

**ADJUDICATION AND INSTITUTIONALISATION OF THE PORTUGUESE SYSTEM OF
INDUSTRIAL RELATIONS: THE *SOFT LAW* OF THE INTERNATIONAL LABOUR
ORGANIZATION PROCEDURES FOR COMPLAINTS AND REPRESENTATIONS¹**

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Abstract

The conflict is a basic structural and integral element of both labour relations and labour law. The transnational solutions for labour conflicts have an increasing complementary role to national systems, mainly in the today's context of globalisation and transnationalisation of industrial relations. For this purpose, the International Labour Organization (ILO), an agency of transnational labour conflicts regulation and a supervising entity of *core labour standards* enforcement, has implemented supervisory mechanisms either special (complaints and representations) or regular (regular supervisory system). Drawing on the documentary analysis of all the complaints and representations procedures, we intend to clarify the relationship between Portugal and ILO, particularly after 1974. The use of this mechanism reveals emerging social tensions within industrial relations systems, as well as it shows the international projection of the conflicts of interest and expresses the demand for

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transnational solutions of national socio-legal conflicts. In the Portuguese case, the post 1974 period demonstrates several particularities, as its system of labour relations has been subject to the dynamics of the processes of democratic transition and consolidation, as well as to the re-institutionalisation of the system itself. Focusing on the special supervisory mechanisms we intend to understand ILO's role in these dynamic of transformation and consolidation of the Portuguese system of industrial relations.

INTRODUCTION

The international labour standards are a set of guidelines or *standards* outlining the conduct of the labour market actors and a regulatory model in which ILO member states should inscribe their policies and orientations within its area of competence. The decision of affiliation to the ILO system requires progressive harmonisation with this compromise.

The international labour standards (expressed in conventions and recommendations) are aligned with a Constitution wich has been formally adopted upon ILO's institution.⁵ The preamble of the Constitution defends the fact that the non "adoption of humane conditions of work is an obstacle in the way of other nations which desire to improve the conditions in their own countries" (OIT, 2007a: 5). The supervision of the standards enforcement is part of the mechanisms created by ILO to ensure Member States compliance with the model set up by the Organization: a legislation defending and promoting decent work grounded on basic criteria of labour law.⁶ This supervision has

⁵ The Constitution of the International Labour Organization has been adopted in 1919. It has been later amended in 1922, 1934 and 1945. Today's version dates from 20 April 1948. It was written by the Commission on International Labour Legislation composed by representatives of nine countries, including workers and employers' delegates; it is chaired by the President of the American Federation of Labor (AFL). The Constitution has an annex, the Declaration of Philadelphia, adopted in 1944 where all the fundamental principles of the Organization are enshrined.

⁶ In 1969, on the occasion of its 50th anniversary, the International Labour Organization was awarded the Nobel Peace Prize, and the President of the Nobel Committee had stated that ILO was "one of the few institutional creations human race could be proud of" (cf. Quadros, 2009).

been institutionalised through the mechanisms foreseen in ILO Constitution and its competent bodies.

Alongside the regular supervisory system, ILO has developed a system of complaints and representations, working as an appeal body for alleged conventions infringement. The mechanisms of complaints and representations have slightly different implications (which shall be further addressed) and may be both put forward either by the governments of ILO's State members or by employers and workers' organizations. The present analysis is made within that context. Therefore, we have done the inventory and analysis of the complaints and representations procedures concerning Portugal, in the period between 1919 and 2007, based on alleged conventions infringement. As described below, we have focused our analysis in the years between 1960 and 2007, as the special supervisory system – even though it is broadly previewd in ILO Constitution – has been only formally instituted from the fifties onwards of the XX century. Along with this formal question, the Portuguese political context between the thirties and the end of the sixties was an inhibitor factor of the freedom of openness of the country to the outside, and of the development of a fair and free system of industrial relations (grounded on the ILO principles), which limited the possibilities of regulation of conflicts at the international level as well as ILO influence as an agent of normative production.

The use by the national social actors of the ILO system of complaints and representations is relevant to the configuration of the Portuguese system of industrial relations, considering that the changes and tensions emerging from labour relations gain expression and voice within these mechanisms.

In fact, and opposite to the majority of the cases selected to this comparative analysis (western world countries) in which the institutionalisation of the system of industrial relations occurred in the post-war period and found its sustainability within the context of welfare states expansion and of labour and social citizenship rights extension, the Portuguese system of labour relations was subject to the dynamics of the processes of democratic transition and consolidation, as well as to the re-institutionalisation of the system itself.

ILO system of complaints and representations is analysed in this article based on three functions: (1) political function as a result of the mediation State/labour civil society, (2) instrumental/procedural function referring to the regulation of conflicts and (3) symbolic function related to the setting/expression of social expectations. The *soft law* characteristics associated to this mechanism as well as its results shall be also considered.

Following a qualitative and intensive research approach we have done, at an early stage, a documentary and content analysis of all the complaints and representations procedures. For the purpose, we have built up and applied a guide for each and every one of the cases and have used the following sources of information⁷: the complaints/representations procedures filed in Ministry of Labour and Social Solidarity archives⁸; the yearly Official Bulletins of *Bureau International du Travail* (BIT) (1960 to 2005); and the ILO website⁹.

Based on the application of such guide it became possible to create analysis grids for each complaint/representation procedure as well as to quantify the procedures by subject, by ILO's recommendation and by Portuguese governments.

⁷ The guide involved the following indicators: Subjects; Dates; File numbers; Classification; Scope; Complaint's object; ILO Final Decision (conclusions and recommendations); Procedure Length; Practical Effects; Complaints running simultaneously in other international fora; Other relevant information.

⁸ Comprise all documents exchanged about the subject between the syndicates and ILO, the syndicates and the Portuguese government and between the Portuguese government and ILO.

⁹ Consulted between 2005 and 2008, the period of our research project that resulted in the present paper.

1. TRANSNATIONAL SPACE AND THE LABOUR CONFLICT REGULATION

The “conflict” has been historically present in labour market being a basic and integral element of both labour relations and labour law (Kahn-Freund, 1977; Barbash, 1984; Caire, 1991; Lyon-Caen, 1972; Ewald, 1985), a structural factor which has since early led the systems of industrial relations and labour law to include it as part of the socio-legal forms of regulation, attentive to the particularities of the working world, and which the national systems for the regulation of conflicts and of access to labour law and justice have emerged from.

The recognition of the labour conflict as a human right at the international level is enshrined in the Universal Declaration of Human Rights (UDHR) adopted in 1948, particularly in article 23 whereby the right to form and join trade unions for the protection of the workers’ interests is granted.

The right of freedom of association, to form and join trade unions, to conduct collective bargaining as an integral part of the workers’ fundamental rights are also listed in the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, in the Universal Declaration of Civil and Political Rights (1966), as well as in the revised European Social Charter (1996). These legal instruments demonstrate the society’s commitment to the defence of basic public freedoms and the individual rights deemed as fundamental to the free use of union rights. Such commitment defence is visible in the ILO Constitution and in the International Labour Code.

The role of the conflict in labour relations structuring is, nevertheless, as relevant as the one recognised to the different modalities of bargaining and of social dialogue. Such matters, in a broad sense, have been a constant feature of the history of industrial relations and labour law and have therefore contributed to the development and institutionalisation of the different models of labour conflicts regulation. The process of juridification of labour relations underlines the diversity of the situations where principles like collective autonomy, self-regulation, association, State intervention and legal pluralism point out.

At the international level, transnational regulation pacts and agencies with a labour focus have converged in a common guiding line with regard to the forms of labour conflicts

settling, grounded on three main ideas: promotion of social dialogue as well as self-regulation; increment of the alternative dispute resolution (RAL); and development of prevention mechanisms.

A human rights approach envisaged to the resolution of conflicts emerging from its implementation leads to the analysis of the compliance procedures structure. The transnational solutions for the regulation of labour conflicts have an increasing complementary role to national systems, mainly in the today's context of globalisation and transnationalisation of labour relations whereby national states show growing difficulties in handling with this kind of conflicts.

In the post II World War period the national systems of industrial relations operated within a context that could be called of “national autonomy internationally built up”, which worked partially because the autonomy of national economic areas were protected by an international legal regime (Ruggie, 1983). The main elements of this international regime were the *Bretton Woods System* and ILO. However, this autonomy did not just result from the international legal regimes but also from the national and international economic and political environment. On the one hand, “the international efforts to improve the industrial relations were concentrated on establishing rules and procedures to enhance the effectiveness of the national systems; on the other hand, ILO role was to draw up and approve international treaties aimed at setting up standards that would be enacted and enforced at the national level” (Langille, 1998; Leary, 1996), i.e., ILO had no effective power in the enforcement of international standards.

The post war system was characterised for a set of changes which had an impact, under the aegis of globalisation, at the economic, political and social levels. Facing a global economy with its inherent risks it was necessary to understand the deep technological changes, the changes related to the establishment of new economic parameters, the political changes, those happening in the capital markets, and those substantiated in a different way the State started to be looked at in terms of relevance to the economy and subsequently the changes in labour relations.

Supported by the deepening of the existing academic literature it can be stated that this transnational vision of the industrial relations does indeed exist (Hassel, 2008; Haworth and Huges, 2003; Trubek *et al.*, 2005). Such vision rejects the idea that the possibilities of regulation are limited to the choice between the national and the global, and representations that it is possible to create more complex procedures whereby the several normative areas intertwine at different levels as well as across borders, developing standards, local practices, national legislation, supranational forums and international law in the ultimate interest of the workers and their rights' effective protection.

It is though proposed a more solid perspective of this vision of the industrial relations whereby labour interaction is reinforced, as well as the management and the role of the State in the setting of operational standards (Dunlop, 1993); the perspective of legal pluralism enhancing the need of understanding how different overlapping standards may affect several semi-autonomous social fields (Arthurs, 1996); the perspective of the international regime (Krasner, 1983).

Firstly, one cannot give up over national systems as they remain the basis of industrial relations. However, to become fully effective they should be supported either by transnational actors' involvement at the national level, and by truly transnational standards that may alter and replace the usual ruling. Secondly, one cannot fully trust in public action, in other words we have to remember that industrial relations "systems" were partially built up upon different forms of private ordinance. Thirdly, one cannot look for just one type of normative sources; the functioning of the transnational regime of industrial relations can only be built up weaving a net of different public and private normative sources at the different levels. Finally, it is important to be aware about transnational actors and advocacy networks, because they play an important role in the mobilisation of rules belonging to different systems so as to create a stabilising web that surpasses the national".

In what refers to the constituent elements of the regime of regulation of labour conflicts, whenever looked at from the transnational point of view, we must stand out the interaction between the different principles of regulation and the non-judicial forms for the regulation of conflicts, the biggest number of transnational instruments of regulation. From a transnational point of view, labour conflicts only seldom arrive to international courts.

Naturally that the informal ways to regulate conflicts, along with the market principle, are one of the main ways of regulation of labour conflicts, namely via dissuasion and suppressed demand (Ferreira, 2005: 200-214).

Although traditionally “international labour standards regarding the regulation of labour conflicts have a general character and reflect the diversity of the existing national systems” (ILO, 1999), the subject has acquired, in the end of the nineties, a greater visibility as a consequence of the preparatory meetings of ILO Conference planned for 2001 by the Governing Body. The agenda for the reforms to be carried out in the instruments of regulation of labour conflicts reflects the differences of opinion held between the members of the Governing Body. One of the most prominent tensions was whether the intervention should assume the form of a general discussion or of a normative initiative” (ILO, 1998).

Though the Governing Body has decided to maintain this item in 2001 Conference agenda and to submit it to a general discussion, this shows the lack of consensus between the members. The contradictory character of this debate has been proven by the position adopted by Member States in the course of the consultations held: thirteen Member States agreed with the proposal of submitting the subject to a general discussion; out of the Governments defending a normative initiative, a subject deemed as “particularly sensitive”, Austria has suggested the adoption of a recommendation and Australia advocated for a preliminary general discussion followed by the adoption of standards (ILO, 1997); Germany raised serious reservations, though without explaining them, to the inclusion of such matter in the agenda of the Conference (Ferreira, 2005: 200-214).

Despite the differences regarding procedures and methods to be implemented it is clear the concern with the need for a legal reform in what refers to labour conflicts, whereby the systems and mechanisms ensuring accessibility, efficiency, equity and parties confidence should be reinforced (cf. ILO, 1999). In one of its working papers (March, 1999), the Governing Body dealt with the new trends in the field of prevention and resolution of labour conflicts. The text stands out the appearance of new strategies and of innovative techniques and models on bargaining, regulation of conflicts and joint solution to the problems, materialised in the adoption of active and creative measures and programs aimed

at motivating the parties to leave an attitude of confrontation and adopt one of conciliation, team work and cooperation.

