International Labour Organization

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Governing Body

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Institutional Section **INS**

Fifteenth item on the agenda

Report of the Committee on Freedom of Association

400th Report of the Committee on Freedom of Association

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▶ Introduction

1. The Committee on Freedom of Association (CFA), set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva from 27 to 29 October 2022 and 3 November 2022, and also in hybrid form, under the chairmanship of Professor Evance Kalula.

2. The following members participated in the meeting: Mr Gerardo Corres (Argentina) (virtually), Ms Gloria Gaviria (Colombia), Ms Petra Herzfeld Olsson (Sweden), Mr Akira Isawa (Japan), Ms Anousheh Karvar (France) and Ms Vicki Erenstein Ya Toivo (Namibia); Employers' group Vice-Chairperson, Mr Alberto Echavarría and members, Mr Hiroyuki Matsui, Mr Kaiser Moyane and Mr Fernando Yllanes; Workers' group Vice-Chairperson, Ms Amanda Brown and members, Mr Zahoor Awan, Mr Gerardo Martínez, Mr Magnus Norddahl, Mr Jeffrey Vogt and Mr Ayuba Wabba. The members of Colombian nationality were not present during the examination of the cases relating to Colombia (Cases Nos 3281, 3295 and 3309).

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3. Currently, there are **125** cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined **20** cases on the merits, reaching conclusions in **7** definitive reports, **9** reports in which the Committee requests to be kept informed of developments and interim conclusions in **4** cases; the remaining cases were adjourned for the reasons set out in the following paragraphs. The Committee recalls that it issues "definitive reports" when it determines that the matters do not call for further examination by the Committee beyond its recommendations (which may include follow-up by the government at national level) and the case is effectively closed for the Committee, "interim reports" where it requires further information from the parties to the complaint and "reports in which it requests to be kept informed of developments" in order to examine later the follow-up given to its recommendations.

Examination of cases

4. The Committee appreciates the efforts made by governments to provide their observations on time for their examination at the Committee's meeting. This effective cooperation with its procedures has continued to improve the efficiency of the Committee's work and enabled it to carry out its examination in the fullest knowledge of the circumstances in question. The Committee would therefore once again remind governments to send information relating to cases in **paragraph 7**, and any additional observations in relation to cases in **paragraph 9**, as soon as possible to enable their treatment in the most effective manner. Communications received after **3 February 2023** will not be able to be taken into account when the Committee examines the case at its next session.

Serious and urgent cases which the Committee draws to the special attention of the Governing Body

5. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2318 (Cambodia), 2508 (Islamic Republic of Iran) and 3263 (Bangladesh) because of the extreme seriousness and urgency of the matters dealt with therein. The Committee recalls in this regard that, in accordance with paragraph 54 of its Procedures, it considers as serious and urgent cases those involving human life or personal freedom, or new or changing

conditions affecting the freedom of action of a trade union movement as a whole, cases arising out of a continuing state of emergency and cases involving the dissolution of an organization.

Paragraph 69 of the Committee's procedures

6. In light of the seriousness of the matters raised in Case No. 2318 (Cambodia) and the lack of efforts on the part of the Government to bring the requested investigations to a conclusion in a transparent and impartial manner, the Committee invites the Government, by virtue of its authority as set out in paragraph 69 of the procedures for the examination of complaints alleging violations of freedom of association, to come before the Committee at its session in May-June 2023 so that it may obtain detailed information on the steps taken by the Government in relation to the pending matters.

Urgent appeals: Delays in replies

7. As regards Cases Nos 3249 (Haiti), 3337 (Jordan), 3418 (Ecuador) and 3431 (Angola), the Committee observes that despite the time which has elapsed since the submission of the complaints or the issuance of its recommendations on at least two occasions, it has not received the observations of the Governments. The Committee draws the attention of the Governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases at its next meeting if the observations or information have not been received in due time. The Committee accordingly requests the Governments to transmit or complete their observations or information as a matter of urgency.

Observations requested from governments

8. The Committee is still awaiting observations or information from the Governments concerned in the following cases: 3067 (Democratic Republic of the Congo), 3269 (Afghanistan), 3275 (Madagascar), 3396 (Kenya), and 3428 (Cameroon). If these observations are not received by its next meeting, the Committee will be obliged to issue an urgent appeal in these cases.

Partial information received from governments

9. In Cases Nos 2254 (Bolivarian Republic of Venezuela), 2265 (Switzerland), 3018 (Pakistan), 3023 (Switzerland), 3141 (Argentina), 3161 (El Salvador), 3178 (Bolivarian Republic of Venezuela), 3192 and 3232 (Argentina), 3242 (Paraguay), 3277 (Bolivarian Republic of Venezuela), 3282 (Colombia), 3300 (Paraguay), 3325 (Argentina), 3335 (Dominican Republic), 3366 and 3368 (Honduras), 3370 (Pakistan), 3383 (Honduras), 3403 (Guinea), 3417 (Colombia), 3419 (Argentina), 3424 (Cambodia) and 3427 (Togo), the Governments have sent partial information on the allegations made. The Committee requests all these Governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

10. As regards Cases Nos 2177 and 2183 (Japan), 2609 (Guatemala), 2761 (Colombia), 2923 (El Salvador), 3027 (Colombia), 3042 and 3062 (Guatemala), 3074 (Colombia), 3148 (Ecuador), 3157 (Colombia), 3179 (Guatemala), 3184 (China), 3185 (Philippines), 3199 (Peru), 3203 (Bangladesh), 3208 (Colombia), 3210 (Algeria), 3213 and 3218 (Colombia), 3225 (Argentina), 3228 (Peru), 3233 (Argentina), 3234 (Colombia), 3239 and 3245 (Peru), 3258 (El Salvador), 3271 (Cuba), 3280

(Colombia), 3307 (Paraguay), 3308, 3311 and 3315 (Argentina), 3321 (El Salvador), 3322 (Peru), 3324 (Argentina), 3329, 3333 and 3336 (Colombia), 3342 (Peru), 3349 (El Salvador), 3352 (Costa Rica), 3358 (Argentina), 3359 (Peru), 3360 (Argentina), 3363 (Guatemala), 3373 (Peru), 3376 (Sudan), 3377 (Panama), 3380 (El Salvador), 3384 (Honduras), 3388 (Albania), 3390 (Ukraine), 3392 (Peru), 3395 (El Salvador), 3397 (Colombia), 3402 (Peru), 3406 (China, Hong Kong Special Administrative Region), 3414 (Malaysia), 3416 (Algeria), 3420 (Uruguay), 3421 (Colombia), 3422 South Africa and 3426 (Hungary), the Committee has received the Governments' observations and intends to examine the substance of these cases as swiftly as possible.

Withdrawal of a complaint

11. The Committee takes note of a communication from the International Transport Workers' Federation (ITF) dated 19 October 2022 requesting the withdrawal of its complaint in Case No. 3207 (Mexico). The Committee therefore considers that this case is closed.

New cases

12. The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: 3429 (Ecuador), 3430 (Republic of Korea), 3432 (United Kingdom of Great Britain and Northern Ireland), 3433 (Republic of Korea), 3434 (Algeria) and 3435 (Peru) since it is awaiting information and observations from the Governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Admissibility of complaints

13. In accordance with the decision taken in its March 2021 report (GB.341/INS/12/1), the Committee has decided, based on its criteria to assist in filtering out complaints for which it considered it would not be in a position to provide pertinent recommendations under its mandate (including the time elapsed since the alleged matters occurred; the treatment and follow-up of the matter at national level (i.e. ongoing consideration by independent bodies); insufficient evidence or support of the freedom of association violation alleged and its consideration at international level or absence of a link to freedom of association or collective bargaining), that it was not in a position to provide pertinent recommendations under its mandate with respect to four complaints received between June 2022 and October 2022 and therefore decided not to examine them.

Voluntary conciliation

14. In its March 2021 report (GB.341/INS/12/1), the Committee decided to adopt a similar approach of optional voluntary conciliation for complaints as has been adopted with respect to representations under article 24 of the ILO Constitution. In its June 2022 report, the Committee took due note that the parties in Case No. 3425, the Trade Union Congress of Swaziland (TUCOSWA) and the Government of Eswatini, had agreed to refer the dispute to voluntary conciliation at the national level. This suspended the consideration by the Committee of the complaint for a period of up to six months. The Committee also takes note that the parties in Case No. 3423, the Single Confederation of Workers of Colombia (CUT) and the Colombian Association of Professional Soccer Players (ACOLFUTPRO) as well as the Government, have agreed to refer the dispute to voluntary conciliation at the national level. This suspends the consideration by the Committee of the complaint for a period of up to six months. The

Committee recalls that the ILO fully supports the resolution of disputes at national level and is available to assist the parties in this regard.

Article 24 representations

15. The Committee has received certain information from the following Governments with respect to the article 24 representations that were referred to them: Costa Rica (Case No. 3241) and Poland and intends to examine them as swiftly as possible. The article 24 representation referred to the Committee on Freedom of Association concerning the Government of France (Case No. 3270) is being finalized by the corresponding tripartite committee. The Committee has also taken note of the more recent referral of the article 24 representations concerning Argentina and France and is awaiting the Governments' full replies. The Committee takes due note that the parties in the article 24 concerning Uruguay, the Association of Locally Employed Functionaries of the Diplomatic Missions and Consular Offices of Uruguay Abroad (ASFUCOUREX) and the Government, have agreed to refer the dispute to voluntary conciliation at the national level. This suspends the consideration by the Committee of the representation for a period of up to six months.

Article 26 complaints

16. The Committee is awaiting the observations of the Government of Belarus in respect of its recommendations relating to the measures taken to implement the recommendations of the Commission of Inquiry. In light of the time that has elapsed since its previous examination of this case, the Committee requests the Government to send its observations so that it may examine the follow-up measures taken with respect to the recommendations of the Commission of Inquiry at its next meeting.

Transmission of cases to the Committee of Experts

17. The Committee draws the legislative aspects of Cases Nos 2994 (Tunisia), 3107 (Canada), 3219 (Brazil) and 3413 (Plurinational State of Bolivia), as a result of the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

▶ Cases in follow-up

18. The Committee examined **11** cases in paragraphs **19** to **75** concerning the follow-up given to its recommendations and concluded its examination with respect to and therefore closed **9** cases: 2153 (Algeria), 2934 (Peru), 2994 (Tunisia), 3065 and 3066 (Peru), 3072 (Portugal), 3093 (Spain), 3096 (Peru) and 3107 (Canada).

Case No. 2153 (Algeria)

19. The Committee last examined this case at its June 2021 meeting. On that occasion, it indicated that it expected the Government to inform it without delay of the outcome of the application for judicial review that had been lodged in August 2012 by the employer of Mr Mourad Tchikou (Vice-President of the National Union of Civil Protection – SNAPAP) in respect of the decision to lift Mr Tchikou's suspension [see 395th Report, June 2021, para. 18.] In its communication dated

19 May 2022, the Government indicated that the Supreme Court had ruled in favour of Mr Tchikou, but that he had not subsequently approached his employer concerning the execution of the judgment.

20. *The Committee notes the information provided by the Government. The Committee finds it regrettable that the Government did not provide further information on the ruling of the Supreme Court in a case that has been under way since 2012, in particular the date of the judgment and the Court's reasons for ruling in favour of Mr Tchikou. Nevertheless, in the absence of information from the complainant organization on any difficulties in securing the execution of the judgment, the Committee must consider the dispute in question to have been resolved. In the light of the foregoing, the Committee considers this case closed and will not pursue its examination.*

Case No. 3107 (Canada)

21. The Committee last examined this case in which the complainant, the Amalgamated Transit Union (ATU), Local 113, alleged that its members had been deprived of their right to strike and their right to freely negotiate their employment by virtue of a legislation (Toronto Transit Commission Labour Disputes Resolution Act, 2011), which declared the Toronto Transit Commission (TTC) to be an essential service, at its March 2016 meeting [see 377th Report, paras 215–244]. On that occasion, the Committee made the following recommendation:

> In light of the review to be carried out on the operation of the Act in the very near future, the Committee urges the Government to takes the necessary steps so that the Government of Ontario will review the Toronto Transit Commission Labour Disputes Resolution Act, 2011, in consultation with the social partners, in a manner so as to ensure the rights of TTC workers. It requests the Government to keep it informed in this respect.

22. In a communication dated 18 February 2022, the ATU, Local 113, expresses its disappointment with the results of the review of the Toronto Transit Commission Labour Dispute Resolution Act (TTCLDRA) by a third party, who recommended no changes to be made to the legislation. Accordingly, the complainant submits, the legislation continues to prohibit Local 113 members, employees of the TTC, from engaging in any form of work stoppage and thereby strips Local 113 of its bargaining powers. The complainant explains that the review did not take into account all issues pertaining to "workers' rights", considered as relating solely to the constitutionality of the TTCLDRA and thus outside the scope of the review. Likewise, the reviewer declined to comment in what manner the Government was in breach of its international legal obligations, namely the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

23. According to the complainant, in the years following the review, the Government has continued to refuse to amend the TTCLDRA and the labour relations between the parties have reached an all-time low. The TTC and Local 113 have had a collective agreement imposed on them by an interest arbitrator in each round of bargaining that has taken place (in 2018 and 2021). In the last round of bargaining which concluded on 4 January 2022, the parties failed to negotiate a single substantive term.

24. In its communication dated 2 May 2022, the Government of Canada transmits the observations of the Government of Ontario, in which the latter argues that the TTCLDRA does not violate the Convention No. 87, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154). The Government states that it engaged an independent neutral expert to conduct a review of the TTCLDRA in accordance with Committee's recommendations and that no further inquiry is necessary. The Government also states that key stakeholders and social partners, such as Local 113, participated in the

review and provided detailed submissions. The primary recommendation arising from the five-year review was to retain the TTCLDRA as such, to which the Government has complied. The Government of Ontario requests the present case be closed.

25. *The Committee notes with regret that the TTCLDRA has not been amended as per its recommendation made in 2016. While noting the Ontario Government's statement that the Act is in compliance with Conventions Nos 87, 98 and 154, the Committee recalls that its mandate is to determine whether any given legislation complies with the principles of freedom of association and collective bargaining laid down in relevant Conventions. Moreover, when a State decides to become a Member of the International Labour Organization, it accepts fundamental principles embodied in the Constitution and the Declaration of Philadelphia, encompassing the principles of freedom of association [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 9 and 44].*

26. *The Committee refers the Government to its previous conclusions set out in paragraphs 240–243 of its 377th Report wherein it concluded that: (1) metropolitan transport did not constitute an essential service in the strict sense of the term, but a public service of primary importance where the requirement of a minimum service in the event of a strike could be justified; and (2) that legislative provisions which establish that, failing agreement between the parties, the points at issue in collective bargaining must be settled by arbitration were not in conformity with the principle of voluntary negotiation.*

27. *The Committee reiterates its previous conclusions and once again urges the Government to review the TTCLDRA in consultation with the social partners concerned without further delay. The Committee refers the legislative aspect of this case to the Committee of Experts on the Application of Conventions and Recommendations. In these circumstances, the Committee considers that this case is closed and will not pursue its examination.*

Case No. 3093 (Spain)

28. The Committee examined this case, concerning allegations of suppression of the right to strike through the application of article 315.3 of the Criminal Code (CC), at its meeting in June 2016 [see 380th Report, October 2016, paras 445–511]. On that occasion, the Committee made the following recommendations:

(a) The Committee requests the Government to invite the competent authority to review the impact of the 2015 reform of article 315.3 of the CC and to inform the social partners of the outcome of the review. The Committee requests the Government to keep it informed in this respect.

(b) The Committee requests the Government to indicate the specific grounds that led to the sentencing of Ms Bajo and Mr Cano to imprisonment of three years and one day and, noting that they are currently free, awaiting a decision on their petitions for clemency, the Committee requests the Government to keep it informed of the evolution of their situation.

(c) Noting that Mr Carlos Rivas Martínez and Mr Serafín Rodríguez Martínez are currently free, awaiting a decision on their petitions for clemency, the Committee requests the Government to keep it informed of the evolution of their situation.

(d) The Committee requests the Government to send its observations on the situation of Ms María Jesús Cedrún Gutierrez, Mr José Manuel Nogales Barroso, Mr Rubén Sanz Martín, Mr Juan Carlos Martínez Barros, Ms Rosario María and Mr Alonso Rodríguez. The Committee trusts that the ongoing criminal proceedings relating to the exercise of the right to strike referred to in the present complaint will be settled as quickly as possible. The Committee requests the Government to keep it informed in this regard.

29. The complainant organizations provided additional information by communications dated 11 April and 23 May 2022. The Government, for its part, submitted further observations in communications dated 10 May and 26 July 2021.

30. The Committee notes that, by communications sent on 11 April and 23 May 2022, the complainant organizations report on the adoption of Organic Law 5/2021 of 22 April 2021, which repeals article 315.3 of the CC and whose sole transitory provision provides that "judges and courts shall proceed to review final judgments handed down in accordance with the repealed legislation".

31. In its communication of 11 April 2022, the Trade Union Confederation of Workers' Commissions (CC.OO.) additionally refers to the situation of several persons mentioned in the conclusions and recommendations issued by the Committee in the framework of the present case. The complainant organization indicates that, by means of decisions adopted by the Council of Ministers (Royal Decrees 55/2019 and 56/2019 of 8 February 2019 and Royal Decrees 137/2019 and 138/2019 of 8 March 2019), a pardon was granted to Mr and Mrs Carlos Rivas Martínez, Serafín Rodríguez, Carmen Bajo and Carlos Cano. The trade union confederation further states that, by virtue of the single transitory provision of the aforementioned Organic Law 5/2021, the judicial review of the above cases is appropriate, given that the conducts for which the convictions of the persons subsequently pardoned were issued were decriminalized.

32. In its communication of 23 May 2022, the General Union of Workers (UGT) further states that its work has been aimed not only at the repeal of article 315.3 of the CC but also at the exoneration of the offences and proceedings that all workers prosecuted and convicted for participating in a strike have seen initiated and that the trade union centre has taken the necessary legal measures, including pardons, to close such proceedings. The complainant organization then refers to particular cases, indicating specifically that: (i) the offence for which Ms María Jesús Cedrún, a worker and trade union leader, was convicted under article 315.3 of the CC, was reduced to a misdemeanour of coercion, which was time-barred; (ii) the sentence imposed on Mr Ruben Ranz Martín under article 315.3 of the CC was reduced from an offence to a misdemeanour of injury; (iii) the sentence imposed on Mr Ruben Ranz Martín under article 315.3 of the CC; the worker finally had to pay a fine of €1,200 for damages to a policeman and a waiter; and (iv) the sentence imposed on Mr José Manuel Nogales Barroso on the basis of article 315.3 of the CC was reduced from a crime to a misdemeanour of injury; the worker finally had to pay a fine of approximately €500 for damages to a policeman and a waiter. After stating that it considered that the fine imposed on Mr Ranz Martín was still excessive in the light of the facts (having hit a riot policeman with a small plastic flag), the complainant organization states that all the cases are closed.

33. The Committee also takes note of the communications from the Government dated 10 May and 26 July 2021 by means of which it: (i) reports on the repeal of article 315.3 of the CC following the adoption of Organic Law 5/2021; (ii) stresses the importance of the single transitory provision of the aforementioned law, which provides that judges and courts will proceed to review final judgments handed down in accordance with the repealed legislation, a review which will be carried out by the Criminal Chamber of the Supreme Court; and (iii) states that the Ministry of Justice does not have information on specific judicial proceedings that could be provided in this regard.

34. The Committee takes note of the various elements provided by the complainant organizations and by the Government. The Committee takes particular note of the repeal of article 315.3 of the CC concerning the offence of coercion to initiate or continue a strike, which provided that

"those who, acting as a group or individually, but in agreement with others, coerce other persons to initiate or continue a strike, shall be punished by imprisonment for a term of one year and nine months to three years or by a fine of eighteen months to twenty-four months". In the light of its findings and recommendation (a) in the present case and recalling that it has considered that penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association and that all penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 966], the Committee notes with satisfaction the repeal of article 315.3 of the CC.

35. With regard to recommendations (b), (c) and (d) of the present case, the Committee takes due note of the information provided by the complainant organizations concerning the specific situation of seven persons who had been convicted on the basis of article 315.3 of the CC. The Committee notes that, according to this information: (i) four of these persons, in particular Ms Bajo and Mr Cano, who had received sentences of three years and one day in prison, were pardoned by the Executive; (ii) on the basis of the repeal of article 315.3 of the CC, the courts redefined the criminal offences on the basis of which three other persons had been convicted, the conducts which were the subject of the criminal proceedings being finally qualified as misdemeanours (less serious criminal offences) instead of crimes; (iii) as a result of the foregoing, the sentence applicable to one person was time-barred, while in the other two cases, the sentences were reduced to fines of €500 and €1,200 respectively; and (iv) on the basis of the single transitional provision of the above-mentioned Organic Law, the sentences of the four persons subsequently pardoned could be subject to review by the competent courts. Finally, the Committee notes that the two individual cases about which it has not received specific information (Juan Carlos Martínez Barros and Rosario María Alonso Rodríguez) had resulted in the imposition of a fine for the commission of a misdemeanour.

36. *Taking due note of the information mentioned above and trusting that the cases that could still be subject to judicial review following the repeal of article 315 of the CC will be examined as soon as possible, the Committee considers that this case is closed and will not pursue its examination.*

Case No. 2949 (Eswatini)

37. The Committee last examined this case at its March 2019 meeting [see 388th Report, paras 18–23]. On that occasion, the Committee took note of a communication of September 2018 of the International Trade Union Confederation (ITUC) which denounced the increasing violent interferences by the security forces in peaceful trade union activities. The Committee, while noting new measures by the Government to improve the handling of trade union gatherings in public places, expressed deep concern over the serious allegations of intimidation against trade union leaders and violent attacks of security forces against peaceful trade union gatherings. It urged the Government to initiate an independent investigation with a view to determine the justification for the action of the police denounced by the complainant and responsibilities.

38. In a communication dated 30 November 2020, the Government informs of the appointment, through Legal Notice No.183 of 2019, of the Members of the "Investigation Committee in Terms of the Recommendations of the International Labour Organization Committee of Freedom of Association" with the mandate, inter alia, to investigate on the alleged acts of violence, arrests and disruption of protest actions, this is in line with the previous

recommendations of the Committee. The Government further indicates that the Investigation Committee, composed of experts in labour law led by a senior judicial officer, was initially given six weeks to complete its tasks. However, the investigations were much more complex than expected and were further severely impeded by the outbreak of the COVID-19 pandemic and the successive lockdowns and restrictions in travel and meetings. The Investigation Committee was given an extended period until March 2021 to submit a report. *The Committee requests the Government to provide without delay information on the findings of the Investigation Committee, as well as any measures taken by the Government as a follow-up.*

39. Furthermore, the Committee previously requested the Government to provide the court ruling in the case of Messrs Mbongwa Earnest Dlamini and Mcolisi Ngcamphalala, members of the Swaziland National Association of Teachers (SNAT), who were arrested in February 2016 with criminal charges preferred against them for perpetrating criminal and malicious acts in contravention of the 1963 Public Order Act during a protest action. In this regard, the Committee recalled that the 1963 Public Order Act had been repealed and replaced in 2017, partially due to its non-conformity with freedom of association, and expressed its expectation that the judiciary would bear in mind both the fact that the Act is no longer in force and the Committee's previous recommendations in this case when examining the charges against Messrs Mbongwa Earnest Dlamini and Mcolisi Ngcamphalala. *In the absence of information, the Committee requests, once again, the Government to provide a copy of the court judgment when rendered and to indicate any follow-up action given to it.*

Case No. 2934 (Peru)

40. The Committee examined this case, in which the complainant organization challenged a ministerial decision requiring the parties involved in voluntary arbitration in collective bargaining in the public sector to use arbitrators appointed and trained by the State, at its November 2012 meeting [see 365th Report, paras 1228–1258]. On that occasion, the Committee observed that, although Act No. 29812 on the Public Sector Budget for the 2012 fiscal year provided for the establishment of a special council to appoint the chairperson of the Arbitration Tribunal in the event that the parties failed to agree on the appointment, the Act did not specify who the members of the special council would be. The Committee requested the Government to take the necessary steps to ensure that the members of the special council who would appoint the chairperson of the Arbitration Tribunal if the parties could not reach an agreement would be appointed in consultation with the social partners.

41. The Committee notes that, in communications of 28 January and 13 February 2013, the Autonomous Workers' Confederation of Peru indicates that, although the Government issued Supreme Decree No. 009-2012-TR establishing the special council provided for under Act No. 29812, the members of the council were appointed unilaterally by Government entities, without prior consultation with the social partners – thus failing to follow the Committee's recommendation – and that the council functions and holds its meetings in accordance with wholly arbitrary guidelines or rules and without consulting the social partners, and had even held meetings without them present.

42. The Committee notes that, in a communication of 28 September 2017, the Government reported that, as a result of a series of applications for a declaration of unconstitutionality submitted in 2013 concerning Act No. 29812, the Constitutional Court handed down rulings that resulted in the dismantling of the special council. The Government also reports that Supreme Decree No. 011 amending article 52 of the regulations of the Collective Labour Relations Act was issued in 2016 and that its current provisions state that if the employer is an enterprise falling within the scope of the business activity of the State, in the absence of an

agreement on the appointment of the chairperson of the Arbitration Tribunal, any party may request the Labour Directorate to appoint the chairperson by public lottery from among the arbitrators on the National Register of Collective Bargaining Arbitrators who are specialized in collective bargaining in the public sector. The Government also indicates that under the fifth final transitional provision of the aforementioned regulations of the Collective Labour Relations Act, if there is no agreement between the parties, the chairpersons of arbitration tribunals will be appointed in accordance with article 52, until the Civil Service Support Commission established by the general regulations of the Civil Service Act No. 30057 is operational.

43. *The Committee takes note of this information and recalls that in its last examination of this case, it observed that the National Register of Collective Bargaining Arbitrators was an open register containing flexible and reasonable eligibility requirements. The Committee observes that, according to the information provided by the Government, the chairperson of the Arbitration Tribunal will continue to be appointed from the national register by public lottery until the Civil Service Support Commission is operational. Considering that the Committee has not received any information from the complainant organization on the appointment by public lottery of chairpersons of arbitration tribunals from arbitrators included on the register, and that the functioning of the Civil Service Support Commission is a matter that will be examined by the Committee of Experts on the Application of Conventions and Recommendations in the context of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee considers that this case is closed and will not pursue its examination.*

Case Nos 3065 and 3066 (Peru)

44. The Committee examined these cases together, in which the complainant organizations alleged the unlawful dismissal of a union leader and other anti-union practices by various enterprises in the textile sector, at its June 2015 meeting [see 375th report, paras 460–482]. On that occasion, the Committee made the following recommendations:

(a) Committee requests the Government to send it the administrative and judicial decisions concerning the enterprise INCA TOPS SA.

(b) The Committee requests the Government to keep it informed of the outcome of the appeal brought by the Pisco SAC workers' union, which is currently before the Supreme Court.

(c) The Committee, stressing the importance of consultation between enterprises and trade union organizations on labour issues and industrial relations matters of mutual interest and of encouraging and promoting the full development and utilization of machinery for collective bargaining, encourages Romosa SAC and the trade union to negotiate in good faith on all pending demands as soon as the financial situation improves.

(d) The Committee requests the Federation of Textile Workers of Peru (FTTP) to provide further detailed information with regard to the allegations that audio-visual equipment is being used for anti-union purposes.

(e) The Committee, recalling that fixed-term contracts should not be used deliberately for anti-union purposes and that, in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights, requests the Government to keep it informed of the legislative process regarding the draft legislation for the repeal of sections 32, 33 and 34 of the Act on the promotion of non-traditional exports and section 80 of Legislative Decree No. 728.

45. In communications dated 26 September 2016, 21 June 2017, 23 August 2018, 11 October 2018, 19 November 2018 and 4 March 2019, the Government provided the following information in response to these recommendations.

46. As regards recommendation (a), the Government reports that: (i) in a judgment issued in 2015, the seventh specialized civil court ruled in favour of Mr López Motta with respect to the *amparo* [protection of constitutional rights] appeal that he had lodged; and (ii) Mr López Motta was reinstated in his post on 19 October 2015.

47. As regards recommendation (b), the Government reports that the Supreme Court of Justice of the Republic upheld the judgment issued by the Superior Court of Justice of Ica, which had declared the claim filed by the enterprise contesting the administrative resolutions to be well-founded.

48. With respect to recommendation (c), the Government indicates that, on 29 September 2014, the enterprise and the trade union signed a collective agreement that resolved the lists of demands dated 2012–13, 2013–14 and 2014–15. The Government also indicates that the parties signed two more collective agreements on 24 July 2015 and 13 December 2017.

49. With respect to recommendation (d), the Government indicates that, in 2016, the National Labour Inspection Authority issued two fines to the enterprise for violations of freedom of association. The Government has also resubmitted to the Committee a copy of a document dated 16 October 2018 that it had received from the FTTP, which contains information relating to the present case. In this document, the FTTP indicates that: (i) the use of audio-visual equipment has been expanded in all production areas within the enterprise, in particular the areas where union leaders and members work; (ii) the enterprise has deployed security staff who continually record the work of unionized workers with the cameras on their mobile telephones, which leads to these workers being summoned to the human resources department for trivial reasons and then often punished; and (iii) this does not occur with non-unionized workers.

50. As regards recommendation (e), the Government reports that Bill No. 01635, which proposes the repeal of sections 32, 33 and 34 of the Act on the promotion of non-traditional exports and section 80 of Legislative Decree No. 728, is currently before the Labour and Social Security Commission and the Foreign Trade and Tourism Commission.

51. *The Committee takes due note of the information provided by the Government in relation to recommendations (a), (b) and (c) and will not pursue its examination of these recommendations. With respect to recommendation (d), the Committee observes that, although the Government indicates that, in 2016, fines were issued to the enterprise for violations of freedom of association, in the document sent to the Government by the FTTP in 2018, the organization alleges that acts of anti-union discrimination continue to take place. Recalling once again that no one should be subjected to discrimination or prejudice with regard to employment because of legitimate trade union activities or membership, and the persons responsible for such acts should be punished [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1076], the Committee trusts that the necessary measures will be taken to ensure that union leaders and members can carry out their trade union activities within the enterprise unhindered.*

52. *With respect to recommendation (e), the Committee takes note that Bill No. 01635, which proposes the repeal of sections 32, 33 and 34 of the Act on the promotion of non-traditional exports and section 80 of Legislative Decree No. 728, is currently before the Labour and Social Security Commission and the Foreign Trade and Tourism Commission, and observes that the reform of the Act on the promotion of non-traditional exports is subject to follow-up by the Committee of Experts*

on the Application of Conventions and Recommendations in the framework of the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). On the basis of the above factors, the Committee considers that this case is closed and will not pursue its examination.

Case No. 3096 (Peru)

53. The Committee examined this case, which concerns restrictions imposed by the State Health Service on the exercise of the right to strike by nurses, at its October 2015 meeting [see 376th Report, paras 861–896]. On that occasion, the Committee made the following recommendations:

(a) The Committee again requests the Government to take steps to amend the legislation so that responsibility for declaring a strike illegal does not lie with the Government but with an impartial and independent body.

(b) Furthermore, the Committee suggests that the disagreements between the parties as to the number and duties of the public service workers in a minimum service should be settled by an independent body, such as, for example, the judicial authority.

(c) The Committee requests the Government to send its observations on the allegation concerning the refusal to grant trade union leave to union official Ms Marcela Guevara González.

54. The Government submitted additional information in communications dated 25 April 2016, 3 and 21 September and 5 November 2018, and 8 June 2021. Concerning recommendation (a), the Government indicates that: (i) the entity responsible for ruling on the lawfulness of a strike in the private sector is the labour authority, at the national or regional level, in accordance with the rules set out in Supreme Decree No. 017-2012-TR; and (ii) in accordance with articles 86, 87 and 88 of the General Regulations of the Civil Service Act No. 30057, rulings on the lawfulness of a strike in the public sector fall within the competence of the Civil Service Support Commission; while the commission will consist of independent professionals, it has not yet been established, hence the Directorate-General of Labour is currently assuming these responsibilities. *The Committee notes the information provided by the Government and trusts that the Civil Service Support Commission will be established promptly.*

55. Concerning recommendation (b), the Government reports that in 2018, the executive branch issued Supreme Decree No. 009-2018-TR governing the exercise of the right to strike and the communication of minimum services and the procedure for deviating from them, which was intended to have a positive impact on the determination of minimum services within the enterprise and, in the event that the right to strike is exercised, to provide greater legal certainty both to employers and to workers. The Committee observes that Supreme Decree No. 009-2018-TR amends articles 67 and 68 of the Regulations of the Collective Labour Relations Act and incorporates articles 68-A and 68-B concerning the communication of minimum services in the event of a strike and the procedure for deviating from them. The Committee further observes that the aforementioned articles of the Regulations of the Collective Labour Relations Act were subsequently amended by Supreme Decree No. 014-2022-TR, which was published on 24 July 2022, and that article 68 as amended establishes, inter alia, that: (i) to settle a disagreement on the minimum service level in essential public services, the labour administration may rely on the support of an independent body; and (ii) the labour administration shall settle any disagreements on the basis of the report of the independent body, the technical report submitted by the employer and the observations or reports submitted by the workers or trade union, and may seek the support of the labour inspectorate or other entities. *While duly noting the amendments introduced by Supreme Decree No. 014-2022-TR, the Committee recalls once again that disagreements between the parties as to the number and*

duties of the workers should not only be examined, but also settled, by an independent body, such as the judicial authority, and trusts that any subsequent amendment will take the foregoing into account.

