200 billion dollars whilst imports amount to 187 billion dollars. The main exports are machines and equipment, chemical and pharmaceutical products and clocks and watches. The main markets for exports are in Europe, headed by Germany. The main imports are agricultural products, minerals, cars, metals and textiles. Most imports come from European countries.

Switzerland is a member of the European Free Trade Association (EFTA), which also includes Norway, Iceland and Liechtenstein. It has signed bilateral agreements with the European Union. EFTA itself has also signed bilateral agreements with many countries, including Canada, Chile, Mexico, South Korea and, most recently, Colombia. In 2008, negotiations with the Gulf Cooperation Council and Japan are currently being finalised.

I. Freedom of association and the right to collective bargaining

Switzerland ratified ILO Convention N° 87 (1948) on freedom of association and protection of union rights in 1975 and ILO Convention N° 98 (1949) on the right to organise and to bargain collectively in 1999.

A clause in the Federal Constitution (article 28), which came into force in January 2000, explicitly recognises workers' right to form and join trade unions. Swiss legislation does not permit the dismissal of trade union representatives except in cases where the dismissal is considered to be legally justified. However, the law does not provide for the reinstatement of trade union leaders who have been unfairly dismissed. At most, the judge may require an offending employer to pay compensation amounting to six months' wages to the victims of such measures.

Though comparatively rare, dismissals of trade unionists have been increasing in Switzerland, facilitated by the lack of effective protection preventing employers' unfair breaching of employment contracts. In addition, the fact that courts cannot order reinstatement in a company has something of a dissuasive effect on the exercise of trade union rights.

That prompted the ILO Governing Body, in November 2006, to approve unanimously a decision by the Committee on Freedom of Association calling on Switzerland to provide better protection to workers' representatives in companies. The Federal Council was requested to take measures to provide the victims of unfair anti-union dismissals with the same type of protection afforded to victims of dismissals in breach of the principle of equality between men and women, including the possibility of reinstatement in the offending company.

The right to negotiate collectively is recognised in law, however in practice there are several limitations:

The lack of clear rules regarding the representativeness of trade union organisations has led certain employers to choose the most accommodating of the workers' organisations, even where the latter are not the most representative within the company. In certain cases, staff associations part-financed by employers have been set up in order to avoid negotiating with the unions.

According to the unions, the Swiss State has been showing no interest or determination with regard to enforcing collective agreements for several years now. The authorities have been doing nothing to promote voluntary bargaining. As a result, based on the latest Federal statistics, the level of workers covered by collective agreements has declined.

In addition, several cases of bad faith collective bargaining have been reported recently. For example, there was no collective agreement covering the construction industry after autumn 2007. The *Société suisse des entrepreneurs (SSE)*, which is the building sector's employers' organisation, unilaterally ended collective bargaining at the sectoral level, which provoked an industrial dispute. The government tried to act as a mediator but the SSE management did not keep its promise to defend the agreement to its members: the members of the SSE were informed that the outcome of the negotiations was not final and did not, therefore, ratify the agreement.

Following numerous strikes, the agreement was finally ratified and came into force on 1 May 2008.

Following its recent establishment in Switzerland, Aldi, the German retail giant, has banned its employees from discussing their working conditions with the media and the unions. The trade union Unia, which asked the management to open collective bargaining, had its request turned down. The union has been unable to verify whether the company has, as it claims, made the basic changes to individual employment contracts needed to ensure respect of freedom of association.

The right to strike is specified by the Federal Constitution. Striking is therefore a Constitutional right, as long as it relates to labour relations and is consistent with the obligations "to keep the peace at work or to have recourse to conciliation." The Constitution requires that labour conflicts be resolved either through negotiation or through mediation. To this end, it is important that a strike be led by an organisation having the capacity to conclude collective work agreements, in connection with matters that can be dealt with through collective bargaining. Furthermore, strikes must abide by the principles of the equitable conduct of collective disputes, and in particular that of proportionality.

If a strike is ruled unlawful, the employer is entitled to terminate immediately the employment contract of any employee who has taken part in it. S/he can furthermore demand compensation amounting to one quarter of the monthly salary and, if appropriate, payment of additional damages. Trade unions can also be the subject of criminal proceedings.

Article 357a of the Code of Obligations includes the obligation to maintain social peace in connection with all matters governed by a collective agreement. Some two-thirds of collective agreements in force in Switzerland include a clause whereby the trade unions undertake not to take strike action as long as the agreement remains in force.

Nevertheless, Swiss trade unions note the lack of mechanisms to provide compensation for state employees who cannot always join strike actions. For instance, there are no conciliation and arbitration procedures to resolve public sector disputes.