Grounded on the principle of association and social dialogue, ILO proposals on the labour conflicts resolution enhance the need for developing tools and forms of preventive law and for reforming traditional mechanisms of regulation of labour conflicts. Regarding the new trends on labour conflicts prevention and resolution, different bargaining techniques have been pointed out on a basis of win/win, interests' reciprocity or amicable conflicts' resolution. Underlining the need to strengthen the systems and mechanisms granting accessibility, efficiency, equity and parties confidence, the suggestion is to replace the traditional paradigm of conflicts' regulation (acting only after the situation of open conflict is declared) by preventive models enhancing cooperation between social partners.

Besides the defence of preventive law and always having in mind the current context of globalisation and transition of many countries towards open market-oriented economies, the proposal for reforming the classical methods of conflict regulation – collective bargaining; conciliation; mediation; arbitration; and court decisions – aims at allowing their adaptation to the new demands of labour market. For instance, one of the limitations levelled at courts is their insufficient knowledge of the working world, the high litigation costs, the excessively adversarial character of their decisions, the lack of sense of compromise, their capacity to take good legal decisions but inability for dealing with the real problems at stake which may endanger the future relations of the parties, and finally the difficulty in accessing courts. Such limitations led to proposals for carrying out in-depth studies related to the functioning of labour courts and similar bodies in order to make them more accessible and to improve the confidence in their performance.

Regarding ILO's role – as an agency of transnational labour conflicts regulation - it must be stood out the existence of different representations and complaints' proceedings, the setting up of committees of inquiry, the action of the Committee on Freedom of Association, and the implementation of *core labour standards* mechanisms. Present in all of these modalities are the social partners; wherefore, ILO's action - a way of regulation of labour conflicts - has a direct link to the principle of association and social dialogue¹⁰.

2. ILO SUPERVISORY SYSTEM

In this chapter dedicated to the analysis of ILO supervisory bodies we emphasise the “options” (Aliston and Heenan, 2005) and the “aspects” (Blanpain, 2004) used by ILO in the creation, enforcement and supervising of international labour standards. The follow-up and supervising of international labour standards' effectiveness through the bodies of the supervisory system – Committee on Freedom of Association, Committee of Inquiry and Fact-Finding and Conciliation Commission on Freedom of Association – are part of “ILO's traditional system of functioning (Aliston and Heenan, 2005: 238-240) of legal base (Blanpain, 2004: 10), being possible to admit that they replicate at the transnational level the adjudication and intervention approach by a third party typical of the national regulatory systems of labour conflicts. To that extent, the supervisory bodies may be seen

¹⁰ The activity of the European Court of Human Rights at the labour level must also be mentioned: important decisions have been taken on matters like rights related to workers movement, discrimination between men and women, sexual discrimination and length of the proceedings before national courts. Notwithstanding the fact that this is not a streamlined way of dealing with labour matters because of the procedural limitations of the European Court of Human Rights, its decisions must be mentioned because of their innovative character and their potential for future solutions. At the formal non-judicial level and in what refers to the violation of the European Charter rights in labour matters, particularly referring to child labour, working time and discrimination, it must be stood out the possibility of a complaint being initiated by syndicates, NGOs or workers before the European Commission (Ferreira, 2005: 200-214).

as a transnational “board of appeal” for labour conflicts arising at the national level. The creation of such procedures was, at the time, innovative both at the international and national levels (Sussekind, 2000).

After 1989, with the end of the Cold War and the acceleration of globalisation forces, ILO has become more attentive to the effective compliance of fundamental labour rights, expressed on matters like abolition of forced labour and child labour, freedom of association and collective bargaining, discrimination in labour and occupation, promotion of decent employment and fair globalisation¹¹. Within this context, it has been adopted in 1998 the Declaration on Fundamental Principles and Rights at Work (ILO, 1998b). ILO conventions on such core matters set up the minimum thresholds upon which the States must organise their legal framework and translate those rulings in the construction of a more decent and fair society.¹² As stated by Jean-Claude Javillier during the 2004 International Forum on Human and Social Rights, “to implement is not just to ratify but to further give life to standards, to incorporate, to get appropriated of those standards in the national field” (Javillier, 2004: 142).¹³

In the case of democratic countries like Portugal, where international labour standards had been already strongly assimilated, far beyond the fundamental and primary conventions, the

¹¹ The 8 core conventions: Convention 87 – Convention on Freedom of Association and Protection of the Right to Organise; Convention 98 – Convention on the right to organize and collective bargaining; Convention 29 – On Forced Labour; Convention 105 – On the Abolition of Forced Labour; Convention 138 – On the Minimum Age for Admission to Employment; Convention 182 – On the Worst Forms of Child Labour; Convention 100 – On Equal Remuneration; Convention 111 – On Discrimination in Labour and Occupation. Alongside, there are still 4 more priority conventions: Convention 81 – On Labour Inspection; Convention 129 – On Labour Inspection in Agriculture; Convention 144 – On Tripartite Consultation; Convention 122 – On Employment Policy. Cf. ILO

¹² In 2004, ILO role in the promotion of strategies for a fair globalisation was reinforced by the *Report of the World Commission on the Social Dimension of Globalisation* (ILO, 2005).

¹³ The mechanism of Regular Supervision is not under analysis in this paper. Yet it is relevant to point out some data on the impact of its activity. A survey made between 1964 and 2004 reveals more than 2.300 cases of progresses in the enforcement of ratified Conventions. More than 150 countries have taken tangible measures for the harmonisation of their socio-legal framework with ILO recommendations (cf. ILO, 2007b).

lodging of a complaint and its referral to the supervisory bodies maintains the adversarial approach of the national social partners. The “exhaustion” of the national regulatory system of labour conflicts and of social dialogue has an adjudicative functional equivalent in the supervisory mechanisms, being their mobilisation strongly linked to the tradition and patterns of the national systems of labour relations. Moments of greater social crisis and conflict at the national level may also induce the search for supervisory mechanisms.

The Portuguese case is a good example of the relevance of ILO’s decisions in the adjudication of labour conflicts, which have, as mentioned above, a triple function: (1) the symbolic function of establishing the “judicial meaning” of the applicable standards to the relevant case and its further extension or (re)use as a bargaining resource in other similar conflicts; (2) an instrumental function since it offers a solution to the conflict as an appeal body; and (3) a political function of recognition of the boundaries and limits of social partners’ action (State included), i.e., as a regulating counter-power of the power imbalance of the parties.

Within the special supervisory system of ILO standards compliance (conventions and recommendations), we stand out the representations and complaints procedures initiated by employers' and workers' organizations and by Governments for non-compliance with conventions ratified by a member State. We shall analyse some of the characteristics of the specific supervisory bodies which are: the Committee on Freedom of Association; the Committee of Inquiry and the Fact-Finding and Conciliation Commission on Freedom of Association.¹⁴

¹⁴ For a more detailed insight of the supervisory mechanisms, see *Handbook of Procedures relating to International Labour Conventions and Recommendations* (2010), in http://ilo.org/global/standards/information-resources-and-publications/publications/WCMS_192621/lang-en/index.htm

The *Committee on Freedom of Association* (C.F.A.) was created in the fifties in a context of special procedures establishment. If the grounds of a complaint or of a representation is union rights infringement the case may be handled by this committee. The arguments may be attended regardless the ratification of the relevant conventions thereof, since ILO Constitution establishes the principle of freedom of association and the union rights as fundamental. This Committee is comprised of an independent president and of 3 full members and 3 substitutes on each of its groups – governmental, employers and workers. Their meetings are annually held in March, May and November, being their reports published in BIT Official Bulletin. Since its creation, CFA has already analysed more than 2300 cases. More than sixty countries spread all over the five continents have taken measures based on CFA recommendations, and registered a positive evolution in terms of freedom of association over the past years (ILO, 2007b).

The *Fact-Finding and Conciliation Commission on Freedom of Association* may also appreciate complaints and representations that are the Committee on Freedom of Association's responsibility. The cases are sent to this Commission by the Governing Body. This Commission has been created in 1950 upon agreement of the United Nations Economic and Social Council, and comprises 9 independent persons (appointed by the Governing Body). As a principle, this Commission cannot examine any case without the prior consent of the relevant government. This rule comprises no exception unless the government has ratified the conventions on freedom of association. A report shall be produced with recommendations. The Governing Body may ask the governments to comply with the recommendations and to be informed about the measures adopted.

The *Committee of Inquiry* has been created by the Governing Body for those cases where governments do not give a satisfactory reply to the complaints and representations. This is the responsible body for the appreciation of complaints introduced between governments that are ILO members. This Commission is composed of independent persons. It is the highest investigative body within ILO and it is usually set up whenever a member State is accused of serious and recurrent violations and refuses to apply a solution. Until March 2005, 11 inquiry commissions had been put in place, followed up by final reports about the cases (cf. *Normlex, Complaints/Commissions of Inquiry Art. 26, ILO*).

Besides these three special supervisory bodies, the complaints and representations procedures they are not exactly coincident. The representations procedure is provided for by articles 24 and 25 of ILO Constitution. The employers' or workers' organizations are given the right to lodge a complaint in BIT Governing Body¹⁵, “based on the fact that one of the Members did not ensure in a satisfactory way the execution of a convention to which the same Member has joined”, being subsequently possible “that the Governing Body transmits it to the Government at stake and invites the same Government to provide the due information on the subject”. (*ILO Constitution*, art. 24). It is afterwards possible to set up a tripartite committee composed of 3 members belonging to the Governing Body which shall analyse the representation and reply of the Government thereto. A report shall be then produced and submitted to the Governing Body. This report shall detail the legal aspects and the practices thereof; the information provided shall be assessed and recommendations shall be made. The representations procedure is confidential and the Governing Body may decide to: a) file without further action; b) adopt the complaints procedure; or c) publicise the representation and its reply (if there is any).

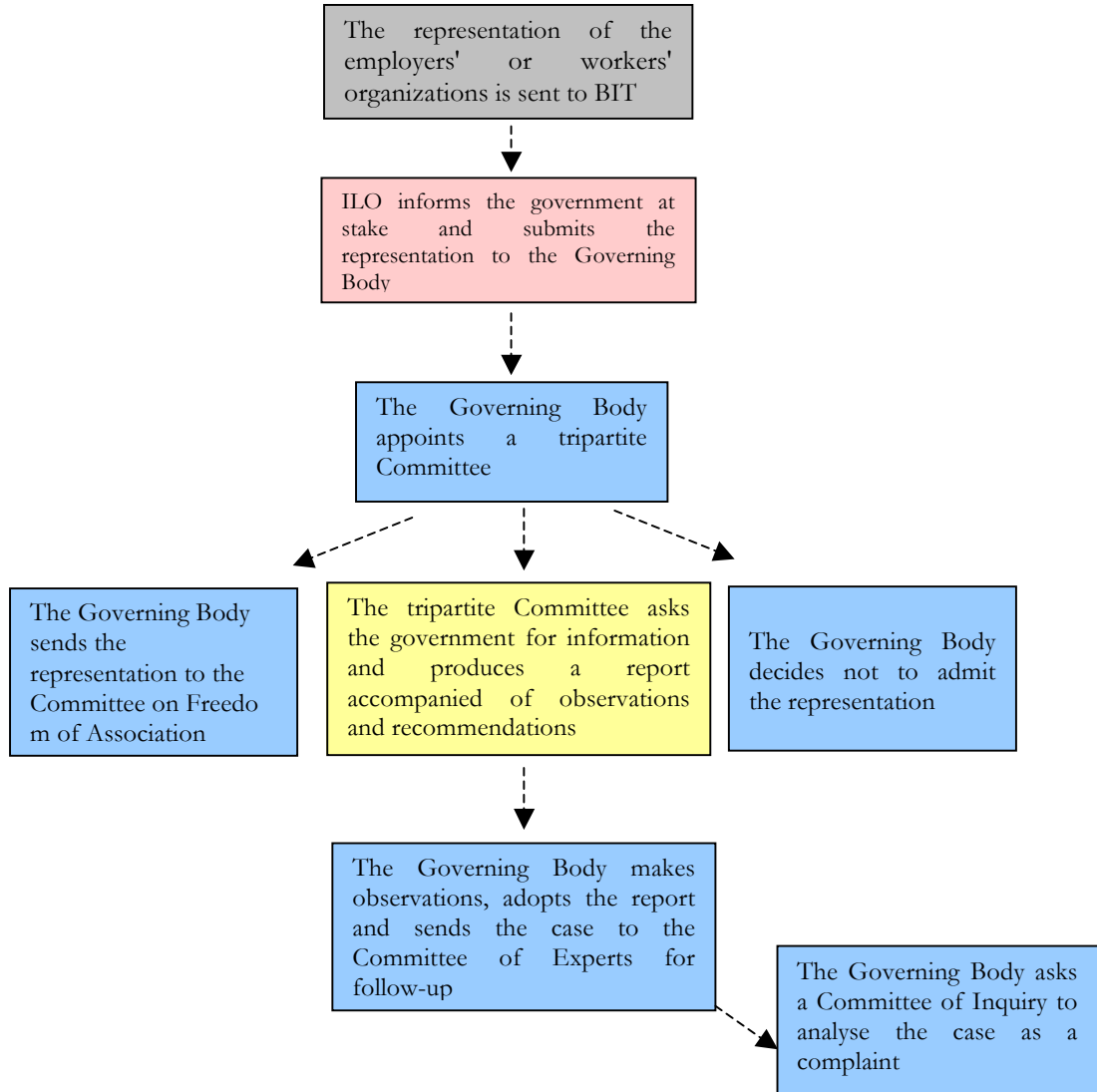
Whenever the case is not filed without further action, the Constitution ensures that if the relevant government does not send “any declaration within a reasonable time, or if the declaration sent does not seem satisfactory to the Governing Body, the latter shall be entitled to publicise the representation and, if applicable, the answer provided” (*ILO Constitution*, art. 25)¹⁶. Namely, if the representation results from non-compliance with conventions 87 and 98 (on the matter of Right to Organise), normally the

¹⁵ A representation may be submitted by employers' and workers' organizations, whether national or international, as per article 24 of ILO Constitution. Individuals may present a representation directly to ILO but may as well transmit the information to their employers' or workers' organization.