56. Concerning recommendation (c), the Government informs the Committee that: (i) the State Health Service respects freedom of association and ensures that union leaders' rights and prerogatives are exercised appropriately; and (ii) on 18 October 2016, Ms Marcela Guevara González left her position as Secretary of Social Welfare, Sport and Leisure of the National Union of State Health Service Nurses and does not sit on the current board. *The Committee duly notes this information. On the basis of the above considerations, the Committee considers that this case is closed and will not pursue its examination.*

Case No. 3072 (Portugal)

57. The Committee last examined this case at its October 2015 meeting [see 376th Report, paras 897–927]. On that occasion, the Committee encouraged the Government to continue promoting social dialogue in relation to the measures taken to deal with the crisis and other issues relating to workers' rights outlined in the complaint, with a view to finding, to the fullest possible extent, solutions agreed by the most representative employers' and workers' organizations. It further invited the Government to carry out a joint evaluation with the most representative employers' and workers' organizations on the impact of the legislative provisions adopted, regarding wages and other allowances and benefits, on the exercise of trade union rights and in particular the right to collective bargaining, with a view to ensuring that exceptional measures adopted in the context of a crisis are not perpetuated.

58. The Government has sent follow-up information in communications dated 19 May 2017 and 29 October 2021. The Committee notes that in its 2017 communication, the Government refers to a number of laws and regulations governing working time, wages, promotions and regularization of precarious contracts in the public sector that were adopted after the first examination of the complaint. The Government indicates that working time was reduced back to 7 hours a day (35 hours a week) and wage reductions were progressively annulled. With regard to the procedure established in the regulation governing regularizations, the Government indicates that it is based on social dialogue, as Evaluation Committees that will be established in accordance with the regulation have a bipartite composition that includes members of the trade unions representing workers in public service.

59. With regard to the measures adopted in the State Budgets Laws for 2011, 2012 and 2013, the Government once again indicates that they had a transitory and exceptional character. It further adds that Law No. 42/2016, of 28 December, which approved the State Budget for 2017, amended Decree-Law No. 133/2013, of 3 October, which regulates the legal regime applicable to the public corporate sector, repealing section 18(4) of the Decree-Law, which provided for the mandatory nature of the regime fixed by law as regards meal allowances, daily subsistence allowances, overtime and night work. Thus, the prevalence of the law over collective bargaining agreements was removed and collective autonomy restored concerning these matters. With regard to public administration workers governed by General Law on Work in Public Administration and its regulations (both approved by Law No. 59/2008 of 11 December), the Government indicates that two channels for collective bargaining are provided in application of Article 7 of the Labour Relations (Public Service) Convention, 1978 (No. 151): (a) collective bargaining that aims at reaching agreement on matters to be incorporated into legislative acts or regulations applicable to public administration workers; and (b) collective bargaining that aims at concluding a collective bargaining agreement that would be applicable to workers with a public administration employment contract. The Government finally indicates the following

numbers of collective agreements concluded in the public sector governed by the General Law on Work in Public Administration: 159 in 2014; 337 in 2015 and 424 in 2016. According to the Government the main purpose of these collective bargaining agreements was to reduce regular working time (from 8 hours a day (40 hours a week) provided in law to 7 hours a day (35 hours a week)).

60. In its 2021 communication, the Government refers to the increase in the national minimum wage, the increase in the salary mass of public administration, and the updating of wage base for public administration resulting in an increase in the lowest wages. It further indicates that in 2020 normal career development has resumed after the progressive unfreezing that started in 2018. The Governments adds that the Law on State Budget for 2018, provides expressly in its section 23 that as of 1 January 2018, in public corporate sector, the provisions of collective labour agreements, when they exist, are fully applicable with regard to the acquired rights. According to the Government, thus the prevalence of law over collective bargaining agreements was clearly repealed and collective autonomy restored in the corporate public sector. Furthermore, with regard to overtime in public administration, the Law on State Budget for 2018 reinstated the original legal regime concerning the increase in hourly wage, repealing the restrictions provided in budget laws of 2015–17. Thus, with regard to this matter as well, provisions of collective bargaining agreements became applicable.

61. The Government further adds that the Law on State Budget for 2019, lifted the restrictions on the applicability of collective bargaining agreements applicable to workers in public foundations governed by public law, public foundations governed by private law and public establishments in matters concerning per diem regimes, overtime and night work. With regard to these matters the legal regime will apply only in absence of collective bargaining agreements. Finally, the Government indicates that the Law on State Budget for 2019 also re-established the prevalence of collective bargaining agreements, when they exist, with regard to the issue of wage increase of the employees of legal persons of public law endowed with independence resulting from their integration in areas of regulation, supervision or control, as well as to office holders and other staff integrated in the public corporate sector.

62. The Committee notes that according to the information submitted by the Government, restrictions imposed on areas that could be regulated by collective bargaining agreements have been progressively removed. *Therefore, the Committee considers this case closed and will not pursue its examination.*

Case No. 2994 (Tunisia)

63. The Committee examined the present case, which relates to acts of interference by the authorities in the affairs of the Tunisian General Confederation of Labour (CGTT), its exclusion from all national tripartite consultations and anti-union acts by certain enterprises against its leaders, the last time at its meeting in June 2016 [see 378th Report, paras 758–774]. On that occasion, the Committee requested the Government to take all necessary measures to establish clear and pre-established criteria of trade union representation while prioritizing an inclusive social dialogue for the determination of these criteria by endeavouring to extend the scope of its consultation to all the Tunisian trade union and employers' organizations concerned to enable it to take the various points of view into consideration.

64. The Committee notes that, in its communications dated 20 August 2018, jointly signed with the Confederation of Tunisian Corporate Citizens (CONECT) and the Tunisian Farmers' Union (SYNAGRI) on 4 April 2019 and 24 September 2021, the CGTT denounces its persistent exclusion from social dialogue and in particular from the National Council for Social Dialogue under the

provisions of Government Decree No. 2018-676 of 7 August 2018 on the determination of the number of members of the National Council for Social Dialogue. According to the CGTT, article 2 of this Decree, issued without consultation with the social partners, expressly provides that the 35 worker members will be drawn from the most representative workers' organization to the detriment of proportional representation. The complainant organization adds that this logic of exclusive representation is also applied to the representation of employer members in the agricultural (5 members) and non-agricultural (30 members) sectors. These provisions necessarily lead to limiting union and employer representation to three entities, excluding all other professional employers' and workers' organizations. The CGTT adds that the provisions of the Decree contradict the provisions of Law No. 2017-54 of 24 July 2017 establishing the National Council for Social Dialogue, article 8 of which upholds expressly the logic of trade union pluralism in the composition of the Council's assembly, which is composed of "the most representative organizations of workers and representatives of the most representative organizations of employers in the agricultural and non-agricultural sectors".

65. Moreover, the CGTT recalls that the judiciary confirmed in a decision of the Administrative Court of Appeal of Tunis dated 5 February 2019, confirming a judgment of the Administrative Court dated 26 June 2015, its right to benefit from the rights and advantages related to its status as a trade union organization, in particular those relating to the withholding of trade union dues, the availability of trade union leaders and the right to collective bargaining.

66. The Committee notes the Government's indication contained in a communication dated 21 December 2021 that the Minister of Social Affairs issued the Decree of 26 September 2018 establishing the criteria adopted to determine the most representative trade union organization at national level for the purpose of determining the composition of the National Council for Social Dialogue. The criteria are: (i) the number of members of the trade union until 31 December 2017; (ii) the holding of the trade union's electoral congress; (iii) the number of the trade union's sectoral structures and the nature of its activity; and (iv) the number of the trade union's regional and local structures. According to these criteria, the most representative workers' organization is the organization that has held its electoral congress and the one with the largest number of members and the largest number of sectoral, regional and local structures. The same applies to the employers' representation.

67. The Government states that, following the publication of the Order, the Ministry of Social Affairs sent correspondence to this effect to the professional organizations to provide the required information. However, replies were received only from the following organizations: the General Federation of Tunisian Workers; the Tunisian Workers' Labour Union; and the Tunisian Union of Industry, Trade and Handicrafts. On this basis, the Minister of Social Affairs issued a decision on 6 November 2018 appointing the above-mentioned organizations as members of the National Council for Social Dialogue.

68. *With regard to representation on the National Council for Social Dialogue, the Committee observes that article 8 of Law No. 2017-54 of 24 July 2017 establishing the Council in question provides that the general assembly of the Council shall be composed of an equal number of representatives of the Government, representatives of the most representative organizations of workers and representatives of the most representative organizations of employers in the agricultural and non-agricultural sectors while Decree No. 2018-676 establishes clear representativity criteria for the purposes of determining participation in the Council. The Committee regrets however that the Government has not replied to the complainants' allegations that the inclusive social dialogue for the determination of these criteria which the Committee requested when it last examined this case did not take place and requests the Government to be mindful of the views of other representative organizations when discussing matters that may concern them.*

69. *Furthermore, recalling that the courts have long recognized the rights and advantages conferred on the CGTT by its status as a trade union organization, the Committee trusts that the Government will ensure full respect of these decisions, particularly as regards the granting of the referred facilities.*

70. *Finally, recalling that at its origin this case concerned the question of trade union representativeness for the purposes of collective bargaining at all levels and that the above-mentioned laws appear to only address the question of representativity in the National Social Dialogue Council, the Committee once again requests the Government to engage in inclusive consultations with all workers' and employers' organizations concerned to ensure that the determination of representative organizations at sectoral and enterprise level are also based on clear, pre-established and objective criteria. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case. In these circumstances, the Committee considers this case closed and will not pursue its examination.*

Case No. 3314 (Zimbabwe)

71. The Committee last examined this case in which the complainant, the Zimbabwe Congress of Trade Unions (ZCTU), alleged violations of collective bargaining rights, restrictions on the right to demonstrate, illegal dismissal of trade union leaders, the arrest and criminal prosecution of a trade union leader following participation in a demonstration, at its October 2019 meeting [see 391st Report, paras 545–577]. On that occasion, the Committee made the following recommendations [see para. 577]:

(a) The Committee urges the Government to take all necessary measures to ensure that the CBA is implemented by the parastatal company in question or that a settlement is fully negotiated with the union without further delay. It requests the Government to keep it informed of all steps taken to that end.

(b) The Committee requests the Government to transmit the considerations of this case to the relevant judicial authorities and to transmit a copy of the final decision once it is handed down.

(c) The Committee urges the Government to address the issue of dismissed employees as per its commitment expressed during the meeting of 11 April 2019 and to provide information in this regard as a matter of urgency.

(d) The Committee requests the Government to provide without delay detailed information on the circumstances of the arrest of Mr Masvingwe, the exact charges brought against him and the outcome of the trial.

72. In its communications dated 12 April 2019, 23 March and 17 May 2021 and 1 February 2022, the Government indicates that the collective bargaining agreement (CBA) of 2012 was fully implemented by the Zimbabwe Electricity Supply Authority (ZESA), that workers were paid their dues in accordance with the CBA and there are no salary arrears for the employees. The Government also indicates that the parties have also negotiated a number of CBAs which have been registered and also implemented without any challenges. The Government further indicates that following its intervention, the dismissed workers were reinstated without loses of salaries and benefits.

73. In its communication dated 17 May 2021, the Government informs that Mr Masvingwe's case is still pending at the Magistrate Court awaiting the determination of his challenge to the High Court.

74. The Committee takes due note of the information provided by the Government regarding the implementation of the CBA at the parastatal electricity company. It further noted with interest the reinstatement of workers.

75. *The Committee regrets that the Government provides no new information regarding the situation of Mr Masvingwe since its communication dated 17 May 2021. The Committee recalls that Mr Masvingwe was arrested during a demonstration on 13 March 2018 and that according to the complainant, while he was not being detained, he was facing criminal charges with the trial initially set for 25 April 2018. The Committee observes that more than four years have passed since the arrest. The Committee urges the Government to provide without delay detailed information on the circumstances of the arrest of Mr Masvingwe, the exact charges brought against him and the outcome of the trial. The Committee requests the ZCTU to provide all information on the developments in this regard.*

* * *

Status of cases in follow-up

76. Finally, the Committee requests the Governments and/or complainants concerned to keep it informed of any developments relating to the following cases.

Case No.	Last examination on the merits	Last follow-up examination
2096 (Pakistan)	March 2004	October 2020
2603 (Argentina)	November 2008	November 2012
2715 (Democratic Republic of the Congo)	November 2011	June 2014
2749 (France)	March 2014	–
2756 (Mali)	March 2011	March 2022
2797 (Democratic Republic of the Congo)	March 2014	–
2807 (Islamic Republic of Iran)	March 2014	June 2019
2869 (Guatemala)	March 2013	October 2020
2871 (El Salvador)	June 2014	June 2015
2889 (Pakistan)	March 2016	October 2020
2902 (Pakistan)	March 2019	June 2022
2925 (Democratic Republic of the Congo)	March 2013	March 2014
3011 (Türkiye)	June 2014	November 2015
3036 (Bolivarian Republic of Venezuela)	November 2014	–
3046 (Argentina)	November 2015	–
3054 (El Salvador)	June 2015	–
3078 (Argentina)	March 2018	–
3098 (Türkiye)	June 2016	November 2017
3100 (India)	March 2016	–
3139 (Guatemala)	November 2021	–
3167 (El Salvador)	November 2017	–

Case No.	Last examination on the merits	Last follow-up examination
3180 (Thailand)	March 2017	March 2021
3182 (Romania)	November 2016	–
3202 (Liberia)	March 2018	–
3243 (Costa Rica)	October 2019	–
3248 (Argentina)	October 2018	–
3257 (Argentina)	October 2018	–
3285 (Plurinational State of Bolivia)	March 2019	–
3288 (Plurinational State of Bolivia)	March 2019	–
3289 (Pakistan)	June 2018	October 2020
3313 (Russian Federation)	November 2021	–
3319 (Panama)	March 2022	–
3323 (Romania)	March 2021	–
3331 (Argentina)	November 2021	–
3339 (Zimbabwe)	March 2022	–
3364 (Dominican Republic)	March 2022	–
3375 (Panama)	June 2022	–
3385 (Bolivarian Republic of Venezuela)	March 2022	–
3386 (Kyrgyzstan)	November 2021	–
3393 (Bahamas)	March 2022	–
3399 (Hungary)	March 2022	–
3412 (Sri Lanka)	June 2022	–

77. The Committee hopes that these Governments will quickly provide the information requested.

78. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 1865 (Republic of Korea), 2086 (Paraguay), 2341 (Guatemala), 2362 and 2434 (Colombia), 2445 (Guatemala), 2528 (Philippines), 2533 (Peru), 2540 (Guatemala), 2566 (Islamic Republic of Iran), 2583 and 2595 (Colombia), 2637 (Malaysia), 2652 (Philippines), 2656 (Brazil), 2679 (Mexico), 2684 (Ecuador), 2694 (Mexico), 2699 (Uruguay), 2706 (Panama), 2710 (Colombia), 2716 (Philippines), 2719 (Colombia), 2723 (Fiji), 2745 (Philippines), 2746 (Costa Rica), 2751 (Panama), 2753 (Djibouti), 2755 (Ecuador), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2793 (Colombia), 2816 (Peru), 2852 (Colombia), 2882 (Bahrain), 2883 (Peru), 2896 (El Salvador), 2924 and 2946 (Colombia), 2948 (Guatemala), 2952 (Lebanon), 2954 (Colombia), 2976 (Türkiye), 2979 (Argentina), 2980 (El Salvador), 2982 (Peru), 2985 (El Salvador), 2987 (Argentina), 2995 (Colombia), 2998 (Peru), 3006 (Bolivarian Republic of Venezuela), 3010 (Paraguay), 3016 (Bolivarian Republic of Venezuela), 3017 (Chile), 3019 (Paraguay), 3020 (Colombia), 3022 (Thailand), 3024 (Morocco), 3026 (Peru), 3030 (Mali), 3032 (Honduras), 3033 (Peru), 3040 (Guatemala), 3043 (Peru), 3055 (Panama), 3056 (Peru), 3059 (Bolivarian Republic

of Venezuela), 3061 (Colombia), 3069 (Peru), 3075 (Argentina), 3095 (Tunisia), 3097 (Colombia), 3102 (Chile), 3103 (Colombia), 3104 (Algeria), 3119 (Philippines), 3131 and 3137 (Colombia), 3146 (Paraguay), 3150 (Colombia), 3162 (Costa Rica), 3164 (Thailand), 3170 (Peru), 3171 (Myanmar), 3172 (Bolivarian Republic of Venezuela), 3183 (Burundi), 3188 (Guatemala), 3191 (Chile), 3194 (El Salvador), 3220 (Argentina), 3236 (Philippines), 3240 (Tunisia), 3253 (Costa Rica), 3267 (Peru), 3272 (Argentina), 3278 (Australia), 3279 (Ecuador), 3283 (Kazakhstan), 3286 (Guatemala), 3287 (Honduras), 3297 (Dominican Republic), 3316 (Colombia), 3317 (Panama), 3341 (Ukraine), 3343 (Myanmar), 3347 (Ecuador), 3374 (Bolivarian Republic of Venezuela), 3378 (Ecuador), 3401 (Malaysia) and 3410 (Türkiye) which it will examine as swiftly as possible.

Closure of follow-up cases

79. In its November 2018 report (GB.334/INS/10), the Committee informed the Governing Body that, from that moment onwards, any cases in which it was examining the follow-up given to its recommendations, for which no information has been received either from the government or from the complainant for 18 months (or 18 months from the last examination of the case) would be considered closed. At its current session, the Committee applied this rule to the following cases: 3081 (Liberia), 3121 (Cambodia), 3320 (Argentina), 3330 and 3350 (El Salvador).

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Case No. 3263

Interim report

Complaint against the Government of Bangladesh presented by
- the International Trade Union Confederation (ITUC)
- the IndustriALL Global Union (IndustriALL) and
- UNI Global Union (UNI)

Allegations: The complainant organizations denounce serious violations of freedom of association rights by the Government, including arbitrary arrest and detention of trade union leaders and activists, death threats and physical abuse while in detention, false criminal charges, surveillance, retaliation, intimidation and interference in union activities, as well as excessive use of police force during peaceful protests and the lack of investigation of these allegations

80. The Committee last examined this case (submitted in February 2017) at its October–November 2020 meeting, when it presented an interim report to the Governing Body [see 392nd Report, paras 266–287 approved by the Governing Body at its 340th Session]. [1]

[1] Link to previous examination.

81. The International Trade Union Confederation (ITUC) provided additional information in a communication dated 4 March 2022.

82. The Government provided its observations in communications dated 24 May 2021 and 29 May 2022.

83. Bangladesh has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

84. At its October–November 2020 meeting, the Committee made the following recommendations on the matters still pending [see 392nd Report, para. 287]:

(a) The Committee trusts that the two pending cases filed against workers following the 2016 Ashulia strike will be concluded without further delay and requests the Government to keep it informed of the outcome thereof.

(b) The Committee encourages the Government to take concrete measures to strengthen training for police officers on the specific aspect of civil liberties relating to arbitrary arrests and detention and to increase the accountability for any violations in this regard, with a view to ensuring that trade unionists are not arbitrarily arrested and detained. The Committee requests the Government to provide information on the nature and content of any training provided or foreseen in this regard.

(c) The Committee requests the Government to take the necessary measures to ensure that clear instructions and training are given to police officers, including the development of training modules on trade union rights and any other appropriate measures, so as to effectively prevent, in the future, police interference in union activities.

(d) The Committee urges the Government to institute an independent inquiry – to be carried out by an institution that is independent from the one allegedly implicated – into the allegations of death threats, physical abuse and beatings of trade unionists arrested and detained in the aftermath of the 2016 Ashulia strike, as well as into all other alleged incidents of intimidation and harassment by the police during the same period and to keep it informed of the steps taken in this regard. The Committee once again invites the complainants to provide any further relevant information to the appropriate national authority so that it can proceed to an investigation in full knowledge.

(e) The Committee requests the Government to institute an independent inquiry without delay into the allegedly excessive use of force during the 2018–19 demonstrations, resulting in injuries to at least 80 workers, and to inform it of the findings and the measures taken as a result. It also requests the Government to keep it informed about the outcome of the ongoing investigation into the death of one worker and the measures taken as a result. The Committee trusts that these investigations will be established without delay and will yield concrete results in order to determine reliably the facts and the persons responsible, in order to apply the appropriate punishments and to prevent such incidents recurring in the future.

(f) The Committee requests the Government to clarify whether the 13 cases pending with the police in relation to the 2018–19 demonstrations eventually led to criminal charges being filed against any worker or whether they were dismissed through a final report and to provide updated information on the status of all arrests of demonstrating workers originating in the 2019 January demonstrations.

(g) Considering the serious and repeated nature of the allegations in this case, the Committee encourages the Government to step up its efforts in providing concrete, regular and comprehensive training to police officers and other relevant state officials on matters of civil liberties, human and trade union rights so as to avoid the use of excessive force and

to ensure full respect for civil liberties during public assemblies and demonstrations, as well as full accountability of those responsible in case of any violations.

(h) The Committee requests the Government to provide detailed observations on the additional allegations submitted by the complainants, in particular in relation to the criminal cases pending against hundreds of workers following the 2018–19 minimum wage protests.

B. Additional information from the complainants

85. In its communication dated 4 March 2022, the ITUC provides additional information denouncing the Government's failure to institute an independent inquiry into the previously reported allegations of physical assaults and other forms of violence against trade unionists, workers and activists, as well as the Government's failure to ensure the availability of effective remedies, which, it alleges, has resulted in continued attacks against workers seeking to exercise their right to freedom of association and reinforced a culture of impunity among the security forces. In particular, the ITUC alleges attacks on the exercise of the right to form and join trade unions by the employers and adds that police repression and the criminal justice system are used to deter the exercise of trade union rights in a systematic manner, including through police interference in the exercise of the right to freedom of association, anti-union attacks and criminalization of trade union activities.

86. With regard to the alleged attacks on the exercise of the right to form and join trade unions, the complainants specifically allege that:

- A worker at a garment-producing factory – Romo Fashion Today Limited (factory A) – was forced to resign, was blacklisted on the company's website as punishment for his attempt to form a union and has not been employed by any factory since then. It is alleged that he attempted to form a union to address the difficult working conditions at the factory, including a 16- to 18-hour working day and an intense working environment, where protesting workers were asked to resign. The worker and his colleagues filed a case against the employer to the labour court, but it was dismissed in July 2021. The Department of Inspection for Factories and Establishments (DIFE) has not yet investigated the issue.

- When in 2016, a worker attempted to form a union in a large shipbuilding enterprise – Crystal Ships Limited (Bilash Office) (enterprise B) – in addition to securing the agreement of 30 per cent of the workers, he was requested by the Department of Labour (DOL) to inform the management about the decision to form a union. Having informed the management, the initiator of the movement was dismissed, blacklisted and has not been employed in the shipbuilding industry since then. Even though this case had been brough to the attention of the DIFE, it has not been investigated.

- A workers' representative at a leather-exporting factory – Dhaka Hide and Skins Limited (factory C) – in the Lather Industrial Park in Hemayetpur in Savar was blacklisted and dismissed without notice or justification after 20 years of service as punishment for his trade union activities. Following his dismissal, workers at the factory started a protest and stopped their work, as a result of which another 25 workers were dismissed. A complaint was filed to the labour court and to the DIFE, but it has not yet been investigated.

87. Concerning allegations of anti-union attacks and continued police interference in the exercise of the right to freedom of association, the complainants point to the following incidents and allege that the Government failed to ensure that the attacks against peacefully protesting workers are investigated and the officers held accountable:

- In April 2021, at least five people were killed and dozens injured after the police opened fire on a crowd of workers protesting and demanding unpaid wages and a pay rise in a power plant in Chittagong.
- In May 2021, about 20 garment workers were injured in the Tongi industrial area in Gazipur after the police opened fire and charged at them with batons. The protesting workers were demanding an extension of public religious holidays.
- In June 2021, one garment worker was killed and many injured after the police attacked protesting workers from a garment-producing factory – Lenny Fashions and Lenny Apparels (factory D) – in the Dhaka Export Processing Zone in Ashulia. The workers were protesting to demand the payment of their wages after the factory had closed down.
- In September 2021, the police stopped a meeting of the Bangladesh Independent Garment Workers' Union Federation (BIGUF), an IndustriALL affiliate in Chittagong; its aim had been to create a regional committee. It is alleged that police officers, some of whom were in plain clothes, blocked the gate and did not allow participants to enter the premises to undertake their activities.
- In February 2022, workers at a garment-producing factory – Tivoli Apparels Ltd (factory E) – engaged in a protest against a production manager who was allegedly harassing a female worker. In reply, the management called the police, who fired at least 10 rounds of sound grenades, 30 rounds of shotgun shells and 6 rounds of tear gas to disperse the workers, injuring at least 10 workers.
- In February 2022, the industrial police in Gazipur attacked 500 protesting workers from a garment-producing factory – Gooryang Fashion (factory F) – with batons and sound grenades, injuring at least 20 people. The workers were protesting at the dismissal of a number of workers and the closure of the factory.

88. As to the alleged criminalization of trade union activities, the complainants point to the situation in two garment-producing factories – Crossline Factory Pvt. Ltd and Crossline Knit Fabrics Ltd (factories G and H) – where, in August 2021, in reply to the formation of two unions and the filing of registration applications, the industrial police filed a criminal case against the General Secretary of the Bangladesh Garment and Industrial Workers' Federation (BGIWF), 24 other union leaders and members, as well as against more than 100 workers and around 70 unnamed individuals. According to the complainants, the allegations filed against the General Secretary were meant to harass him for assisting workers to form trade unions at the two factories and the criminalization of the situation puts him and other trade union leaders and members at risk of being arrested at any time and of being summoned by the court. The unionists concerned would then need to be bailed, with bail conditions restricting the free exercise of trade union rights as they would be subject to threat of further prosecutorial or judicial harassment.

89. In conclusion, the complainants express their deep concern at the non-implementation by the Government of the Committee's previous recommendations in this case and consider that the situation has not improved since the filing of the complaint. Instead, they allege that the Government continues to use the police and other security forces, as well as the criminal justice system, to deny workers the exercise of trade union rights and has thus failed to create an atmosphere of respect for civil liberties, including freedom of expression and freedom of assembly.

C. The Government's reply

90. In its communications dated 24 May 2021 and 29 May 2022, the Government provides its observations on the Committee's previous recommendations, as well as on the additional allegations from the complainants.

Observations on the Committee's previous recommendations

91. The Government indicates, in relation to the two pending cases filed against workers in the aftermath of the 2016 Ashulia strike, that both cases are at the witness stage and that the proceedings were delayed due to the COVID-19 pandemic. As to the Committee's request to institute an independent investigation into the allegations of death threats, physical abuse and beatings of trade unionists arrested and detained in the aftermath of the 2016 Ashulia strike, the Government states that the established investigative mechanisms have in-built processes to probe any such allegations in an independent manner and that these mechanisms remain available to receive any further substantiated information on the allegations made.

92. With regard to the 2018–19 minimum wage protests, the Government reiterates that private properties were damaged in the Dhaka area, that the police only used minimal force to protect civilian lives and properties and that 84 workers were arrested and released on bail. It adds that there were 36 cases filed against workers by the police or the management on the ground of vandalizing vehicles and destroying property, out of which 23 cases were withdrawn or are being withdrawn, 3 were not related to the protests, 4 cases were not pursued by the management, in 1 case the factory was closed and 5 cases are currently pending. The Government reiterates that any case filed by the police is based on primary verification after which it can either be dismissed through a final report or, if sufficient ground is found, charges are framed against the alleged perpetrator. At the moment, no charges were framed in any of the above cases and no worker is in jail.

93. The Government further provides information on the training of police officers, indicating that the police are given basic courses and in-service trainings, including on human rights, civil liberties and trade union rights, and that each police official is also trained on human rights, fundamental rights and constitutional rights during their foundation courses. The Government also refers to the road map of actions on the labour sector [2] developed in cooperation with the Office, which provides for: regular training to raise awareness of responsible factory security staff, police and employers to prevent violence, harassment, unfair labour practices and anti-union acts; the development and regular updating of an online database to provide an overview of the number and nature of training programmes and trainees among factory security staff, police, employers and workers; the development of a compendium in the Bangla language of all existing relevant laws, rules and regulations on the use of minimum force and applicable sanctions or penalties for any proven violation in order to train and raise awareness among the industrial police and other relevant law enforcement agencies; and continued training and clear instructions to the industrial police and other relevant law enforcement agencies on the use of minimal force, respect for human rights and labour rights, including trade union rights and civil liberties during labour protests.

[2] The road map of actions was developed by the Government in order to address all outstanding issues mentioned in the complaint under article 26 of the ILO Constitution concerning alleged non-observance by the Government of Bangladesh of the Labour Inspection Convention, 1947 (No. 81), Convention No. 87 and Convention No. 98, in line with the decision of the Governing Body at its 341st Session (March 2021).

Observations on the additional information from the complainants

94. In relation to the alleged attacks on the exercise of the right to form and join trade unions, the Government provides the following information:

- Concerning the situation in factory A (alleged forced resignation and blacklisting of a worker based on union activities), the Government indicates that in February 2019, the Secretary General of the factory trade union lodged a complaint to the Divisional Labour Office in Dhaka alleging that he himself and other workers were forced to resign due to their trade union activities. In reply to the complaint, the DOL appointed a two-member investigation team (a Deputy Director and a labour officer), who recommended to file a court case for unfair labour practices on the part of the employer. In January 2020, a criminal case was filed by the DOL on behalf of the workers but, in January 2021, the defendants were acquitted of the charges based on the fact that the workers concerned signed a memorandum of understanding and received their dues.

- In relation to the situation in enterprise B (alleged dismissal and blacklisting of a worker based on union activities), the Government states that several dismissed workers applied for the payment of unpaid salaries through a tripartite amicable settlement. The DIFE arranged a hearing between the enterprise and the workers but due to a lack of agreement, the workers were advised to apply to the labour court. However, before submitting a case, the management committed to reinstating the workers and according to an inspection by the DIFE in March 2022, the workers concerned were working at the factory.

- Regarding the situation in factory C (alleged dismissal of a workers' representative and of an additional 25 workers based on union activities), the Government informs that no complaint against the factory was filed to the DIFE and that although the factory management, the police and the union President and General Secretary attempted to sign an agreement, they did not reach consensus. Union representatives also confirmed that no case was filed to the DIFE on behalf of the worker but that a case was filed to the labour court, with the latest hearing in May 2022.

95. On the allegations of anti-union attacks and continued police interference in the exercise of the right to freedom of association, the Government provides the following details:

- Regarding the incident at factory D (alleged police attack on protesting workers, in which one garment worker was killed and several injured), the Government indicates that on 13 June 2021, many workers gathered at a bridge on the Dhaka Tangail Highway demanding arrears and allowances when one worker felt sick and was taken to the hospital. The Government indicates that she was declared dead as a result of injuries which were homicidal in nature. The Bangladesh Export Processing Zones Authority (BEPZA) took immediate action to pay for the worker's treatment, ambulance fare and burial. The Dhaka Export-Processing Zone Authority also arranged a meeting between the factory management and the worker's family in the presence of the police. The management paid compensation, insurance and due salaries to the family, amounting to a total of US$3,172. BEPZA took further measures to resolve the issues that had led to the initial protests and offered counselling to the workers on several occasions. According to the Government, excellent working conditions prevail in all export-processing zones.

- Concerning the February 2022 incident at factory E (alleged police dispersal of protesting workers resulting in injuries to ten workers), the Government indicates that to protest against the harassment of a female worker by the management, workers stopped working for three days. Following negotiations with the Government, the Bangladesh Garment

Manufacturers and Exporters Association, trade union federation leaders and law enforcement agencies, all workers except those on one factory floor resumed work. Considering this action illegal, the management closed the factory sine die as per the provisions of the Bangladesh Labour Act, which sparked further demonstrations. The dispute was finally resolved after the signature of a tripartite agreement; the factory opened a few days later and has been running smoothly since then. However, the factory management filed a case against several workers on grounds of vandalism.

- As to the February 2022 incident at factory F (alleged police attack against 500 protesting workers resulting in injuries to 20 workers), the Government indicates that some workers gathered and demonstrated to demand an increase in wages but asserts that the workers were divided into two groups and started beating each other. In reply, the management declared the factory closed but reopened it five days later after negotiations with the local administration. The factory is now running smoothly.