Furthermore, employees working in certain cantons and municipalities are also forbidden to strike. For instance, Nidwalden half-canton and Fribourg canton have banned the right to strike for their employees. Some municipalities in Fribourg have adopted these canton provisions in their own regulations. In other cantons, changes are being introduced to bring legislation into line with the Federal Constitution.

The Federal Constitution acknowledges the employer's right to temporarily deny employees work (lock-out) under the same provisions that recognise the right to strike. Swiss trade unions report that lock-outs can be used selectively, for instance to target strikers exclusively.

Lastly, the Swiss legal system requires the implementation of international treaties by national legislation. In practice due to the absence of specific national provisions, the ILO Conventions do not grant individuals and trade unions rights that can be defended in a national court. For instance, in 2005 the Federal Tribunal ruled that the trade union Comedia could not cite Conventions 98 and 154 to demand protection against acts of interference. Although such a system does exist in numerous countries, the Swiss government is selective in its implementation

of the Conventions. Despite several ILO recommendations, the government argues that its system is appropriate and that no changes are needed.

Conclusions

Trade unionists are granted inadequate legal protection in Switzerland. In practice, collective bargaining is sometimes hampered by bad faith and problems of interference. Limitations on the right to strike have persisted for several years, to the extent that strikes are legally banned by some cantons and municipalities. The government does not undertake efforts to promote the freedom of association Conventions.

II. Discrimination and equal pay

In 1972, Switzerland ratified ILO Convention N° 100 (1951) on equal remuneration, and in 1961 ILO Convention N° 111 (1958) on Discrimination in Respect of Employment and Occupation.

Article 8 of the new Federal Constitution, which came into force on 1st January 2000, states that nobody should suffer discrimination on account of their origin, race, gender, age, language, social situation, lifestyle, religious, philosophical or political beliefs, nor on account of any physical, mental or psychological deficiency. Article 8 2) affirms that men and women have equal rights and that the law should ensure equality in legislation and practice, with particular regard to families, education and employment.

There is a Federal Bureau for Equality between Women and Men, and the Federal Commission for Women is striving to eradicate direct and indirect discrimination between the genders. Several cantons and large cities have offices dealing with gender issues.

Despite some government initiatives to reduce the pay gap between men and women, it remains at approximately 23% in the private sector and 10% in the public sector, according to public sources. A report published by the government in June 2006 estimates that 40% of the pay gap between men and women can be attributed to discrimination. Furthermore, in practice, women are over-represented in low-skilled jobs and obtain promotions less easily than men.

Sexual harassment is forbidden by law. Nevertheless, according to a government study, 6.5% of interviewees say they have suffered sexual harassment during the past twelve months and 18% say they have suffered it at least once during their professional career.

The law facilitates access to the courts for those who consider that they have suffered discrimination or harassment. If employers fail to adopt reasonable measures to prevent sexual harassment, they are liable to fines of up to six months of the worker's salary.

Foreign population groups say they suffer discrimination in hiring and at the workplace. They report not enjoying the same access to opportunities for training and advancement in their professional careers. Muslims are believed to be frequent targets. Some employers forbid the

wearing of the Islamic headscarf at the workplace. In practice, foreign workers are over-represented in work offering low job security.

A 2006 study by Neuchâtel University confirms this trend. It shows that young adults whose parents come from countries outside the EU suffer discrimination in the marketplace. Indeed, these second-generation immigrants, who have had the same education as youngsters born to Swiss or European parents, have much less chance of finding jobs.

Another report, in 2003, by the Swiss Forum for Migration and Population Studies, specifically examined discrimination in hiring. According to this study, minorities from non-EU countries suffer the worst discrimination on recruitment.

Conclusions

Despite several federal initiatives to combat discrimination, women enjoy a much less favourable situation than men in the labour market. More of them have lower-quality jobs. A substantial proportion of the pay gap between men and women can be attributed to discrimination. Numerous non-European workers suffer discrimination in hiring and are over-represented in poor-quality jobs and work offering poor job security.

III. Child labour

In 1999, Switzerland ratified ILO Convention 138 (1973) on the minimum age for admission to employment and in 2000, Convention 182 (1999) on the worst forms of child labour.