¹⁶ We stress that the publication is an act of pressure and moral sanction against the envisaged member-State to make it take the measures according ILO principles.

Committee on Freedom of Association shall be the responsible body to analyse it. We shall enclose below the diagram of the representations' procedure¹⁷.

Figure 2 – Representation Procedure (Source: ILO)



¹⁷ Adapted from the *Rules of the Game*, ILO (2007b: 81).

The complaints procedure is regulated in articles 26 to 34 of ILO Constitution, upon which a complaint may be brought against a member State for non-compliance with a ratified convention, by another country that has ratified that same convention. It may also be introduced by a delegate to the Conference or by the Governing Body itself.

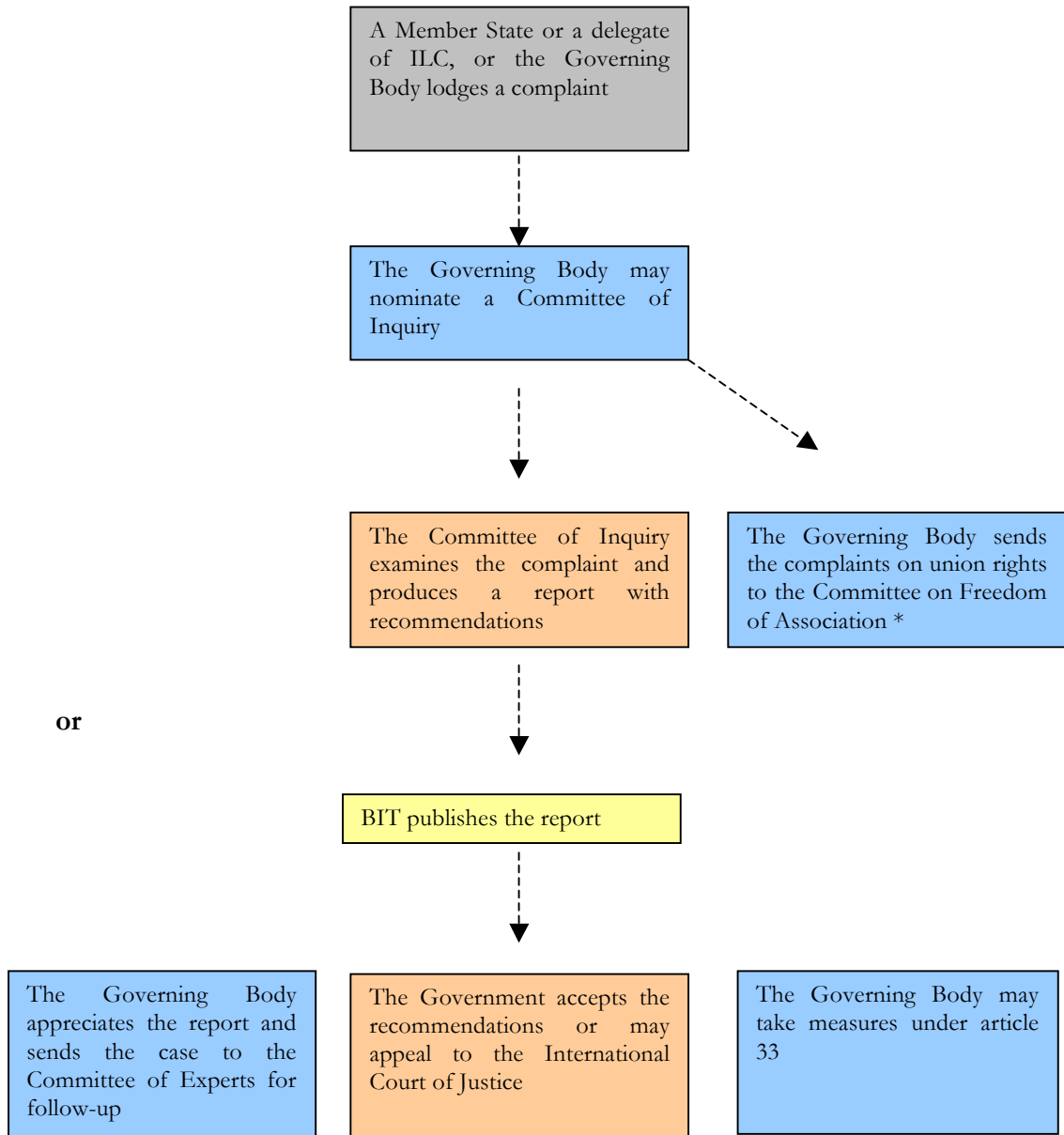
After receiving the complaint the Governing Body may nominate a Committee of Inquiry composed by three independent members for an in-depth analysis thereof, so as to be possible to make recommendations on the measures to be taken in order to solve the problems at stake. If a country refuses to take the recommendations into account, the Governing Body may take the measures foreseen in ILO Constitution, whereby “in case of any Member not complying, in the deadline stipulated, with the recommendations made either in the Committee of Inquiry report or in decision of the International Court of Justice, as the case may be, the Governing Body may address the Conference a recommendation with the measure that it may find suitable to ensure the implementation of such recommendations” (art.33, *ILO Constitution*).

Article 33 measures had been used, for the first time in ILO’s history, in 2000 (ILO, 2007b). In this case, the Governing Body has asked the International Labour Conference to take the suitable measures to compel Myanmar to stop using forced labour. A complaint has been lodged in 1996, under article 26 of the Constitution for violation of convention 29 (Forced Labour, 1930), and the appointed Committee of Inquiry has confirmed a broad and systematic use of forced labour.

For better understanding of the formal differences between complaints and representations, we shall enclose below the diagram of the complaints procedure.¹⁸

¹⁸ Adapted from the *Rules of the Game* (ILO, 2007b: 83-85)

Figure 3 – Complaint Procedure (source: ILO)

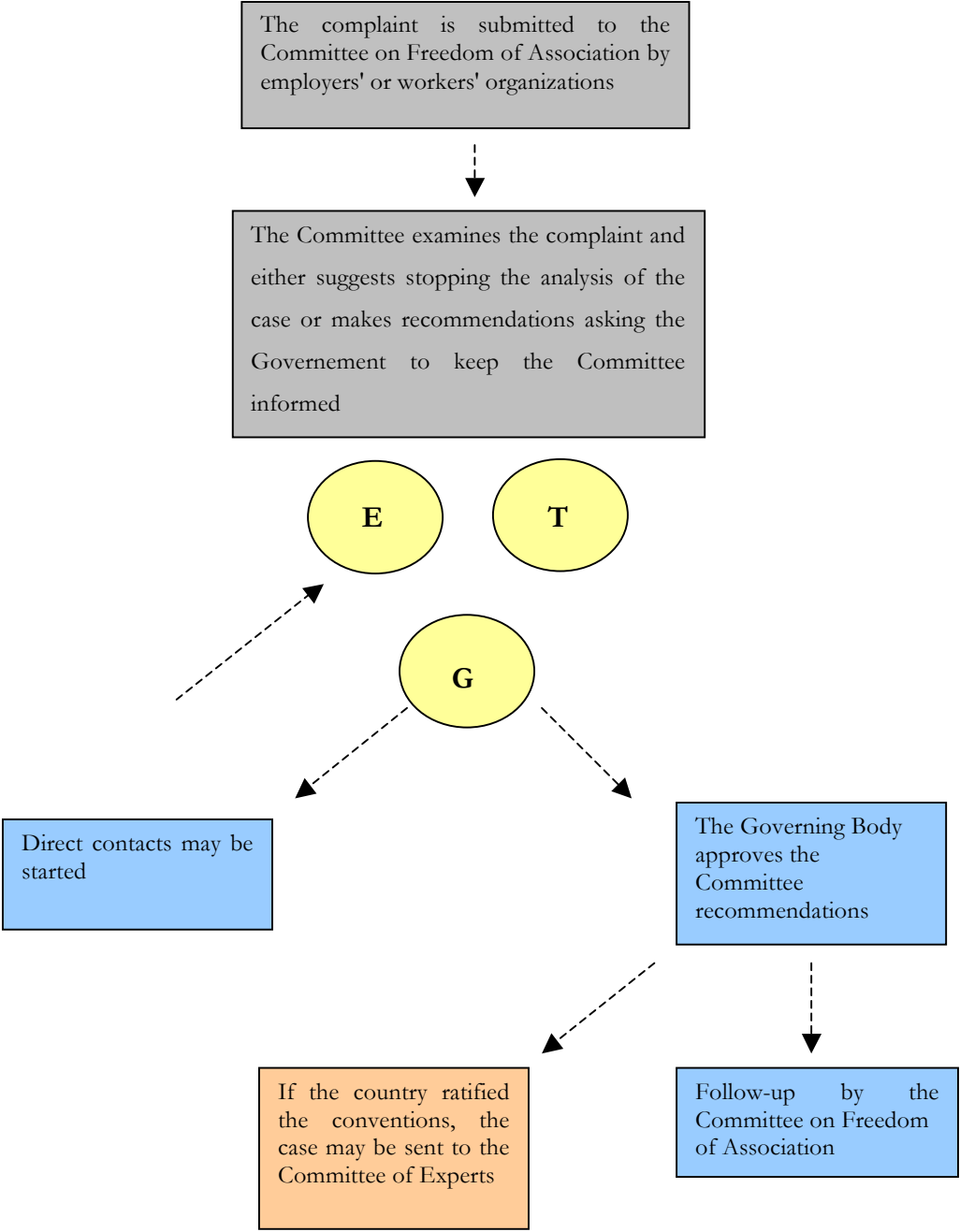


Regarding complaints related to freedom of association, it is important to recall that freedom of association and collective bargaining are ILO's founding principles. Upon adoption of conventions 87 (Freedom of Association and Protection of the Right to Organise) and 98 (right to organise and right to bargain collectively), ILO has established that these principles should be subject to another supervisory procedure in order to guarantee they would be enforced even by those countries that did not ratify the conventions. To do so, the Committee on Freedom of Association has been created in 1951 with the mission of analysing complaints against violations of freedom of association principles even when the State at stake had not ratified the conventions. The complaints are initiated by employers' or workers' organizations against a member State.

As earlier said, the Committee on Freedom of Association is set up by the Governing Body. It is composed of an independent president, three employers' representatives and three workers' representatives. If the complaint is admissible (valid in formal terms), the dialogue is started with the relevant government. If CFA concludes for the existence of an infringement of the standards or the principles of freedom of association, a report shall be produced and submitted to the Governing Body with the recommendations on how to solve the case. The government is invited to take CFA's recommendations into account and implement them. If the country at stake has ratified the conventions the Committee of Experts shall take care of the legal aspects. CFA may as well opt to propose a procedure of direct contacts with the relevant government, namely with the governmental representatives and the social partners. To summarise the complaints formal procedure, we shall enclose below the correspondent diagram¹⁹.

¹⁹ Adapted from the *Rules of the Game* (ILO, 2007b: 83-85).

Figure 4 – Complaint procedure for freedom of association matters (source: ILO)



3. COMPARATIVE ANALYSIS OF COMPLAINTS AND REPRESENTATIONS

For a comparative analysis and in order to frame the Portuguese case within the international context, we have done an assessment of all complaints and representations addressed by EU countries (15) to ILO, in the period between 1974 and 2007²⁰. To better understand their percentage in the total of the cases, we have done a survey to the period prior 1974 (Table 1). Within the cases dealt with there were only complaints and representations regarding freedom of association and representations concerning conventions on Freedom of Association (C.87; C.98)²¹, which have been submitted to the Governing Body's considerations²².