96. Regarding the alleged criminalization of trade union activities in factories G and H, the Government states that in an initial dispute in July and August 2021, factory management dismissed 17 workers due to misconduct but later paid dues to all dismissed workers, except 1 female worker who was also requesting maternity allowances but did not provide a medical report supporting her claim. In reply to the management's refusal to pay maternity allowances, workers got agitated and attacked one member of the management. The industrial police peacefully dispersed the agitated workers and sent the employer to the hospital. On the following day, the management closed the factory, but the workers demanded to open the gates, got agitated and tried to enter the premises forcefully. The police requested them to disperse peacefully but the BGIWF General Secretary and others instigated the workers to become violent. As a result, between 150 and 200 workers started to throw brickbats towards the factory, attacking the police with sticks. To protect civilian lives and the factory from destruction, the police dispersed the agitated workers by blowing whistles and light baton charges, with permission from senior officers and an executive magistrate. Following the incident, a case was filed with the police against the BGIWF General Secretary and his associates for an attempt to forcefully enter the factory, attacks on the factory, obstruction of police work and attacks on police personnel, as well as an additional charge of instigating violence. The investigation has already been concluded and a charge sheet was submitted to the court in February 2022.

D. The Committee's conclusions

97. *The Committee recalls that this case concerns allegations of serious violations of freedom of association rights by the Government, in particular through the action of police forces in the aftermath of a strike in garment factories in Ashulia in December 2016, including arbitrary arrest and detention of trade union leaders and activists, death threats and physical abuse while in detention, false criminal charges, surveillance of trade unionists, intimidation and interference in union activities. The complainants also alleged excessive use of police force during peaceful protests in December 2018 and January 2019 and criminal cases pending against hundreds of workers who had participated in the protests. Additional allegations refer to systematic repression of trade union rights, including through anti-union acts by the employers, police violence and criminalization of trade union activities.*

98. *Concerning the allegations of false criminal charges filed against hundreds of named and unnamed workers in the aftermath of the 2016 Ashulia strike (recommendation (a)), the Committee understands from the information provided by the Government that out of the ten cases initially filed*

against workers, two are still pending before the courts and are at the witness stage, the proceedings having been delayed due to the COVID-19 pandemic. While acknowledging the significant challenges brought about by the pandemic, including on the judiciary of the country, the Committee regrets to observe that, since its last examination of the case in October 2020, no progress seems to have been achieved in the conclusion of the two cases, which concern 20 named and around 110 unnamed persons. Recalling once again that the Committee has pointed out the danger for the free exercise of trade union rights of sentences imposed on representatives of workers for activities related to the defence of the interests of those they represent [see ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 154], the Committee expects the two remaining cases to be concluded without further delay and requests the Government to keep it informed of the outcome thereof.*

99. *With regard to the need to institute an independent inquiry into the allegations of death threats, physical abuse and beatings of trade unionists arrested and detained in the aftermath of the 2016 Ashulia strike (recommendation (d)), the Committee observes that the Government indicates that the established investigative mechanisms have in-built processes to probe any allegations in an independent manner and that these mechanisms remain available to receive any further substantiated information on the allegations made. The Committee understands from the above that no investigation appears to have been conducted into these allegations so far and observes that it is unclear to what investigative mechanisms the Government refers. In this regard, the Committee also notes the complainants' concern as to the lack of independent investigations and effective remedies, allegedly resulting in continued attacks against unionists and the reinforcement of a culture of impunity among the security forces. In these circumstances, while acknowledging the advantages for domestic authorities to have at their disposal additional information to facilitate investigations, the Committee must recall once again that in cases of alleged torture or ill-treatment while in detention, governments should carry out independent inquiries into complaints of this kind so that appropriate measures, including compensation for damages suffered and the sanctioning of those responsible, are taken to ensure that no detainee is subjected to such treatment [see* ***Compilation****, para. 112]. Emphasizing the need to investigate all such serious allegations even in the absence of a formal complaint filed by the injured party, the Committee once again invites the complainants to provide any further relevant information to the appropriate national authority so that it can proceed to an investigation in full knowledge. The Committee urges the Government to institute, without delay, an independent inquiry into the allegations of ill-treatment of trade unionists arrested and detained in the aftermath of the 2016 Ashulia strike on the basis of information it already has at its disposal, as well as any additional information provided by the complainants, and to keep the Committee informed of the steps taken in this regard, including detailed information on the mechanisms available to conduct such independent investigations as referred to and the necessary steps for triggering their review.*

100. *As regards the allegations of excessive use of police force during the 2018–19 demonstrations (recommendation (e)) and the cases pending against workers following these protests (recommendation (f)), the Committee notes that the Government reiterates previously provided information indicating that, contrary to the complainants' assertion, the protests were agitated, vandalizing private property, and that the police used minimal force to address these acts. It further clarifies that five cases are still pending against workers, but no charges have been filed against any of them so far and no worker is in jail. The Committee recalls that, in its previous examination of the case, it expressed concern at the incidents of violence on both sides, emphasized that the principles of freedom of association did not protect abuses consisting of criminal acts while exercising protest action and requested the Government to inform it of the ongoing investigation into the death of 1 worker and to institute an independent inquiry into the allegedly excessive use of police force resulting in injuries to at least 80 workers. Observing with regret that the Government does not*

*provide any information on the measures taken in this respect, the Committee must recall once again that in cases in which the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities [see **Compilation**, para. 104]. The Committee therefore urges the Government once again to indicate the measures being taken to investigate the allegedly excessive use of force during the 2018–19 demonstrations resulting in injuries to at least 80 workers and to inform it of any findings in this regard. It also urges the Government to provide information on the outcome of the investigation that the Government previously indicated was being conducted into the killing of one worker during these demonstrations. The Committee also requests the Government to keep it informed of the status of the five cases pending against workers, in particular to indicate whether they eventually led to criminal charges being filed or whether they were dismissed though a final report.*

101. *With regard to the additional allegations submitted by the complainants in February 2020 (recommendation (h)), the Committee recalls that these allegations concerned mass retaliation, criminalization, continued surveillance and intimidation of workers following the 2018–19 demonstrations. The Committee notes that while the Government provides updates in relation to the cases pending against workers for their participation in these demonstrations, it does not elaborate on the other allegations, in particular on: (i) the alleged mass retaliation against workers following the 2018–19 demonstrations, which, according to the complainants, led to 7,000–12,000 workers losing their jobs and being subjected to public shaming, defamation and blacklisting by factory owners as a means to intimidate workers and undermine organizing in the garment sector; and (ii) the alleged persistent monitoring, surveillance and intimidation of trade unionists by the employers, the Government and third parties working on their behalf. The Committee recalls in this regard that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment. Acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize. All appropriate measures should be taken to guarantee that, irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind [see **Compilation**, paras 1075, 1098 and 73]. In line with the above and given the persistent nature of the allegations and the large number of workers allegedly concerned by them, the Committee requests the Government to provide its observations on these allegations and to take the necessary measures to address and prevent all forms of retaliation, intimidation, harassment and surveillance of workers based on trade union membership or legitimate trade union activities.*

102. *Concerning the provision of training and instructions to police officers and other state officials on civil liberties, human rights and trade union rights (recommendations (b), (c) and (g)), the Committee notes the Government's indication that police officers are regularly trained on these issues, whether through their foundation courses or in-service trainings and that additional awareness-raising training and other relevant measures (a compendium of applicable laws and regulations, instructions on the use of minimal force, online databases on training programmes) are also provided for in the road map of actions on the labour sector developed in cooperation with the Office. Taking note of the Government's engagement in ensuring regular training of police officers and other relevant state actors, the Committee encourages the Government to pursue its efforts in this regard so as to ensure full respect for basic civil liberties, human rights and trade union rights during labour protests, as well as full accountability of those responsible in case of any violations.*

The Committee further requests the Government to provide details of such trainings, particularly for the police engaged in industrial and export-processing zones. The Committee also requests the Government to provide copies of the curriculum for in-service training of police officers.

103. *With regard to the new allegations submitted by the complainants in March 2022, the Committee notes that these refer to continued and systematic attacks against workers seeking to exercise their right to freedom of association, including through anti-union acts by the employers, police violence and repression, criminalization of trade union activities and the lack of proper investigations into these allegations.*

104. *Firstly, the Committee observes with deep concern that the complainants denounce the killing of 6 people and injuries to more than 60 workers as a result of police intervention in workers' protests in Chittagong, Gazipur and Ashulia since April 2021. The Committee notes that while providing some relevant details, including on the compensatory measures taken in response to the killing of one worker in Ashulia in June 2021 (factory D), the Government does not elaborate on any measures taken to investigate this incident, despite having indicated that the injuries sustained by the victim were homicidal in nature. Similarly, while providing some information on the incidents in factories E and F, the Government does not elaborate on the concrete allegations of police involvement in injuries to at least 30 garment workers in these factories in February 2022 and does not provide any information on the alleged police involvement in the killings of 5 workers and injuries to dozens of workers in a power plant in Chittagong in April 2021 and injuries to around 20 garment workers in Gazipur in May 2021.*

105. *While acknowledging that it is not always clear from the complainants' information whether the workers concerned were members or leaders of workers' organizations, the Committee is obliged to recall that the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events. Acts of intimidation and physical violence against trade unionists constitute a grave violation of the principles of freedom of association and the failure to protect against such acts amounts to a de facto impunity, which can only reinforce a climate of fear and uncertainty highly detrimental to the exercise of trade union rights [see* ***Compilation****, paras 94 and 90]. The Committee therefore requests the Government to provide its observations on the alleged involvement of the police in the above incidents causing the death of six workers and injuries to many others and, should this not yet be the case, to ensure that these incidents are expeditiously and properly investigated by an independent mechanism so as to combat impunity and prevent repetition of such acts, and to provide detailed information on the progress made in this regard and on the outcome.*

106. *Secondly, the Committee observes that the complainants also denounce several instances of anti-union discrimination and interference, including forced resignation, dismissals and blacklisting of around 28 workers in the garment and shipbuilding sectors, police interference in a trade union meeting in Chittagong in September 2021, the filing of criminal charges against 115 workers and unionists and 70 unnamed individuals in response to workers' attempts to form trade unions and the failure of the DIFE to investigate most of these allegations despite having been notified thereof by the workers concerned or their representatives. The Committee notes that the Government provides detailed observations in this respect, indicating that many of the incidents mentioned have been addressed and solved as a result of Government engagement and agreement between the parties, leading to the reopening of the factories, reinstatement or payment of salaries and other dues to the workers concerned (factories A, E and F and enterprise B); that in one case, alleged anti-union incidents were not brought to the DIFE but submitted directly to the court which is addressing*

the allegations (factory C); and that a few cases are indeed pending against trade unionists for vandalism or incitement to violence (factories E, G and H).

107. *Taking due note of the above, the Committee wishes to recall that especially at the initial stages of unionization in a workplace, dismissal of trade union representatives might fatally compromise incipient attempts at exercising the right to organize, as it not only deprives the workers of their representatives, but also has an intimidating effect on other workers who could have envisaged assuming trade union functions or simply join the union. Where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention. The rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see **Compilation**, paras 1131, 1159 and 84]. In view of the above, recalling the systematic nature of the allegations reported by the complainants and the serious consequences these may have on the legitimate exercise of trade union activities, the Committee requests the Government to remain vigilant towards allegations of all forms of anti-union discrimination, including dismissals and blacklisting of trade unionists, and police interference in union activities, so as to be able to take measures to rapidly and properly address such allegations. The Committee requests the Government to keep it informed of the outcome of the cases pending against trade union leaders and members in factories E, G and H in relation to their participation in trade union activities, as well as of the outcome of the proceedings for anti-union practices in factory C. Finally, the Committee requests the Government to provide its observations on the alleged police interference in a trade union meeting in Chittagong in September 2021.*

108. *In view of the sometimes-contradictory information submitted by the complainants and the Government in relation to the additional allegations from March 2022, the Committee invites the complainants to provide additional information in this regard.*

The Committee's recommendations

109. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee expects the two remaining cases filed against workers following the 2016 Ashulia strike to be concluded without further delay and requests the Government to keep it informed of the outcome thereof.

(b) Emphasizing the need to investigate all serious allegations of ill-treatment of trade unionists even in the absence of a formal complaint filed by the injured party, the Committee once again invites the complainants to provide any further relevant information to the appropriate national authority so that it can proceed to an investigation in full knowledge. The Committee urges the Government to institute, without delay, an independent inquiry into the allegations of ill-treatment of trade unionists arrested and detained in the aftermath of the 2016 Ashulia strike on the basis of information it already has at its disposal, as well as any additional information provided by the complainants, and to keep it informed of the steps taken in this regard, including detailed information on the mechanisms available to conduct such independent investigations as referred to and the necessary steps for triggering their review.

(c) The Committee urges the Government once again to indicate the measures being taken to investigate the allegedly excessive use of force during the 2018–19

demonstrations resulting in injuries to at least 80 workers and to inform it of any findings in this regard. It also urges the Government to provide information on the outcome of the investigation that the Government previously indicated was being conducted into the killing of 1 worker during these demonstrations. The Committee also requests the Government to keep it informed of the status of the 5 cases pending against workers, in particular to indicate whether they eventually led to criminal charges being filed or whether they were dismissed though a final report.

(d) The Committee requests the Government to provide its observations on the February 2020 additional allegations of the complainants referring to mass retaliation against workers following the 2018–19 demonstrations (dismissals, public shaming, defamation and blacklisting) and persistent monitoring, surveillance and intimidation of trade unionists. The Committee requests the Government to take the necessary measures to address and prevent all forms of retaliation, intimidation, harassment and surveillance of workers based on trade union membership or legitimate trade union activities.

(e) Taking note of the Government's engagement in ensuring regular training of police officers and other relevant state actors, the Committee encourages the Government to pursue its efforts in this regard so as to ensure full respect for basic civil liberties, human rights and trade union rights during labour protests, as well as full accountability of those responsible in case of any violations. The Committee further requests the Government to provide details of such trainings, particularly for the police engaged in industrial and export-processing zones. The Committee also requests the Government to provide copies of the curriculum for in-service training of police officers.

(f) The Committee requests the Government to provide its observations on the alleged involvement of the police in the killing of 6 people and injuries to more than 60 workers during workers' protests in Chittagong, Gazipur and Ashulia since April 2021 and, should this not yet be the case, to ensure that these incidents are expeditiously and properly investigated by an independent mechanism so as to combat impunity and prevent repetition of such acts, and to provide detailed information on the progress made in this regard and on the outcome.

(g) The Committee requests the Government to remain vigilant towards allegations of all forms of anti-union discrimination, including dismissals and blacklisting of trade unionists, and police interference in union activities, so as to be able to take measures to rapidly and properly address such allegations. The Committee requests the Government to keep it informed of the outcome of the cases pending against trade union leaders and members in factories E, G and H in relation to their participation in trade union activities, as well as of the outcome of the proceedings for anti-union practices in factory C. Finally, the Committee requests the Government to provide its observations on the alleged police interference in a trade union meeting in Chittagong in September 2021.

(h) In view of the sometimes-contradictory information submitted by the complainants and the Government in relation to the additional allegations from March 2022, the Committee invites the complainants to provide additional information in this regard.

(i) The Committee draws the attention of the Governing Body to the serious and urgent nature of this case.

Case No. 3415

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Belgium presented by
- the Confederation of Christian Trade Unions (CSC)
- the General Labour Federation of Belgium (FGTB) and
- the General Confederation of Liberal Trade Unions of Belgium (CGSLB)

Allegations: The complainants report that the Act of 26 July 1996 on the promotion of employment and protection of competitiveness, as amended by the Act of 19 March 2017, drastically limits the possibility for the social partners to freely negotiate wage increases for workers in the private sector

110. The complaint is contained in a joint communication by the Confederation of Christian Trade Unions (CSC), the General Labour Federation of Belgium (FGTB) and the General Confederation of Liberal Trade Unions of Belgium (CGSLB), dated 6 December 2021. In a communication dated 14 January 2022, the complainant organizations provided additional information.

111. The Government sent its observations in a communication dated 24 February 2022.

112. Belgium has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

113. In their communication of 6 December 2021, the complainant organizations allege that the Act of 26 July 1996 on the promotion of employment and protection of competitiveness, as amended by the Act of 19 March 2017 (hereafter "the Act"), is contrary to Conventions Nos 98 and 154 ratified by Belgium in 1953 and 1988, respectively. The complainant organizations indicate that the Act in question aims to introduce a wage moderation mechanism for the entire private sector (and for some public economic enterprises) in Belgium, and sets a maximum available margin, which can be defined as the maximum percentage authorized for wage increases negotiated at all levels of social dialogue (inter-occupational, sectoral and enterprise levels). They state that the notion of wage increases includes all measures presenting a cost for the employer, with a few limited exceptions listed in section 10 of the Act, and that the above-mentioned mechanism does not cover only wage increases in the strict sense, but also increases of social security contributions, which are the main source of social security financing in Belgium.

114. The complainant organizations indicate that the amendments made to the Act in 2017 considerably tightened the wage moderation system applicable in Belgium insofar as, previously, the authorities only intervened in the absence of an agreement between the social

partners on wage increases, whereas, since the legal amendment introduced in 2017, the mechanism established by the Act involves a prior, systematic and open-ended intervention by the authorities in negotiations on wage increases. The complainant organizations allege that this mechanism therefore substantially infringes the right to collective bargaining as laid down in Conventions Nos 98 and 154, insofar as it drastically limits the margins for negotiation and therefore also has adverse effect on the promotion of free and voluntary collective bargaining at all levels of social dialogue. The complainant organizations also refer to the legislative process that led to the amendment of the Act in 2017. They state in this regard that: (i) the Government at the time had consulted the social partners about the amendment of the Act, by raising the matter with "the Group of 10", which is an informal social dialogue body at the inter-occupational level, and which brings together leaders of workers' and employers' organizations, but that this consultation did not formally take place through the National Labour Council, which is legally competent to give advice on social and labour matters to the authorities; (ii) this consultation with the social partners took place in November 2016, at the same time as when the social partners were to negotiate the wage margin for the years 2017–18 and the 2017–18 inter-occupational agreement (AIP), and seriously damaged the spirit of the negotiations; (iii) evidently, the social partners were not able to reach consensus regarding these legislative amendments (which were more favourable to the employers' bench) and, as a result, were not able to formally issue an opinion; and (iv) however, since the beginning, the trade union organizers have strongly criticized the Government's projects, which did not prevent the Government from implementing its plans to amend the Act. The complainant organizations state that the employers' organizations, which were favourable to the Government's plans, had made the conclusion of the 2017–18 AIP (which contained important provisions on social issues other than wages) conditional on a parliamentary vote on the amendment, and therefore the 2017–18 AIP was concluded on 21 March 2017, two days after the vote in the Parliament. The complainant organizations state that these events demonstrate the influence of the Act, as amended in 2017, on the collective bargaining process and the imbalance that it creates in this regard.

115. The organizations then describe in detail the mechanism established by the Act, as amended in 2017, which comprises four successive stages.

Employment and competitiveness assessment report

116. The complainant organizations specify that, firstly, the mechanism provides for the drafting, every two years, in even years, of a report on the development of employment and competitiveness by the Central Economic Council (CCE). In this regard, they indicate that the social partners are members of the CCE. They state that section 5, paragraph 2, subparagraph 1 of the Act establishes, however, that the first part of the report referred to in paragraph 1 "is drafted under the responsibility of the secretariat of the CCE and concerns the maximum available margins for wage increases …", and that although the social partners are members of the CCE, however, they are in no way part of its secretariat, which acts independently. They then indicate that the subsequent paragraphs of section 5, paragraph 2, provide an exhaustive list of all the parameters to be taken into account by the CCE secretariat when calculating the maximum available margin. They state in this regard that: (i) the secretariat of the CCE therefore has no scope for manoeuvre in calculating the maximum available margin and is strictly bound by the provisions of the Act; and (ii) the Act does not provide for any institutional role for the social partners in the drafting of the first part of this report.

Collective wage negotiations

117. The complainant organizations indicate that, secondly, section 6, paragraph 1 of the Act provides that, "Every two years, in odd years, before 15 January, the inter-occupational agreement of the social partners shall establish, on the basis of the report referred to in section 5, paragraph 1, inter alia, employment measures and the maximum margin for wage cost increases for the two years of the inter-occupational agreement", and that section 6, paragraph 2, provides that "the maximum margin for the increase of wage costs, referred to in paragraph 1, is the maximum available margin, as referred to in section 5, paragraph 2". The complainant organizations state in this regard that the social partners cannot agree on a maximum margin for wage increases that is higher than the maximum available margin previously defined by the CCE secretariat on the basis of parameters imposed by the Act, and that the maximum margin for wage increases on which they agree can therefore only be lower or equal to this maximum available margin. If the social partners reach an agreement, "the margin … shall be … established in a collective labour agreement concluded in the National Labour Council …". They then indicate that, under section 7 of the Act, if the social partners decide by mutual agreement to go beyond the maximum available margin defined in the report of the CCE secretariat, the authorities will set the maximum margin for wage cost increases, in accordance with section 6, paragraphs 1 and 2 of the Act, that is, without exceeding the maximum available margin as defined in the report drafted by the CCE secretariat. The complainant organizations underscore in this regard that the maximum available margin is general in scope insofar as it is imposed on all levels of social dialogue (inter-occupational, sectoral and enterprise levels).

Conciliation efforts in case of failure of negotiations

118. The complainant organizations indicate that section 6, paragraph 3 of the Act provides that, "if no consensus is reached between the social partners within two months of the date of the report [of the CCE], the Government shall invite the social partners to undertake conciliation efforts and shall make a proposal for mediation, on the basis of data contained in the aforementioned report". If an agreement is reached as a result of these conciliation efforts, "the maximum available margin for wage cost increases shall be established in a collective labour agreement concluded in the National Labour Council".

Setting of the maximum margin for wage increases by royal order

119. The complainant organizations indicate that, where the conciliation efforts described in the above paragraph fail, section 7, paragraph 1, subparagraph 1 of the Act provides that, "in the absence of an agreement between the Government and the social partners in the month following the invitation of the social partners to engage in dialogue as referred to in section 6, paragraph 3, the King shall set, by means of an order deliberated by the Council of Ministers, the maximum margin for wage cost increases, in accordance with section 6, paragraph 1 and paragraph 2 …". They reiterate that section 7, subparagraph 2 of the Act also stipulates that, if the social partners decide by mutual agreement to go beyond the maximum available margin for wage cost increases defined in the report of the CCE secretariat, the authorities will set the maximum available margin for wage cost increases, in accordance with section 6, paragraphs 1 and 2 of the Act, that is, without exceeding the maximum available margin as defined in the report drafted by the CCE secretariat.

Period of validity of the mechanism

120. The complainant organizations conclude their description of the mechanism by stating that, even if it is implemented periodically (every two years), the mechanism introduced by the revision of the Act in 2017 is for an indefinite duration and will therefore be implemented on a recurrent basis for an unlimited period of time.

121. The complainant organizations then indicate the grounds on which they consider that the above-described mechanism is, following the amendments made in 2017, contrary to the principles contained in Conventions Nos 98 and 154. They state in particular that: (i) the mechanism in question establishes prior interference by the authorities in collective bargaining, and that, while the Committee on Freedom of Association has already accepted that the authorities may intervene after the social partners have failed to reach an agreement, these hypotheses only concern, however, cases in which the authorities intervene a posteriori. They underscore that, in the present case, by setting in advance a maximum available margin for wage increases, the interference by the authorities in the collective bargaining process occurs before the collective bargaining has even started and considerably restricts, from the outset, the framework for negotiations to the detriment of the interests defended by representative organizations of workers; (ii) the unilateral establishment by the authorities of parameters to determine maximum wage increases is contrary to the criteria of the Committee on Freedom of Association, for which "the determination of criteria to be applied by the parties in fixing wages is a matter for negotiation between the parties", and that the social partners should indeed be allowed to determine for themselves the parameters to be taken into account in determining the maximum wage increase; (iii) these parameters and their implementation restrict the maximum available margin to the extent that there is little incentive for representative organizations of employers to negotiate; (iv) by unilaterally imposing the parameters for the calculation of maximum wages increases, with no possibility of deviating from them and by determining in advance and in a mandatory manner a maximum available margin, the authorities seriously and permanently undermine the autonomy of the parties in collective bargaining; the complainant organizations add that section 7, subparagraph 2 of the Act particularly illustrate the restriction by this legislation of the autonomy of the parties in negotiations, in that it goes so far as to allow the authorities to destroy any agreement reached between the social partners that would establish a maximum wage increase higher than the maximum available wage margin calculated in accordance with section 5, paragraph 2, by the CCE secretariat; and (v) as long as wage increases are limited by legislation, there is little incentive for representative organizations of employers to make use of collective bargaining, which creates an imbalance between the parties, and which prevents the achievement of balanced and satisfactory agreements for all the stakeholders concerned.

122. In the light of the foregoing, the complainant organizations state that the mechanism that is the subject of the present complaint has adverse effects on the promotion of collective bargaining, and refer in this regard to the practical implementation of the mechanism since 2017, indicating that: (i) while an inter-occupational agreement, including in relation to wage increases, was reached in 2017–18, this agreement (which was the result of Collective Labour Agreement No. 119 concluded on 21 March 2017 within National Labour Council) was concluded against a backdrop of great mistrust by trade union organizations regarding the new mechanism established by the Act of 26 July 1996; (ii) the complainant organizations have since continued to voice strong criticism regarding the mechanism in question, and no inter-occupational agreement on wages was reached for the period 2019–20, and therefore the Government itself had to impose the maximum margin for wage increases through the adoption of a royal order; (iii) in turn, as the trade union organizations were not able to accept

the constraints imposed by the Act in question, no inter-occupational agreement on wages was reached for the period 2021–22, and the Government therefore once again had to impose the maximum margin for wage increases by means of a new royal decree; and (iv) it is feared that the next round of inter-occupational negotiations scheduled for the period 2023–24 will not be successful in terms of the determination of wage increases if the Act of 26 July 1996 is not amended so as to, in particular, respect the principles contained in Convention No. 98.

123. In order to illustrate the effects of the implementation of the legislative mechanism on the ability of the social partners to agree on wage increases, the complainant organizations refer specifically to the horticulture sector. In this regard, they state that: (i) the horticulture sectoral agreement for 2017–18 provided for a greater wage increase for seasonal and casual workers, in order to bring into line, by 2025, these wages with the minimum wage of the lowest category in the subsector concerned; (ii) the maximum wage margin established for 2017–18 at an increase of 1.1 per cent prevents this harmonization of applicable wages; and (iii) the social partners wishing to conclude agreements that exceed the maximum wage margin imposed risk being penalized under section 9, paragraph 1, subparagraphs 4 to 6, of the Act, which provides that "an administrative fine of between €250 and €5,000 may be imposed for employers who do not respect the obligation [not to exceed the maximum wage margin authorized]. … [This] fine shall be multiplied by the number of workers concerned, with a maximum of 100 workers."

124. In a further communication dated 14 January 2022, the complainant organizations refer firstly to the situation of an enterprise in the service voucher sector (personal services paid for by means of a state-recognized voucher) to illustrate the restrictive effects of the legal competitiveness safeguard mechanism on the implementation of collective agreements at the sectoral and enterprise levels. The complainant organizations indicate that Belgium has a mechanism to grant temporary reductions of social security contributions for enterprises that introduce a collective reduction of working hours for an indefinite period. In certain conditions, the wages of part-time workers must also be equalized following the introduction of this collective reduction of working hours. The enterprise concerned, however, failed to adapt the wages of numerous part-time workers, while at the same time benefiting from reductions of social security contributions. The complainant organizations indicate that, as the enterprise was not willing to provide a solution at the enterprise level, the trade union organizations, in order to eliminate this unfair practice, demanded and obtained, during the 2019–20 sectoral negotiations in the service voucher sector, the inclusion in the sectoral collective agreement of a requirement for enterprises to equalize the wages of part-time workers. The complainant organizations state that the enterprise in question refuses to apply this sectoral agreement, stating that the sectoral agreement is contrary to the Act of 26 July 1996, and that it is willing to assert this position before the courts if the trade unions take legal action to demand compliance with the sectoral agreement freely negotiated by the social partners.

125. The complainant organizations then refer once again to the parameters established by the Act for the calculation of the maximum available margin for wage cost increases. After having reiterated that, in accordance with the Act, as amended in 2017, the social partners do not have the competence to determine these parameters, which would be contrary to Conventions Nos 98 and 154, they report the inappropriateness of the criteria chosen, highlighting in particular that: (i) the relative position of Belgium's hourly wage cost compared with that of other countries is distorted by the failure to take into account the reduction of employers' contributions and wage subsidies paid using public funds; and (ii) only absolute hourly wage costs are compared, without taking into account work productivity, which is higher in Belgium than in neighbouring countries. The complainant organizations add that, while the social

partners have succeeded in agreeing on a 5 per cent phased increase of the minimum wage between 2022 and 2026, this agreement will not be enough to make up for the delay caused by the wage moderation policy, which resulted in a 4 per cent decrease in the real inter-occupational minimum wage between 2009 and 2019.

126. The complainant organizations state lastly that the wage-fixing mechanism at the inter-occupational level should be indicative rather than imperative, as was the case prior to the 2017 reform. They state that: (i) the rigidity created by the current Act does not make it possible to address the sometimes very different economic realities depending on the sector, and that an indicative wage standard would allow space for catching up in low-wage sectors, in particular regarding an increase in minimum wages and operations aimed at creating and sustaining jobs thanks to the reduction in working hours with maintenance of wages; and (ii) before the 2017 reform, slight excesses in certain sectors were always offset by more limited wage agreements in other sectors, with the wage standard having generally never been exceeded between 1996 and 2017.

B. The Government's reply

127. In its communication dated 24 February 2022, the Government firstly provides information on the background to, grounds for and mechanisms of the Act of 25 July 1996. The Government indicates that, in the context of Belgium's integration into the European Economic and Monetary Union and the Eurozone, the Belgian Parliament voted to adopt the Act in 1996, in order to avoid slippage of competitiveness rather than correct such slippage ex post as had been the case under the previous legislation. The Government specifies that, in each odd year, before 15 January, on the basis of the report referred to in section 5, paragraph 1 of the Act, the joint agreement of the social partners determines, in particular, measures in favour of employment and the maximum margin for wage cost increases for the two years covered by this agreement. It states that, in this context, a distinction should be made between the procedure to calculate the maximum available margin and the procedure to set the maximum margin for wage cost increases.

128. Concerning the calculation of the maximum available margin for wage cost increases, the Government indicates that: (i) the procedure, substantially amended in 2017, provides for the intervention of the CCE secretariat, which drafts every two years, in even years, a report concerning the maximum available margins for wage cost increases and wage cost handicap in Belgium compared with three neighbouring reference countries (Germany, France, the Netherlands); (ii) the CCE secretariat must, when calculating the maximum available margin, follow the legal provisions set out in the aforementioned section 5, with no possibility for derogation; and (iii) the procedures and calculations to be carried out by the CCE in accordance with the new section 5 include protective measures (safety margin), measures to reduce the wage handicap that has accumulated since 1996 (correction term), and measures to take into account not only the forecasts of increases for the two years to come, but also the wage cost increases observed in the last two years, while comparing each time these data with the reference countries. The Government states that the reform introduced in 2017 concerning the above-mentioned mechanism aimed, as indicated in the introductory summary of the Bill, to "eliminate the wage cost handicap in relation to our three neighbouring countries before the close of the legislative session, in consultation with the social partners".

129. Concerning the procedure to set the maximum margin for wage cost increases, as described in sections 6 and 7 of the Act, the Government indicates that: (i) the social partners are responsible for initiating negotiations on the basis of the CCE report; (ii) since the 2017 reform, their agreement must be made official by means of a collective labour agreement concluded

within the National Labour Council; (iii) the Federal Government only intervenes when the negotiations and the mediation proposed by the Federal Government fail, and, in the absence of an agreement between the social partners on a maximum margin for wage cost increases, the margin is set by a royal decree deliberated in the Council of Ministers. In the light of the above, the Government states that: (i) the social partners are always the first to retain control of the negotiations, even if the negotiations are regulated, with regard to the determination of the maximum margin for wage cost increases; (ii) even though the Government can also intervene when the agreement reached between the social partners is not in line with the maximum margin set by the CCE, the fact remains that it is always possible to establish a dialogue; and (iii) it should be underscored that the Government itself is committed to respecting the standard established by the CCE, which means that if the standard is set at a specific percentage, this percentage will be respected, regardless of its value. The Government also states that the successive royal orders adopted since 2011, which unilaterally set the wage standard, were issued later and later in their respective years in order to give the social partners every opportunity to reach an agreement (28 March for the Royal Order of 2011; 28 April for the Royal Order of 2013; 19 April for the Royal Order of 2019 and 30 July for the Royal Order of 2021).

130. The Government then states that the maximum margin for wage cost increases cannot be increased by labour agreements at the intersectoral, sectoral, enterprise or individual level. Failure to respect the maximum margin for wage cost increases can be controlled by the social inspection services, which may, in the case of violation, draw up a report. However, only an administrative penalty is established for individual employers who have not respected the maximum margin for wage cost increases. Employers' and workers' organizations concluding agreements that exceed the maximum margin for wage cost increases cannot be penalized.