The minimum age for admission to employment is 15 years and school is compulsory until that age. In June 2006, the Federal Assembly adopted an amendment to employment legislation to reduce the age limit from 20 to 18 years for the application of more robust legal protection. The employment of youngsters aged 15 to 18 years is therefore subject to strict regulations. These youngsters cannot work at night or on Sundays and cannot perform tasks injurious to their health or safety. Children from the age of 13 years are allowed to work a maximum of 9 hours a week during school term time and 15 hours a week during school holidays.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has nevertheless noted that Swiss penal legislation is not entirely consistent with the Convention as regards child prostitution. The law does not forbid the prostitution of children aged 16 years, this being the legal age of sexual consent in Switzerland. However, according to the CEACR, the age of sexual consent cannot imply the freedom to engage in prostitution without detriment to one of the objectives of the Convention, namely, to prevent the worst forms of child labour. Indeed, according to the terms of the Convention, sexual relations with a child under 18 years of age for payment are forbidden even with the latter's consent. The Commission has therefore insisted that the government adopt the necessary measures to ban and punish the use of children aged between 16 and 18 years for prostitution.

Conclusions

The minimum age for the employment of children is set at 15 years and school is compulsory until that age. Swiss legislation on child prostitution is not consistent with the Convention, however. In practice, child labour is not a major problem in Switzerland.

IV. Forced labour

In 1940, Switzerland ratified ILO Convention 29 (1930) on forced labour and in 1958 ILO Convention 105 (1957) on the abolition of forced labour.

The Criminal Code forbids forced labour and trafficking in human beings. However several reports seem to show that human beings are being forcibly transported to Switzerland, principally for the purpose of their sexual exploitation. The federal police say that between 1,500 and 3,000 victims of trafficking in human beings are resident in the country, most of them women from central Europe, the countries of the former Soviet Union or Southeast Asia.

Cases have also been reported of domestic workers employed in conditions similar to forced labour.

Conclusions

The law forbids forced labour. The authorities are trying to halt the traffic in women for purposes of prostitution. In practice the working conditions of some domestic workers can be tantamount to forced labour.

CORE LABOUR STANDARDS IN LIECHTENSTEIN

Liechtenstein's economy is very open and dominated by financial services. Liechtenstein is a member of the European Free Trade Association (EFTA)

The law states that all workers, including foreigners, are entitled to form and join a trade union of their choice and to choose their representatives. However, the law does not provide for protection of trade unionists against discriminatory acts. In practice, workers enjoy freedom of association and the right to collective bargaining. Some 25% of workers are covered by collective agreements.

The right to strike is not recognised by the Constitution or by labour legislation. Public employees are not allowed to strike.

The law forbids discrimination based on race, sex, language or social status, and this applies in the labour market, too. In May 2006, Parliament introduced amendments to the laws governing employment contracts and equal opportunities in order to combat sexual discrimination at work. Since 1 January 2007, a new law on equal opportunities forbids discrimination against disabled people in employment and education.

In practice, however, women have little opportunity to secure jobs traditionally held by men. Men earn more than women and the principle of equal pay for jobs of equal value is not, in practice, observed.

A government report on the integration of foreign population groups published in August 2007 shows that the latter are on average less well qualified and more likely to fall below the poverty line.

The minimum age of access to employment is 16 years. Some exceptions are made for children from the age of 14 years, who can be allowed to work in non-arduous jobs for a few hours a week. Laws, policies and programmes protect children from exploitation in the workplace. In practice, child labour is not a problem.

The law forbids forced or compulsory labour and in practice such work does not seem to exist in Liechtenstein.

Conclusions and Recommendations

1. The governments of Switzerland and Liechtenstein must improve their legislation to protect trade unionists and provide for the reinstatement of trade unionists who have been unfairly dismissed.
2. The Swiss government must strengthen the promotion of ILO Convention 98 on freedom of association and the right to collective bargaining.
3. All Swiss cantons and municipalities must bring their legislation into line with international conventions and limit the ban on the right to strike to public employees working in strictly essential services.
4. Active measures are needed to reduce the constraints confronting women in employment in both Switzerland and Liechtenstein.
5. Both governments must focus on eliminating the pay gap between men and women.
6. The Swiss government must adopt urgent measures to eliminate the discrimination in hiring suffered by foreign minorities.
7. The Swiss government must bring its legislation on child prostitution into line with international conventions.
8. The Swiss government must examine the situation of foreign domestic workers more closely.
9. The Swiss government must make greater efforts to end trafficking in women for the purpose of sexual exploitation.
10. In accordance with the commitments made by Switzerland and Liechtenstein at the WTO ministerial conferences in Singapore and Doha and with Switzerland's obligations as an ILO member, the governments must submit regular reports to the WTO and ILO on changes in their legislation and their plans to apply all the core labour standards.
11. The WTO must draw the Swiss and Liechtenstein authorities' attention to the commitments that they made at the WTO ministerial conferences in Singapore and Doha to respect the core labour standards.

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