²⁰ Source: "LibSynd, Databases of the Committee on Freedom of Association", International Labour Organization: <http://www.ilo.org/public/english/standards/norm/index.htm>

²¹ ILO has five more conventions (non fundamental) on freedom of association: C.11 (Rights of Association and Combination of Agricultural Workers), C. 84 (Right of Association (Non-Metropolitan Territories, 1947); C.135 (Workers' Representatives, 1971); C.151 (Labour Relations (Public Service), 1978); C.154 (Collective Bargaining, 1981). Whereas the principle of freedom of association is a key stepping stone for the prosecution of ILO objectives, enshrined ever since its foundation, beyond the conventions on freedom of association there are several relevant recommendations and resolutions, out of which it is worth mentioning the one concerning the independence of the trade union movement (1952) and the one concerning concerning trade union rights and their relation to civil freedoms (1970).

²² It has been excluded the complaints between countries and the representations related to conventions other than 87 and 98. Even within the subject of freedom of association, not all representations can be found in our databases as only those submitted to the Governing Body's consideration had been published. For instance, in the Portuguese case, only two representations had been included in that database, even if there were many more related to freedom of association that haven't been published and can only be found whenever studying DGERT/MTSS archived files.

Table 1 – Complaints and Representations, European Union (15)²³

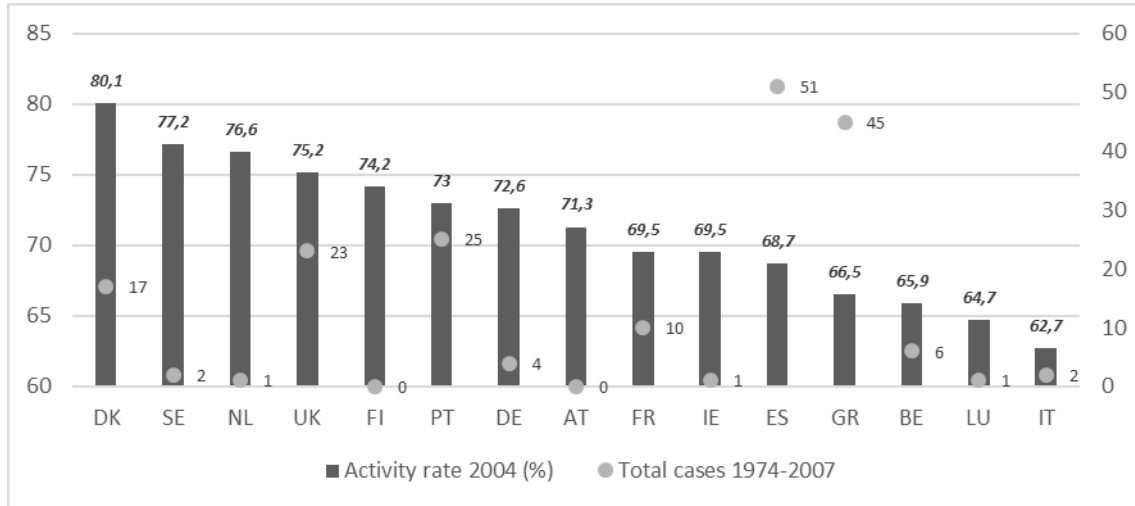
Countries	Period 1974-2007	Cases 1974-2007	Period 1919-2007	Cases 1919-2007
1.Spain ES	1974- 2002	51	1952-2002	216
2.Greece GR	1974-2003	45	1951-2003	161
3.Portugal PT	1980-2005	25	1961-2005	34
4.United Kingdom UK	1976-2004	23	1951-2004	178
5.Denmark DK	1985-2005	17	1958-2005	18
6.France FR	1974-2002	10	1951-2002	73
7.Belgium BE	1974-2003	6	1954-2003	17
8.Germany DE	1984-1994	4	1954-1994	15
9.Italy IT	1975; 1979	2	1951-1979	9
10.Sueden SE	1994;2001	2	1969-2001	3
11.Holland NL	1988	1	1951-1988	7
12.Ireland IE	1986	1	1965-1986	3
13.Luxembourg LU	1998	1	1969; 1998	2
14.Austria AT	-	-	1954-1963	3
15.Finland FI	-	-	1963	1

Source: Own calculations based on ILO

For the purpose of this comparative analysis, we shall present the results of some of the crossed statistical data concerning complaints and representations. In the following graph it can be seen the total number of complaints and representations recorded between 1974 and 2007 and the activity rates of EU-15 countries recorded in 2004.

²³ The periods accounted for in each country correspond to the dates of the first and last cases.

Graph 1 – Activity rate (2004) and number of complaints and representations (1974-2007)



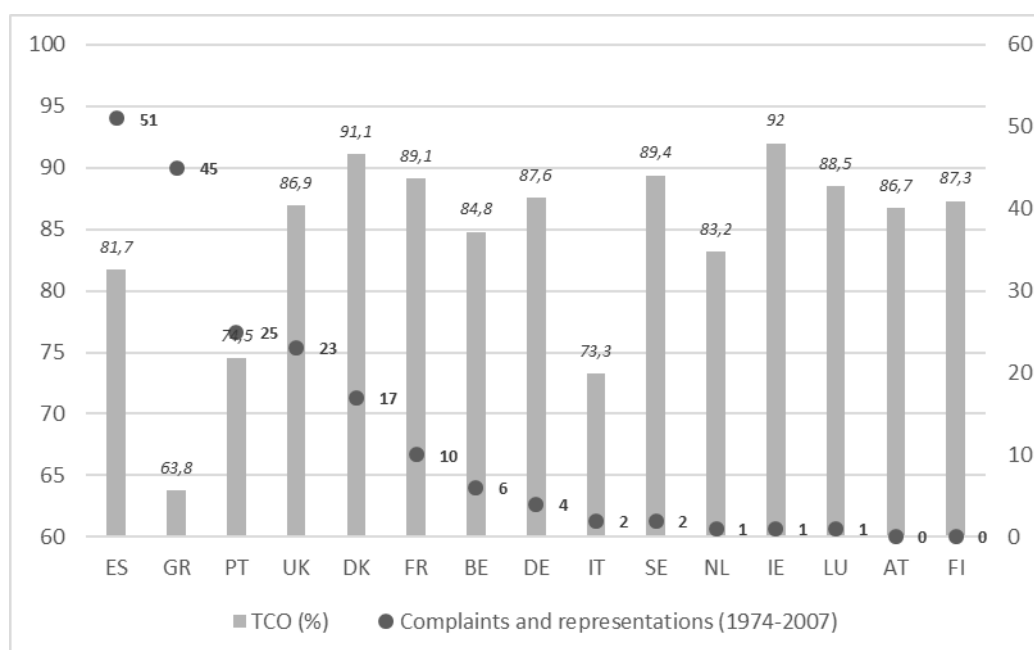
Source: Own calculations based on ILO and DGERT/MTSS; Eurostat

Out of the countries showing higher number of complaints and representations in the period under review, the following stand out: Spain (51), Greece (45), Portugal (25), United Kingdom (23), Denmark (17) and France (10). As it can be seen in the graph, the six mentioned countries registered figures equal or higher than 10, i.e., out of the EU15 countries, six recorded ten or more complaints and representations between 1974 and 2007.

If we cross this results with the activity rates recorded in 2004 in the same countries, we come to the conclusion that the highest activity rates do not necessarily correspond to the highest number of complaints and representations. See, for this purpose, the examples of Sweden, Holland and Finland with high activity rates and low number of complaints and representations.

A similar analysis has been done to the percentage of employed workers (TCO) recorded in 2005 and to the number of complaints and representations occurred between 1974 and 2007 in the EU-15 countries.

Graph 2 – Complaints and representations (1974-2007) and % AR (2005)



Source: Own calculations based on ILO and DGERT/MTSS; Eurostat

Looking at the countries with the highest number of complaints and representations (Spain, Greece, Portugal, United Kingdom, Denmark and France) it is possible to conclude that these countries recorded very different activity rates in 2005. United Kingdom and France, for instance, show that diversity. Countries with activity rates above 85% recorded a very diverse number of complaints and representations: 23 for United Kingdom and 10 for France. The most paradoxical case is probably Greece with the lowest activity rate of the EU15 countries (63.6%) and the second highest number of complaints and representations (45).

The influence of exogenous factors over the national regulatory system of labour conflicts reflects both on the creation of guiding normative references and on direct intervention in the conflicts' resolution. Opposite to the majority of the cases where the institutionalisation of labour relations systems occurred in the post-war period and found its sustainability within the context of welfare states expansion and of labour and social citizenship rights extension, the Portuguese system of industrial relations was subject to the historic "short-circuit" of the 25th of April. The State centrality in the regulation of employment relationship, inherited from the corporatism, if faced in line with the processes of

democratic transition and consolidation, made clear the need for reviewing the functions and roles of the State in social arbitration of labour conflicts.

Generally speaking, the influences emerging from the transnational space, namely those deriving from ILO's interventions and from the process towards integration into the EU, almost exclusively aimed at reducing the weight of state intervention in labour conflicts, suggesting a bigger participation of the civil society in socio-labour conflicts resolution.

In the 80s, ILO has decreased its normative activity on matters of freedom of association. In return, it has intensified the effort to promote and supervise the conventions enforcement. On the other hand, the world political alterations occurred after the fall of the Berlin Wall and the generalisation of the market economy triggered the evolution of several countries' legislation and a substantial rise in the number of Member States and of ratifications of core conventions regarding freedom of association (87 and 98).

In the Portuguese case, a relatively young democracy, ILO's relevance in the guidance and supply of reference frameworks to the Portuguese regulatory system of labour conflicts acquired added significance with EU integration in 1986 and the adherence to the communitarian principle of subsidiarity, particularly facing the situation of lack of harmonisation of the different national systems of labour conflicts.

The intervention of that organization towards labour conflicts resolution is recognisable at the levels of normative orientation and political legitimisation, smoothing the transition from the model of labour relations inherited from "Estado Novo" (New State) to the democratic model of labour relations. This allowed, among others, legitimating the need for reducing State presence in the system of labour relations, standing out the excessive weight of administrative mechanisms in the regulation of conflicts and highlighting the importance of implementing forms of conflicts' regulation on a tripartite basis.

Therefore, ILO's relevance must be seen as a way to "rebalance" the relationship State/civil society within the context of regulation of labour conflicts, in the post "25 of April", in particular where the role of the State in its function of social arbitration was being repositioned to the extent that it was endeavoured to reduce its intervention in the regulation of conflicts (Ferreira, 2002 and 2005).

It must be mentioned, in line with Ferreira (2002; 2005), the criticism levelled by ILO at the mechanism of mandatory arbitration provided for by Decree-law 209/92 and created by “Comissão de Liberdade Sindical e Negociação Colectiva” in 1994; such criticism had its origin in a complaint initiated in ILO by CGTP. At ILO’s advice, the point at issue in this kind of arbitration was that the mentioned legislation allowed one of the parties in conflict and the public authorities to impose unilaterally the use of mandatory arbitration, which did not favour collective bargaining. That is why the Portuguese Government was asked to take measures in order to modify the legislation concerning mandatory arbitration “so that it complies with Convention nr 98 and the parties may not decide otherwise, other than jointly refer to mandatory arbitration” (ILO/*Observation*, 1999).

Relatively to the forms of direct intervention, which means the possibility of referring to ILO in an attempt to find a solution for a national labour dispute, it has to be mentioned the procedures brought before the Committee on Freedom of Association. Within the supervisory systems of this organization, and irrespective of the general mechanisms applicable to all labour international conventions, there are special proceedings foreseen for the protection of standards and principles of freedom of association. The Committee on Freedom of Association’s role is to do the preliminary examination of the complaints brought against the violation of union rights, which does not depend on the governments’ consent.

Maria de Fátima Falcão de Campos (1994) has developed a pioneering work analysing the complaints brought against Portuguese Government before ILO’s body responsible for supervising the principles on freedom of association – Committee on Freedom of Association. It started with the description of the international legal sources on freedom of association, namely ILO’s conventions - the founding texts on the matter - and the specific supervisory system for social rights. Portuguese internal law on freedom of association was also examined as well as the complaints brought against Portuguese Government before the Committee on Freedom of Association. Based on this complaints analysis and its economic and social context, she tried to give in-depth explanation of the reasons therefor. Finally, the fundamental principles of the Committee on Freedom of Association’s decisions had been are also analysed.

The present analysis updates and develops the work already started by Campos (1994) focused on the relation established between Portugal and ILO. The next chapter shall be dedicated to a more thorough analysis of the Portuguese case.