131. The Government states that, as from 1996, the Act introduced an advanced form of coordination of wage costs into the Belgium wage-fixing and collective bargaining system, by using the instrument to balance the following macroeconomic objectives: (i) maintain cost-based competitiveness in a globalized economy and in the euromarket (where currency devaluation is no longer possible); (ii) stimulate employment in a country that is heavily dependent on exports; and (iii) obtain, through labour, a fair share of the growing national income thanks to sectoral negotiations (with a positive impact on domestic consumption).

132. The Government also states that recent international studies, led particularly by the Organisation for Economic Co-operation and Development (OECD), have highlighted the importance of such a coordination, in particular with regard to social inequality. Belgium is therefore a country in which wage inequality is extremely low, and furthermore, this inequality has remained very stable.

133. The Government indicates that this form of coordination is used in an institutional system which greatly facilitates collective (wage) and sectoral negotiations, and which has a well-developed system for determining sectoral base wages by means of collective agreements using wage scales and an indexation guaranteed by collective agreement. The Government wishes to underscore the importance of not considering the instrument in isolation, but to take into account how it fits into a broader set of institutions and regulations that support and facilitate the Belgian collective bargaining system.

134. The Government then refers to the effects of the legislation as amended by the Act of 19 March 2017 on the right to free and autonomous collective bargaining. It states in this regard that: (i) the legal procedure creates a balance between the objective of protecting competitiveness and promoting employment, while ensuring the inclusion of the social partners in each of the

stages of the process; (ii) the legal procedure allows the social partners to determine, through collective bargaining, the maximum margin for wage cost increases, and it is only in the absence of consensus between the social partners or in the event of failure to comply with the legal framework that the Government is authorized to intervene; (iii) the absence of consensus between the social partners at the inter-occupational level may eventually lead to a deadlock in negotiations at lower levels, with the Committee on Freedom of Association having admitted in this regard that, in the case of prolonged and unsuccessful negotiations, intervention by the authorities may be justified, if it becomes clear that the deadlock cannot be resolved without their initiative; (iv) despite the criticism of the legislative amendment introduced in 2017, the social partners were able to reach an agreement for the period 2017–18 in conformity with the new legal provisions, even though it is true that, in the two subsequent cycles of negotiations, the social partners did not reach an agreement within the framework of the amended Act; and (v) the statistical data available show that the number of collective agreements concluded at the sectoral level has not decreased since 2017, and these collective agreements continue to address a wide range of issues.

135. The Government then states that the legal mechanism for calculating the maximum margin for wage cost increases does not include all the elements relating to wage costs insofar as, in accordance with section 10 of the Act, the following elements are not taken into account for the calculation of wage costs: (i) profit-sharing bonuses, as defined by the Act; (ii) increases in the payroll resulting from the rise in the number of persons employed in full-time equivalents; (iii) payment in cash or in stocks or shares to workers, under the Act of 22 May 2001 regarding the participation of workers in the capital of enterprises and in the creation of a beneficiary bonus for workers; (iv) the contributions paid as part of pension schemes that meet the requirements established by the Act of 28 April 2003 on supplementary pensions; (iv) the one-off innovation premium established in section 28 of the Act of 3 July 2005; and (v) the Corona bonus to temporarily support workers' purchasing power for a maximum of €500, which is included in the Royal Decree of 21 July 2021, and which can be negotiated at the sectoral, enterprise or individual level.

136. The Government then recalls that indexations and wage scale increases are guaranteed under the Act of 1996, and that the wage increase established by the legal mechanism that is the subject of the present complaint will therefore be added to any indexations and wage scale increases. In this regard, Belgium is, in contrast with its three neighbouring reference countries, the only one with an automatic wage indexation mechanism guaranteed by collective agreement. The procedure established by the Act since 1996 is applied every two years. During each round of negotiations, a new standard calculated on the basis of objective economic elements will be set each time, and this standard will therefore be of a temporary and variable nature.

137. By way of conclusion, the Government states lastly that: (i) as recognized by the complainants, the process gives the social partners the opportunity to set the wage standard, and thus, the social partners maintain a key role in the determination of the wage standard; (ii) although collective bargaining is regulated by the Act, numerous measures are taken to sustain the living standards of workers; (iii) the wage indexation mechanism guaranteed by collective agreement in the context of protecting the purchasing power of Belgian workers is of particular importance; (iv) as wage scale increases continue to be authorized, and section 10 of the above-mentioned Act provides that certain elements are not taken into account for the calculation of wage cost increases, the social partners maintain their freedom to negotiate wage-related issues; and (v) social dialogue on other subjects continues to take place, and collective bargaining is not limited only to negotiations on wages.

C. The Committee's conclusions

138. *The Committee observes that the present case concerns the Act of 26 July 1996 on the promotion of employment and protection of competitiveness, as amended by the Act of 19 March 2017, which provides for the adoption, every two years, at the intersectoral level and with the participation of the social partners, a wage standard consisting of the setting of a maximum margin for wage cost increases which then applies to the different levels of collective bargaining in the country. The Committee notes the complainant organizations' allegations according to which the effect of this Act, particularly since its revision in 2017, is to drastically restrict the possibility for the social partners to freely negotiate the wage increases of workers in the private sector, which is therefore contrary to the principle of free and voluntary collective bargaining established by the ILO instruments ratified by Belgium. The Committee observes that the Government maintains that the mechanism, the purpose of which is to obtain a balance between the protection of competitiveness and the promotion of employment, continues to give an important role to the social partners in the determination of wage increases, and that the Act in question cannot be evaluated separately from the whole system of collective relations in Belgium, which recognizes the central role of negotiation and consultation between the social partners.*

139. *The Committee notes that the complainant organizations' allege that the above-mentioned legal mechanism implies, in particular since the 2017 reform which the workers' organizations had rejected, a priori, systematic and open-ended intervention by the public authorities in negotiations concerning wage increases in the private sector. The Committee notes the complainant organizations' indication that: (i) the negotiations at the intersectoral level between the social partners, established since 1996 by the Act, on the setting, every two years, of a maximum margin for wage cost increases, are, since the 2017 reform, preceded by a report established by the secretariat of the Central Economic Council (CCE), which calculates, on the basis of criteria listed exhaustively by the Act, without the participation of the social partners, the above-mentioned maximum margin; (ii) these calculation criteria imposed unilaterally by the Act are distorted by the failure to take into account the reduction of employer contributions and wage subsidies paid using public funds, and labour productivity, and therefore, it is not possible to make an accurate comparison of the real cost of labour in Belgium and its neighbouring countries; (iii) throughout the intersectoral negotiations following the calculation made by the CCE secretariat, the social partners are required to respect the margin thus defined, and cannot agree on a higher maximum wage cost increase; (iv) where the social partners decide to exceed the maximum margin calculated by the CCE secretariat, their agreement will be cancelled by the authorities who will unilaterally set the maximum available margin in accordance with the calculation made by the CCE secretariat; and (v) under the threat of penalties, the maximum margin for wage cost increases is then imposed at all subsequent levels of negotiations (sectoral and enterprise).*

140. *The Committee notes the complainant organizations' indication that the wage moderation mechanism described: (i) significantly restricts, from the outset, the framework for negotiations to the detriment of the interests defended by representative organizations of workers, reduces the incentive for representative organizations of employers to make use of collective bargaining, which creates an imbalance between the parties; (ii) seriously and permanently damages the autonomy of the parties in collective bargaining by unilaterally imposing parameters for the calculation of maximum wage increases, with no possibility for derogation, and by allowing the authorities to determine in advance and in a mandatory manner a maximum available margin; (iii) has a damaging effect on the promotion of collective bargaining, as demonstrated by the absence of inter-occupational wage agreements for the periods 2019–20 and 2021–22, the maximum margin for wage increases having been imposed unilaterally in both cases by the authorities by means of royal orders, as provided for by legislation in this case; (iv) prevents, for example in the case of horticulture,*

the implementation of sectoral agreements with the aim of re-evaluating the wages of categories of particularly vulnerable workers such as seasonal and casual workers; and (v) in general, does not enable different sectors of activity to respond to the sometimes very different economic realities that they face, and does not leave sufficient space for catching up in low-wage sectors, which highlights that an indicative standard would be preferable in this regard.

141. *The Committee notes that the Government recalls firstly that the main objectives of the legal mechanism setting the maximum margin for wage cost increases are to protect cost-based competitiveness in a globalized economy and in the euromarket, and to stimulate employment in a country which is heavily dependent on exports, and which has a wage-cost handicap in comparison with its direct neighbours. The Committee notes that, after having described the different stages of the legal mechanism, the Government states that: (i) even if these negotiations are indeed framed by the Act and are based on the report of the CCE secretariat, the social partners retain the initiative for negotiations on the wage standard; (ii) the Federal Government intervenes to set the wage standard only in the event of failure of negotiations between the social partners and of the mediation proposed by the Federal Government; (iii) even though the Government can also intervene if the agreement concluded between the social partners is not in conformity with the maximum margin set by the CCE, it still remains possible to establish a dialogue: (iv) even if agreements were not reached after two subsequent rounds of negotiations, the social partners succeeded, within the framework of the mechanism reformed in 2017, in adopting, by consensus, the maximum margin for the period 2017–18; and (v) the wage standard, adopted either by agreement of the social partners or by a royal decree, has a two-year period of application and is therefore not permanent.*

142. *The Committee also notes the Government's indication that the legal mechanism for the calculation of the maximum margin for wage cost increases does not include all the elements relating to wage cost insofar as, under section 10 of the Act, the following elements are not taken into account for the calculation of wage cost: (i) profit-sharing bonuses, as defined by the Act; (ii) increases in the payroll resulting from the rise in the number of persons employed in full-time equivalents; (iii) payment in cash or in stocks or shares to workers, under the Act of 22 May 2001 regarding the participation of workers in the capital of enterprises and in the creation of a beneficiary bonus for workers; (iv) the contributions paid as part of pension schemes that meet the requirements established by the Act of 28 April 2003 on supplementary pensions; (v) the one-off innovation premium established in section 28 of the Act of 3 July 2005; and (vi) the Corona bonus to temporarily support workers' purchasing power for a maximum of €500, which is included in the Royal Decree of 21 July 2021.*

143. *The Committee notes the Government's indication that wage indexations and wage scale increases (that is, the existing wage increases according to seniority, age, normal promotions or individual category changes, provided for by a collective agreement) are guaranteed by the Act, and that the wage increase established under the legal mechanism that is the subject of this complaint will therefore be added to any indexations and wage scale increases. The Government states in this regard that, compared with its neighbours, Belgium is the only country with an automatic wage indexation mechanism that is guaranteed by collective agreement. The Committee notes lastly the Government's indication that: (i) the coordination of the wage standard at the intersectoral level which is the subject of the present case cannot be examined in isolation from the institutional system in which it is incorporated, which greatly facilitates collective and sectoral (wage) negotiations, and which provides a highly developed system for the determination of sectoral base wages through collective agreements; (ii) the statistical data available show that the number of collective agreements concluded at the sectoral level has not decreased since 2017, and that these collective agreements continue to address a wide range of issues; and (iii) social dialogue on other subjects continues to take place, and collective bargaining is not limited only to negotiations on wages.*

144. *The Committee notes the different elements provided by the parties. It notes that it is clear from the concordant descriptions of the complainant organizations and the Government, that the mechanism setting the wage standard at the intersectoral level, which was established in 1996 and reformed in 2017, and which aims to establish, for a period of two years, the maximum margin for wage cost increases, comprises the following stages: (i) in each even year, the CCE technical secretariat calculates the above-mentioned maximum margin on the basis of criteria exhaustively listed by section 5 of the Act; (ii) based on this calculation, the social partners enter into negotiations to set the maximum margin, with any agreement by the social partners being incorporated into a national collective agreement (section 6, paragraph 2 of the Act); (iii) where negotiations are unsuccessful, the Government facilitates a dialogue and mediation process between the social partners (section 6, paragraph 3 of the Act); and (iv) if mediation fails, it is for the Government to set the maximum margin, and its decision gives rise to the adoption, in the Council of Ministers, of a royal order (section 7, paragraph 1 of the Act). The Committee notes that the parties also agree on the fact that both the social partners, in the event that they conclude an agreement, and the Government in the case of the adoption of a royal order, cannot exceed the margin calculated at the beginning of the process by the CCE secretariat (section 7 of the Act), and that the final margin set is of general application to the different levels of negotiation under the threat of penalties for the employers concerned.*

145. *The Committee notes that, while the mechanism described is part of an established practice of concertation on wages at the intersectoral level, the results of which are then applied to the different levels of negotiation in the country, the reform introduced in 2017 significantly amended some of these aspects. In this regard, the Government recognizes the existence of limits on the freedom to negotiate of the social partners with regard to wage increases, in particular the obligation to respect the maximum margin calculated at the beginning of the process by the CCE secretariat. The Committee observes, however, that the parties' views diverge on the extent to which the autonomy of the parties is restricted, on the one hand, and the temporary nature or otherwise of these restrictions.*

146. *Concerning the first point, the Committee notes that, as indicated by the parties, in accordance with the legislation in force, the social partners cannot agree on a wage standard providing for an increase higher than the maximum margin for wage cost increases established in advance by the CCE technical secretariat, which is calculated on the basis of criteria listed exhaustively by the Act. In this regard, the Committee notes that section 2 of the Act defines the wage cost increase as "the increase in nominal terms of the average wage cost per worker in the private sector" and that, in this context, the wage cost is defined by the same provision as "all remuneration in cash or in kind paid by employers to their employees for work completed by the employees during the period of reference …". While noting that section 10 of the Act establishes that certain payroll increases listed exhaustively are not included in the calculation of the maximum margin, the Committee observes that the elements described indicate the existence of a significative restriction of the ability of the social partners to autonomously negotiate wage levels in the private sector. In this regard, the Committee recalls that it is for the parties concerned to decide on the subjects for negotiation, and that determination of criteria to be applied by the parties in fixing wages (cost-of-living increases, productivity, etc.) is a matter for negotiation between the parties and it is not for the Committee to express an opinion on the criteria that should be applied in fixing pay adjustments [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1289 and 1465.] Recalling that Belgium has ratified Conventions Nos 98 and 154, the Committee also underscores that it has considered that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with Convention No. 98; tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method of resolving these difficulties [see **Compilation**, para. 1290].*

147. *Concerning the temporary nature or otherwise of the restrictions on free negotiation of the maximum margin for wage cost increases described above, the Committee observes that, while the wage standard adopted every two years is not, by definition, permanent, the mechanism which allows for the setting of the standard, and which is the subject of the present complaint, is, however, continuous in time insofar as, in accordance with the legislation in force, it governs for an indefinite period of time the successive exercises for setting the maximum margin of wage cost increases. In this regard, and while duly taking into account the characteristics of the present case (participation of the social partners in the setting of the maximum margin, possibility of negotiating certain defined aspects of remuneration in addition to this margin, wage indexation mechanism), the Committee recalls that it has considered that if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards [see* ***Compilation****, para. 1456].*

148. *In the light of the foregoing, and taking duly into account the tradition of dialogue that characterizes collective labour relations in Belgium, the Committee requests the Government to take, in full consultation with the social partners, the necessary steps to ensure that the social partners are able to freely determine the criteria on which to base their negotiations on wage increases at the intersectoral level, and the results of those negotiations. The Committee requests the Government to keep it informed of any developments.*

The Committee's recommendation

149. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:

> **The Committee requests the Government to take, in full consultation with the social partners the necessary steps to ensure that the social partners are able to freely determine the criteria on which to base their negotiations on wage increases at the intersectoral level, and the results of those negotiations. The Committee requests the Government to keep it informed of any developments.**

Case No. 3413

Interim report

Complaint against the Government of the Plurinational State of Bolivia presented by the Departmental Federation of Oil Workers of Santa Cruz (FDTPSC)

Allegations: The complainant organization alleges that the Ministry of Labour illegally revoked decisions recognizing the leadership and the union leave entitlement of trade union leaders of and trade unions belonging to the FDTPSC and that, after the decisions had been revoked, acts of anti-union persecution and discrimination were carried out against members and leaders, such as dismissals and disciplinary proceedings

150. The complaint is contained in communications dated 11 July and 5 November 2021 of the Departmental Federation of Oil Workers of Santa Cruz (FDTPSC).

151. The Government sent its observations in a communication dated 18 May 2022.

152. The Plurinational State of Bolivia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

153. In its communications dated 11 July and 5 November 2021, the FDTPSC indicates that it was founded on 22 July 2020 by the following trade unions: the YPFB Transporte Oil Workers' Union (Trade Union I); the YPFB Andina Oil Workers' Union (Trade Union II); the Petrobras Bolivia Oil Workers' Union (Trade Union III); the Eastern Oil Workers' Union (Trade Union IV); and the Union of Oil Workers of YPFB Refinación Gualberto Villaroel (Trade Union V). The complainant organization indicates that the FDTPSC was established as a result of the abandonment and lack of protection of the aforementioned trade unions by the Trade Union Federation of Oil Workers of Bolivia, which is affiliated with the Bolivian Workers' Federation (COB), and particularly as a result of its financial mismanagement. It also indicates that, after the establishment of the FDTPSC, the five trade unions made the joint decision to withdraw from the Trade Union Federation of Oil Workers of Bolivia.

154. The complainant organization indicates that: (i) on 18 August 2020, in compliance with the national legislation in force, in particular with Ministerial Decision No. 832/2016, which establishes the requirements and procedures for granting recognition of the leadership of trade union organizations, the FDTPSC requested the Ministry of Labour, Employment and Social Welfare (MTEPS) to recognize its leadership and the union leave entitlement of the members of the executive committee; and (ii) on 27 October 2020, the MTEPS issued Decision No. 603/20 recognizing the leadership and union leave entitlement of the FDTPSC. The complainant organization has attached a copy of Decision No. 603/20 which indicates that the

General Directorate for Trade Union Affairs concluded that the procedure to recognize the leadership and union leave entitlement of the FDTPSC for the period 2020–23 was technically sound, as it complied with the requirements and procedures approved by Ministerial Resolution No. 832/2016.

155. According to the complainant organization, on 9 November 2020, the Trade Union Federation of Oil Workers of Bolivia filed an appeal to revoke Decision No. 603/20. The complainant organization considers that the Trade Union Federation of Oil Workers of Bolivia lacked a legitimate interest for filing the appeal for revocation, and that only the applicant, that is, the FDTPSC, could challenge the ministerial decision concerning it. The complainant organization alleges that the Trade Union Federation of Oil Workers of Bolivia wanted to avoid recognizing the leadership and union leave entitlement of the executive committee of the FDTPSC in order to harm the trade unions belonging to the FDTPSC and to force them to rejoin the Trade Union Federation of Oil Workers of Bolivia. The complainant organization alleges that all of this is in clear violation of its rights and guarantees, and aims to legitimize an alleged trade union dictatorship, circumvented by the MTEPS, which should protect the interests of workers, but is instead violating these interests, by giving preference to a group of leaders. The complainant organization states that, owing to the appeal for revocation filed by the Federation of Oil Workers of Bolivia, on 19 November 2020, following the change in Government, the new authorities of the MTEPS issued Decision No. 647/20, which illegally revokes Decision No. 603/20 in its entirety. It also indicates that, on 24 November 2020, the FDTPSC filed a hierarchical appeal against Decision No. 647/20, and that, on 4 December 2020, it requested the MTEPS to suspend the enforcement of the contested Decision.

156. The complainant organization also states that, on 6 January 2021, the executive committee of the Trade Union Federation of Oil Workers of Bolivia, once again making use of its influence, requested the MTEPS to annul the ministerial decisions issued under the transitional Government regarding the trade unions that belong to and founded the FDTPSC, indicating that, "At the national conference of general secretaries of the country, held in La Paz on 7 November 2020, during which Decisions Nos 02/20 and 04/20 were issued, the national conference, after holding a comprehensive discussion in the exercise of its attributions and powers, unanimously decided that the trade union leaders who had allegedly participated in reprehensible acts of division and parallelism be expelled with ignominy from the national movement, and that their union leave entitlement be immediately suspended, for having permanently withdrawn from their parent organization, thus annulling the decisions ensuing from the unorganized actions of the coup d'état by the de facto Government. Consequently, the Trade Union Federation of Oil Workers of Bolivia revokes the corresponding approval". The complainant organization indicates that, as a result, on 11 February 2021, the MTEPS issued Decision No. 144/21 which revoked, in their entirety, the ministerial decisions relating to the five trade unions that belong to and founded the FDTPSC. It also indicates that: (i) on 22 February 2021, the FDTPSC filed an appeal for revocation, seeking the annulment of Decision No. 144/21 vitiated by nullity and which violated acquired rights in breach of legal certainty as part of due process; (ii) on 26 February 2021, the Minister of Labour was requested to suspend the enforcement of Decision No. 144/21; and (iii) due to administrative silence, on 12 March 2021, the FDTPSC lodged an appeal for *amparo* [protection of constitutional rights] requesting the suspension of the enforcement of Decision No. 144/21, guaranteeing the rights to petition and to organize enshrined in the Political Constitution of the Plurinational State of Bolivia (CPE) and ILO Conventions Nos 87 and 98.

157. The complainant organization indicates that, since the revocation of the ministerial and administrative decisions concerning the five trade union organizations, the organizations have

been going through a very difficult period. It indicates that the leaders of the five trade union organizations are being persecuted and harassed and, in some cases, have been dismissed illegally, despite being protected by trade union immunity as trade union leaders, as part of a plan to destabilize and leave workers defenceless. The complainant organization has attached documents which refer to the dismissal of members of Trade Unions I and II, and which indicate that Mr Dimar Céspedes Zardón and Mr Freddy Vásquez Moreno, who had been leaders of Trade Union I until 11 February 2021, were reportedly dismissed on 8 July 2021, without a judicial process and in violation of section 51 of the CPE, which establishes that trade union leaders shall enjoy trade union immunity and that they shall not be dismissed until one year after the end of their mandate.

158. The complainant organization also alleges that the MTEPS has taken on the political task of preventing or obstructing the operation of the trade unions belonging to the FDTPSC and has illegally recognized the leadership of parallel trade unions. The complainant organization has attached documents indicating that, by means of Decision No. 45/2021, the MTEPS rejected an appeal for revocation filed by the former leader of Trade Union IV, Mr Ronald Medrano Heredia, who contested a decision recognizing a fake Eastern oil workers' trade union approved by the Trade Union Federation of Oil Workers of Bolivia.

159. The complainant organization further alleges that criminal proceedings have been initiated against leaders of Trade Union I for alleged offences of conduct jeopardizing economic development, misuse of influence, dereliction of duty and illegitimate contributions and benefits. The complainant organization alleges that, despite having filed complaints and administrative appeals against the dismissals and against transfers, the complaints lodged before the MTEPS were not addressed.

B. The Government's replies

160. In its communication of 18 May 2022, the Government indicates that section 51 of the CPE of 7 February 2009, recognizes the right of all workers to organize themselves in trade unions, and establishes that the State shall respect the ideological and organizational independence of trade unions, which shall enjoy legal personality solely by virtue of the fact that they organize and are recognized by their parent entities. The Government also indicates that section 99 of the General Labour Act regulates employers' and workers' organizations, and provides that the right to form unions, which may be employers' organizations, trade unions or professional associations, whether mixed, industrial or at enterprise level, is recognized, and that, in order to act as such, a trade union must be permanent in nature, have a legal personality and be established in accordance with the legal rules. It indicates that section 99 is in line with the Regulatory Decree of the General Labour Act, which recognizes the right of workers to form unions.

Acts of recognition and revocation concerning the FDTPSC

161. The Government indicates that: (i) on 12 August 2020, members of the FDTPSC requested the MTEPS to recognize the leadership and union leave entitlement of the executive committee, and attached documentation in compliance with the requirements established by Decision No. 832/2016, which provides that it is necessary to, inter alia, submit the approval or certification document issued by the parent entity, specifying the type of procedure being approved; (ii) after the documents submitted by the FDTPSC had been analysed, the Directorate of Trade Union Affairs considered that the procedure to recognize the leadership and union leave entitlement was "technically sound"; (iii) while the General Directorate of Legal Affairs of the MTEPS made some observations in relation to the documents submitted,

including that there was no register of members in order to identify the FDTPSC as a federation, in reports dated 23 and 26 October 2020, the General Directorate of Legal Affairs of the MTEPS indicated that the observations had been addressed, and recommended that the relevant decision be issued; and (iv) on 27 October 2020, the MTEPS issued Decision No. 603/20, which recognized the leadership of the FDTPSC for the period from 31 July 2020 to 30 July 2023, and which declared ten leaders of the FDTPSC as being on union leave.

162. The Government indicates that, on 9 November 2020, the Trade Union Federation of Oil Workers of Bolivia, which belongs to the COB, filed an appeal for revocation that challenged Decision No. 603/20, indicating that: (i) section 51 of the CPE provides that it is not sufficient for a trade union organization simply to organize, but that it also needs to be recognized/approved by a parent entity for its existence to be legally established, with the exception of the COB, as it is the highest parent entity; (ii) the recognition of leadership obtained by the FDTPSC did not comply with the main requirement of being recognized by its parent entity, and that, consequently, the MTEPS had issued a decision that failed to respect section 51 of the CPE, and Ministerial Decision No. 832/2016, which refers to approval or certification by a parent entity; and (iii) this demonstrated a lack of analysis and expertise on the part of the MTEP authorities, and that, the issuance of Decision No. 603/20 resulted in interference in the ideological and organizational independence of trade unions, which is prohibited by section 51.IV of the CPE; and as the supposed FDTPSC has not been approved by any parent entity in the trade union system, it is an entity on the fringes of the system, which has led to parallel and divisive actions within the trade union system, thus implicitly positioning the MTEPS as the parent entity.

163. According to the documents attached by the Government, in issuing Decision No. 603/20, the MTEPS expressed the principle of good faith, but this was in disregard of all the background information that was submitted with the appeal for revocation, which made it possible to conclude that the FDTPSC did not have the approval of the parent entity, that is, it failed to meet an essential requirement, and therefore, the of 19 November 2020, which revokes Decision No. 603/20 of 27 October 2020.

Acts revoking the decisions concerning the five trade unions

164. The Government indicates that, by means of decisions issued in 2018, 2019 and 2020, the Departmental Labour Office of Santa Cruz recognized the leadership of the five trade unions in question and that, in decisions issued by the MTEPS in those years, the leaders of the five trade union organizations were declared as being on union leave, "considering the justification and responsibility assumed by the Trade Union Federation of Oil Workers of Bolivia".

165. According to the Government, on 8 January 2021, the Trade Union Federation of Oil Workers of Bolivia, informed the MTEPS that the national conference of general secretaries of the country, held on 7 November 2020, had issued Decisions Nos 2/20 and 4/20, in which the national conference had unanimously decided that Mr Ronald Medrano Heredia, Mr Dimar Céspedes Zardón, Mr José Nogales Mérida, Mr Freddy Vásquez Moreno and Mr José Luis Franco Geiger be expelled with ignominy from the national movement and that their union leave entitlement be immediately suspended on the grounds of participation in reprehensible acts of division and parallelism, thus disqualifying them from exercising their trade union leadership (as leaders of the five trade unions and the FDTPSC). The Federation informed the MTEPS that the above-mentioned leaders had left the parent organization, and that, consequently, the Trade Union Federation of Oil Workers of Bolivia had revoked the corresponding approval.

166. The Government indicates that, in exercising its right to petition established in section 24 of the CPE and its right to challenge administrative decisions, the executive committee of the Trade Union Federation of Oil Workers of Bolivia requested the MTEPS to annul the ministerial and administrative decisions concerning the five trade unions. The Government indicates that the MTEPS analysed the background information and documentation provided by the Trade Union Federation of Oil Workers of Bolivia, and that, on 11 February 2021, it issued Decision No. 144/21 which revoked, in their entirety, the ministerial and administrative decisions recognizing the leadership and the union leave entitlement of the executive committees of the five trade unions. The Government indicates that the ministerial and administrative decisions recognizing the leadership and the union leave entitlement of the executive committees of the trade unions in question, owing to unforeseen circumstances not attributable to the administration, no longer complied with one of the requirements set out in Decision No. 832/2016, specifically the "approval or certification document issued by the parent entity, determining the type of procedure being approved", which was indispensable for granting recognition of the leadership and/or union leave entitlement of the executive committees of the trade unions, and therefore it was appropriate to revoke the recognition of the leadership and the trade union leave entitlement of the leaders of the five trade unions.

167. The Government indicates that those who had been the leaders of the five trade unions had filed an appeal for revocation against Decision No. 144/21 of 11 February 2021. In this regard, the Government indicates that, as there is no evidence of a violation of acquired rights, as alleged by the applicants, and that, given that the administrative decision being challenged had only sought to safeguard the notion of public order, which is a criterion that applies to all decisions adopted by the public administration, it was concluded that Decision No. 144/21 of 11 February 2021 did not restrict any rights of the members of the trade unions, and even less did it disregard the progressive nature of labour rights. The Government indicates that Decision No. 244/21 of 22 March 2021 confirmed Decision No. 144/21 in its entirety.

168. The Government indicates that Decisions Nos 647/20 and 144/21 were not issued arbitrarily, but rather in compliance with the procedure established in the Administrative Procedure Act, in particular, sections 61 and 64, which refer to the appeal for revocation and to the forms of settlement of legal challenges, and in response to a duly substantiated and express request submitted by the Trade Union Federation of Oil Workers of Bolivia. The Government underscores that the State cannot intervene, as, if the State were to take measures such as suspending, by means of administrative proceedings, the status of trade union leaders (claim by the complainant organization), or challenging, overseeing or overruling the election processes of these leaders, it would mean disregarding the will expressed by workers through their workers' entities, undermining their autonomy in their functioning and administration, and unconstitutionally restricting their right to organize, which would therefore constitute a violation of section 51 of the CPE. The Government emphasizes that the above-mentioned decisions are subject to the principle of legality and the presumption of legitimacy, established in the Administrative Procedure Act, which determines that "the actions of the public administration, being fully subject to the law, are presumed to be lawful, unless expressly declared otherwise by the courts".

169. The Government indicates that the present complaint was filed by a person who was expelled from the trade union movement, and further states that the procedure established by the Administrative Procedure Act has not been exhausted, as, once a hierarchical appeal has been ruled upon, it is possible to file a judicial challenge by means of administrative dispute proceedings, before the Supreme Court of Justice. The Government indicates that the

complainant organization should have appealed to the legal authority beforehand by means of administrative dispute proceedings.

170. The Government also indicates that the Trade Union Federation of Oil Workers of Bolivia is the parent entity that brings together all unionized state oil workers, and that it belongs to the COB, which is the parent entity for all workers in the country, making it the sole representative and participatory parent entity for workers' social demands. The Government indicates that the organization, representation and activities of these parent entities are based on the principles contained in the CPE, in particular those established in paragraph II of section 51, which states that "The State shall respect the principles of trade union unity…", which is one of the key principles of the trade union activity of trade union organizations in the country. Consequently, the intention to create a parallel trade union organization, to the detriment of the original lawfully organized trade union organization, constitutes a violation of the trade union principles established and recognized by the national legislation in force, and by the main parent entity for the workers in the country.

171. With regard to the *amparo* appeal filed against Decision No. 144/21, which reported alleged administrative silence and requested the suspension of the enforcement of the above-mentioned decision, the Government indicates that: (i) the MTEPS made an observation concerning the appeal, on the grounds that it was defective in form and substance and thus liable to cause error in the Constitutional Court; (ii) *amparo* appeals are not an alternative to or substitute for ordinary or administrative proceedings that the Constitution or law assign to the different jurisdictions for the protection of rights considered to be violated, but rather they are a subsidiary mechanism, as they can only be established when the injured party has no other means of defence; therefore, where other expedient remedies are available, these must be used first; (iii) in this case, the applicant failed to exhaust a further remedy provided for by the regulations governing administrative proceedings, specifically a hierarchical appeal, provided for in the Administrative Procedure Act, which can be corroborated by the statements made by the complainant organization in reference to its appeal for revocation filed on 22 February 2021; (iv) the time frame for settling the appeal for revocation is 20 working days, and therefore the deadline for issuing the corresponding decision was 22 March 2021, when Ministerial Decision No. 244/21 was issued, which confirmed Decision No. 144/21 in its entirety, and which was notified to the parties on 23 March 2021, therefore demonstrating that no administrative silence occurred; and (v) in the event that the alleged negative administrative silence referred to in the *amparo* appeal had occurred, the applicant had the right to expeditiously challenge the decision by means of a hierarchical appeal, which was not exhausted.

172. The Government indicates that, in the *amparo* appeal, the rights specified as having been violated were the right to petition and the right to form unions. Regarding the right to petition, it was claimed that there had been negative administrative silence, in that, allegedly, no response had been provided to the appeal for revocation filed on 22 February 2021, which was not the case, as Decision No. 244/21 was issued on 22 March 2021 in order to respond to the appeal for revocation, within the legal time frame. Concerning the right to form trade unions, which was allegedly violated by Decision No. 144/21, an appeal was filed against Decision No. 144/21, and was settled by Decision No. 244/21 of 22 March 2021. The Decision could have been challenged by means of a hierarchical appeal, yet the administrative challenge was not exhausted.