4. PORTUGAL AND ILO'S SUPERVISORY SYSTEM

Before 1974, due to a repressive political and economic context, the actors' conflicting interests never really managed to get a concerted response, not at the legal level or at the practical level. With the rise of "Estado Novo" the right to strike or to impose lock-outs has been banned as well as the right to form and operate employers and workers' organizations. The only organizations admitted were the corporative type and under state supervision (Rodrigues, 2012). Such environment projected Portugal to the international stage in what refers to infringements of fundamental labour principles. Indeed, the restrictions on freedom of association represent restrictions to ILO functioning itself as a tripartite organization (Sussekind, 2000) justifying the special attention given by ILO's supervisory bodies to these cases. Despite complaints and conflicts, during that period Portugal did not refrain its normative production in accordance with ILO conventions. Besides being one of ILO founding members, between the Military Dictatorship and the institution of "Estado Novo", Portugal has ratified 7 ILO conventions, showing the community some interest (at least theoretically) in giving its contribution to the construction of an international labour law²⁴, seeking this way some legitimacy within the foreign community (Torgal, 2009). Yet, as Rodrigues (2012) noticed, at least until 1960 the "socio-labour juridification path, although timid and vague (...) has been done by Portuguese society, having the State had a role in the normative production" (p.110).

²⁴ In 1928, conventions 1 and 14 [Hours of Work (Industry) and Weekly Rest (Industry)]; in 1929, conventions 17, 18 and 19 (Workmen's Compensation (Accidents), Workmen's Compensation (Occupational Diseases) and Equality of Treatment (Accident Compensation)); and in 1932, conventions 4 and 6 (Night Work (Women) and Night Work of Young Persons (Industry)). Cf. Rodrigues (2012).

Within this context, the appeal towards ILO for the resolution of domestic socio-legal disputes was limited, and the cases of non-compliance with international standards were mostly denounced by external actors: for instance, international trade union organizations²⁵ or other countries. Between 1961 and 1971 Portugal registered a high number of complaints and representations (9). Yet, the majority of them has been filed by ILO without further action, whether because they lacked legal justification or because with the change of the political circumstances in 1974, most of the reasons for dispute had disappeared.

Because of the forced labour maintained in the Portuguese colonies of Angola, Mozambique and Guinea-Bissau Portugal has been, for several years, at the center of the international criticism. Only after II World War Portugal started ratifying the conventions on forced labour; the eldest, no.29 (1930), was ratified only in 1956. Convention no.105 (1957) was ratified just after its adoption in 1959. Nonetheless, the first Committee of Inquiry ever in ILO history dates from June 1961, and it was set up subsequent to a complaint brought against Portugal by the Republic of Ghana on forced labour matters, which triggered greater vigilance from ILO to Portugal.²⁶ Ghana was an ILO member State, which has, likewise Portugal, ratified the convention on progressive abolition of forced labour (this case shall be better detailed further on).

In what concerns trade union matters, it is only after 1969 that it is possible to notice some changes in Portuguese trade union law, which resulted, to a great extent, from the

²⁵ For instance, by the World Federation of Trade Unions (WFTU), former trade union confederation with strong presence in Asia, Latin America and Africa.

²⁶ For more information on this subject see *Colonialism, forced labour and the International Labour Organization: Portugal and the first Commission of Inquiry*, from Oksana Wolfson, Lisa Tortell and Catarina Pimenta (s/d). See also the joint paper from Jerónimo, Miguel Bandeira and Monteiro, José Pedro (2014), “O império do trabalho. Portugal, as dinâmicas do internacionalismo e os mundos coloniais”, in Jerónimo, Miguel Bandeira e Pinto, António Costa (eds.) *Portugal e o fim do Colonialismo. Dimensões internacionais*, Edições 70, Lisboa: pp. 15-54

ratification of convention no.98 and the community pressure subsequent to that period of complaints and representations. As noticed by Rodrigues (2012), “apart from the internal context, and the economic and social evolution triggering the changes, this is one of the areas where ILO influence was most felt” (p.143).²⁷

After 1974, Portugal started developing a more favourable political context for the protection of labour citizenship rights as per ILO principles of freedom of expression and association, democratic participation inside the companies and the covenants on Economic, Social and Cultural Rights and on Civil and Political Rights (Ferreira 2009). In this process of anchorage of a young democracy and of greater freedom of participation (and of protest) ILO, being an international instance for the regulation of labour conflicts, appeared as a closer partner to national actors. Portugal became a reference in terms of labour law and social policy reforms (Quadros 2009). Alongside these reforms and a closer proximity to ILO, the social unrest in Portugal also had an impact in the increase of complaints and representations brought against Portuguese governments. ILO became more present as a soft ruler for national conflicts. See as below the summarised discrimination of the overall figures relative to all complaints and representations submitted to ILO (Table 2).

²⁷ There are other international cases of complaints and representations brought before ILO which had a clear impact in the changes later occurred at the national level. It is, for instance, Poland’s case in the eighties: the trade union Solidarnosc managed to bring together the people’s protests and to get enough power to overthrow the Government of Jaruzelski, after a complaint put forward before ILO (Pache 2014, p.5228).

Table 2 – Complaints and representations between 1960 and 2007, Portugal²⁸

Total	Type of procedure	Actors		Cases filed without further action
Total procedures: 53	Representations: 20	Trade union organizations: 20	3	Total: 7
	Complaints: 33	Between countries: 1 (Portugal; Ghana)	-	
		Trade union organizations: 32	4	

Source: Own calculations based on ILO; DGERT/MTSS

As mentioned before, after 1974 ILO's influence – particularly through the Committee on Freedom of Association – in the Portuguese system of labour relations was reinforced. Within the framework of a democratic society the principle of freedom of association got legal recognition both at the constitutional and the ordinary legislation levels. That is why the complaints brought against Portuguese government had a paradigmatic value.

If we consider the period between 1981 – the date of the first complaint lodged after the 25th of April 1974 – and 1998, we realise that there had been 22 complaints communicated to ILO about the violation of union rights.

The period between 1974 and 2007, the one of social-democrat governments in power (Graphs 3 and 4) recorded the largest number of complaints and representations. There are

²⁸ It hasn't been here included the only complaint Portugal has put forward against a country, Liberia, on the 31st of August 1961 for non-compliance with convention no.29 on Forced Labour. We haven't included it because the table refers to complaints brought against the Portuguese Governments for ILO conventions' violations.

several reasons explaining such concentration in a period of eight years of the majority of the existing complaints. This happened in aftermath of an economic crisis with strong repercussions in the employment system, and this was the time of Portugal's integration into the EEC (1985), of IMF's second programme of stabilization (1983/84), and the starting period of the industrial renewal process as well as of changes deriving from the introduction of the new technologies (Campos, 1994).

The fairly neoliberal political context, illustrated, for instance, by several privatisations, the issues with wage arrears, the institutionalisation of social dialogue, the reconfiguration of the industrial relations' pattern, the relatively offensive measures against workers and syndicates and the recognition of the civil servants' right to bargaining and taking part in the definition of their working conditions, are some of the constraints lived at the time in Portugal (vd. Stoleroff 1988 and 1992).

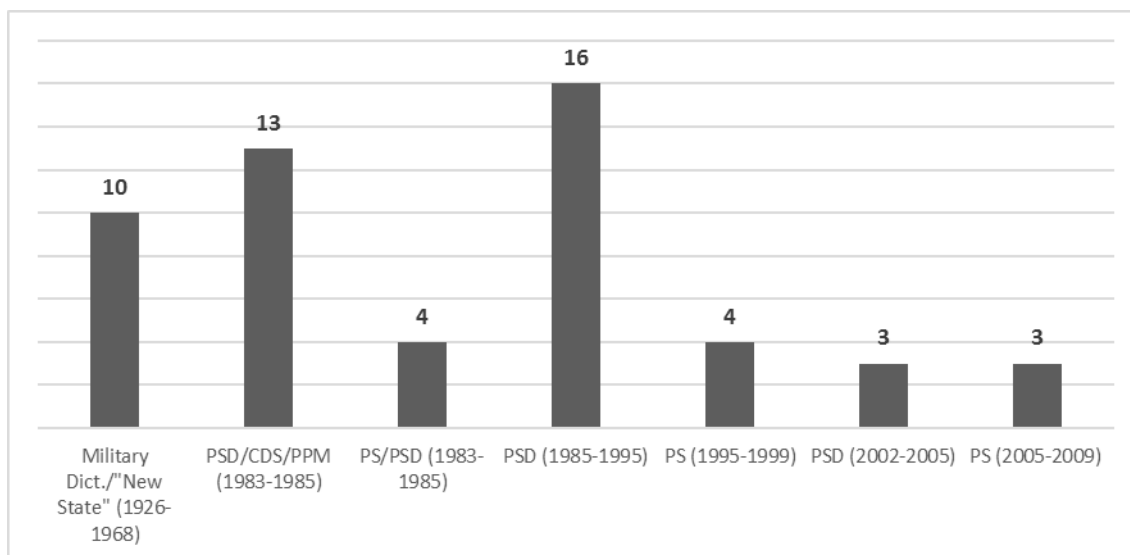
Beyond these weakening factors of the workers' representation action, the union pluralism has been reinforced as well as the competition between CGTP-IN and UGT. All these elements contributed to the hypothesis that the complaints brought before ILO have worked as a "safety valve" of labour conflicts in a period characterized by great instability in the system of labour relations, whereby the State's regulating role was being questioned along with the reinforcement of the pluralist character of the intermediation system of interests on the workers' side (Ferreira, 2005).

Graph 3 – Distribution of complaints and representations by decades, Portugal (n=53)



Source: Own calculations based on ILO; DGERT/MTSS

Graph 3 – Distribution of the overall number of complaints and representations by governments, Portugal²⁹ (n=53)

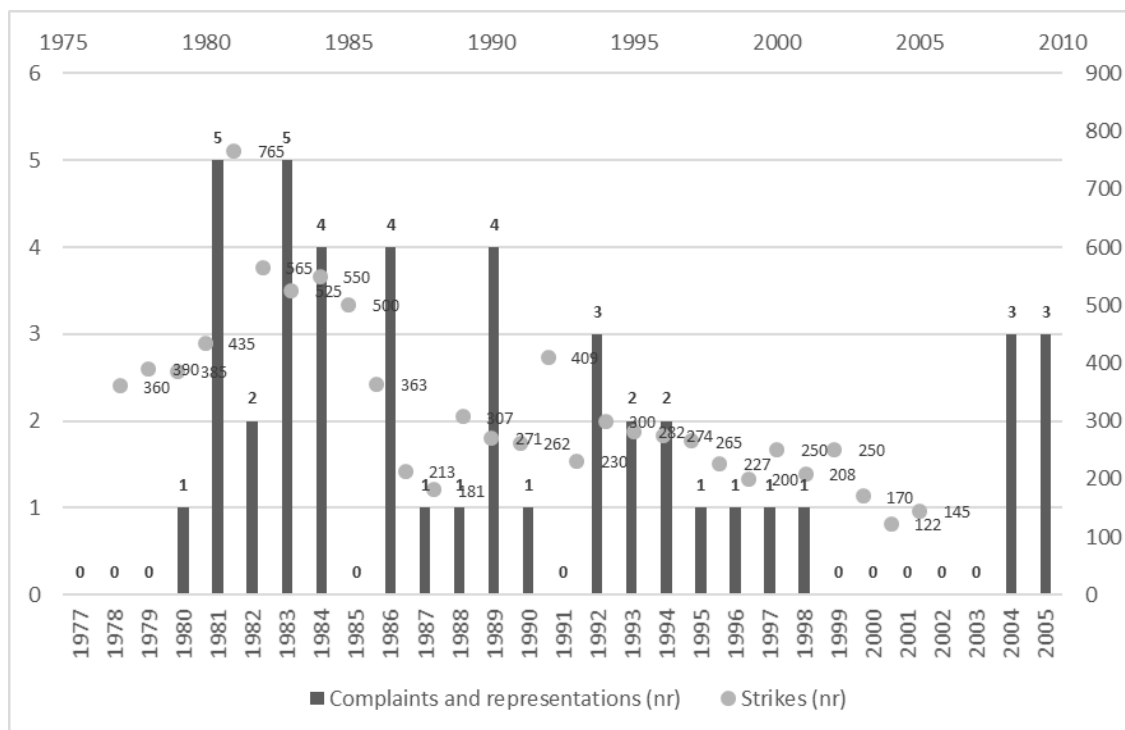


Source: Own calculations based on ILO; DGERT/MTSS; Government's official website

We have considered the hypothesis that there could be a trend in the relation between the volume of complaints and representations to ILO and the number of strikes, as they are both indicators of social breakdowns and tensions in Portugal. The following graph shows the evolution of the number of complaints and representations recorded between 1977 and 2005, crosschecking the data collected during the same period concerning strikes occurred in Portugal (Graph 5).

²⁹ By political parties in power.

Graph 5 – Complaints/Representations and Strikes (1977-2005), Portugal



Source: Own calculations based on ILO; DGERT/MTSS

The graph shows that in some years the tendency in terms of complaints, representations and strikes tended to converge. The highest convergence trend occurred in 1981, accounting for the largest number of complaints, representations and strikes (6 complaints and representations and 765 strikes). After a general decreasing tendency between 1982 and 1988, it is noticeable a slight increase between 1989 and 1992; 1992 recorded a peak in terms of complaints and representations converging with a large number of strikes. Finally,

for the period between 1992 and 2005, it is clear the general decreasing trend. However, during 2004 and 2005 there was a slight rise in the number of complaints and representations.

Regarding the complaints and representations' subjects, all cases concerned fundamental rights³⁰, with the exception of one where no mention to a particular convention has been made (and has thus been excluded) and another one which related exclusively to employment policy, a priority and complementary matter, though not fundamental. The cases concerning Freedom of Association represented the majority (87%) of the universe of procedures³¹ (Quadro 3).

Table 3 – Complaints and representations by subject (1960-2007)

Subjects	Nr of cases
Exclusively on Freedom of Association	47
On Freedom of Association and also on other matters ³²	3
Exclusively on Forced Labour	1
Exclusively on Discrimination	1
Exclusively on Employment Policy	1

Source: Own calculations based on ILO; DGERT/MTSS

As explained above, the representations and complaints have relatively different proceedings, namely in what refers to competent bodies, following-up, to subjects and its

³⁰ We recall that the matters deemed as Fundamental Rights are: Forced Labour; Freedom on Association; Discrimination and Inequality; Child Labour: International Labour Organization Classification.

³¹ The cases filed with no further action had been also included. It was considered that 53 was the total number of complaints and representations' procedures.

³² Matters like: General Working Conditions (wages, paid holidays), Discrimination, Forced Labour, Labour Inspection.

seriousness, and to the actors' legitimacy to bring cases before ILO. Hence, we have opted to make an autonomous qualitative treatment of the cases.

Representations

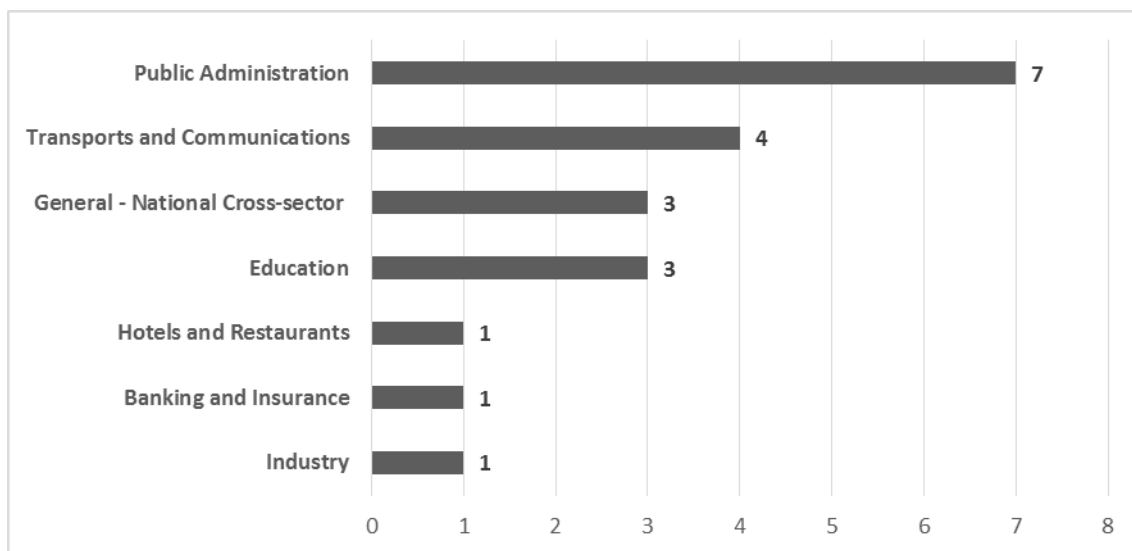
As already mentioned, the representations procedure is provided for by articles 24 and 25 of ILO Constitution³³. The employers' or workers' organizations are given the right to submit a complaint to BIT Governing Body whenever the Government does not comply with the conventions. In the period under analysis (until 2007), the 20 representations recorded distribute between the eighties and the nineties. There was a representation dating 2004 that was eventually treated by ILO as a complaint.³⁴

In what refers to the economic sector and the structure of the trade union actors addressing representations to ILO, the most relevant were the trade unions from the Transport and Telecommunications sectors (through the air and sea transport syndicates) and those representing Civil Servants. It was mainly individual trade unions – professional or category – submitting cases to ILO. Graph 6 summarises this data.

³³ All cases are addressed to BIT as complaints. With regard to the procedures, the fact that allegations thereof refer to union rights that does not mean the case shall be directly sent to the Committee on Freedom of Association (CFA). Internally, and depending on what is at stake, BIT shall discuss if the case should be or not appreciated by that supervisory body. Another caveat relates to the discrepancy between the number of representations available online and the number of representations mentioned in this paper. The explanation for that is that only representations further submitted to the consideration of the Governing Body are made available online. The remaining had to be consulted in DGERT/MTSS' archives.

³⁴ For updating purposes, even though beyond the period under analysis, it has to be mentioned that between 2007 and March 2015, ILO has recorded 4 more representations: 1) terminated since 2013, on convention 155 (*Occupational Safety and Health and the Working Environment*, 1981) and submitted by ASPP/PSP (Associação Sindical dos Profissionais da Polícia); 2) pending since 2013, on conventions 81 (*Labour Inspection*, 1947), 129 (*Labour Inspection in Agriculture*, 1969) and 155 (*Occupational Safety and Health and the Working Environment*, 1981), submitted by SIT (Sindicato dos Inspectores do Trabalho); 3) pending since 2013, on convention 137 (*Social Repercussions of New Methods of Cargo Handling in Docks*, 1973), submitted by several labour organizations related to stowage; and 4) pending since 2014, on conventions 29 (Forced Labour, 1930) and 111 (*Discrimination in Respect of Employment and Occupation*, 1958), submitted by FNSTFPS (Federação Nacional dos Sindicatos dos Trabalhadores em Funções Públicas e Sociais). Cf. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50010:0::NO::P50010_ARTICLE_NO:24

Graph 6 – Number of representations by trade union sector, 1960-2007, Portugal (n=20)



Source: Own calculations based on ILO; DGERT/MTSS

The representations addressed to ILO may concern the violation of any convention, whether with respect of fundamental rights or of other matters. In the Portuguese case, the representations addressing fundamental rights refer to subjects like “freedom of association”, “forced labour” and “discrimination in labour and occupation”.

“Working conditions” (in particular, pay issues), “employment” and “Labour administration” (via Labour Inspection) were also addressed by trade unions for non compliance. The most prominent of the representations’ subjects was “freedom of association”, accounting for more than half of the representations. The allegations made in

cases concerning Freedom of Association may be subdivided according to the following subjects³⁵.

1) *Obstacles to the assignment of rights to organise and act in trade unions*: representations dated 1981 and submitted by trade union organizations representationing for the right to collective bargaining, to join trade unions and to exercise trade union activity in the workplace (vd. cases of “Sindicato dos Trabalhadores da Aviação e Aeroportos”, SITAVA/1981; and of “Sindicato Livre dos Trabalhadores da Indústria de Bordados, Tapeçarias e Têxteis da Madeira”, SLTIBTTM/1981);

2) *Obstacles to trade union action*: in these cases the allegations were based either on labour “discrimination”, grounded on trade union belonging, or in a hindrance to union meeting at the workplace (cases of “Federação dos Sindicatos da Hotelaria e Turismo”, FESHOT/1989; and of “Sindicato dos Trabalhadores do Município de Lisboa”, STML/1997);

3) *Obstacles to collective bargaining/IRCT(Instrumentos de Regulamentação Colectiva do Trabalho)*: there were two types of allegations: a) within the context of civil servants’ wages negotiations, as Government did not enter into dialogue with social partners either because it unilaterally interrupted the negotiations, rejected further negotiations or did not comply with agreed deadlines (for instance, the case of “Sindicato dos Quadros Técnicos do Estado”, STE/2004); b) whenever the Government published diplomas extinguishing existing IRTC or did not publish negotiated agreements (the case, for instance, of “Confederação Geral dos Trabalhadores-Intersindical”, CGTP-IN/1988);

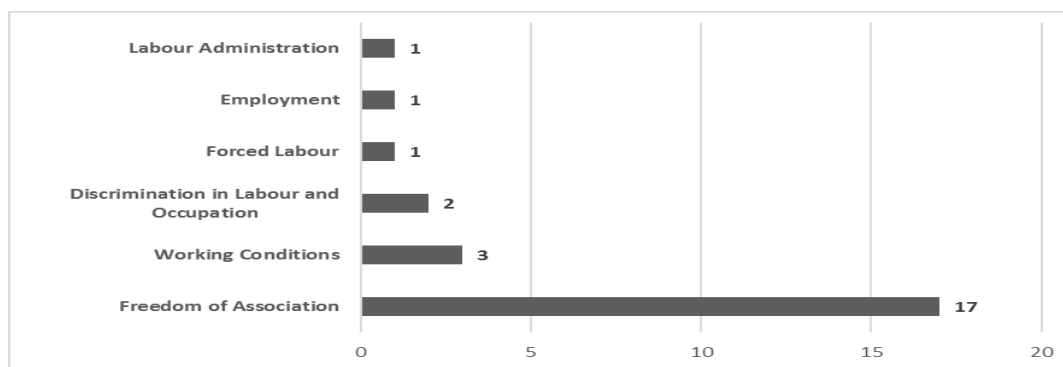
³⁵ These categories may also be used in the analysis of complaints made on freedom of association matters. These categories had been created upon analysis of the allegations content presented by trade unions. As per Campos’ proposal (1994) the complaints on freedom of association may be grouped into three categories: collective bargaining within public service; State’s interference in collective bargaining; freedom of association right.

4) *Absence of bargaining within public sector*: on the one hand, when allegations related to lack of bargaining, within Public Administration, for the adoption of legislation, in particular, governing careers and retributive systems (the case, for instance, of “Federação Nacional dos Professores”, FENPROF/1989); on the other hand, and within public undertakings, whenever allegations related to the implementation of wage reviews without previous bargaining and agreement (for instance, the case of “Confederação Geral dos Trabalhadores-Intersindical”, CGTP-IN/1988);

5) *Criticism levelled at the regulatory mechanism for conflicts regarding the setting of working conditions*: whenever the allegations condemned the absence of legal mechanisms governing collective bargaining in Public Administration, and the fact that they did not provide for peaceful and credible means for the regulation of labour conflicts in that sector (the cases of “Sindicato dos Quadros Técnicos do Estado”, STE/1990 e STE/1995).

The data thereof is summarised in the following graph (Graph 7).

Graph 7 – Number of representations by subject, 1960-2007, Portugal³⁶



Source: Own calculations based on ILO; DGERT/MTSS

³⁶ Since there are representations concerning more than one subject, the overall number of representations does not account for the whole of the 20 representations.

After the representation is sent to ILO, it starts the exchange of requests for clarification and supply of supplementary information, and the professional organizations wait for its appreciation. In the Portuguese case, and during the period between 1960 and 2007³⁷, the representations' appreciation was either of the following types³⁸: 1) immediate filing without further action, for non-compliance with the requirements of admissibility; 2) positive assessment to the Government; 3) positive assessment to the trade union organization.³⁹

Filing with no further action (1) was largely motivated for formal reasons (in the light of ILO Constitution) whether for illegitimacy of the actors or on the vagueness of the arguments put forward. *Positive assessment to the Government (2)* occurred, for instance, in the following situations: in 1984 when “Confederação Geral dos Trabalhadores Portugueses - Intersindical Nacional”, subsequent to a problem of non-payment of wages and of wage arrears, pleaded that the conventions on forced labour had been infringed (case CGTP-IN de 1984). After exchanging reports and obtaining information from the parties concerned the Committee of Experts concluded for the absence of forced labour in Portugal under ILO conventions on the matter (cf. DGERT/MTSS procedures); and on freedom of association matters, when the Committee of Experts confirmed the existence of collective bargaining and the lack of request for supplementary negotiation by Federação Nacional de

³⁷ The following-up of the representations – if not treated as complaints – is done on a regular basis. At the time of our research (between 2005 and 2008) there was no record of a clear representations' outcome. Excluding the cases where no record of its follow-up was found – whether in DGERT/MTSS archives, in BIT Official Bulletins or in the reports of the Committee of Experts – we realised that the Committee of Experts intervenes in some cases, and does it simultaneously with the Committee on Freedom of Association in cases of union rights infringement. Currently the following-up reports already appear organised and categorized within ILO databases.