173. The Government indicates that, in accordance with section 51 of the CPE, trade unions shall enjoy legal personality solely by virtue of the fact that they organize and are recognized by their parent entities, and that recognition and legal personality can only be granted by the parent entities on which they are organizationally dependent. It also states that, in the present

case, the complainant organization failed to indicate to the Constitutional Court and the Committee on Freedom of Association, that it was the one that requested its withdrawal from the Trade Union Federation of Oil Workers of Bolivia and that, owing to this, the parent entity, by means of Decisions Nos 2/20 of 16 September 2020 and 4/20 of 7 November 2020, and Note LP-FSTPB 1/21 of 6 January 2021, decided that the complainant organization be expelled with ignominy and that its union leave entitlement be immediately suspended, and to annul the decisions recognizing its leadership and union leave entitlement. The Government indicates that the work of the MTEPS is basically to ensure the formalities necessary for the decisions or organizational determinations made by these trade union organizations and their parent entities, as this Ministry cannot interfere in the affairs of these trade unions; in this regard, the MTEPS was responsible only for formalizing the decision made by the Trade Union Federation of Oil Workers of Bolivia, and therefore it is not possible to establish any violation of rights by the MTEPS. The Government indicates that all these elements were brought to the attention of the Constitutional Court, which issued Decision No. 63/2021 of 24 March 2021 rejecting the appeal filed.

174. The Government emphasizes that: (i) the State recognizes and guarantees the right to freedom of association of unionized workers, and that trade union organizations enjoy legal personality solely by virtue of the fact that they organize and are recognized by their parent entities, as expressly established in paragraph IV of section 51 of the CPE; (ii) trade union organizations must furthermore comply with the obligation to legalize this legal personality through their registration with the MTEPS, for which they must comply with certain requirements set out in section 99 of the General Labour Act, that is, "they must legalize their legal 'personality' and establish themselves in accordance with the legal rules", which is a procedure that concludes with the issuance of the corresponding decision that proves the legal existence of the trade union organization, and enables the trade union organization and its representatives to exercise their rights, fulfil their purpose and carry out their activities vis-à-vis third parties; (iii) all trade union organizations must respect the legal rules, in particular, the essential requirement of being recognized by their parent entities; (iv) Decision No. 832/2016 of 2016 approving the requirements and procedures for formalities carried out by trade union organizations with the MTEPS, including the procedure for the recognition of trade union leadership and/or union leave entitlement, which establishes the documents to be submitted by trade union organizations; and (v) the recognition of the leadership of trade union organizations is of vital importance, in order for the State to guarantee the exercise of the rights granted to trade union leaders.

C. The Committee's conclusions

175. *The Committee observes that, in the present case, the complainant organization alleges that the MTEPS illegally revoked ministerial decisions recognizing the leadership and union leave entitlement of leaders of the FDTPSC and of the five trade unions that belong to and founded the FDTPSC. It also alleges that, after these decisions had been revoked, acts of anti-union persecution and discrimination were carried out against members and leaders of the FDTPSC and the five trade unions, such as dismissals and the initiation of disciplinary proceedings.*

176. *The Committee notes from the complaint and the Government's reply that: (i) in 2020, five trade unions belonging to the Trade Union Federation of Oil Workers of Bolivia took the decision to withdraw from it, established the FDTPSC, and requested the MTEPS to recognize the leadership and union leave entitlement of the members of the executive committee; (ii) on 27 October 2020, the MTEPS issued Decision No. 603/20 recognizing the leadership of the FDTPSC for the period from 31 July 2020 to 30 July 2023, and declaring ten leaders from the FDTPSC as being on union leave;*

(iii) on 9 November 2020, the Trade Union Federation of Oil Workers of Bolivia challenged Decision No. 603/20 on the grounds that the essential requirement of being recognized by the parent entity had been overlooked during the procedure, thus violating section 51 of the CPE and Ministerial Decision No. 832/20226; (iv) on 19 November 2020, the MTEPS confirmed that the procedure carried out by the FDTPSC had not been approved by the parent entity, and issued Decision No. 647/20 which revoked Decision No. 603/20; and (v) on 24 November 2020, the FDTPSC filed a hierarchical appeal against Decision No. 647/20.

177. *The Committee also notes that: (i) on 8 January 2021, the Trade Union Federation of Oil Workers of Bolivia informed the MTEPS that the national conference of general secretaries of the country, held on 7 November 2020, had decided to expel the leaders of the five trade unions from the trade union movement for their reprehensible acts of division and parallelism, who were disqualified from exercising trade union leadership; (ii) the Trade Union Federation of Oil Workers of Bolivia informed the MTEPS that, as the trade unions had withdrawn from the parent organization, they no longer had approval from that organization, and requested the MTEPS to annul the decisions recognizing the leadership and union leave entitlement of the executive committees of the five trade unions issued under the de facto Government; (iii) on 11 February 2021, the MTEPS issued Decision No. 144/21 which revoked the ministerial decisions concerning the five trade unions, as they did not have the approval of the parent entity; (iv) the trade unions filed an appeal for revocation and, on 22 March 2021, the MTEPS confirmed Decision No. 144/21; (iv) on 12 March 2021, the FDTPSC filed an amparo appeal, requesting the suspension of Decision No. 144/21; and (v) the Constitutional Court rejected the appeal filed.*

178. *The Committee notes the complainant organization's allegations that: (i) the FDTPSC was established as a result of the abandonment of and failure to protect the five trade unions by the Trade Union Federation of Oil Workers of Bolivia and as a result of its financial mismanagement; (ii) the Trade Union Federation of Oil Workers of Bolivia lacked a legitimate interest in challenging Decision No. 603/20, and that its aim was to harm the trade unions belonging to the FDTPSC, and to force them to rejoin the Trade Union Federation of Oil Workers of Bolivia; (iii) since the ministerial decisions concerning the five trade unions were revoked, their leaders have been persecuted, harassed and, in some cases, dismissed without a judicial process, despite the fact that they had trade union immunity, as was the case for Mr Dimar Céspedes Zardón and Mr Freddy Vásquez Moreno; and (iv) the MTEPS has taken on the political task of impeding or hindering the functioning of the trade unions belonging to the FDTPSC, and has illegally recognized the leadership of parallel trade unions that have the approval of the Trade Union Federation of Oil Workers of Bolivia, and that, although complaints were lodged in this respect, they were not addressed.*

179. *In this regard, the Committee notes the Government's indication that: (i) trade union organizations enjoy legal personality solely by virtue of the fact that they organize and are recognized by their parent entities, as established in section 51 of the CPE; (ii) in accordance with Ministerial Decision No. 832/2016, which establishes the requirements and procedures for granting recognition of the leadership of trade union organizations, it is necessary to submit the approval or certification documents issued by the parent entity; (iii) all trade union organizations must respect the legal regulations, in particular, the essential requirement of being recognized by their parent entities; (iv) although in issuing Decision No. 603/20, the authorities of the MTEPS considered that the procedure fulfilled the requirements, the Trade Union Federation of Oil Workers of Bolivia exercised its constitutional right to petition, challenged the decision, and demonstrated that it had been issued without the approval of the parent entity; (v) Decisions Nos 647/20 and 144/21 were not issued arbitrarily but rather were in compliance with the procedure provided for by the Administrative Procedure Act, and are subject to the principle of legality and the presumption of legitimacy; (vi) the complainant organization did not exhaust the administrative procedure established by the*

Administrative Procedure Act, as, once a hierarchical appeal has been settled, it is possible to file a legal challenge through administrative dispute proceedings before the Supreme Court of Justice; (vii) the Trade Union Federation of Oil Workers of Bolivia is the parent entity that brings together all state unionized oil workers, and is also a member of the COB, which unites all workers in the country and which is the sole parent entity representing workers; and (viii) the organization, representation and activities of these parent entities are based on the principles contained in the CPE, in particular the principle of trade union unity and, consequently, the intention to create a parallel trade union organization constitutes a violation of the trade union principles established by the national legislation in place.

180. *The Committee observes that, while the facts of the present case point to the existence of a dispute among various currents of the trade union movement in the oil sector (within a political context characterized by changes of Government), the present complaint raises the question of the right of workers to form trade union organizations of their own choosing without necessarily having the authorization of a higher-level organization.*

181. *The Committee in fact observes that the decision of the five trade unions referred to in this case to withdraw from the Trade Union Federation of Oil Workers of Bolivia and to form a new federation meant that they no longer had the approval of the parent entity, which led the MTEPS to revoke not only the decision recognizing the leadership and union leave entitlement of the FDTPSC, but also the decisions recognizing the leadership of the five trade unions, thus critically affecting the capacity for action of the above-mentioned organizations, as recognized by the Government in its reply.*

182. *The Committee recalls that it has emphasized the importance that it attaches to the fact that workers and employers should in practice be able to establish and join organizations of their own choosing in full freedom [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 474]. While it duly notes the Government's indication that all trade union organizations must respect the applicable regulations, which include the requirement of being recognized by their parent entities, the Committee recalls that, although the founders of a trade union should comply with the formalities prescribed by legislation, these formalities should not be of such a nature as to impair the free establishment of organizations. The Committee also recalls that the acquisition of legal personality by workers' organizations, federations and confederations shall not be made subject to conditions of such a nature as to restrict the exercise of the right to establish and join federations and confederations of their own choosing, and that the requirement that a trade union is obliged to obtain the recommendation of a specific central organization in order to be duly recognized constitutes an obstacle for workers to establish freely the organization of their own choosing and is therefore contrary to freedom of association [see **Compilation**, paras 424,1015 and 497].*

183. *Taking due note that the Bolivian trade union movement is characterized by the importance given to trade union unity, and recalling that, while it is generally to the advantage of workers and employers to avoid the proliferation of competing organizations, a monopoly situation imposed by law is at variance with the principle of free choice of workers' and employers' organizations, and that, in previous cases, the Committee indicated that the obligation for trade unions to obtain the consent of a central trade union organization in order to be registered must be removed [see **Compilation**, paras 486 and 454], the Committee requests the Government to initiate constructive dialogue with all parties concerned, with a view to identifying the necessary reforms, to ensure that workers can freely establish the organizations of their own choosing, even without the authorization of a higher-level trade union organization. The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations and reminds the Government that, if it so wishes, it may avail itself of the technical assistance of the Office.*

184. *With regard to the application of section 51 of the CPE to the organizations concerned in the present case, the Committee requests the Government to take specific steps to ensure that these organizations can register, in full freedom, the executive committees of their own choosing, even without the authorization of a higher-level trade union. It requests the Government to keep the Committee informed in this regard. The Committee also requests the complainant organization to inform it of the outcome of the hierarchical appeal filed against Decision No. 647/20, and to indicate whether it has challenged the ministerial decisions that are the subject of the present case through the administrative dispute process before the Supreme Court of Justice.*

185. *Lastly, observing that the Government's reply does not refer directly to the alleged acts of anti-union persecution and discrimination, including the dismissal of former leaders of Trade Union I, Mr Céspedes Zardón and Mr Freddy Vásquez Moreno, allegedly dismissed without a judicial process, despite the fact that they had trade union immunity, the Committee urges the Government to respond specifically to these allegations. The Committee recalls in this regard that no person shall be prejudiced in employment by reason of trade union membership or legitimate trade union activities, whether past or present, and that protection against anti-union discrimination applies equally to trade union members and former trade union officials as to current trade union leaders. It also recalls that, if it appears that the dismissals occurred as a result of involvement by the workers concerned in the activities of a union, the Government must ensure that those workers are reinstated in their jobs without loss of pay [see* ***Compilation****, paras 1074, 1080 and 1169]. The Committee requests the Government to provide detailed information on the status of all the complaints lodged by the complainant organization with the MTEPS in this regard, and requests the complainant organization to indicate whether legal proceedings have been initiated in relation to the alleged dismissals and other acts of anti-union persecution and discrimination.*

The Committee's recommendations

186. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to initiate constructive dialogue with all the concerned parties, with a view to identifying the necessary reforms, to ensure that workers can freely establish the organizations of their own choosing, even without the authorization of a higher-level trade union organization. The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations and reminds the Government that, if it so wishes, it may avail itself of the technical assistance of the Office.

(b) With regard to the application of section 51 of the CPE to the organizations concerned in the present case, the Committee requests the Government to take specific steps to ensure that these organizations can register, in full freedom, the executive committees of their own choosing, even without the authorization of a higher-level trade union. It requests the Government to keep the Committee informed in this regard.

(c) The Committee requests the complainant organization to inform it of the outcome of the hierarchical appeal filed against Decision No. 647/20, and to indicate whether it has challenged the ministerial decisions that are the subject of the present case through administrative dispute proceedings before the Supreme Court of Justice.

(d) The Committee urges the Government to respond specifically to the allegations of acts of anti-union persecution and discrimination, including the alleged dismissal of the former leaders of Trade Union I, Mr Dimar Céspedes Zardón and Mr Freddy

Vásquez Moreno, allegedly dismissed without a judicial process, despite the fact that they had trade union immunity.

(e) The Committee requests the Government to provide detailed information on the status of all the complaints lodged by the complainant organization with the MTEPS in this regard, and requests the complainant organization to indicate whether legal proceedings have been initiated in relation to the alleged dismissals and other acts of anti-union persecution and discrimination.

Case No. 3219

Definitive report

Complaint against the Government of Brazil presented by

- the Union of Hotel, Aparthotel, Motel, Serviced Apartment, Restaurant, Bar, Cafeteria and Allied Workers of São Paulo and the Surrounding Region (SINTHORESP)
- the National Confederation of Tourism and Hospitality Workers (CONTRATUH) and
- the New Workers' Federation (NCST)

Allegations: The complainant organizations allege that SINTHORESP has been unfairly deprived of the right to represent fast-food workers in the municipality of São Paulo and has been fined for bringing court proceedings requesting the payment of trade union contributions

187. The Committee examined this case at its May–June 2018 meeting, when it presented an interim report to the Governing Body [see 386th Report, approved by the Governing Body at its 333rd Session (June 2018), paras 121–133]. [3]

188. The complainant organizations presented additional information in communications received on 31 May and 25 September 2018.

189. The Government sent observations in communications of 25 May and 23 October 2018, 30 September 2019 and 1 February 2021.

190. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

[3] Link to previous examination.

A. Previous examination of the case

191. At its June 2018 meeting, the Committee made the following interim recommendation concerning the allegations presented by the complainant organizations [see 386th Report, para. 133]:

> Recalling that it is important for workers to be able to freely choose which organization will represent them, the Committee requests the Government to send promptly its observations on the complainant's allegation that it was deprived of the right to represent fast-food workers in the state of São Paulo, including information on the procedures and decisions that led to such situation. The Committee also requests the complainant to provide more detailed information on the extent of its representativeness in the state of São Paulo in general and in the state's fast-food restaurants in particular as well as updated information on the court proceeding that SINDIFAST would have initiated against SINTHORESP.

B. Additional information

192. In two communications received on 31 May and 25 September 2018, SINTHORESP provides additional information on the various aspects of this case. The complainant organization first of all clarifies that: (i) the dispute between SINTHORESP and SINDIFAST over representation does not concern fast-food restaurants in the state of São Paulo, but rather those in the municipality of São Paulo, an area with a very high number of such restaurants; and (ii) the trade union contributions taken away from SINTHORESP to be paid to SINDIFAST are not, as the Government incorrectly claimed, compulsory contributions that are contrary to ILO principles and that were in fact abolished by the 2017 legislative reform, but rather contributions that have been negotiated under collective agreements and are applicable to workers who are not members of the union but who derive benefits from the collective agreement (the so-called "solidarity contributions").

193. SINTHORESP then refers to the dispute that it has before the courts with SINDIFAST and claims in this respect that: (i) the payments of union contributions by a number of fast-food restaurants in the municipality of São Paulo to SINDIFAST instead of to SINTHORESP are fraudulent and are being made without the consent of the workers concerned, which is a key dimension of freedom of association that is not being taken into account by the judicial bodies; (ii) SINTHORESP represents fast-food workers in 35 other municipalities; (iii) the establishment of SINDIFAST has given rise to external interference by enterprises, which is contrary to Convention No. 98, which has been ratified by Brazil; and (iv) the collective agreement signed by SINDIFAST has led to a deterioration of working conditions and has resulted in a 40 per cent reduction in the wages of the workers concerned, which demonstrates the non-representative character of this trade union organization.

194. Lastly, the complainant organization also refers to the fact that SINDIFAST instituted a number of judicial proceedings to deprive SINTHORESP of the right to represent several fast-food restaurants, requesting that the corresponding trade union dues be returned to it and calling for SINTHORESP to be fined millions of Brazilian reais. The complainant organization states that, in this context, the labour court is ordering SINTHORESP to pay out 22 million Brazilian reais (BRL), thereby threatening the very existence of the trade union organization.

C. The Government's reply

195. By communications of 25 May and 23 October 2018, the Government provides replies to the recommendation made by the Committee during its first examination of the case and the additional information sent by SINTHORESP. The Government refers first to the allegations by

the complainant organization that it was deprived of the right to represent fast-food workers in the municipality of São Paulo, including information on the procedures and decisions that led to the said exclusion. The Government states in this regard that: (i) under article 8 of the 1988 Constitution, the Ministry of Labour cannot intervene in the organization and functioning of trade unions and it is prohibited to make the establishment of trade unions subject to prior authorization; (ii) at the same time, by virtue of súmula [summary of case law] No. 677 of the Federal Supreme Court, the Ministry of Labour is responsible for registering trade union organizations and ensuring that the single trade union principle is respected; (iii) however, it is not the Ministry's responsibility to assess the representativeness of trade unions beyond what is implicitly required by law; (iv) Brazilian legislation does not contain specific criteria for determining the representativeness of trade unions; (v) article 8(II) of the Constitution establishes however the single trade union system, under which it is prohibited to establish more than one trade union organization, at any level, to represent the same professional or economic category, in the same territorial area; (vi) within the framework of the single trade union system, article 571 of the Consolidation of Labour Laws enshrines the principle of specificity, which allows for the establishment of a new trade union organization that has a more specific scope of activity than an existing union, which can lead to a situation in which two trade unions can request the right to represent the same category of workers; and (vii) the majority of case law and legal doctrine consider that the principle of specificity should prevail over the principle of territoriality.

196. After having described the general rules and criteria applicable to the determination of trade union representativeness, the Government refers to the decision of the Supreme Labour Court granting SINDIFAST the right to represent fast-food workers in the municipality of São Paulo. The Government states in this respect that the Supreme Labour Court's decision of 3 August 2016 was based on the above-mentioned principle of specificity and that the court considered that SINDIFAST had greater legitimacy to represent this category of workers because it was devoted exclusively to fast-food restaurants.

197. The Government then refers to the allegations by the complainant organizations concerning the excessive fines imposed on SINTHORESP by the courts. The Government states in this respect that: (i) the Government fully respects the independence of the judiciary; (ii) the courts fined SINTHORESP because they found that the organization had made use of the judicial system in bad faith by initiating multiple identical judicial proceedings despite knowing in advance the outcome of these proceedings; and (iii) this is notwithstanding the fact that in some of the cases brought by SINTHORESP it is the enterprise that is the subject of the proceedings that has had to bear the legal costs.

D. The Committee's conclusions

198. *The Committee recalls that the present case concerns the situation of a trade union in the catering sector, SINTHORESP, which, under the legal mechanism of enquadramento sindical [trade union coverage], has lost the right to represent fast-food workers in the municipality of São Paulo in favour of SINDIFAST, a decision that is considered by the complainant organizations to be unfair on the grounds that SINDIFAST is not representative.*

199. *The Committee takes note of the additional information provided by the complainant organizations according to which: (i) the workers concerned did not give their consent before their union dues were diverted to SINDIFAST; (ii) SINTHORESP represents fast-food workers in 35 other municipalities; (iii) the establishment of SINDIFAST has led to external interference by enterprises, which is contrary to Convention No. 98 that has been ratified by Brazil; and (iv) the collective agreement signed by SINDIFAST has led to a significant deterioration in the working conditions and pay of the workers*

concerned, which demonstrates the non-representative character of this trade union organization. The Committee notes that, for its part, the Government states that: (i) while it is the responsibility of the Ministry of Labour to register trade union organizations and ensure respect for the single trade union principle (under which it is prohibited to establish more than one trade union organization, at any level, to represent the same professional or economic category, in the same territorial area), it is not its responsibility to carry out an assessment of the representativeness of trade unions beyond what is implicitly required by law; (ii) Brazilian legislation does not contain specific criteria for determining the representativeness of trade unions; (iii) within the framework of the single trade union system established by the Constitution, article 571 of the Consolidation of Labour Laws enshrines the principle of specificity according to which a new trade union organization that has a more specific scope of activity than an existing union may be established; and (iv) the Supreme Labour Court relied on the above-mentioned principle of specificity and granted SINDIFAST the right to represent fast-food workers considering that this organization enjoyed greater legitimacy owing to the fact that it was devoted exclusively to this type of restaurant.

200. *The Committee takes note of this information. The Committee recalls that the dispute over representation between SINTHORESP and SINDIFAST has arisen in the context of the Brazilian system of collective labour relations, which is governed by the single trade union principle, according to which only one trade union organization may legitimately represent, on a territorial basis that may not be smaller than a municipality, a given category of workers. The Committee also notes that the single trade union system, which has been the subject of recommendations by the Committee in previous cases because of the restrictions it imposes on the right of workers to form and join the trade union of their choice [see, for example, 325th Report, Case No. 2099, para. 193], does not prevent disputes over representation from arising when two trade union organizations claim to be the best qualified to represent a given category of workers. The Committee also notes that this type of dispute may arise in particular when, as in the present case, a new trade union is established with a more limited scope of activity than an existing trade union.*

201. *The Committee notes that, in the context of the dispute over representation between SINTHORESP and SINDIFAST, neither the complainant organizations nor the Government provide specific data that would make it possible to assess the representativeness of each of the two organizations and, in particular, they do not provide figures on how many members they have in the fast-food sector in the municipality of São Paulo. The Committee also notes that, in the same vein, the Supreme Labour Court decision cited by the Government granting representative status to SINDIFAST is based on the principle of specificity following the exclusive dedication of that organization to fast-food restaurants.*

202. *The Committee recalls in this respect that workers and employers should in practice be able to freely choose which organization will represent them for purposes of collective bargaining [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1359]. The Committee also recalls that: (i) in order to encourage the harmonious development of collective bargaining and to avoid disputes, it should always be the practice to follow, where they exist, the procedures laid down for the designation of the most representative unions for collective bargaining purposes when it is not clear by which unions the workers wish to be represented. In the absence of such procedures, the authorities, where appropriate, should examine the possibility of laying down objective rules in this respect; (ii) in order to determine whether an organization has the capacity to be the sole signatory to collective agreements, two criteria should be applied: representativeness and independence; according to the Committee, the determination of which organizations meet these criteria should be carried out by a body offering every guarantee of independence and objectivity; and (iii) where, under the system in force, the most representative union enjoys preferential or exclusive bargaining rights, decisions concerning the most*

*representative organization should be made by virtue of objective and pre-established criteria so as to avoid any opportunities for partiality or abuse [see **Compilation**, paras 1382, 1374 and 1369]. In the light of these criteria, the Committee expects that the disputes over representation, including the present case, will be settled by applying objective and pre-established criteria for representativeness determined by the Government in consultation with the social partners, taking due account of the wishes of the workers concerned.*

203. *The Committee, further notes the Government's indication that national legislation does not contain criteria for determining representativeness that would make it possible to settle the representation disputes that may arise between several trade union organizations, and observes that this absence may hinder the right of workers to be represented in collective bargaining by the trade union of their choice. As Brazil has ratified Conventions Nos 98 and 154, the Committee refers this legislative aspect to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

204. *In relation to the Committee's request for the complainant organizations to provide updated information on the court proceedings that SINDIFAST is said to have initiated against SINTHORESP, the Committee notes that the complainant organizations allege that; (i) in the context of the legal proceedings initiated by SINDIFAST to deprive SINTHORESP of the right to represent several other fast food restaurants, SINDIFAST requested that the corresponding trade union dues be returned to it and called for SINTHORESP to be fined millions of Brazilian reais; and (ii) in this context, the labour courts are asking SINTHORESP to pay out BRL22 million, thereby threatening the very existence of the trade union organization. The Committee notes that, for its part, the Government does not refer to the proceedings between SINDIFAST and SINTHORESP, merely recalling that the fine imposed on SINTHORESP by the courts at the time was based on that trade union organization's use of the legal system in bad faith. While noting that it does not have the information that would enable it to comment specifically on the ongoing proceedings between the two organizations, the Committee trusts that the application of clear and pre-established criteria for representativeness, as referred to in the preceding paragraphs, will make it possible to settle the above-mentioned dispute in accordance with the principles of freedom of association.*

The Committee's recommendations

205. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) Taking into account that national legislation does not contain criteria for determining representativeness that would make it possible to settle the representation disputes that may arise between several trade union organizations, the Committee expects that the disputes over representation, including the present case, will be settled on the basis of objective and pre-established criteria for representativeness determined by the Government in consultation with the social partners, taking due account of the wishes of the workers concerned.

(b) The Committee refers the legislative aspects of the case to the Committee of Experts on the Application of Conventions and Recommendations.

(c) The Committee considers that this case is closed and does not call for further examination.

Case No. 2318

Interim report

Complaint against the Government of Cambodia presented by the International Trade Union Confederation (ITUC)

Allegations: The murder of three trade union leaders and the continuing repression of trade unionists in the country

206. The Committee has already examined the substance of this case (submitted in January 2004) on numerous occasions since June 2005, and most recently at its October–November 2021 meeting where it issued an interim report, approved by the Governing Body at its 343rd Session [see 396th Report, paras 158–172]. [4]

207. The Government sent its latest observations in a communication dated 20 May 2022.

208. Cambodia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

209. In its previous examination of the case, the Committee made the following recommendations [see 396th Report, para. 172]:

(a) The Committee firmly urges the Government to take all necessary measures to expedite the process of investigation into the murders of trade union leaders Chea Vichea and Hy Vuthy, and that it will keep the Committee duly informed of any concrete action in this regard, including any measures that the NCRILC may have taken to follow up on these investigations to ensure that the perpetrators and the instigators of these crimes are brought to justice without further delay. In the case of the murder of Hy Vuthy, the Committee urges the Government to specify whether an order has been made to the judicial police to conduct a reinvestigation.

(b) The Committee urges the Government to provide a copy of the decision of the Court of Appeals sentencing Thach Saveth and to inform of developments following the court decision, including any appeal filed against it. The Committee further urges the Government to indicate whether a full and independent investigation into the circumstances of the murder of Ros Sovannareth was carried out in order to bring all relevant information before the courts and if so, to provide a copy of its outcome.

(c) In the absence of information, the Committee again firmly urges the Government to ensure that an investigation into the allegations of torture and ill-treatment of Born Samnang and Sok Sam Oeun while in detention is thoroughly undertaken, under the monitoring of the NCRILC. It firmly urges the Government to provide tangible information on the outcome of the investigation and on measure of redress provided for the wrongful imprisonment of those two men.

[4] Link to previous examination.

(d) The Committee must express its deep concern over the absence of tangible developments concerning all the long-standing issues under examination in this case. The Committee must again express its firm expectation that the Government will take swift action in this regard and will be able to report on meaningful progress, as this necessarily has an impact on the social climate and the exercise of freedom of association rights of all workers in the country.

(e) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

B. The Government's reply

210. In a communication dated 20 May 2022, the Government indicates that the reinvestigation on the murder of trade union leader Chea Vichea is presently under the authority of the Phnom Penh Police. The investigation could not be completed in a timely manner due to its complexity compounded by the fact that it took place nearly two decades ago. The police are making its utmost effort to make progress which requires the close collaboration from the families of the victim and all parties concerned.

211. Regarding the case of the murder of trade union leader Ros Sovannareth, the Government reiterates that the Court of Appeals issued on 14 July 2019 a verdict sentencing Mr Thach Saveth to 15 years of imprisonment for the premediated murder.

212. The Government indicates, with regard to the murder of trade union leader Hy Vuthy, that the Phnom Penh Court of First Instance sentenced Chan Sophonn and Phal Vannak in absentia to 18 years imprisonment and issued arrest warrants in 2017. However, since Chan Sophonn was arrested and released by a judgment of the Court in February 2014, only Phal Vannak is presently under an arrest warrant.

C. The Committee's conclusions

213. *The Committee recalls that it has considered this serious case on numerous occasions which relates, inter alia, to the murder of the trade union leaders, Chea Vichea (January 2004), Ros Sovannareth (May 2004) and Hy Vuthy (February 2007), and to the prevailing situation of impunity with regard to acts of violence against trade unionists.*

214. *The Committee takes note from the succinct report of the Government the following information: (i) the reinvestigation on the murder of Chea Vichea is still under the authority of the Phnom Penh Police. The investigation could not be completed in a timely manner due to its complexity compounded by the fact that it took place nearly two decades ago; (ii) in the case of the murder of Ros Sovannareth, the Court of Appeals issued on 14 July 2019 a verdict sentencing Mr Thach Saveth to 15 years of imprisonment for the premediated murder; and (iii) with regard to the murder of Hy Vuthy, the Phnom Penh Court of First Instance sentenced Phal Vannak in absentia to 18 years imprisonment and issued an arrest warrant in 2017.*

215. *Therefore, the Committee is compelled, once again, to express its deep concern over the lack of progress of the criminal investigation into the murder of Chea Vichea. The Committee expresses the firm hope that the appointment of the Phnom Penh Police to chair the committee investigating the murder will revitalize the investigation and bring it to a conclusion. The Committee recalls the need to bring to justice the perpetrators and the instigators of this crime in order to send an important message that any acts of violence against trade unionists will be punished and to prevent their recurrence. The absence of proper investigation or concrete decision from the authorities would create a situation of impunity, which may reinforce the atmosphere of mistrust and insecurity, prejudicial to the exercise of trade union activities. Consequently, the Committee must once again*

firmly urge the Government to take all necessary measures to expedite the process of investigation into the murder of trade union leader Chea Vichea, and to keep the Committee duly informed of any concrete action in this regard.

216. *In the case of the murder of Hy Vuthy, the Committee recalls that until its most recent report, the Government has maintained that the suspect – Chan Sophonn – who was arrested in September 2013 in accordance with an arrest warrant issued by the Phnom Penh Municipal Court, was released in February 2014, and that the case was under the legal proceedings of the Phnom Penh Municipal Court with no order made to the Judicial Police to do a reinvestigation. While it notes from the latest information provided by the Government that the Phnom Penh Court of First Instance had actually sentenced Phal Vannak in absentia to 18 years' imprisonment and issued an arrest warrant in 2017, the Committee regrets that such information was provided by the Government five years after the investigation and sentencing. It therefore requests the Government to provide a copy of both the Court of First Instance decision and the court decision releasing Chan Sophonn in order to enable the Committee to consider the interlinkages between the trade union activities of Hy Vuthy, violence in the country at the time of his murder, the efforts made to investigate the matter and the degree of impunity in the country. It urges the Government to provide any further information available about the investigation into the circumstances of the murder of Hy Vuthy and its outcome which led to the conviction of Phal Vannak. The Committee also requests the Government to provide any further information in relation to the situation of Phal Vannak.*

217. *In the case of the murder of Ros Sovannareth, the Committee recalls, once again, that for many years it had been referring to the situation of Thach Saveth, arrested and sentenced for 15 years of imprisonment in February 2005 in a trial characterized, in the Committee's view, by the absence of full guarantees of due process necessary to effectively combat impunity for violence against trade unionists. Following the release of Thach Saveth on bail pursuant to the decision of the Supreme Court ordering the review of the case, the Committee requested that justice be carried out and that Thach Saveth be able to exercise his right to a full appeal before the judicial authority. Previously, while noting the Government's indication that the Court of Appeals issued on 14 July 2019 a verdict in absentia sentencing Thach Saveth to 15 years of imprisonment for premediated murder, the Committee urged the Government to provide a copy of the court decision and to indicate any developments, including any appeal filed against it. In the absence of information from the Government, the Committee is bound to, once again, urge the Government to indicate whether a full and independent investigation into the circumstances of the murder of Ros Sovannareth was carried out in order to bring all relevant information before the courts and, if so, to provide to the Committee details on its outcome.*

218. *Additionally, with regard to the allegations that Born Samnang and Sok Sam Oeun – who were wrongfully convicted for Chea Vichea's murder and definitely acquitted in September 2013 – were tortured and ill-treated by the police while in detention, the Committee recalls that it previously urged the Government to ensure that an investigation into these allegations is thoroughly undertaken, under the monitoring of the National Commission on Reviewing the Application of International Labour Conventions Ratified by Cambodia (NCRILC). It further requested the Government to indicate the outcome of such investigation or any measure of redress provided for the wrongful imprisonment of those two men. In the absence of information from the Government, the Committee is bound to reiterate its firm expectation that the Government will provide information on tangible results in this regard.*

219. *In conclusion, while recalling that it had noted back in 2018 the Government's indication that the NCRILC endorsed a road map on the implementation of the ILO's recommendations concerning freedom of association with time-bound actions aimed at providing conclusions to the pending investigations of the murder cases, the Committee must again express its deep concern over the lack*

of efforts on the part of the Government to bring the requested investigations to a conclusion in a transparent and impartial manner, and to report satisfactorily to the Committee. The Committee must again express its firm expectation that the Government will take meaningful action in this regard and emphasizes the importance that it fully uncover the underlying facts and circumstances of these murders of trade union leaders, identify those responsible and punish the guilty parties, as this necessarily has an impact on the social climate and the exercise of freedom of association rights of all workers in the country.