Vd. http://www.ilo.org/dyn/normlex/en/F?p=NORMLEXPUB:50010:0::NO::P50010_ARTICLE_NO:24

³⁸ Cf. Processos de Queixas e Reclamações, DGERT/MTSS archives; BIT Official Bulletins, ILO

³⁹ It is deemed as “positive” to the Government the appreciation that does not include any recommendation to the Government, and finds the arguments of the complaining organization not sustainable. The reverse means a “positive” appreciation to the organization bringing the case under analysis.

Professores (FENPROF case, 1989), and found the allegations that the Portuguese Government has infringed the standards on social conciliation not sustainable (cf. DGERT/MTSS procedures). *Positive assessment to the trade union organization (3)* occurred, for instance, on freedom of association matters when the Committee of Experts and the Committee on Freedom of Association insisted with the Portuguese Government to ensure negotiated collective conventions would enter into force within a reasonable period (Confederação Geral dos Trabalhadores – Intersindical/CGTP-IN, 1988); another example on the same matter was when the Committee reminded the Government, during a process of collective bargaining, of the duty to reply to the requests for supplementary negotiations as represented by a public sector union (Sindicato dos Quadros Técnicos do Estado/STE, de 1990).

Complaints between Member-States: Republic of Ghana and Liberia

Recalling, the complaints procedure is provided for by articles 26 to 34 of ILO Constitution. According to these provisions a complaint may be brought against a Member State for non-compliance with a ratified convention by another country that has ratified that same convention. It may also be introduced by a delegate to the Conference or by the Governing Body itself. ILO Constitution also foresees the possibility of professional organizations (employers' or workers') submitting complaints to the Committee on Freedom of Association for the Government's non-compliance with the conventions on Freedom of Association (87 and 98).

As earlier said, during the political regime of Military Dictatorship and of "Estado Novo" (New State), Portugal has been often denounced by ILO for systematic violation of the conventions on Freedom of Association and Forced Labour. During this period, the violations concerning the freedom of association matter were lodged by international trade

union organizations and the cases had been filed without further action, whether for formal reasons or because the political context has changed, i.e., with the transition to a democratic regime some of the reasons for dispute had disappeared⁴⁰.

Concerning forced labour, Portugal has been denounced in February 1961 by the government from the Republic of Ghana for maintaining forced labour in the Overseas Provinces of Angola, Mozambique and Guinea-Bissau, violating convention no.105. ILO concluded that Portugal was not complying with all the obligations imposed by the convention on the abolition of forced labour since the date it had entered into force in this country (1960). At the time, the seriousness of the situation and of the infringements, justified creating, for the first time in ILO' history, a Committee of Inquiry to follow the case. As of 1963, upon the setting-up of a committee to follow the issue of South-african apartheid, the debates in the International Labour Conferences of the ILO became quite political around the "colonial" question. That year ILO expressly reproached of all forms of colonialism (Ghebali, 1987). In 1965, ILO publicly adopted a resolution condemning the maintenance of forced labour in Portuguese colonies, particularly Angola.⁴¹ In 1966 the Committee published a special report recognising that Portugal has introduced some alterations in its legislation towards harmonisation with forced labour convention. A parallel problem to the one of forced labour, according to ILO, was that the situation created by Portugal in its colonies threatened peace and safety in Africa. ILO considered that Portuguese Government was applying trade union legislation in Angola, Mozambique and Guinea-Bissau that clearly infringed conventions 87 and 98 of ILO. Therefore, and at the beginning of the seventies, ILO adopted another condemnatory

⁴⁰ Between 1955 and 1959, ILO has applied several condemnatory resolutions to Portugal, South Africa and Israel. Cf. *Processos de Queixas e Reclamações*, DGERT/MTSS' archives; BIT Official Bulletins, ILO.

⁴¹ Cf. "Résolution condamnant le gouvernement du Portugal en raison de la politique de travail forcé pratiquée par ce gouvernement dans les territoires qu'il administre soumise par la Commission des résolution (adoptée le 23 Juin 1965)", *Compte Rendu des Travaux*, 49ème session, Genève, 1965, p. 732.

resolution on the situation of freedom of association.⁴² Several recommendations had been made towards the revision of labour legislation in force in the territories of Angola, Mozambique and Guinea, as well as several direct contacts to ensure that the Government would also guarantee the proper functioning of the labour inspection services⁴³.

On the 31st of October 1961, eight months after Ghana's complaint, Portugal brought a complaint against Liberia Government, for maintaining in force legislation imposing forced labour, 29 years after its ratification of the convention on Forced Labour. Likewise, it was set up a Committee of Inquiry to assess the case. After analysing it the Committee has found that the government of Liberia was not complying with the regular reporting on the implementation of forced labour convention⁴⁴. It has been recommended a legislation update, the adequate incorporation of the ratified international labour conventions, and its publication. It has drawn the attention for the adoption of appropriate measures within the fields of labour inspection, labour policy and labour relations.

It seems strange that Portugal has brought a complaint against another country even though it was not entirely complying with the same convention. Indeed, at the start of 1961, Liberia, which enjoyed the statute of first African colony to become independent – has already submitted to the UN a motion against Portugal, condemning its behaviour in the African colonies. The fact that during the same year Portugal has featured two complaints to ILO (one as a target and the other as complainant) was not a coincidence. As stated by Jerónimo and Monteiro (2014), “the option for Liberia was facilitated by two

⁴² Cf. «Résolution concernant la politique d'oppression coloniale, de discrimination raciale et de violation des droits syndicaux par le Portugal en Angola, au Mozambique et en Guinée-Bissau», *Compte Rendu des Travaux*, 57ème session, Genève, 1972, pp.686-687.

⁴³ Cf. BIT Official Bulletin, 1960; and *L'exercice des libertés civiles et des droits syndicaux en Angola, Mozambique et Guinée-Bissau*, BIT, 1973.

⁴⁴ BIT Official Bulletin, 1961.

elements: firstly, to accuse Ghana could create problems inside the organization and be seen as a reprisal, (...); secondly, Liberia's record, in terms of forced labour and beyond the events occurred in the early thirties leading to the setting-up of a committee of inquiry by the League of Nations, was an appealing one, because of the non compliance, during the majority of the 50s, with the reporting obligations to ILO in accordance with Convention 29" (pp.44-5). It is to be stressed, in this context, that the resort to ILO as a strategy of "diplomatic diversion" between countries reinforces, once again, the symbolic dimension of the conflicts at the international level.

Complaints on Freedom of Association matters

Freedom of association and collective bargaining are ILO's founding principles. After the adoption of convention no.87 (Freedom of Association and Protection of the Right to Organise) and of convention no.98 (Right to Organise and to Collective Bargaining), ILO has focused on its enforcement by Member States, regardless their ratification thereof.

The complaints for non-compliance with these conventions may be started by employers' or workers' organizations against a member State. In the Portuguese case all complaints had been brought against Portuguese government by workers' organizations⁴⁵. The procedures had been followed by the Committee on Freedom of Association (CFA), the responsible body for analysing the complaints concerning the violation of freedom of association principles. The Fact-Finding and Conciliation Commission on Freedom of Association may also handle with complaints on this matter. In the Portuguese case, there are no records of such Commission's intervention in the analysis of cases.

45 For updating and beyond the period under analysis in this paper, it is to be mentioned that between 2007 and March 2015, ILO recorded 2 more complaints: 1) case no.2729 lodged in 2009 by CGTP-IN; and 2) case no.3072, lodged in 2014 also by CGTP-IN. Cf. http://www.ilo.org/dyn/normlex/en/f?p=1000:20060:1054471875888359:::P20060_REPORT_TYPE:A

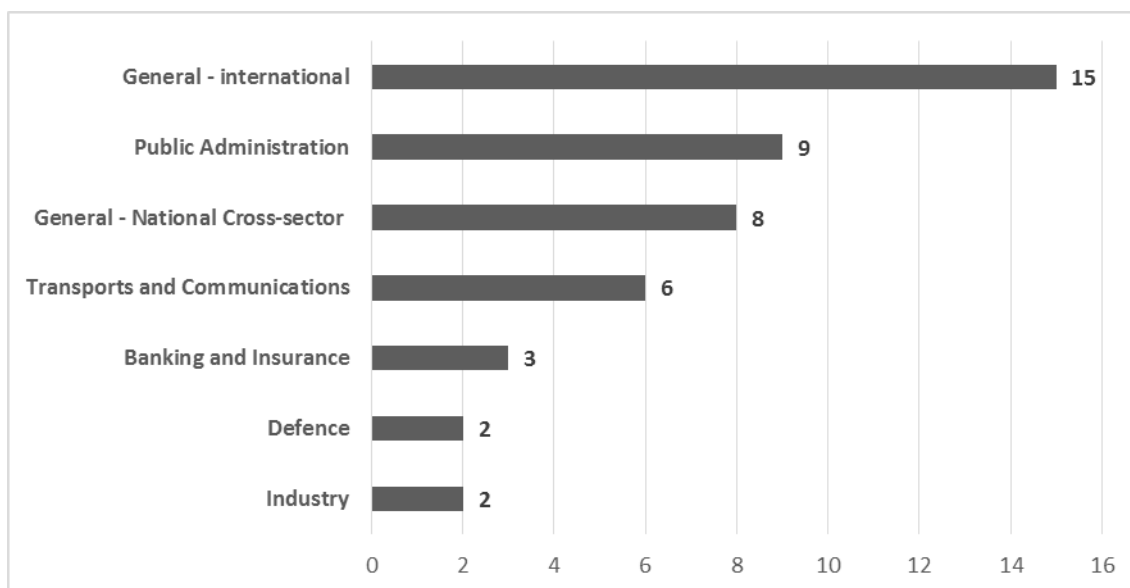
The analysis to the economic sector and to the structure of the trade union organizations that have addressed complaints to ILO between 1960-2007, allow us to conclude that, likewise in representations, it is the sector of Transports and Telecommunications (through air, sea and road transport, and telecommunications syndicates) and those of Public Administration/Defence, mainly via its trade unions structures, that took part in the processes of collective bargaining.

It also stands out, at the national cross-sector level, that Confederação Geral dos Trabalhadores Portugueses (CGTP-IN) has taken a stance for several times during the eighties. During the sixties and early seventies it stands out the strong complaint brought by international trade union organizations against the compelling trade union situation lived in Portugal as Portuguese syndicates could not do it.

The following graph shows the main characterising elements of the organizations receiving complaints on freedom of association matters.⁴⁶

⁴⁶ The number of cases corresponds to the number of complaints lodged in BIT by trade union organizations in those sectors. There are cases that are lodged by more than one trade union organization, thus here the whole of the cases does not exactly corresponds to the total number of complaints concerning freedom of association.

Graph 8 – Number of complaints on freedom of association matters by trade union sector, 1960-2007, Portugal



Source: Own calculations based on ILO; DGERT/MTSS

After analysing the allegations produced by trade union organizations it is possible to subdivide them in six fundamental topics⁴⁷: (1) obstacles to the acquisition of the right to organise and act in trade unions; (2) obstacles to trade union action; (3) obstacles to collective bargaining/IRCT; (4) absence of bargaining; (5) issues with trade union representativeness; (6) criticism levelled at the mechanism of disputes settlement (Graph 9). In all cases, the Government has been accused of non-compliance with the conventions, whether by taking a direct action by Labour Inspection ineffectiveness. Within each category it is still possible to regroup the topics.

⁴⁷ The categories had been created upon analysis of trade union organizations' allegations made in each case. Some cases belong simultaneously to two categories. Cf. Processos de Queixas e Reclamações, arquivos da DGERT/MTSS

Relatively to the *obstacles to the acquisition of the right to organise and act in trade unions*, the allegations were of two kinds: (a) those presented by international trade union organizations condemning the Portuguese political regime for hindering trade union organization and action (for instance, cases 266/1961 by “Confederação Internacional dos Sindicatos Livres/CISL”; 654/1970 by “Confederação Internacional dos Sindicatos Livres/CISL”, “Federação Sindical Mundial/FSM”, “Confederação Mundial do Trabalho/CMT”; 666/1971 also by CISL, FSM, CMT)⁴⁸; (b) allegations made by syndicates wanting to get formal legal recognition but facing Government’s refusal to register and publish their statutes, preventing therefore their functioning and legal existence (cases 1256/1984 by “Comissão para a Constituição de uma Associação Sindical da Polícia de Segurança Pública/CCASPSP”; and 1279/1984 by “Sindicato dos Trabalhadores dos Estabelecimentos Fabris das Forças Armadas/STEFFA”);

Regarding *obstacles to trade union action (2)*, there were three kinds of allegations: (a) those referring to strike situations whereby the Government imposed minimum services and disciplinary proceedings, replaced the strikers in their functions and arrested the union leaders using Public Security Police (PSP) (for instance, case 1042/1981, by “Federação Nacional dos Sindicatos da Função Pública/FNSFP”); (b) allegations concerning situations of labour discrimination on a basis of trade union belonging, whereby whether the union leaders were prevented from returning to their workplace, or trade unions members were prevented from being recruited to work. In these cases the Government has been accused for Labour Inspection services’ ineffectiveness (for instance, case 1045/1981 from “Confederação Geral dos Trabalhadores-Intersindical/CGTP-IN”); (c) allegations referring to other kind of obstacles, such as participation in trade union meetings (for instance, when

⁴⁸ For the Portuguese case and out of all complaints and representations, the lengthiest procedures were cases no.266 (took about 10 years), no.654 and no.666 (both took around 5 years). After analysing the length of the procedures one can say that in average they were taking between 5 to 8 months (upon issuing of the final report).

the entrance in Portugal of foreign union leaders has been restricted in case 966/1980, by Federação Sindical Mundial/FSM) and when some employers retained union fees (for instance, case 1303/1984, by “Confederação Geral dos Trabalhadores-Intersindical/CGTP-IN”).