220. *Consequently, the Committee must once again draw the Governing Body's attention to the extremely serious and urgent nature of this case.*

The Committee's recommendations

221. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee must once again firmly urge the Government to take all necessary measures to expedite the process of investigation into the murder of trade union leader Chea Vichea, and to keep the Committee duly informed of any concrete action in this regard.

(b) The Committee requests the Government to provide a copy of both the first instance court decision and the court decision releasing Chan Sophonn in order to enable the Committee to consider the interlinkages between the trade union activities of Hy Vuthy, violence in the country at the time of his murder, the efforts made to investigate the matter and the degree of impunity in the country. The Committee urges the Government to provide any further information available about the investigation into the circumstances of the murder of Hy Vuthy and its outcome which led to the conviction of Phal Vannak. The Committee also requests the Government to provide any further information in relation to the situation of Phal Vannak.

(c) In the absence of information from the Government, the Committee is bound to, once again, urge the Government to indicate whether a full and independent investigation into the circumstances of the murder of Ros Sovannareth was carried out in order to bring all relevant information before the courts and, if so, to provide to the Committee details on its outcome.

(d) In the absence of information, the Committee again firmly urges the Government to ensure that an investigation into the allegations of torture and ill-treatment of Born Samnang and Sok Sam Oeun while in detention is thoroughly undertaken, under the monitoring of the NCRILC. It firmly urges the Government to provide tangible information on the outcome of the investigation and on any measure of redress provided for the wrongful imprisonment of those two men.

(e) The Committee must again express its deep concern over the apparent lack of efforts on the part of the Government to bring the requested investigations to a conclusion in a transparent and impartial manner, and to report satisfactorily to the Committee. The Committee must again express its firm expectation that the Government will take meaningful action in this regard and emphasizes the importance that it fully uncover the underlying facts and circumstances of these murders of trade union leaders, identify those responsible and punish the guilty

parties, as this necessarily has an impact on the social climate and the exercise of freedom of association rights of all workers in the country.

(f) In light of the seriousness of the matters raised in this case and the lack of efforts on the part of the Government to bring the requested investigations to a conclusion in a transparent and impartial manner, the Committee invites the Government, by virtue of its authority as set out in paragraph 69 of the procedures for the examination of complaints alleging violations of freedom of association, to come before the Committee at its session in May–June 2023 so that it may obtain detailed information on the steps taken by the Government in relation to the pending matters.

(g) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

Case No. 3281

Definitive report

Complaint against the Government of Colombia presented by the Colombian Trade Union Association of Public Servants and Public Services (ASTDEMP)

Allegations: The complainant organization alleges that the municipality of Bucaramanga violated the rights to freedom of association and collective bargaining, including by not complying with collective agreements in the public sector and restricting collective bargaining

222. The Colombian Trade Union Association of Public Servants and Public Services (ASTDEMP) sent its allegations in communications of 17 April, 2 August and 2 October 2017, and 12 February and 18 September 2018.

223. The Government sent its observations in communications dated 24 May and 12 December 2018, 3 May and 17 September 2019, and 30 September 2022.

224. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

225. The complainant organization alleges that the municipality of Bucaramanga violated the rights of freedom of association and collective bargaining by not complying with the collective agreement for 2014–16, restricting collective bargaining in 2017 and 2018, and subjecting the president of ASTDEMP to acts of harassment and death threats.

226. The complainant organization states that ASTDEMP is the majority trade union as it counts 70 per cent of the workers of the municipality of Bucaramanga among its members.

227. The complainant organization alleges that the collective agreement for 2014–16 (Municipal Decree No. 0068 of 2015) has not been applied in good faith by the municipality of Bucaramanga, in a number of respects: (i) the mayor and his secretaries take unilateral decisions without acknowledging the complainant organization as the representative of the workers; (ii) a bipartite committee composed of five representatives of each of the parties, to serve as a direct and preventive mechanism with the purpose of monitoring compliance with the collective agreements, was never established; (iii) the agreed job security for all public employees who are staff members has not been respected, as union members have been dismissed and transferred without respect for minimum safeguards; and (iv) trade union leave has been denied, including to the union's president.

228. The complainant organization states that it filed the following administrative complaints with the Ministry of Labour: (i) Complaint No. 000858 of 27 January 2016 containing allegations concerning the violation of the collective agreement for 2014–16, the violation of the right to bargain collectively and freedom of association, the refusal to grant union leave, the obligation placed on ASTDEMP by the office of the mayor of Bucaramanga to provide detailed information on the union work to be carried out, the transfer of workers with trade union immunity, and acts of workplace harassment and bullying; this complaint was settled on 21 February 2018 and in response to this decision the complainant organization filed a request for reconsideration and an appeal; (ii) Complaint No. 004951 of 29 April 2016, alleging the violation of collective agreements by transferring staff with occupational diseases and staff with trade union immunity, workplace harassment and the dismissal of workers who are members of ASTDEMP; and (iii) Complaint No. 010792 of 13 September 2016 alleging the refusal to grant union leave to the president of ASTDEMP and other union officials for the purposes of carrying out union work and the violation of the right of assembly, which were matters that had been negotiated in the collective agreements and were set out in Municipal Decrees Nos 203 of 2002, 166 of 2009 and 0068 of 2015. The complainant organization alleges delays in the settlement of these administrative complaints.

229. The complainant organization also filed three complaints with the Office of the Inspector General alleging non-compliance with collective agreements and acts of bullying by the mayor of the municipality of Bucaramanga. It also filed Complaint No. 1758/17 of 9 March 2017 with the Office of the Attorney General alleging violations of the rights of assembly and association, which was closed. The complainant organization requested the Office of the Municipal Comptroller of Bucaramanga to initiate two investigations (Investigations Nos 6461 and 6696 of 14 March and 31 March 2017, respectively) into the use of resources in 2016 that had been earmarked for employee training and welfare and into non-compliance with the collective agreement. The complainant organization also filed the following complaints with the Office of the Municipal Ombudsperson of Bucaramanga: (i) Complaint No. 6915 of 12 August 2016, requesting a review of the decision to relocate the posts of police inspectors who are members of ASTDEMP and covered by the collective agreement for 2014–16 and who work in the central administration of the municipality of Bucaramanga; (ii) Complaint No. 2513 of 3 November 2016, referring the complaints filed against the municipality of Bucaramanga; and (iii) Complaint No. 1878 of 14 March 2017, requesting that an investigation be launched into the municipality of Bucaramanga for non-compliance with the collective agreement for 2014-16, which was set out in Municipal Decree No. 0068 of 14 May 2015. The complainant organization states that no sanctions have been applied against the municipality of Bucaramanga. Furthermore, the complainant organization alleges that, on 29 June 2017, the

municipality of Bucaramanga failed to acknowledge the existence of a collective agreement between ASTDEMP and the municipality.

230. The complainant organization also alleges that the municipality of Bucaramanga restricted the right to bargain collectively by issuing Resolution No. 0293 of 15 August 2017, "setting the conditions for public employees for 2017", even though the complainant organization had not participated in the collective bargaining process. In response, the complainant organization initiated the following legal action: (i) a writ for the protection of constitutional rights filed on 30 August 2017 before the Fourth Municipal Criminal Court for Adolescents with Responsibility for Ensuring Due Process of Bucaramanga, which is currently under appeal, in which ASTDEMP states that, in exercising its trade union autonomy, it separated itself from the other public servants' unions in the municipality of Bucaramanga and decided not to submit the list of demands for the collective agreement for 2017, since its interest lay in applying the agreement set out in Municipal Decree No. 0068 of 2015; and (ii) Administrative Complaint No. 008745 of 30 August 2017 to the Territorial Directorate of Santander of the Ministry of Labour.

231. In its communication of 12 February 2018, the complainant organization also alleges acts of harassment by the municipality of Bucaramanga and death threats against Ms Martha Cecilia Díaz Suárez, president of ASTDEMP, stating that: (i) Ms Díaz Suárez has been subjected to death threats on several occasions, including on 29 September 2017; (ii) a procedure to lift her trade union immunity was initiated against her, which was rejected by the courts of first and second instance; (iii) a surveillance camera that was supposed to be for the protection of Ms Díaz Suárez was in fact used to monitor her activity as the president of ASTDEMP; and (iv) these acts of harassment and threats have seriously affected the mental health of the president of ASTDEMP. The complainant organization adds to these allegations in a communication of 18 September 2018, in which it states that Ms Díaz Suárez has been the victim of accusations and bullying by: (i) an external adviser of the municipality of Bucaramanga, which is of concern to the complainant organization, given that Ms Díaz Suárez has already been accused of rebellion, even though the case was closed due to a lack of evidence; and (ii) a representative of the municipality, who seemed to think that Ms Díaz Suárez had participated in an armed blockade when she was absent from work because she was unable to get to her workplace due to an armed blockade by groups operating outside the law.

232. In a communication of 18 September 2018, the complainant organization provides additional information on the allegation of violations of the right to bargain collectively during the 2018 bargaining process, stating that: (i) after the first 20 days of collective bargaining, the municipality of Bucaramanga terminated the negotiations; (ii) the municipality rejected the request by the trade union organizations to appoint a mediator, as provided for in Decree No. 160 of 2014; and (iii) on 15 August 2018, the municipality unilaterally issued Resolution No. 198, "setting the conditions for public employees for 2018".

233. The complainant organization lastly reports that, on 12 December 2017, together with the mayor of Bucaramanga, it appeared before the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT), but no agreement was reached as the representatives of the municipality of Bucaramanga were interested only in imposing their views. As a result, the complainant organization refused to sign the record of the meeting.

B. The Government's reply

234. In its communication of 24 May 2018, the Government submits the information provided by the municipality of Bucaramanga and states that: (i) the Ministry of Labour is the authority that is competent to review allegations of non-compliance with a collective agreement; and (ii) in

the event of alleged violations of the right to freedom of association, labour inspectors may, within the scope of their competence, initiate a punitive administrative procedure to establish whether or not a violation took place and to determine the penalty accordingly. With regard to the allegations of non-compliance with collective labour agreements and the proceedings initiated by the complainant organization, the municipality of Bucaramanga states that it has not been notified of any official proceedings before the Ministry of Labour for alleged non-compliance with collective agreements.

235. In its communication of 12 December 2018, the Government transmits the information submitted by the municipality of Bucaramanga on the allegation concerning the refusal to grant trade union leave and acts of harassment against the president of ASTDEMP, stating that: (i) since 2016, Ms Díaz Suárez had not requested permanent trade union leave, but rather leave for particular events, which has been granted in accordance with the law; and (ii) the surveillance camera was installed to meet the security requirements of Ms Díaz Suárez but was removed in the light of allegations that the camera in question was being used for the purposes of harassment in proceedings before the Office of the Municipal Ombudsman of Bucaramanga.

236. The Government provided its information on the administrative complaints filed by ASTDEMP with the Ministry of Labour. First, with regard to Complaints Nos 00858 and 010792, a case was opened on 12 February 2016 which covered both complaints and an investigation was carried out, which resulted in Resolution No. 000258 of 28 February 2017 ordering the closure of the preliminary inquiries on the following grounds: (i) based on the material evidence, the Ministry of Labour noted that it was not authorized to hand down a decision in disputes involving the assessment of legal criteria, as in the present case, which includes alleged violations of the collective agreement for 2014–16; (ii) with regard to the allegation concerning the refusal to grant trade union leave, and further to an examination of various previous decisions, the Ministry of Labour stated that, together with the Administrative Department of the Public Service, it issued Circular No. 0098 of 26 December 2007, stating that "both the right of association and the exercise of the public service have constitutional connotations [...] which is why trade union leave must be planned and justified, so that the trade union organization has the necessary time to carry out the appropriate trade union activity, without unduly impacting service delivery"; (iii) public servants appointed by trade union organizations are entitled to union leave on a temporary and not a permanent basis; this does not exempt them from providing the service they are obliged to provide; and (iv) in the light of the above, the Ministry of Labour considered it appropriate to close the preliminary inquiry, as there were no grounds for initiating a punitive administrative procedure; this has not affected the right of ASTDEMP to bring the matter before the competent court to defend its rights. Second, with regard to Administrative Complaint No. 004951 of 29 April 2016 concerning violations of collective agreements by transferring staff with occupational diseases and staff with trade union immunity, workplace harassment and the dismissal of workers who are members of ASTDEMP: (i) the Ministry of Labour opened a case and launched an investigation on 30 June 2016, which resulted in Resolution No. 001230 of 26 August 2016 closing the preliminary inquiries, as it was found that, as specifically stipulated in the case law and in accordance with the accounts of what happened and the evidence that came to light during the preliminary inquiry, the act of anti-union harassment does not fall within the scope of the regulations in force; (ii) regarding the alleged dismissals, evidence was found of a legal dispute that does not fall within the competence of the Ministry of Labour, and the Ministry stated that ASTDEMP could bring the matter before the competent legal authority in order to defend its rights; and (iii) ASTDEMP filed a request for reconsideration but this request was rejected by Resolution No. 001802 of 30 November 2016 owing to its late submission.

237. In its communication of 3 May 2019, the Government reaffirms that the municipality of Bucaramanga reported that, by Resolution No. 000194 of 21 February 2018, the Ministry of Labour ordered the closure of Administrative Complaint No. 00858. The Government states in this regard that: (i) the investigation process that gave rise to Resolution No. 000194 of the Ministry of Labour was carried out in accordance with legal parameters and a decision was made on the basis of the evidence in the case file and in accordance with the law; (ii) the complainant organization was notified and filed a request for reconsideration and an appeal, which were settled by the competent officials; (iii) should the complainant organization disagree with this decision, the legislative authority has put mechanisms in place for determining the lawfulness or unlawfulness of administrative decisions, which is a matter for the administrative courts; and (iv) there is no evidence that the complainant organization has exhausted domestic remedies. With regard to the closure of the case filed with the Office of the Attorney General, the Government states that the Office of the Attorney General replied to ASTDEMP explaining the procedure to be followed in order to reopen the case.

238. The Government then transmits information from the Office of the Municipal Ombudsperson, which received several complaints from the complainant organization, and states that: (i) in respect of Complaints Nos 1878 and 2513, in which ASTDEMP requested an investigation against the municipality of Bucaramanga for non-compliance with the collective agreement for 2014–16, which was set out in Municipal Decree No. 0068 of 14 May 2015, the Office of the Municipal Ombudsperson initiated disciplinary proceedings on behalf of the Office of the Designated Ombudsperson for Administrative Oversight, and the matter is currently at the disciplinary investigation stage; and (ii) in respect of Complaint No. 6915 of 2016, in which ASTDEMP requested a review of the relocation of the police inspectors working in the central administration of the municipality of Bucaramanga, the human rights delegate organized a working group with the secretariats responsible for internal, administrative and legal affairs in the office of the mayor of Bucaramanga, at which information was provided setting out the legal reasons and grounds taken into account by the administration when relocating these police inspectors, which was shared with ASTDEMP.

239. With regard to the allegation concerning the violation of freedom of association and collective bargaining as a result of the issuance of Resolution No. 0293 of 15 August 2017, "setting the conditions for public employees for 2017", the municipality of Bucaramanga and the Government state that: (i) the complainant organization filed a writ for the protection of constitutional rights before the Fourth Municipal Criminal Court for Adolescents with Responsibility for Ensuring Due Process of Bucaramanga (No. 2017-00108); (ii) the complainant organization states that it was in fact the beneficiary of collective agreements that were in force from 1 January 2014 to 31 December 2016; (iii) collective bargaining for 2017 was carried out with other trade union organizations; (iv) this is because, according to ASTDEMP, unlike other trade union organizations, it refrained from participating in the preparation of joint lists of demands, claiming that the municipality should therefore respect the provisions of the collective agreement for 2014–16, in whose negotiation it did participate, that the agreement should be extended indefinitely and that Resolution No. 0293 should be declared null and void; and (v) in its decision, the Fourth Municipal Criminal Court for Adolescents with Responsibility for Ensuring Due Process of Bucaramanga (No. 2017-00108) acknowledged that ASTDEMP did not present a list of demands and did not participate in the bargaining process; it therefore considered that the municipality of Bucaramanga had not violated the right to bargain collectively and that ASTDEMP had in fact withdrawn from the bargaining process that had been initiated and had not been excluded by the municipality of Bucaramanga. Specifically, the Government states that this decision takes into account that: (i) ASTDEMP requested the municipality to "modify, revoke or overturn the resolution setting the new working conditions

for the current year, since in its understanding the text removed acquired labour and trade union safeguards and undermined the achievements made in these areas", and (ii) in issuing the administrative decision, which was "of a special and specific nature, the public authority was seeking to uphold the added value of the decent working conditions that had been achieved through labour conquests and negotiated with other workers' organizations that did participate, as the trade union organization that is the complainant in this case withdrew from the negotiation process that had been initiated and refrained from supporting the other workers' organizations at a point when they could have worked together to iron out the differences with the employer […]". Furthermore, the municipality of Bucaramanga explains that the labour agreement for 2014–16 contained 58 clauses that were fulfilled during the period in question and stresses that the office of the mayor of Bucaramanga respects the 14 organizations that are represented in its territory. In this regard, the municipality of Bucaramanga states that, together with the complainant organization, it appeared before the CETCOIT but no agreement was reached.

240. In relation to the alleged violation of the right to bargain collectively as a result of the unilateral issuance of Resolution No. 198 "setting the conditions for public employees for 2018", the municipality of Bucaramanga states that: (i) the terms for collective bargaining in the public sector are governed by Decree No. 160 of 2014, which provides that the initial 20-day period can be extended by mutual agreement and, if no agreement is reached by the end of that period, the parties may agree to appoint a mediator; (ii) both the extension and the appointment of a mediator are optional and subject to mutual agreement; (iii) the office of the mayor respected the minimum period required by law in the negotiations and decided not to appoint a mediator; and (iv) the municipality of Bucaramanga, therefore, met the mandatory conditions and there was no violation of the collective bargaining process. The Government states that, if the complainant organization did not agree with the administrative decision in question, it could have taken the matter to the administrative disputes court, but it seems from the documentation provided that it did not do so.

241. The Government, in its communication of 3 May 2019, transmits information from the municipality of Bucaramanga concerning the allegations of trade union harassment, including accusations and bullying, and the procedure to lift the trade union immunity of Ms Díaz Suárez, president of ASTDEMP, stating that: (i) the municipality brought the action to lift the trade union immunity of this individual in order to defend the municipality's interests, in the exercise of its rights, and that this decision cannot be seen as a violation of trade union rights; (ii) the Fifth Labour Court of the Bucaramanga Circuit denied the request in the first instance, which was upheld in the second instance; (iii) the office of the mayor of Bucaramanga complied with the decision; (iv) the findings of the external adviser do not suggest that any type of accusation has been levelled against this individual; and (v) regarding the alleged comments by a representative of the municipality of Bucaramanga concerning the absence from work of Ms Díaz Suárez, there is nothing in the letter on the matter to suggest that any accusation was levelled against her, as the text simply states that "in view of the circumstances of the armed blockage on 13 February, which was the reason given for her not reporting to work, it is found that this is a justified reason for absence […] although it is surprising that a person benefiting from a protection measure could not make this type of journey under the circumstances in question".

242. Regarding the death threats against Ms Díaz Suárez, the president of ASTDEMP, the Government states in its communication of 17 September 2019, that: (i) it inquired with the National Protection Unit, which reported that it had taken the threats into account by carrying out a further risk assessment; (ii) since 10 October 2018, various protection measures have

been put in place for this individual and her immediate family, including the provision of an armoured vehicle and two bodyguards, a means of communication and a bullet-proof vest, and the implementation of preventive measures; and (iii) these measures have been maintained.

243. In a communication of 30 September 2022, the Government transmitted additional information from the municipality of Bucaramanga in relation to the alleged violation of the right to bargain collectively, stating that: (i) in a first instance decision, the Fourth Family Court of Bucaramanga ordered the office of the mayor of Bucaramanga to set up a collective bargaining process within 15 days and to seek a rapprochement with the trade union organizations (decision of 26 June 2019); (ii) by two administrative decisions, the mayor of Bucaramanga appointed the persons responsible for representing the municipality in the negotiations to reach an agreement on working conditions with the trade unions of public employees (Resolutions Nos 228 and 338 of 16 July and 2 October 2019, respectively); (iii) on 23 September 2019, negotiations began between the municipality and the trade union organizations, including ASTDEMP, and meetings were held to advance the negotiations on the joint list of demands (the minutes of the meetings of 3, 7, 10, 15, 17, 21, 24, 28 and 31 October 2019 are attached hereto); (iv) once the negotiation stage had concluded and all the points on the list of demands had been discussed, the final collective agreement was signed on 1 November 2019 by the municipality of Bucaramanga and most of the trade union organizations, including ASTDEMP (the final agreement of 1 November 2019 is attached hereto); (v) the final agreement resulting from the collective bargaining process was set out in an administrative decision by means of Resolution No. 406 of 25 November 2019 "setting the conditions for public employees for 2019 and 2020"; and (vi) for 2021, the members of the bargaining committee representing the trade union organizations, including ASTDEMP, and the municipality of Bucaramanga set a schedule for the negotiations, which took place between April and May 2021, and as a result of the collective bargaining process an administrative decision was issued through Resolution No. 786 of 8 July 2021 "setting the conditions for public employees for 2021–23". The municipality also states that, in 2022, follow-up meetings have been held with the trade union organizations to monitor compliance with the collective agreement for 2021–23 and round tables for dialogue have been held to address the needs of public servants and to reaffirm that they can always turn to the municipal administration, which will respond effectively.

244. In the same communication, the Government transmits additional information from the Office of the Municipal Ombudsperson of Bucaramanga, stating that: (i) Complaint No. 1878, which led to the initiation of disciplinary proceedings (No. 066-17) by the Office of the Designated Ombudsperson for Administrative Oversight and Disciplinary Matters for non-compliance with the collective agreement for 2014–16, was definitively closed by an order of 21 January 2019, this is because the evidence gathered during the proceedings demonstrated that the municipality of Bucaramanga had complied for the most part with the collective agreement for 2014–16; (ii) the order of 21 January 2019 was notified to Ms Díaz Suárez, the president of ASTDEMP, on 25 January 2019, with the information that she could appeal if she considered it necessary to do so; and (iii) on 7 February 2019, the decision taken by the Office of the Designated Ombudsperson for Administrative Oversight and Disciplinary Matters became final and enforceable, as the time limit for filing an appeal had expired and no appeal had been filed.

245. The Government reiterates that the administrative complaints referred to in the complaint and processed by the Bucaramanga Territorial Directorate of the Ministry of Labour have already been settled.

C. The Committee's conclusions

246. *The Committee notes that, in the present case, the complainant organization alleges that the municipality of Bucaramanga violated the rights of freedom of association and collective bargaining by not complying with the collective agreement for 2014–16, placing restrictions on collective bargaining in 2017 and 2018, and subjecting the president of ASTDEMP to acts of harassment and death threats. The Committee notes that, for its part, the Government states that a collective agreement was negotiated in 2019 and was in force for the period 2019–20, that there is currently a collective agreement for 2021–23, and that ASTDEMP is among the signatory organizations of both of these agreements, that the administrative complaints concerning the allegations of non-compliance with the collective agreement for 2014–16 have been settled and that protection measures have been taken in relation to the president of ASTDEMP.*

247. *The Committee takes note of the complainant organization's allegations of non-compliance with the collective agreement for 2014–16, according to which (i) the mayor and his secretaries take unilateral decisions without acknowledging the complainant organization as the representative of the workers; (ii) a bipartite committee composed of five representatives of each of the parties, which would serve as a direct and preventive mechanism with the purpose of monitoring compliance with the collective agreements, was never established; (iii) the agreed job security for all public employees who are staff members has not been respected, as union members have been dismissed and transferred without respect for minimum safeguards; and (iv) trade union leave has been denied, including to the union's president.*

248. *The Committee takes note of the information provided by the complainant organization stating that it has filed several administrative labour complaints with the Ministry of Labour in relation to the allegations in the present case, and of the statements by the complainant organization regarding the delays in the settlement of these complaints.*

249. *The Committee notes that the municipality of Bucaramanga and the Government state that: (i) the collective agreement for 2014–16 contained 58 clauses that were fulfilled by the municipality of Bucaramanga during the period 2014–16 when the agreement was in force; (ii) Administrative Complaint No. 00858 gave rise to an investigation that was carried out in accordance with legal parameters and resulted in a decision to close the complaint, in response to which ASTDEMP filed a request for reconsideration and an appeal, which were settled by the officials that were competent in that regard; (iii) Complaints Nos 1878 and 2513 were filed with the Office of the Municipal Ombudsperson of Bucaramanga and disciplinary proceedings were initiated on behalf of the Office of the Designated Ombudsperson for Administrative Oversight, and the matter is currently at the disciplinary investigation stage; and (iv) in respect of Complaint No. 6915 of 2016, the human rights delegate organized a working group with the secretariats responsible for internal, administrative and legal affairs in the office of the mayor of Bucaramanga, at which information was provided setting out the legal reasons and grounds taken into account by the administration when relocating the police inspectors who are members of ASTDEMP and covered by the collective agreement for 2014–16 and who work in the central administration of the municipality of Bucaramanga.*

250. *The Committee takes note of the additional information provided by the municipality of Bucaramanga, which was transmitted by the Government on 30 September 2022, indicating that: (i) Complaint No. 1878 filed with the Office of the Municipal Ombudsperson of Bucaramanga was definitively closed by order of 21 January 2019, on the grounds that the municipality had demonstrated that it had complied for the most part with the collective agreement for 2014–16; and (ii) on 7 February 2019, that decision became final and enforceable, as the time limit for filing an appeal had expired and ASTDEMP had not filed an appeal.*

251. *The Committee takes due note of the Government's assertion that all the administrative complaints filed with the Ministry of Labour have been settled, which has not affected the right of ASTDEMP to bring the matter before the competent court to defend its rights in respect of the allegations which the Ministry of Labour considered not to fall within its competence. Furthermore, the Committee notes that the Government has not provided any information concerning the three complaints filed by the complainant organization with the Office of the Inspector General or the two requests for investigations filed with the Office of the Municipal Comptroller of Bucaramanga concerning the alleged acts of bullying by the mayor of the municipality of Bucaramanga and non-compliance with collective agreements. The Committee recalls that agreements should be binding on the parties and that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 1334 and 1336]. The Committee requests the Government to take the necessary measures to expedite the settlement of the proceedings in question that have still not been settled, in relation to the allegations made in the present case.*

252. *The Committee takes note of the allegations by the complainant organization concerning restrictions to collective bargaining in 2017 and 2018 by the municipality of Bucaramanga, according to which: (i) ASTDEMP is the majority trade union as it counts 70 per cent of the workers of the municipality of Bucaramanga among its members; (ii) in 2017, the municipality of Bucaramanga issued Resolution No. 0293 of 15 August 2017, "setting the conditions for public employees for 2017", even though ASTDEMP had not participated in the collective bargaining process; (iii) in 2018, after failing to reach agreement in the bargaining process, the municipality rejected the request by the trade union organizations to appoint a mediator to settle the dispute; (iv) mediation is provided for in Decree No. 160 of 2014; and (v) on 15 August 2018, the municipality unilaterally issued Resolution No. 198 "setting the conditions for public employees for 2018". The Committee notes from the information provided by the complainant organization that ASTDEMP withdrew from the collective bargaining process in 2017, as its intention was to retain the collective agreement that had been negotiated and was in force for 2014–16.*

253. *With regard to this allegation, the Committee takes note of the information provided by the Government, stating that: (i) ASTDEMP refrained from participating in the bargaining process for 2017 and, unlike the other trade union organizations in the municipality, it did not submit a list of demands; (ii) in its decision, the Fourth Municipal Criminal Court for Adolescents with Responsibility for Ensuring Due Process of Bucaramanga confirmed ASTDEMP's refusal to participate in the process, and therefore it did not consider that the municipality of Bucaramanga had violated the right to bargain collectively; and (iii) in the collective bargaining process in 2018, the municipality of Bucaramanga met the mandatory requirement that collective bargaining must take place over a period of 20 days, which may be extended by mutual agreement, thereby complying with the minimum period required by law, and decided not to extend the negotiation period and not to appoint a mediator.*

254. *Furthermore, the Committee takes due note of the additional information provided by the municipality of Bucaramanga, transmitted by the Government in a communication dated 30 September 2022, stating that: (i) the Fourth Family Court of Bucaramanga issued a first instance decision ordering the office of the mayor of Bucaramanga to set up a collective bargaining process within 15 days and to seek a rapprochement with the trade union organizations (ruling of 26 June 2019); (ii) by two administrative decisions, the mayor of Bucaramanga appointed the persons responsible for representing the municipality in the negotiations to reach an agreement on working conditions with the trade unions of public employees (Resolutions Nos 228 and 338 of 16 July and 2 October 2019, respectively); (iii) on 23 September 2019, negotiations began between the*

municipality and the trade union organizations, including ASTDEMP, and meetings were held to advance the negotiations on the joint list of demands (the minutes of the meetings of 3, 7, 10, 15, 17, 21, 24, 28 and 31 October 2019 are attached hereto); (iv) once the negotiation stage had concluded and all the points on the list of demands had been discussed, the final collective agreement was signed on 1 November 2019 by the municipality of Bucaramanga and most of the trade union organizations, including ASTDEMP (the final agreement of 1 November 2019 is attached hereto); (v) the final agreement resulting from the collective bargaining process was set out in an administrative decision by means of Resolution No. 406 of 25 November 2019 "setting the conditions for public employees for 2019 and 2020"; and (vi) for 2021, the members of the bargaining committee representing the trade union organizations, including ASTDEMP, and the municipality of Bucaramanga set a schedule for the negotiations, which took place between April and May 2021 and as a result of the collective bargaining process an administrative decision was issued through Resolution No. 786 of 8 July 2021 "setting the conditions for public employees for 2021–23". The Committee also takes due note of the municipality's assertions that, in 2022, follow-up meetings have been held with the trade union organizations to monitor compliance with the collective agreement for 2021–23 and that round tables for dialogue have been held to address the needs of public servants.

255. *The Committee also notes that a collective agreement was negotiated in 2019 that was in force for the period 2019–20 and that there is currently a collective agreement in force for 2021–23, and that ASTDEMP is among the signatory organizations of both of these agreements. In the light of the above, the Committee notes that the collective bargaining difficulties alleged in the present case have been overcome and, therefore, the Committee will not proceed with the examination of these allegations.*

256. *With regard to the allegation of acts of harassment against the president of ASTDEMP, specifically the procedure initiated by the municipality of Bucaramanga to lift her trade union immunity, the Committee notes that the municipality of Bucaramanga states that, in both the first and second instances, the courts did not authorize the lifting of her trade union immunity and that the corresponding decision was complied with and respected by the office of the mayor of Bucaramanga. In these circumstances, the Committee will not pursue further the examination of this allegation.*

257. *Lastly, the Committee notes with concern the allegation of death threats against Ms Martha Cecilia Díaz Suárez, president of ASTDEMP. The Committee takes note of the Government's account of the protection measures that have been taken, which cover her immediate family and which are still in place. Recalling that the exercise of trade union rights is incompatible with violence or threats of any kind and it is for the authorities to investigate without delay and, if necessary, penalize any act of this kind [see **Compilation**, para. 88], the Committee requests the Government to carry out an investigation with a view to establishing the facts and punishing the perpetrators of the death threats against Ms Díaz Suárez, president of ASTDEMP, and to continue to take any measures that may be necessary to ensure her protection.*

The Committee's recommendations

258. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to take the necessary measures to expedite the settlement of the proceedings in question that have not yet been settled relating to the allegations made in the present case.

(b) The Committee requests the Government to carry out an investigation with a view to establishing the facts and punishing the perpetrators of the death threats against

Ms Martha Cecilia Díaz Suárez, president of ASTDEMP, and to continue to take any measures that may be necessary to ensure her protection.

(c) The Committee considers that this case is closed and does not require further examination.

Case No. 3295

Definitive report

Complaint against the Government of Colombia presented by
- the Colombian Association of Funeral and Related Services Industry Workers (ACTIFUN) and
- the Confederation of Workers of Colombia (CTC)

Allegations: The complainant organizations allege a series of anti-union acts by a funeral establishment against an industry trade union, including the dismissal of trade union officials and members, interference with the aim of encouraging members to leave the trade union, a ban on demonstrations, bringing legal action to cancel trade union registration and restrictions to collective bargaining

259. The complaint is contained in a communication from the Colombian Association of Funeral and Related Services Industry Workers (ACTIFUN) and the Confederation of Workers of Colombia (CTC) dated 26 May 2017.

260. The Government of Colombia sent its observations on the allegations in two communications dated 23 May 2018 and 30 September 2022.

261. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

262. In its communication dated 26 May 2017, the complainant organizations allege that the Funeral Services Cooperative of Cartagena (hereinafter "the enterprise") committed acts that infringed the right to freedom of association and collective bargaining of the workers affiliated to ACTIFUN, including the dismissal of trade union officials and members, interference with the aim of encouraging members to leave the trade union and banning demonstrations, the lodging of an application by the enterprise to request the cancellation of trade union registration, and restrictions to collective bargaining. The complainant organizations claim that these acts by the enterprise are intended to dismantle and eliminate ACTIFUN.

263. The complainant organizations indicate that ACTIFUN is an industry trade union that was established on 2 February 2014.

264. The complainant organizations state that in November 2014 the enterprise terminated the employment contracts of all the members of the executive committee of ACTIFUN, namely Mr Luis Alberto Cabarcas Taborda, president, Ms Diana Castro Pérez, vice-president, Mr Mariano Ezequiel Diago Severiche, general secretary, Ms Yajaira Rocío Posso Muñoz, legal adviser, Ms Ana María Vázquez Prasca, Ms Dora María Sharp, Ms Berledys Barragán Barreto, Mr Hernán Padilla Cervantes and Ms Indira Mondol Pardo. The complainant organizations appended to their complaint a copy of the letters to terminate the employment contracts, where the grounds are indicated as: (i) in October 2014 a demonstration or rally was conducted by ACTIFUN in the car park of the premises of the enterprise; (ii) the enterprise banned such events on its premises; and (iii) the demonstration caused disruption at a wake organized by the enterprise and sparked violence among the participants at the wake, the enterprise management and the demonstrators. The complaints also indicate that the ordinary labour courts denied the enterprise permission to dismiss Mr Cabarcas Taborda and Mr Diago Severiche, president and general secretary of the trade union, respectively.

265. The complainant organizations state that the enterprise's systematic policy of persecution and anti-union interference continued, and in May 2017 Mr Diago Severiche, general secretary, was again dismissed without the judicial suspension of trade union immunity, with the enterprise claiming in the letter of dismissal that he did not have trade union immunity because a court had already ordered the dissolution and liquidation of the trade union he represented. Furthermore, in December 2016 the enterprise sent a communication to Mr Cabarcas Taborda, president, notifying him of the application of article 140 of the Substantive Labour Code (CST) to prevent him from entering the enterprise to perform his work and trade union activities, indicating in the communication that: (i) it was due to disrespectful acts, aggression and ill-treatment of the enterprise manager; (ii) the enterprise was not obliged to put up with the "habitual and wrongful intention of meddling" in management decisions; and (iii) the enterprise exempted him from providing his services and would go on paying him all wages and labour entitlements for the duration of the administrative legal proceedings brought against him.

266. They also allege the dismissal of Mr Arnoldo Álvarez Castellar, Ms Sobeida Álvarez Jiménez, Mr Said Bayte Zumaque, Ms Martha García Acosta, Ms Egla Álvarez Muñoz and Mr Ricardo Bellido Hurtado, protected by circumstantial trade union immunity, and Ms Heydys San Juan Florez, a person with a disability and a member of ACTIFUN.

267. The complainant organizations further allege that the enterprise conducted campaigns to discourage trade union membership, offering to pay various benefits to workers in exchange for their withdrawal from the union, which resulted in 15 members leaving the union.

268. The complainant organizations also state that the enterprise engaged in acts of interference to disrupt activities arranged by the trade union, including its ban on holding protest days and meetings.

269. The complainant organizations further allege that the enterprise requested the cancellation of the trade union registration of ACTIFUN on the grounds that it did not have the required number of members. They indicate that while the Fourth Labour Court of the Cartagena Circuit ordered the cancellation of the legal personality of ACTIFUN, an appeal against that ruling is under way.

270. The complainant organizations also allege that their right to collective bargaining was infringed by various actions, including: (i) the enterprise refused to consider viable the lists of demands submitted since they did not result in agreements; and (ii) two years following the submission to the Ministry of Labour of the documentation for the convening of an arbitration

tribunal, due to the lack of agreement regarding the first list of demands of March 2014, ACTIFUN was informed that the documentation had been mislaid.

B. The Government's reply

271. The Government submitted the observations of the enterprise and its own reply to the complainants' allegations in a communication dated 23 May 2018.

272. The enterprise states, with respect to the dismissal of the members of the executive committee of ACTIFUN, that: (i) all the people mentioned by the complainant organizations committed serious misconduct in the performance of their duties; (ii) those workers were sent letters to terminate their employment contracts and were made aware that the enterprise would be lodging the respective judicial applications for the suspension of trade union immunity, some of which have been decided upon, while others are under way; (iii) it will not give effect to the letters until the labour judge has granted authorization; and (iv) their employment contracts are valid. More specifically, regarding the dismissals of Mr Cabarcas Taborda and Mr Diago Severiche, president and general secretary of the trade union, respectively, the enterprise states that: (i) in the case of Mr Cabarcas Taborda, the enterprise applied article 140 of the CST to the president of ACTIFUN, respecting his trade union immunity, as Mr Cabarcas Taborda verbally assaulted, threatened and challenged the manager of the enterprise, with the enterprise consequently proceeding to lodge labour and criminal proceedings against him; and (ii) with regard to Mr Diago Severiche, general secretary of ACTIFUN, he was dismissed for just cause and he did not benefit from trade union immunity, as at that time the Fourth Labour Court of the Cartagena Circuit had already issued a ruling ordering the dissolution of ACTIFUN.

273. Regarding the dismissals of Mr Arnoldo Álvarez Castellar, Ms Sobeida Álvarez Jiménez, Mr Said Bayte Zumaque, Ms Martha García Acosta, Ms Egla Álvarez Muñoz and Mr Ricardo Bellido Hurtado, the enterprise indicates that they were for just cause, that those workers did not benefit from trade union immunity and that proceedings are under way, just not for Mr Bellido Hurtado, who is working for the enterprise. With regard to the dismissal of Ms San Juan Florez, the enterprise indicates that her dismissal was for just cause, she did not have trade union immunity and she does not have a disability.

274. The enterprise states that it did not conduct campaigns to discourage trade union membership and that the workers submitted their requests to withdraw from ACTIFUN voluntarily. The enterprise also indicates that: (i) it is entitled to respect for private property, and it cannot allow meetings and protests to be held on its premises, particularly in view of the fact that it provides funeral services; and (ii) ACTIFUN can hold meetings or protests away from the premises of the enterprise at its discretion, as long as it does not disrupt the usual running of its activities.

275. The enterprise further states that it brought summary proceedings for the liquidation of ACTIFUN on the grounds of not having the necessary number of members and that the Fourth Labour Court of the Cartagena Circuit ruled in favour of the enterprise.

276. With regard to the collective bargaining process, the enterprise states that it responded to the demands contained in the two lists submitted by ACTIFUN and that the failure to reach agreement does not imply an infringement of the law, which makes provision for a solution to such a situation, as in the case of the convening of an arbitration tribunal.

277. The Government then provides its reply to the allegations of the complainant organizations. It communicates the observations of the Territorial Directorate of the Ministry of Labour of Bolívar with respect to the administrative labour investigations brought by ACTIFUN against the enterprise, indicating that four administrative labour complaints were under way, at

various stages, before the Coordinator of Resolution, Conflict and Conciliation of the Technical Directorate.

278. Regarding the alleged anti-union dismissal of the members of the executive committee of ACTIFUN, the Government states that: (i) the enterprise certified that Mr Luis Alberto Cabarcas Taborda, president, Ms Diana Castro Pérez, vice-president, Mr Mariano Ezequiel Diago Severiche, general secretary, Ms Yajaira Rocío Posso Muñoz, legal adviser, Ms Ana María Vázquez Prasca and Mr Hernán Padilla Cervantes still have valid employment contracts, although there is no information available as to whether the last two are members of the executive committee of ACTIFUN; and (ii) Ms Dora María Sharp voluntarily resigned. The Government does not condone the employer's decision to send letters of termination of employment, making those terminations conditional on the judge's decision, given that by law the judicial authority shall decide whether or not to grant permission to the employer to terminate an employment relationship of workers who are unionized and protected by trade union immunity, and only then will the employer be in a position to terminate the employment contract or not (articles 405 and 408 of the CST). Consequently, the situation whereby the complainant organizations state that their employment contracts were terminated in 2014 and the enterprise indicates that they are still working for the enterprise is incomprehensible and a matter of concern for the Government.

279. The Government indicates that, with regard to Mr Cabarcas Taborda, president of ACTIFUN: (i) the enterprise applied article 140 of the CST which stipulates that "workers are entitled to receive their wages even if the service is not being provided by order or fault of the employer"; and (ii) the enterprise alleges that there was an assault, which has been brought to the attention of the criminal and labour authorities, and consequently it is necessary to wait and see what is decided. With regard to the alleged dismissal in May 2017 of Mr Diago Severiche, general secretary, the Government indicates that it would have been too early for the enterprise to terminate the employment contract, as the dissolution and liquidation proceedings initiated by the enterprise were still under appeal and it was for the ordinary labour courts to decide.

280. With respect to the dismissal of Mr Arnoldo Álvarez Castellar, Ms Sobeida Álvarez Jiménez, Mr Said Bayte Zumaque, Ms Martha García Acosta and Ms Egla Álvarez Muñoz, the Government indicates that it is for the labour courts to decide whether at the time the employer ordered the termination of the employment contracts the workers in question were covered by circumstantial trade union immunity; consequently the decision must be awaited and the ruling complied with.

281. Regarding the allegations concerning campaigns to discourage trade union membership, the Government states that there is no evidence to confirm the existence of a hostile campaign by the enterprise to encourage ACTIFUN workers to leave the trade union. Furthermore, regarding the alleged acts of interference, the Government states that it is a difficult matter to understand, as the enterprise indicates that the reason for banning protests inside the enterprise is due to the fact that it is a funeral establishment, but the enterprise recognizes the freedom of the trade union to hold such protests away from the premises of the enterprise. The Government indicates that the resolution of the proceedings initiated by the enterprise to dissolve and liquidate ACTIFUN is under appeal.

282. With respect to the alleged infringement of the right to collective bargaining of ACTIFUN, the Government states that it cannot be claimed that a lack of agreement between the parties following collective bargaining is the same as a refusal to negotiate, as the possibility of signing an agreement does not end there, given that labour legislation makes provision for the

possibility of convening an arbitration tribunal should assembled workers so decide. With respect to the application to convene an arbitration tribunal submitted by ACTIFUN in June 2014, the Government states that the Territorial Directorate of the Ministry of Labour of Bolívar asked the trade union to submit various documents, which ACTIFUN did not do, and once the respective deadline expired it was understood that the application had been withdrawn by ACTIFUN and it was ordered that the case be closed (Decision No. 2029 of 2 June 2016).

283. In its communication dated 30 September 2022, the Government sent additional information from the enterprise regarding the alleged anti-union dismissal of the members of the executive committee of ACTIFUN, which indicates that: (i) the applications for the suspension of trade union immunity regarding Mr Luis Alberto Cabarcas Taborda, president, Ms Diana Castro Pérez, vice-president, Mr Mariano Ezequiel Diago Severiche, general secretary, Ms Yajaira Rocío Posso Muñoz, legal adviser, Ms Berledys Barragán Barreto, Ms Indira Mondol Pardo, Ms Ana María Vázquez Prasca and Mr Hernán Padilla Cervantes have already been finalized; (ii) these people, who are members of the executive committee, have valid employment contracts; (iii) in the specific case of Mr Cabarcas Taborda, there is no legal action pending against him; and (iv) Ms Dora María Sharp voluntarily resigned.

284. With regard to Mr Said Bayte Zumaque, Mr Ricardo Bellido Hurtado, Ms Egla Álvarez Muñoz and Ms Martha García Acosta, the enterprise indicates that the first three have valid employment relationships with the enterprise and that the employment relationship of Ms García Acosta was terminated for just cause.

285. Regarding the allegation of restrictions to collective bargaining, the enterprise further indicates that, although no collective labour agreement had been concluded, an arbitration award was issued by an arbitration tribunal and covers ACTIFUN and the enterprise, and it remains in force until 31 May 2023.

286. In its communication dated 30 September 2022, the Government provides additional observations with respect to the procedural status of the administrative labour complaints relating to the present case: (i) No. 05636 of 2 September 2016 for the alleged withholding of union dues was closed by the Ministry of Labour, as it was not found that the right to freedom of association had been infringed given that the enterprise made the trade union dues available to ACTIFUN (Decision No. 302 of 25 April 2018); (ii) in No. 07075 of 16 November 2016, for alleged trade union persecution by the enterprise for purported non-compliance in the negotiation process, the enterprise was initially sanctioned (Decision No. 47 of 24 January 2019) and in the appeal for review lodged by the enterprise, the Ministry of Labour revoked the sanction on the grounds that the enterprise did not refuse to bargain collectively, nor did it fail to meet the deadline to start collective bargaining (Decision No. 0549 of 17 May 2019); (iii) in No. 07576 of 13 December 2016, for alleged trade union persecution, a preliminary investigation was opened, which was closed as the Ministry of Labour considered that the initiation of the administrative procedure for the imposition of penalties was not appropriate as ACTIFUN's claims were outside the jurisdiction of the Ministry of Labour, and ACTIFUN was reminded that it could have recourse to the ordinary courts to resolve the situation (Decision No. 603 of 24 July 2018); and (iv) No. 01757 of 27 March 2017, for the alleged violation of the right to freedom of association, was closed with binding effects.

C. The Committee's conclusions

287. *The Committee observes in the present case that the complainant organizations allege a series of anti-union acts by a funeral establishment against an industry trade union, including the dismissal of trade union officials and members, interference with the aim of encouraging members to leave*

the trade union, a ban on demonstrations, bringing legal action to cancel trade union registration and restrictions to collective bargaining. The Committee notes that the enterprise denies that anti-union acts took place and emphasizes the existence of an arbitration award that settled the dispute arising from the collective bargaining process, while the Government indicates the resolution of various administrative labour procedures related to the complaint.

288. *The Committee notes the allegations by the complainant organizations that claim that the actions carried out by the enterprise are intended to dismantle and eliminate ACTIFUN. The complainant organizations allege the anti-union dismissal in November 2014 of the members of the executive committee of the trade union organization ACTIFUN, namely, Mr Luis Alberto Cabarcas Taborda, president, Ms Diana Castro Pérez, vice-president, Mr Mariano Ezequiel Diago Severiche, general secretary, Ms Yajaira Rocío Posso Muñoz, legal adviser, Ms Ana María Vázquez Prasca, Ms Dora María Sharp, Ms Berledys Barragán Barreto, Mr Hernán Padilla Cervantes and Ms Indira Mondol Pardo. The Committee also notes that the letters of termination of employment indicate that those persons participated in a protest or rally, which are banned by the enterprise on its premises. The Committee notes the information provided by the Government in which it transmits the enterprise's response that the terminations concerned were due to serious misconduct and that they were subject to the respective judicial authorizations, thus ensuring trade union immunity. The Committee notes the concern expressed by the Government regarding the discrepancies in the statements of ACTIFUN and the enterprise in respect of the dismissals concerned. The Committee notes the Government's indication that articles 405 and 408 of the CST stipulate that the judicial authority shall decide whether or not to grant permission to the employer to terminate an employment relationship of workers who are unionized and protected by trade union immunity, and only then will the employer be in a position to terminate the employment contract or not. The Committee notes the information from the Government whereby in these judicial proceedings the ordinary labour courts denied the enterprise permission to dismiss Mr Cabarcas Taborda and Mr Diago Severiche, president and general secretary of the trade union, respectively. The Committee also notes the additional information provided by the enterprise and transmitted by the Government in its communication dated 30 September 2022, indicating that the employment relationship of all the members of the executive committee of ACTIFUN mentioned above remain valid, with the exception of the employment relationship of Ms Sharp, who unilaterally terminated her employment relationship.*

289. *The Committee also notes the allegations by the complainant organizations regarding the anti-union dismissal of Mr Arnoldo Álvarez Castellar, Ms Sobeida Álvarez Jiménez, Mr Said Bayte Zumaque, Ms Martha García Acosta, Ms Egla Álvarez Muñoz and Mr Ricardo Bellido Hurtado, who, according to the complainant organizations, benefited from circumstantial trade union immunity, and of Ms Heydys San Juan Florez, a member of ACTIFUN. The Committee notes the Government's statement whereby it was within the jurisdiction of the labour courts to decide whether at the time the employer ordered the termination of the employment contracts the workers concerned were covered by circumstantial trade union immunity. Furthermore, the Committee notes the additional information provided by the enterprise and transmitted by the Government on 30 September 2022, indicating that: (i) Mr Bayte Zumaque, Ms Álvarez Muñoz and Mr Bellido Hurtado have valid employment relationships with the enterprise; and (ii) the employment relationship of Ms García Acosta and Ms San Juan Florez were terminated for just cause.*

290. *The Committee takes due note of these various elements. Regarding the alleged anti-union dismissal of the members of the executive committee of ACTIFUN and of other affiliates, some with circumstantial trade union immunity, it observes that: (i) Mr Cabarcas Taborda, president, Ms Castro Pérez, vice-president, Mr Diago Severiche, general secretary, Ms Posso Muñoz, legal adviser, Ms Vázquez Prasca, Ms Barragán Barreto, Mr Padilla Cervantes and Ms Mondol Pardo, members of the executive committee of ACTIFUN, and the members with circumstantial trade union immunity,*

Mr Bayte Zumaque, Ms Álvarez Muñoz and Mr Bellido Hurtado, have valid employment relationships with the enterprise; (ii) Ms Sharp voluntarily resigned; and (iii) the employment relationships of Ms García Acosta and Ms San Juan Florez were terminated for just cause. Noting that the employment relationships of the members of the executive committee of ACTIFUN and of the members with circumstantial trade union immunity remain valid, and noting the voluntary resignation and the terminations with just cause of the employment relationships of other members of the executive committee, the Committee will not pursue its examination of these allegations.

291. *The Committee observes that it has no further information regarding the cases of Mr Álvarez Castellar and Ms Álvarez Jiménez, who, according to the complainant organizations, were protected by circumstantial trade union immunity. The Committee recalls that in cases of the dismissal of trade unionists on the grounds of their trade union membership or activities, the Committee has requested the Government to take the necessary measures to enable trade union leaders and members who had been dismissed due to their legitimate trade union activities to secure reinstatement in their jobs and to ensure the application against the enterprises concerned of the corresponding legal sanctions [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1167]. The Committee requests the Government to take the necessary measures so that the judicial proceedings relating to Mr Álvarez Castellar and Ms Álvarez Jiménez are concluded without delay and that it is determined whether the enterprise engaged in trade union discrimination in the dismissal of these members with circumstantial trade union immunity and, if this is found to be the case, that appropriate sanctions are taken and remedies provided, including reinstatement in the workplace.*

292. *The Committee further notes that, according to the complainant organizations, in order to prevent Mr Cabarcas Taborda, president of ACTIFUN, from entering the enterprise and performing his work and trade union activities, article 140 of the CST was applied to him, which stipulates that "workers are entitled to receive their wages even if the service is not being provided by order or fault of the employer". It also notes the information from the complainant organizations indicating that the enterprise, in its communication dated December 2016 to Mr Cabarcas Taborda, indicated to him that: (i) the application of article 140 of the CST was due to disrespectful acts, aggression and ill-treatment of the enterprise manager; and (ii) the enterprise was not obliged to put up with the "habitual and wrongful intention of meddling" in management decisions. While the Committee takes due note of the additional information from the enterprise transmitted by the Government in its communication dated 30 September 2022 regarding the fact that Mr Cabarcas Taborda has a valid employment contract with the enterprise and that there are no judicial proceedings pending against him, the Committee observes the lack of additional information from the enterprise and the Government regarding the current status of the application of article 140 of the CST to Mr Cabarcas Taborda. The Committee recalls that trade union representatives should be granted access to the enterprise and also that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see **Compilation**, para. 1075]. The Committee requests the Government to ensure that Mr Cabarcas Taborda, president of ACTIFUN, is able to fully exercise his trade union activities in the enterprise in accordance with the above-mentioned freedom of association criteria.*

293. *The Committee notes the allegations of the complainant organizations indicating that the enterprise conducted campaigns to discourage trade union membership, which resulted in 15 members leaving ACTIFUN. The Committee also notes the enterprise's statement that it did not conduct campaigns to discourage trade union membership and the Government's indication that it does not have any evidence to be able to confirm the existence of a hostile campaign by the enterprise to encourage members to leave the trade union.*

294. *The Committee notes at the same time the information provided by the Government regarding the four administrative labour investigations brought by ACTIFUN against the enterprise before the Territorial Directorate of the Ministry of Labour of Bolívar and which have been decided upon as follows: (i) No. 05636 of 2 September 2016 for the alleged withholding of union dues was closed by the Ministry of Labour, as it was not found that the right to freedom of association had been infringed given that the enterprise made the trade union dues available to ACTIFUN (Decision No. 302 of 25 April 2018); (ii) in No. 07075 of 16 November 2016, for alleged trade union persecution by the enterprise for purported non-compliance in the negotiation process, the enterprise was initially sanctioned (Decision No. 47 of 24 January 2019) and in the appeal for review lodged by the enterprise, the Ministry of Labour revoked the sanction on the grounds that the enterprise did not refuse to bargain collectively, nor did it fail to meet the deadline to start collective bargaining (Decision No. 0549 of 17 May 2019); (iii) in No. 07576 of 13 December 2016, for alleged trade union persecution, a preliminary investigation was opened, which was closed as the Ministry of Labour considered that the initiation of the administrative procedure for the imposition of penalties was not appropriate as ACTIFUN's claims were outside the jurisdiction of the Ministry of Labour and ACTIFUN was reminded that it could have recourse to the ordinary courts to resolve the situation (Decision No. 603 of 24 July 2018); and (iv) No. 01757 of 27 March 2017, for the alleged violation of the right to freedom of association, was closed with binding effects. The Committee observes that the administrative labour procedures were initiated between 2016 and 2017 and that they were resolved between one and two years after their submission to the Ministry of Labour. In this respect, the Committee recalls that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see* ***Compilation****, para. 1159]. The Committee takes due note of the resolution of the administrative complaints mentioned and will not pursue its examination of this allegation.*

295. *Regarding the allegations by the complainant organizations relating to the procedure initiated by the enterprise to dissolve and liquidate ACTIFUN for not having the minimum number of members required by law, the Committee observes from publicly available information that, on 5 September 2017, the Labour Chamber of the High Court of the Judicial District of Cartagena decided to revoke the ruling of 5 April 2017 issued by the Fourth Labour Court of the Cartagena Circuit in the summary proceedings and dismissed the claims made by the enterprise in its application. The Committee duly notes this information. While it observes that the application for judicial dissolution of the trade union was made in a context of numerous dismissals of members of its executive committee, the Committee will not pursue its examination of this allegation.*

296. The Committee notes the complainants' allegations with regard to acts of interference by the enterprise to prevent protests and meetings. The Committee also notes the information provided by the enterprise whereby the enterprise's ban on holding meetings on its premises is due to the funeral services that it provides, but it recognizes the freedom of the trade union to hold such protests or meetings away from the premises of the enterprise.

297. *The Committee further observes the contrasting nature of the accounts of the enterprise and the complainant organizations regarding whether or not retaliation occurred for trade union activity in the enterprise. In the light of the above, the Committee recalls that workers should enjoy the right to peaceful demonstration to defend their occupational interests [see* ***Compilation****, para. 208]. The Committee also recalls that the right to hold meetings is essential for workers' organizations to be able to pursue their activities and that it is for employers and workers' organizations to agree on the modalities for exercising this right [see* ***Compilation****, para. 1585]. In view of the above, the Committee invites the Government to bring together the parties concerned in order to establish, by*

mutual agreement, the arrangements for the exercise of trade union activities, and thus ensure both the effective representation of workers and the efficient functioning of the enterprise.

298. *With regard to the alleged violation of the right to collective bargaining, the Committee notes that according to the complainant organizations: (i) the enterprise refused to consider viable the lists of demands submitted; and (ii) this situation led to ACTIFUN submitting to the Ministry of Labour an application to convene an arbitration tribunal, but the Ministry of Labour misplaced the documentation concerned. The Committee notes that, according to the Government: (i) the failure to reach agreement between the parties is not the same as the refusal to negotiate and the possibility of signing an agreement does not end there, as labour legislation makes provision for the possibility of convening an arbitration tribunal should assembled workers so decide; and (ii) with respect to the application to convene an arbitration tribunal submitted by ACTIFUN, the documents required were not submitted and when the deadline expired it was ordered that the case be closed. The Committee also observes that Decision No. 2029 of 2 June 2016 issued by the Ministry of Labour states that "… the trade union organization did not respond to the request … . Consequently, the case will be closed, without prejudice to the interested party subsequently submitting a new application … ." The Committee observes that the decision preserved the rights of ACTIFUN to file subsequent applications in this respect.*

299. *Lastly, the Committee takes due note of the additional information from the enterprise transmitted by the Government on 30 September 2022, indicating that although no collective labour agreement had been concluded, an arbitration award was issued by an arbitration tribunal and covers ACTIFUN and the enterprise, and it remains in force until 31 May 2023.*

300. *In the light of the numerous allegations in the present case, the Committee finally invites the Government to take the necessary measures to ensure full respect for freedom of association within the enterprise and to promote dialogue and collective bargaining between the parties concerned.*

The Committee's recommendations

301. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to take the necessary measures so that the judicial proceedings relating to Mr Álvarez Castellar and Ms Álvarez Jiménez are concluded without delay and that it is determined whether the enterprise engaged in trade union discrimination in the dismissal of these members with circumstantial trade union immunity and, if this is found to be the case, that appropriate sanctions are taken and remedies provided, including reinstatement in the workplace.

(b) The Committee requests the Government to ensure that Mr Cabarcas Taborda, president of ACTIFUN, is able to fully exercise his trade union activities in the enterprise, in accordance with the freedom of association criteria mentioned in its conclusions.

(c) The Committee invites the Government, in accordance with the freedom of association criteria mentioned in its conclusions:

(i) to bring together the parties concerned in order to establish, by mutual agreement, the arrangements for the exercise of trade union activities, and thus ensure both the effective representation of workers and the efficient functioning of the enterprise; and

(ii) to take the necessary measures to ensure full respect for freedom of association within the enterprise and to promote dialogue and collective bargaining between the parties concerned.

(d) The Committee considers that this case is closed and does not require further examination.

Case No. 3309

Definitive report

Complaint against the Government of Colombia presented by the National Trade Union Association of Workers in the Surveillance and Private Security and Similar Industry (ANASTRIVISEP)

Allegations: the complainant organization alleges the refusal by a corporate group to negotiate a list of claims with a surveillance and private security industry trade union organization present within the group and the absence of a penalty by the Ministry of Labour for this refusal on the basis that the primary objective of the group is unrelated to the surveillance and security sector

302. The complaint is contained in a communication from the National Trade Union Association of Workers in the Surveillance and Private Security and Similar Industry (ANASTRIVISEP) dated 29 August 2017.

303. The Government sent its observations concerning the allegations in communications dated 28 September 2018 and 28 February 2019.

304. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

305. In its communication dated 29 August 2017, the complainant alleges that on 3 March 2014, as a minority trade union organization and having fulfilled all legal and documentary requirements, it submitted a list of claims to the security department of the corporate group of the prepaid medical company Colsanitas (hereinafter "the corporate group"), an extensive list, from a standpoint of corporate organization, to various enterprises belonging to this group (Farmasanitas, EPS Sanitas, Servicios Industriales de Lavado, Clínica Colsanitas, Iberocaribe, Heymocol, Soluciones Logísticas Organización Sanitas Internacional, Clínica Campo Organización Sanitas Internacional, Libcom de Colombia, Óptica Colsanitas, Soprinsa, Club Deportivo OSI and Fundación Universitaria Sanitas). In view of the refusal to negotiate through the legal representative of the corporate group, on 17 March 2014 the complainant submitted

a labour related administrative complaint to the Bogotá Territorial Directorate of the Ministry of Labour, emphasizing the existence of a security department and of a surveillance and private security skills development department in the aforementioned companies belonging to the corporate group. The complainant alleges in this respect that, in July 2014, the competent labour inspector conducted separate, individual interviews which confirmed that those interviewed were employed in the security department headed by the corporate group, that they were members of the complainant organization, that they received training from the skills development department of the corporate group as in any surveillance company, and that they acted on behalf of the corporate group. The complainant alleges that by Decision No. 001355 of 28 August 2014, the coordinating body of the Dispute Resolution and Conciliation Group in the Ministry of Labour (Bogotá Territorial Directorate) found in favour of the corporate group in violation of section 433 of the Substantive Labour Code and of Convention No. 154. Furthermore, the complainant organization indicates that it appealed against the decision but that the decision was upheld by the Bogotá Territorial Directorate by Decision No. 001715 of 20 October 2014, thereby depriving the guards of their right to bargain collectively. Lastly, the complainant indicates that the companies in the group which it approached separately on 13 October 2015 also refused to engage in the requested negotiations.

B. The Government's reply

306. In its communication of 28 September 2018, the Government states that the Bogotá Territorial Directorate, given the request of ANASTRIVISEP that the corporate group be penalized for refusing to negotiate its list of claims, carried out, through its labour inspectors, the relevant administrative investigations in accordance with the applicable rules. It specifies that labour inspectors are not empowered, under section 486(1) of the Substantive Labour Code, "to declare individual rights or to settle disputes, which shall be decided by judges". It adds that in the event that the parties concerned are not in agreement with the decision, mechanisms are in place for ruling on the legality or illegality of administrative acts by public officials. The Government indicates in this regard that there is no evidence that the complainant trade union has exhausted domestic judicial mechanisms, namely by resorting to the administrative dispute court.

307. In its communication of 28 February 2019, the Government sets out the reasons why the labour administration, on two occasions, dismissed the claims of the trade union organization. It states that the administrative decisions were due to the fact that the corporate group does not engage in surveillance and private security activities related, connected or complementary to the sector and was therefore not bound to negotiate the list of claims. In this respect, the Government provides Decision No. 001355 of 28 August 2014 issued by the coordinating body of the Dispute Resolution and Conciliation Group of the Bogotá Territorial Directorate, as well as Decision No. 001715 of 20 October 2014 issued by the Bogotá Territorial Directorate which settled the appeal.

C. The Committee's conclusions

308. *The Committee observes that this case refers to the refusal, by a corporate group, to negotiate a list of claims with a trade union organization representing a branch of activity with a minority presence in the group and to the absence of penalties by the Ministry of Labour for this refusal due to the fact that the scope of activity of this organization does not correspond to the primary objective of the group, namely, the management and contracting of health services provision, whereas the complainant is an organization in the surveillance and private security industry.*

309. *The Committee notes the complainant's allegation in this respect that: (i) on 3 March 2014, it submitted a list of claims to the security department of the corporate group, which extended to a number of the enterprises constituting this group; (ii) in view of the refusal of the legal representative of the corporate group to negotiate the list of claims, on 17 March 2014 the complainant submitted a labour-related administrative complaint to the Bogotá Territorial Directorate, emphasizing the existence of a security department and of a surveillance and private security skills development department within the corporate group; and (iii) by Decision No. 001355 of 28 August 2014, the coordinating body of the Dispute Resolution and Conciliation Group in the Ministry of Labour (Bogotá Territorial Directorate) found in favour of the corporate group and that decision, against which the trade union organization appealed, was upheld by the Bogotá Territorial Directorate by Decision No. 001715 of 20 October 2014.*

310. *The Committee observes that the Government refers to these two decisions underscoring that the reason why the claims of the trade union organization were dismissed is due to the fact that the corporate group does not engage in surveillance and private security activities related, connected or complementary to the sector and was therefore not bound to negotiate the list of claims. The Committee also notes that the Government, after having recalled that the Labour Inspectorate is not empowered to settle disputes, which is within the competence of judges, underscores that the complainant does not provide evidence of having resorted to an administrative dispute court in order to challenge these administrative decisions. The Committee observes in this respect that the annexes to the complaint and publicly available information indicate that ANASTRIVISEP filed a number of amparo [protection of constitutional rights] actions for violation of the constitutional right to collective bargaining, which the guardianship courts did not admit on the grounds that these actions should be brought before the administrative dispute courts.*

311. *The Committee observes that the documents and annexes provided by the parties and, in particular, the substance of the two aforementioned decisions of the labour administration, indicate that: (i) the objective of the corporate group and its constituent enterprises is the contracting and provision of health services and that ANASTRIVISEP, according to its statutes, encompasses "workers in the surveillance and private security industry and similar industries in accordance with their nature or in enterprises providing the following services: security guards, surveillance and countersurveillance, guards, caretakers, bodyguards, dog handlers, technological media operators for the transportation of valuables, custodianship, radio operators, bilingual bodyguards, drivers, security officials, receptionists"; (ii) the corporate group has an internal security department which holds an operating licence issued by the Supervisory Authority for Surveillance and Private Security (Decision No. 513 of 4 February 2010); (iii) under this licence, the internal department is authorized to provide security services within the corporate group and prohibited from providing surveillance services to persons other than those linked to the enterprise or corporate group; (iv) ANASTRIVISEP indicated to the labour administration that its members included 20 workers employed by this internal security department; and (v) according to the labour administration, the existence of an employment relationship between the unionized workers and the corporate group has not been called into doubt but rather the dispute has revolved around the ability of the trade union to collectively bargain with the aforementioned group.*

312. *The Committee takes due note of these elements. The Committee observes that, on the basis of these elements, the labour administration, referring on the one hand to section 356 of the Substantive Labour Code which classifies trade union organizations according to four types (company, industry or branch of economic activity, occupational and various occupations) and, on the other hand, to the statutes of ANASTRIVISEP, considered that: (i) the existence of an internal security department within the corporate group does not imply that the group forms part of the surveillance and private security industry; and (ii) ANASTRIVISEP, which is a trade union in the aforementioned industry,*

cannot seek to bargain collectively with a corporate group whose main activity is unrelated to the industry.