As for the *obstacles to collective bargaining/IRCT (3)*, there were two kinds of allegations: (a) those concerning to the Government’s negotiation attitude in the bargaining of the wages for civil servants. In particular, it is to be noted the (allegedly) unilateral termination of the negotiations, the unilateral wage setting and the Government’s denial of supplementary negotiations (for instance, case 1365/1986 by “Frente Comum dos Sindicatos da Função Pública/FC” and “Frente Sindical da Administração Pública/FESAP”); (b) allegations concerning the elimination or restriction of the existing collective bargaining instruments (in insurance sector, case 1370/1986, by “Sindicato dos Trabalhadores de Seguros do Sul e Ilhas/STSSI”).

With regard to the *absence of bargaining (4)* there were two kinds of allegations: (a) those referring to Government’s direct action, after for instance unilaterally setting up the level of minimum services in case of strike, or after approving diplomas which defined, allegedly without social dialogue, wages and other matters (for instance the policemen’s assessment system: case 2325/200, by “Associação Sindical dos Profissionais da Polícia/ASPP-PSP”); (b) or, once again, because of Labour Inspection ineffectiveness, in those cases whereby public undertakings adopted diplomas setting up, without social conciliation, the regime of their employees’ working conditions (working time, non negotiated renewal of Works Agreement, etc. See case 1424/1987, by “Sindicato Nacional do Pessoal de Voo da Aviação Civil/ SNPVAC”, whereby an air company established a higher flying time than the one provided for in the Works Agreement).

The *issues of union representativeness (5)* referred to cases that can be split into two sets of topics: (a) the absence of representatives of the complaining union organization within the bargaining process of collective labour agreements (where organizations considered as minority are present. See, for instance, case 1174/1983, from “Confederação Geral dos Trabalhadores-Intersindical/CGTP-IN”); (b) the absence of the complaining union organization in the Social Conciliation bodies or in the tripartite Commissions created by

the Government (See, for instance, case 2334/2004, by “União dos Sindicatos Independentes/USI”). This type of cases strengthened the divergences between CGTP and UGT (the two main trade union organizations in Portugal) as well as the divergences between these and the independent organizations).

Finally, in the topic of the *criticism levelled at the mechanism of disputes settlement (6)* situations occurred whereby trade union organizations expressly representationed improvements in Portuguese legislation so as to protect the resort to supplementary negotiations in Public Administration (see case 1315/1984 by “Federação Nacional dos Sindicatos da Função Pública/FNSFP”) and to ensure greater harmonisation with convention 151 (see case 1694/1993, by “Sindicato dos Quadros Técnicos do Estado/STE” and “Frente Sindical da Administração Pública/FESAP”).

Graph 9 - Percentage (%) of the topics in terms of complaints on Freedom of Association, 1960-2007



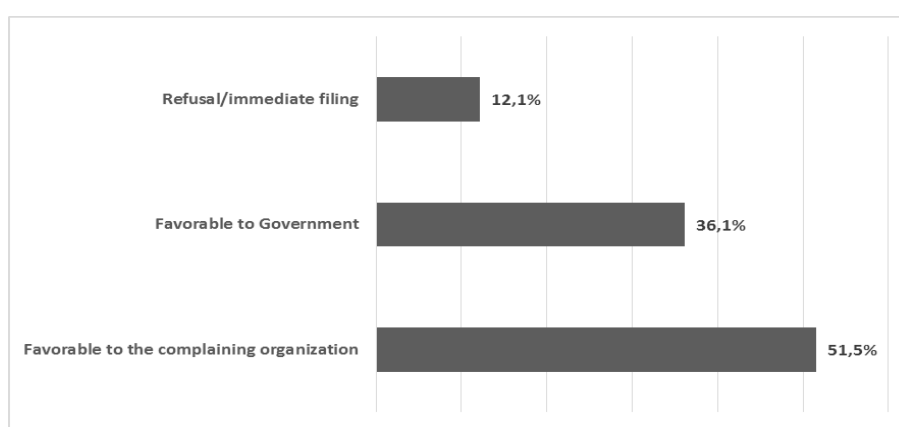
Source: Own calculations based on ILO; DGERT/MTSS

After the complaint is sent to ILO and if the Governing Body finds the case should be analysed by the Committee on Freedom of Association, the professional organizations must wait for its appreciation. In the Portuguese case, likewise with representations, the appreciation of the complaints brought before BIT in the period under analysis was either of the following ties: 1) immediate filing without further action, for non-compliance with

the requirements of admissibility; 2) positive assessment to the Government; 3) positive assessment to the trade union organization.

Graph 10 summarises the information in terms of complaints outcome on freedom of association matters analysed by the Committee on Freedom of Association (CFA). Each value refers to the percentage of cases having any of the mentioned outcomes.

Graph 10 – CFA’s final appreciation concerning complaints on freedom of association matters, 1960-2007, Portugal (% , n=33)



Source: Own calculations based on ILO; DGERT/MTSS

ILO ruled “in favor” of the Government (and against the complaining organization) in cases, for instance, where the Committee considered that the allegations referred to internal administrative and legal matters, with no direct impact on the right to freely associate of the complaining union organization (see case 1497/1989 from the “Sindicato dos Profissionais da Banca dos Casinos/SPBC”); where the Committee considered that it was not an infringement of union rights at stake, but other matters beyond its competence (like the sovereign right of a country to stop the entrance of foreigners in its territory (see case 966/1980 from “Federação Sindical Mundial/FSM”); or when the Committee noted that according Portuguese legislation, the police workers did not enjoy from the right to form trade unions and, as such, could not appreciate the complaint which is provided for by the law of each country (see case 1256/1983 from “Comissão para a Constituição de uma Associação Sindical da Polícia de Segurança Pública/CCASPSP”).

In those cases where ILO ruled “in favour” of the complaining organization (and against the Government), situations occurred like, for instance, when the Committee regretted the unilateral setting up of the rises in civil servants wages and reproached the detention of trade union leaders (see case 1942/198 from “Federação Nacional dos Sindicatos da Função Pública/FNSFP”); when recommended the Government to adjust legislation so as to allow the right to freely and collectively bargain in fields like “working time” (see case 1370/1986, by “Sindicato dos Trabalhadores de Seguros do Sul Ilhas/STSSI”); when it drew the attention for the possible abuse of workers requisitions in strike situations recommending that these requisitions should only happen in case of severe crisis and for the maintenance of essential services and that trade union organizations should also be part of the definition of such minimal services (see case 1486/1989 by “Confederação Geral dos Trabalhadores-Intersindical/CGTP” and “Sindicato dos Trabalhadores dos Transportes Ferroviários e Conexos/SITRA”); and when the Committee asked the Government to establish (with prior consultation to workers and employers) precise and objective criteria to evaluate the representativeness and independence of trade union organizations that should become participating members of social conciliation bodies. In this case, ILO expressly asked that the legislation should be changed and omitted the reference to the organizations legitimised to be part of such bodies (see case 2334/2004, from “União dos Sindicatos Independentes/USI”).

Immediate filling of the cases: demand refused

According to standards, the cases sent to BIT, after a first analysis and sorting may be filed without further action for non-compliance with the requirements of admissibility. Out of a total of 53 cases, 7 had been filed (around 14% of the cases), 4 of which before 1974. The admissibility requirements of complaints and representations as defined by ILO are as follows: (a) the representation must be put forward, in written, in BIT; (b) it must be put

forward by an employers or a workers' organization; (c) it must expressly mention article 24 of ILO Constitution; (d) it must involve a member of the organization; (e) it must concern a convention ratified by the country at stake (or not, if it is on a matter of union rights); (f) it must indicate the specific aspect of the convention the country was not in compliance with, within the limits of its jurisdiction.⁴⁹

Subsequent to the formal analysis of the case, the Secretariat (BIT) shall produce a report with its preliminary appreciation and shall send the Governing Body its advice on the admissibility of the representation in formal terms. Only afterwards shall be possible to do the analysis of the representation's substance.

With regard to the complaints for freedom of association violation, as per the proceeding in place, the allegations shall be admitted if they are made by: (a) a national organization with a direct interest on the subject; (b) international employers or workers' organizations with an advisory status within ILO; (c) other international employers or workers' organizations whose allegations report to matters affecting directly the affiliated organizations.

Only under these conditions may ILO pursue with the complaints and representations put forward. In Portugal, the cases filed without further action were "refused" based on such reasons. From the actors' point of view, two situations have occurred: (a) the complaining trade union organizations did not enjoy from advisory status within ILO and had not affiliates in our country; (b) the fact that a company was unable to make a representation against a syndicate. From the point of view of the substance of the allegations, the cases had been filed either because they were not grounded in any ILO convention in particular,

⁴⁹ Cf. article 2 of the Regulation relative to the proceedings to be followed in the examination of the representations under articles 24 and 25 of ILO Constitution.

or for the vagueness of the arguments (cf. Processos de Queixas e Reclamações, DGERT/MTSS' archives).

From our point of view, we note that the underlying reasons of these filings, to be joined to those 36% of cases where ILO has ruled in favour of governments as well as to the great number of complaints/representations Portugal has within the context of European Union, they contribute to reinforce, first of all, the “adversarial” dynamic of the (re)institutionalisation process of the Portuguese system of labour relations. Secondly, the fact that ILO has ruled in favour of trade union organizations in more than 50% of the cases, reinforces the role of this organization within civil society and its effective contribution to the application of labour key principles at the national level. Finally and regardless the outcome of the cases or the basis of the allegations, we have noticed that the special supervisory mechanism has, in either situation, a relevant symbolic dimension. It is not without reason that it is seen as a pioneering system which influenced other international bodies to create similar mechanisms (Sussekund, 2007).

As we have seen, ILO supervisory mechanisms have a regulatory and morally sanctioning nature, even though their enforcement powers are not as those of a judicial authority. The fact that a country becomes member of ILO's community, demonstrates a commitment (always renewed) with the fundamental labour principles and with the values of social justice and decent work. To be the target of a complaint or a representation is both a national and international embarrassment – mainly because of media exposure – which triggers pressure actions, moral sanction and technical monitoring of the socio-legal problems at stake. Upon analysis of the procedures outcome, as well as of ILO supervisory annual reports and of the samples used in our investigation, we have realised that some of the recommendations were effectively transposed to the national systems. Apart from that, and fundamentally, ILO special supervisory system is a clear example of the “symbolic use of law” (Carlomagno, 2011), with a constructive and tangible impact in labour market.

ENDNOTES

Based on the theoretical premises of the ways of labour law making and the system of regulation of labour conflicts, in this chapter we have clarified their implementation using Portuguese society as the unity of analysis.

According to the needs of an innovative political mobilisation for the symbolic extension of the workers' rights, grounded on considerations of human dignity, one can realise the potential of ILO's *soft law* (regulatory law). Its action, even if it is not of a judicial nature, bases in instruments that become effective because of its symbolic dimension, which means that the use of the system of complaints and representations is legitimised by the symbolic application of the reference framework built upon ILO's fundamental principles. The recommendations made to the organizations and governments, the following-up of the alterations requested through reports and direct contacts, as well as the publication of the cases are examples of regulation in the national socio-legal sphere.

This kind of approach based on *soft law* mechanisms is the Organization strength as it is clearly more adequate than an inflexible approach that does not consider the national specificities. Thus and paradoxically, being these ILO's instruments of the *soft law* type, they have similar potential, if not higher, than the *hard law*'s, particularly if we consider the acquired status and the dissemination of ILO's normative framework among public opinion as for labour human rights.

All said, it is to be concluded that the evolution of the Portuguese system of labour relations was widely influenced by ILO's governance model, which becomes clearer by the political and legal mobilisation for the use of the complaints and representations system; this ultimately illustrates the reconfiguration in Portugal of the relation between the State and the labour civil society, namely the decrease of the influence of the State's intervention alongside a higher participation of the civil society in this domain.

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