313. *The Committee recalls that the free exercise of the right to establish and join unions implies the free determination of the structure and composition of unions and that workers and employers should in practice be able to freely choose which organization will represent them for purposes of collective bargaining [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 502 and 1359]. The Committee considers that inasmuch as the labour administration established that the corporate group has contracted employees as security guards in its internal security department, these workers should be able to be represented by a trade union of their choice, including a branch trade union dedicated to the protection of the specific activities and tasks that those workers in fact carry out within this group.*

314. *Observing that under the current national system of collective relations, the power to bargain collectively extends to minority trade unions, the Committee requests the Government to ensure that ANASTRIVISEP is able validly to submit lists of claims on behalf of its members who are employed by the aforementioned corporate group.*

The Committee's recommendations

315. In view of the foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to ensure that ANASTRIVISEP is able validly to submit lists of claims on behalf of its members who are employed by the aforementioned corporate group.

(b) The Committee considers that this case is closed and does not call for further examination.

Case No. 3251

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Guatemala presented by the Guatemalan Union, Indigenous and Peasant Movement (MSICG)

Allegations: The complainant organization alleges the refusal to bargain collectively and several anti-union measures, including dismissals, transfers and acts of intimidation and interference, by several public institutions in their capacity as employers

316. The complaint is contained in 12 communications by the Guatemalan Union, Indigenous and Peasant Movement (MSICG) dated 27 and 29 April and 2, 3 and 4 May 2016, and 31 January, 10 and 20 February, 23, 25 and 30 May and 2 June 2017.

317. The Government of Guatemala sent its observations on the allegations in 15 communications dated 30 October 2017, 15 May, 21 August, and 13 and 17 September 2019, and 29 January, 1 and 17 February, 29 March, 12, 23 and 26 April, 5 and 7 May 2021, and 30 September 2022.

318. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but has not ratified the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

Ministry of Culture and Sport

319. In its communications dated 27 April 2016 and 25 May 2017, the complainant organization alleges that the State of Guatemala maintains an anti-union policy of mass dismissals of workers when they attempt to establish trade union organizations or exercise their right to collective bargaining. With regard to the Ministry of Culture and Sport, the complainant organization alleges in particular that: (i) after the establishment of the Union of Workers of the Directorate-General for Sports and Recreation at the Ministry of Culture and Sport (SINTRADEPORTES) on 24 June 2015, the employer dismissed the workers who had participated in its creation; (ii) requests for reinstatement submitted by the dismissed workers are being processed by the labour and social welfare courts of the department of Guatemala; (iii) the reinstatement orders issued at first instance have not been complied with; and (iv) the Ministry of Culture and Sport has begun transferring the other trade union members to different locations, has substantially changed their working conditions, and has mistreated them as a means of pressuring them into leaving their positions.

320. The complainant organization also alleges that the Ministry of Culture and Sport filed an appeal for revocation against the registration of SINTRADEPORTES, which has made it impossible to register the leaders of the trade union. It indicates that, in February 2016, SINTRADEPORTES filed an objection with the General Labour Directorate, but that, to date, there has been no notification of a settlement. The complainant organization states that, consequently, the refusal to register the trade union officials has been illegally maintained, thus preventing the trade union from functioning despite the fact that it has legal personality.

Secretariat of Public Works of the First Lady of the Republic of Guatemala

321. In its communications dated 29 April 2016 and 10 February 2017, the complainant organization states that: (i) on 5 November 2015, the Trade Union of Workers of the Secretariat of Public Works of the First Lady of the Republic (SITRASEC) filed a socio-economic collective dispute in response to the refusal by the employer to directly negotiate a list of claims submitted by SITRASEC; (ii) the first labour and social welfare judge for the admission of claims warned the parties not to retaliate against each other, and ordered that no dismissals should be carried out without an order by the competent judge within the procedure established by law; (iii) despite these preventive measures, the Secretariat of Public Works of the First Lady of the Republic of Guatemala proceeded to unlawfully carry out the dismissals of workers belonging to SITRASEC in December 2015 and January 2016, as an act of anti-union retaliation, in order to weaken the trade union's leverage in the filing of the collective dispute; (iv) during the reinstatement proceedings before the labour and social welfare courts, 14 workers obtained favourable rulings in the courts of first instance, which were confirmed by the Court of Appeal; and (v) the employer refused to follow the reinstatement orders, and filed an application for

proceedings for the protection of constitutional rights *(amparo)* before the Supreme Court of Justice.

Ministry of Education

322. In its communications dated 27 and 29 April 2016, the complainant organization alleges that, with the aim of discouraging workers from joining trade unions and persuading them not to participate in collective bargaining processes, the Government has adopted a hiring policy involving the simulation of industrial relations, either by concealing the employment relationship under non-employment hiring arrangements, or by simulating the temporary nature of contracts, with fixed-term contracts being established despite the continuous and permanent nature of the services for which the workers are hired. In its communication of 20 February 2017, the complainant organization reports the use of this strategy by the Ministry of Education with technicians specialized in secondary-level distance learning, who were reportedly subject to precarious hiring procedures.

323. The complainant organization also reports the close relationship between the Ministry of Education and the Education Workers' Trade Union of Guatemala (STEG), which imposes a dialogue between the technicians specialized in secondary-level distance learning and STEG. In this regard, it states that: (i) joint boards have been established between the employer and delegates of STEG, which is a trade union under the employer's control; (ii) these delegates may intervene in the selection of staff for the allocation of full-time positions, and have the authority to transfer workers to other workplaces; (iii) this situation provides STEG with a clear organizational advantage over other trade unions, and enables it to put pressure on workers to join STEG and to refrain from joining trade union organizations of their own choosing; and (iv) STEG has used these powers to repress workers who have opposed its claims.

Municipality of Mixco

324. In its communication of 2 May 2016, the complainant organization alleges that: (i) the Union of Workers and Employees of the Municipality of Mixco submitted a list of claims to its employer, the municipality of Mixco; (ii) after the refusal by the employer to engage in such negotiations, the trade union filed a socio-economic collective dispute on 13 January 2016 before the First Labour and Social Welfare Court, which warned the parties not to retaliate against each other; (iii) the mayor of the municipality of Mixco requested the trade union to abandon the collective dispute, in order to give it the freedom to dismiss municipal workers to ensure positions for persons who had supported the current authorities during the recent electoral process; and (iv) when the trade union refused to do so, the employer launched a campaign of stigmatization against the exercise of legitimate trade union activities.

325. According to the complainant organization, as part of the aforementioned campaign, the mayor of the municipality of Mixco, through publications on his official Facebook page, called on the population to take action and react against the legitimate actions of the trade union, openly qualifying the exercise of trade union rights as acts of opposition to the development of the municipality. The complainant organization also denounces publications in other media, in which the above-mentioned mayor led the population to believe that the trade union was responsible for acts of violence that occurred in the municipality. It indicates that, in response to the media's refusal to publish its own version, the trade union filed appeals before the competent courts in order to exercise its constitutional right to clarification and reply. It also indicates that the acts carried out by the mayor were the subject of a criminal complaint that was referred to the unit for offences committed against trade unionists within the Public Prosecutor's Office.

326. The complainant organization indicates that the trade union filed retaliation claims before the Fifth Labour and Social Welfare Court, and that, despite the fact that the claims should have been settled within 15 days, they have yet to be resolved. It states that, in response to the use of legal mechanisms by the trade union, the employer has initiated various administrative proceedings in order to dismiss trade union officials. The complainant organization further maintains that, after the trade union reported the retaliation to which it was being subjected to the General Labour Inspectorate and the employer expressly recognized that the publications had been made in response to the filing of the collective dispute, the latter proceeded unilaterally and without notification to deduct almost the totality of the wages of the trade union officials, and even more from the general secretary of the trade union.

Municipality of San Lucas Tolimán

327. In its communication of 3 May 2016, the complainant organization maintains that: (i) on 5 January 2016, the Union of Workers of the Municipality of San Lucas Tolimán in the department of Sololá (SITRAMSALT) was established; (ii) when it learned of the imminent establishment of the trade union, the employer intimidated workers so that they would abandon the process and, after these measures failed, it dismissed 13 workers who had participated in the establishment of the trade union in January and February 2016; (iii) complaints and requests for reinstatement were filed before the Labour and Social Welfare Court of First Instance of the municipality of Santiago Atitlán in the department of Sololá; (iv) on 21 April 2016, the judge proceeded to enforce the reinstatement of the majority of the dismissed workers; and (v) on 22 April 2016, the workers reported to their place of work, but were unable to take up their duties, as the staff hired by the mayor as their replacements had closed the offices to them.

328. The complainant organization states that, when the workers attempted to return to their place of work: (i) one of them, Mr Gilberto Cosigua Panjoj, was physically assaulted by the mayor, and was insulted and threatened with death by the persons accompanying the mayor; (ii) Mr Panjoj was locked in the offices of the municipal treasury by the mayor and another person, and was illegally detained there for over 30 minutes; and (iii) in the meantime, the mayor made threatening statements to the workers and to the judge who had ordered their reinstatement. The complainant organization also alleges that the mayor summoned the population in front of the municipal council building to criminalize and stigmatize the workers, and to encourage the population to attack them. The complainant organization states that, owing to the above facts, it filed a complaint with the Public Prosecutor's Office, requesting security measures.

Municipality of Tiquisate

329. In its communication of 4 May 2016, the complainant organization maintains that: (i) workers from the municipality of Tiquisate established the Union of Organized Municipal Employees of Tiquisate in the Department of Escuintla (SEMOT) on 20 October 2015 in response to systematic violations of their labour rights, and this union was registered by the Ministry of Labour and Social Welfare on 22 January 2016; (ii) with the aim of pressuring workers to leave the trade union, the employer suspended the payment of their wages in full as from November 2015; (iii) the mayor and the members of the municipal council also harassed and threatened workers, demanding that they leave the trade union; (iv) after 29 workers left the trade union, the employer proceeded to pay their wages; (v) the wages of 102 workers continue to be withheld illegally, as they refuse to leave the trade union; and (vi) the mayor hired other

workers to carry out the duties of the unionized workers, which even led to violence in some cases when the unionized workers were removed from their posts.

330. In its communication of 31 January 2017, the complainant organization indicates that, in May 2016, it initiated ordinary labour proceedings before the Labour and Social Welfare Court of First Instance in the department of Escuintla, in order to demand the payment of outstanding wages and other benefits not received by the unionized workers. In this respect, it states that although, to date, the disputes have not been settled, each time the workers report to the court, two judges request them to withdraw their claims, pointing out that they are going to lose the proceedings in any case.

331. Furthermore, the complainant organization maintains that, in June 2016, the employer followed through on its earlier threats and dismissed 81 unionized workers. It indicates that the dismissed workers filed an *amparo* appeal before the Pluripersonal Court of First Instance for Labour and Social Welfare of Escuintla, but that the appeal was rejected in a ruling dated 22 December 2016. It states that this decision was appealed by the above-mentioned workers before the Constitutional Court.

Public Prosecutor's Office

332. In its communication of 23 May 2017, the complainant organization states that, when the new Chief Public Prosecutor and Head of the Public Prosecutor's Office came into office, she obtained the necessary legal authorization and dismissed three leaders of the Union of Workers of the Criminal Investigation Directorate of the Public Prosecutor's Office (SITRADICMP), including its disputes secretary, Mr José Reyes Canales, for failing to comply with transfers to remote parts of the country after the establishment of the trade union on 29 March 2007. It states that these trade union leaders filed *amparo* appeals before the Constitutional Court and were reinstated after rulings were issued ordering their reinstatement.

333. The complainant organization also alleges that: (i) the employer uploaded pornography onto the shared computers on which the leaders and several members of SITRADICMP worked; (ii) two members of SITRADICMP were dismissed in relation to this fabrication; (iii) these members challenged their dismissals before the courts and were reinstated after the Constitutional Court issued rulings in their favour; (iv) after lengthy judicial proceedings to obtain the necessary authorization, Mr Reyes Canales was also dismissed; (v) Mr Reyes Canales filed an appeal for review with the Chief Public Prosecutor, but the appeal was declared inadmissible by a decision dated 26 April 2017; and (vi) Mr Reyes Canales also filed an *amparo* appeal before the Supreme Court of Justice, which is being processed.

334. The complainant organization also states that the Chief Public Prosecutor initiated, through her agents and various NGOs, a stigmatization campaign against the MSICG and SITRADICMP, associating them and their leaders with organized crime. It maintains that the Chief Public Prosecutor attempted to take control of SITRADICMP, by encouraging a group of members of the trade union, with the prior agreement of the authorities of the Public Prosecutor's Office, to simulate the holding of a trade union assembly and to draft minutes containing false facts. It states that criminal proceedings were initiated in this regard and that, on 12 May 2015, the Third Criminal Court for Drug Trafficking Offences and Environmental Crimes convicted, for the offence of continued falsification of facts, the former members of the trade union who drafted the false documents, and that the ruling was upheld by the Judicial Chamber. According to the complainant organization, the criminal investigation should also have been directed against the Chief Public Prosecutor, her lawyer and her private secretary, but the

corresponding officer from the Public Prosecutor's Office flatly refused to conduct the corresponding investigation and obstructed the criminal prosecution of the above-mentioned members of the trade union.

National Office of the Attorney-General

335. In its communication of 30 May 2017, the complainant organization states that: (i) the National Office of the Attorney-General (hereafter "the Attorney-General's Office" attempted to take control of the Union of Organized Workers of the National Office of the Attorney-General (STOPGN) by placing persons on its executive committee and advisory board during an extraordinary general assembly that had been convened for its trade union elections; (ii) after the failure of this assembly due to lack of quorum, persons associated with the employer convened another assembly in the name of STOPGN; (iii) when this strategy failed and STOPGN convened a new assembly, the employer attempted to block the participation of members of the trade union, and the same persons associated with the employer invaded the headquarters of the MSICG, where the assembly was being held, to insult and threaten the officials of the trade union, and to attempt to take MSICG documentation from them by force; (iv) during this process, the head of services of the Attorney-General's Office threatened to dismiss and to assassinate several members of the trade union; and (v) STOPGN reported these events to the General Labour Directorate and the General Labour Inspectorate.

336. Furthermore, the complainant organization alleges that the Attorney-General's Office uses the media to promote campaigns of stigmatization against trade unionism and collective bargaining, and that it is taking advantage of this situation to promote the approval of the Basic Act of the National Office of the Attorney-General, with the aim of legislatively and unilaterally repealing the protections of workers arising from collective agreements on working conditions.

National Institute of Forensic Sciences

337. In its communication of 2 June 2017, the complainant organization states that the National Institute of Forensic Sciences (hereafter "INACIF") is a public and autonomous institution responsible for carrying out expert work for the courts of the country. The complainant organization alleges that: (i) the registration of the Union of Workers of the National Institute of Forensic Sciences of Guatemala (SINTRAINACIF) on 14 May 2015 was followed by the dismissal of its organizers; (ii) although the organizers were reinstated, a policy of persecution, harassment and discrimination continued to be implemented against the trade union; (iii) workers are constantly threatened with dismissal or transfer to remote parts of the country if they join SINTRAINACIF; and (iv) the employer coerces members to leave the trade union if they wish to receive a promotion.

338. The complainant organization also alleges that: (i) INACIF attempted to illegally remove Mr Juan Saca Aguilar, information and propaganda secretary of SINTRAINACIF, from his place of work; (ii) after filing multiple complaints, Mr Saca Aguilar was able to return to his place of work, but the employer stopped providing him with instruments for work and assigning him duties; and (iii) the employer initiated proceedings before the labour and social welfare courts to dismiss Mr Saca Aguilar, on the grounds that he does not report for work. The complainant organization also maintains that the employer changed the hours of Mr Marlon Alfonso Martínez, agency secretary of SINTRAINACIF, and assigned him additional duties to prevent him from participating in the meetings of the trade union's executive committee.

339. Furthermore, the complainant organization states that INACIF encouraged ordinary labour proceedings, requesting the cancellation of SINTRAINACIF's registration before the Third Labour and Social Welfare Court, on the grounds, inter alia, that the workers who participated in its establishment had been hired on a temporary basis. According to the complainant organization, INACIF lacks procedural legitimacy for the submission of such a request, and the processing of the request legitimizes the interference of the employers in the exercise of freedom of association.

B. The Government's reply

Ministry of Culture and Sport

340. In its communication of 17 September 2019, the Government reports that SINTRADEPORTES was registered on 18 January 2016, and that its legal personality remains valid, as there are no pending appeals or notifications. In a communication dated 30 September 2022, the Government also provides information on the requests for reinstatement filed by ten dismissed workers. It indicates that: (i) eight of the workers were reinstated after the issuance of reinstatement orders in their favour; (ii) one worker withdrew his request; and (iii) in another case, the worker was not reinstated, as an appeal filed by the employer against the first instance decision in her favour was declared admissible by the Judicial Chamber.

Secretariat of Public Works of the First Lady of the Republic of Guatemala

341. In its communication of 17 February 2021, the Government provides information obtained from the Seventh Pluripersonal Labour and Social Welfare Court regarding eight of the SITRASEC workers who were dismissed. It indicates that: (i) six workers were reinstated and paid their outstanding wages and other employment benefits; (ii) one worker was reinstated and is in the process of receiving her outstanding wages and other employment benefits; and (iii) it was not possible to verify the reinstatement of one worker, as she did not report to the judicial body for the coordination of her reinstatement.

Ministry of Education

342. In its communication of 30 September 2022, the Government forwards information obtained from the Pluripersonal Court of First Instance for Labour and Social Welfare of the department of Santa Rosa, according to which: (i) 68 secondary-level distance learning workers of the Ministry of Education filed ordinary labour proceedings which were declared admissible on 11 July 2016, as a continuous, uninterrupted and indefinite employment relationship between the workers and the Ministry was proven; and (ii) the Ministry was ordered to grant them indefinite contracts in the budget line allocated for this purpose, with the same functions for which they had been hired year after year.

Municipality of Mixco

343. In its communication of 23 April 2021, the Government states that the Union of Workers and Employees of the Municipality of Mixco brought legal proceedings against the enterprise, Guatevisión, before the Fifth Justice of the Peace Civil Court regarding the constitutional guarantee of clarification and reply of the individuals concerned by a publication, and that these proceedings remain pending. Regarding the retaliation claims filed by the trade union, the Government indicates that: (i) when the First Labour and Social Welfare Court processed the collective dispute, the parties were warned not to retaliate against each other and that any termination of a labour contract should be authorized by a competent judge; (ii) on

20 September 2018, the parties reached an understanding on a collective agreement on working conditions; (iii) on 4 December 2018, the previously decreed preventive measures were annulled and lifted; and (iv) specific actions and measures have been taken to promote, encourage and protect the right to collective bargaining in the municipalities since 2020, through a request for technical and financial support in order to hold a workshop on collective bargaining and social dialogue in collaboration with the ILO.

Municipality of San Lucas Tolimán

344. In its communications of 23 April 2021 and 30 September 2022, the Government provides information on the reinstatements of the 13 dismissed workers that are being processed by the Labour and Social Welfare Court of First Instance of the municipality of Santiago Atitlán in the department of Sololá. It indicates that, in the 13 cases, the Public Prosecutor's Office recorded or was ordered to record an act of disobedience, as the municipality of San Lucas Tolimán did not comply with the reinstatement order.

345. Regarding the criminal complaint filed before the Public Prosecutor's Office, the Government states that: (i) preliminary proceedings were filed against the mayor of the municipality of San Lucas Tolimán, but the mayor died, which extinguished his criminal liability; (ii) as part of the investigations, it was determined, in accordance with witness statements, that the events reported occurred with the participation of another person; (iii) however, it was not possible to prove this, as the injured party, Mr Panjoj, did not come forward to testify, even though he had been duly summoned to the corresponding public prosecutor's office; and (iv) it was therefore not possible to bring the matter before the courts.

Municipality of Tiquisate

346. In its communications of 29 January 2021 and 30 September 2022, the Government indicates that, on 20 December 2015, SEMOT filed a complaint against the General Labour Inspectorate with regard to the withholding of the wages of its members. It maintains that, after a hearing held on 3 February 2016, the General Labour Inspectorate warned the employer to refrain from retaliation of any kind against the members of the trade union.

347. In its communication of 12 April 2021, the Government indicates that an *amparo* appeal filed by the 81 dismissed workers (who had been appointed by the former mayor between October 2015 and January 2016) against the municipal council and the mayor of Tiquisate, was declared inadmissible in a ruling dated 22 December 2016. It states that, following an appeal, the decision was upheld by the Constitutional Court in a ruling dated 3 July 2017.

Public Prosecutor's Office

348. In its communication of 30 October 2017, the Government forwards the observations of the Public Prosecutor's Office on the allegations made against it. Regarding the dismissal of Mr Reyes Canales as a result of the discovery of pornographic material, the Public Prosecutor's Office states that: (i) following disciplinary proceedings against him, a decision dated 21 July 2009 was issued, which established that he should be removed from his post by means of justified direct dismissal; (ii) by virtue of the right to immunity of Mr Reyes Canales, and in strict observance and application of the constitutional principles of the right to defence and due process, it brought the matter before the judicial body with the aim of requesting authorization to terminate the employment relationship; (iii) its claim was heard by the competent jurisdictional bodies and was finally resolved by the Labour and Social Welfare Appeals Court, which declared it admissible on 5 April 2017; and (iv) in compliance with the above, Mr Reyes

Canales was dismissed on 20 de April 2017. The Government concludes that, given that judicial authorization was obtained before the dismissal of Mr Reyes Canales, no violation of freedom of association by the Public Prosecutor's Office can be observed.

349. In its communications of 21 August 2019 and 13 September 2019, the Government confirms that, after Guatemalan domestic legal proceedings had been exhausted, Mr Reyes Canales was dismissed, as pornographic material had been found on the computer equipment that had been allocated to him. It also confirms that the other two leaders and the two members of SITRADICMP who had been dismissed by the Public Prosecutor's Office were reinstated following the issuance of judicial decisions in their favour.

National Office of the Attorney-General

350. In its communications of 30 October 2017 and 1 February 2021, the Government forwards the observations of the Attorney-General's Office on the allegations made against it. The Attorney-General's Office categorically denies the alleged interference in the election of STOPGN officials, emphasizing that it did not intervene in STOPGN's membership procedures or in the organization of its assemblies. It states that the persons involved were acting in their personal capacity and, under no circumstances, did they represent the will or opinion of the employer. Regarding its head of services, the Attorney-General's Office indicates that, at the time of the alleged events, he was serving as a member of STOPGN's advisory board, and therefore represented the interests of the trade union and not those of the employer.

351. Concerning the alleged stigmatization campaigns, the Attorney-General's Office states that it is totally untrue that it is attacking collective bargaining in the media. It further indicates that Decree No. 512, which serves as a legal basis for its actions, is outdated, and that, consequently, in 2016 and 2017, Bills Nos 5154 and 5156, which put forward the Basic Act of the National Office of the Attorney-General, were tabled. The Attorney-General's Office states that these Bills are being examined in the Congress of the Republic of Guatemala, and emphasizes that it respects the right to collective bargaining.

National Institute of Forensic Sciences

352. In its communication of 30 October 2017, the Government provides the observations of INACIF, stating that its current administration, which began on 18 July 2017, cannot be held accountable for internal policies related to past administrations, but that it has implemented a policy for respecting freedom of association and all rights deriving from it. It indicates that, in the current administration, any worker who has the appropriate profile and the respective qualifications is taken into consideration for promotion, and that several unionized workers have been promoted.

353. Regarding the allegations related to Mr Saca Aguilar, INACIF maintains that he did not perform his duties and received remuneration without consideration of any kind, which constitutes gross misconduct, but maintains that it has respected his right to defence and due process. Concerning the allegations related to Mr Alfonso Martínez, INACIF indicates that the criteria for the allocation of shifts are not based on any type of retaliation. It states that the number of staff is too limited to carry out the functions that it performs, and that priority is given to the interests of the Guatemalan population, without preventing workers from participating in trade union activities. With regard to the proceedings requesting the cancellation of SINTRAINACIF's registration, INACIF states that the fact that an employer has recourse to the labour justice bodies of the country does not constitute a violation of any rights of workers, but rather guarantees the protection of their rights.

354. In its communication of 15 May 2019, the Government states that ordinary labour proceedings concerning the request for authorization to dismiss Mr Saca Aguilar are still being processed by the First Labour and Social Welfare Court. It also states that, on 22 September 2017, a claim filed by INACIF against the decision ordering the registration of the trade union was declared inadmissible by the Third Labour and Social Welfare Court, and that this decision was upheld on 8 May 2018 by the Fifth Labour and Social Welfare Chamber following an appeal filed by INACIF.

C. The Committee's conclusions

355. *The Committee notes that, in the present case, the complainant organization alleges a series of anti-union measures, including dismissals, transfers and acts of intimidation and interference, by nine public institutions in their capacity as employers. It notes that, according to the complainant organization, several of these measures were taken in response to the establishment of trade unions or in the context of collective disputes. The Committee notes that the Government provides information on the judicial proceedings conducted as a result of some of these measures, and that it forwards the observations of certain public entities, which deny most of the allegations against them.*

356. *The Committee wishes to indicate that some of the allegations included in the communications sent by the complainant organization are not being examined in this case, as they have already been addressed in the context of other cases for which the Committee has already issued recommendations.*

Ministry of Culture and Sport

357. *The Committee notes the complainant organization's allegations that: (i) following the establishment of SINTRADEPORTES on 24 June 2015, workers who had participated in its creation were dismissed; (ii) the dismissed workers filed requests for reinstatement, which are being processed by the labour and social welfare courts; and (iii) the employer has not complied with the reinstatement orders issued at first instance. The Committee notes that the Government provides information on the requests for reinstatement filed by ten dismissed workers, indicating that eight were reinstated after the issuance of reinstatement orders in their favour, one withdrew his request, and one was not reinstated as the employer filed an appeal against the first instance decision in her favour and the appeal was declared admissible by the Judicial Chamber. The Committee duly notes this information and therefore will not pursue its examination of these allegations.*

358. *The Committee also notes that the complainant organization states that the employer allegedly started transferring the other members of SINTRADEPORTES to different locations, substantially changed their working conditions, and mistreated them in order to pressure them into leaving their posts. Observing that the Government does not reply to these allegations, the Committee recalls that protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1087]. The Committee requests the Government to take the necessary measures to conduct an inquiry into the alleged acts of anti-union discrimination against the members of SINTRADEPORTES, and, if found to be true, to take appropriate remedial measures and sanctions. The Committee requests the Government to keep it informed of any developments in this respect.*

359. *The Committee also notes the complainant organization's further allegations that: (i) the Ministry of Culture and Sport filed an appeal for revocation against the registration of SINTRADEPORTES, which*

means that the trade union cannot register its leaders; and (ii) the trade union filed an objection before the General Labour Directorate, but there has been no notification of a resolution. The Committee notes the Government's indication in this regard that SINTRADEPORTES is registered, that its legal personality is valid, and that there are no pending appeals or notifications. In light of this information, the Committee trusts that the Government will ensure that the leaders of SINTRADEPORTES have been duly registered.

Secretariat of Public Works of the First Lady of the Republic of Guatemala

360. *The Committee notes that the complainant organization maintains that: (i) in retaliation for the filing of a socio-economic collective dispute, the Secretariat of Public Works of the First Lady of the Republic of Guatemala dismissed the members of SITRASEC in December 2015 and January 2016; (ii) the first instance labour and social welfare courts ordered the reinstatement of 14 workers, and the decisions were upheld by the Court of Appeal; and (iii) the employer refused to comply with the reinstatement orders and filed amparo appeals before the Supreme Court of Justice. The Committee notes that the Government provides information on the follow-up given to eight of the reinstatement orders issued, stating that seven of the dismissed workers were reinstated and that six of them already received their outstanding wages and other employment benefits. The Committee expects the Government to take the necessary measures to ensure full compliance with the reinstatement orders issued in favour of the members of SITRASEC, and requests it to provide information on the outcome of the amparo appeals filed by the employer before the Supreme Court of Justice.*

Ministry of Education

361. *The Committee notes that the complainant organization: (i) alleges that the Government uses fixed-term contracts despite the continuous nature of the services provided by its workers, with the aim of discouraging trade union membership and participation in collective bargaining processes; and (ii) denounces in particular the use of such a strategy by the Ministry of Education with technicians specialized in secondary-level distance learning. The Committee also notes the Government's indication that a decision dated 11 July 2016 of the Pluripersonal Court of First Instance for Labour and Social Welfare of the department of Santa Rosa recognized that there was a continuous, uninterrupted and indefinite employment relationship between 68 secondary-level distance learning workers and the Ministry of Education, and ordered the Ministry to grant them indefinite contracts. The Committee recalls that fixed-term contracts should not be used deliberately for anti-union purposes .and that, in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights [see* ***Compilation****, para. 1096 and 377th Report, Case No. 3064 (Cambodia), para. 213]. The Committee trusts that the Government will pay attention to this criterion, and that it will ensure that fixed-term contracts are not used to hinder the enjoyment of the rights of freedom of association of the technicians specialized in secondary-level distance learning who work for the Ministry of Education.*

362. *Furthermore, the Committee notes that the complainant organization maintains that: (i) joint boards have been established between the management of the Ministry of Education and delegates of STEG; (ii) these delegates can participate in decisions on the selection of staff and the transfer of workers; and (iii) this advantageous situation enables STEG to pressure workers into joining STEG and not to join other trade union organizations. The Committee regrets that the Government has not provided replies to this allegation. Observing that STEG is considered to be the most representative trade union in the education sector in the country, the Committee recalls that the granting of exclusive rights to the most representative organization should not mean that the existence of other unions to which certain involved workers might wish to belong is prohibited. Minority organizations should be permitted to carry out their activities and at least to have the right to speak on behalf of their*

*members and to represent them [see **Compilation**, para. 1388]. The Committee therefore trusts that the Government will adopt the necessary measures to ensure that the other trade unions of the Ministry of Education are able to freely exercise their activities.*

Municipality of Mixco

363. *The Committee notes the complainant's allegations that: (i) after the filing of a socio-economic collective dispute in January 2016 by the Union of Workers and Employees of the Municipality of Mixco, the First Labour and Social Welfare Court prevented the parties from retaliating against each other; (ii) despite this, the employer carried out a media campaign stigmatizing the exercise of legitimate trade union activities, during which the mayor of the municipality linked the trade union to acts of violence that had occurred in the municipality; (iii) in response to this media campaign, the trade union filed retaliation claims before the Fifth Labour and Social Welfare Court and the General Labour Inspectorate, and a criminal complaint against the mayor; and (iv) in reaction to this use of legal mechanisms, the employer initiated administrative proceedings to dismiss the leaders of the trade union and deducted almost the totality of their wages. The Committee notes the Government's indication that: (i) after the signing of a collective agreement on working conditions between the parties in September 2018, the preventive measures decreed by the court regarding retaliation were lifted; and (ii) since 2020, specific action has been taken to promote, encourage and protect the right to collective bargaining in the municipalities of the country in collaboration with the ILO.*

364. *While it notes the Government's indication that a collective agreement was signed between the parties, the Committee observes that the Government does not deny the allegations of retaliation against the trade union and its leaders in the context of the exercise of their right to collective bargaining. In this respect, the Committee recalls that no one should be subjected to discrimination or prejudice with regard to employment because of legitimate trade union activities or membership, and the persons responsible for such acts should be punished [see **Compilation**, para. 1076]. The Committee requests the Government to investigate the alleged anti-union retaliation by the municipality of Mixco, in particular the wage deductions, and if found to be true, to ensure the availability of appropriate remedies for the trade union leaders affected and the imposition of sufficiently dissuasive penalties. The Committee requests the Government to keep it informed in this respect, and of the outcome of the criminal complaint filed by the trade union.*

Municipality of San Lucas Tolimán

365. *The Committee notes the complainant organization's indication that: (i) in January and February 2016, after learning about the imminent establishment of SITRAMSALT, the municipality of San Lucas Tolimán dismissed the 13 workers who participated in the creation of the trade union; (ii) these workers filed reinstatement claims before the First Instance Labour and Social Welfare Court of the municipality of Santiago Atitlán in the department of Sololá; and (iii) after the issuance of decisions in their favour, most of the workers attempted to return to their place of work but were denied access. The Committee notes the Government's indication in its reply that: (i) in the 13 cases, the municipality did not comply with the reinstatement order and, therefore, Public Prosecutor's Office recorded or was ordered to record an act of disobedience. In this regard, the Committee recalls that respect for Convention No. 98 requires that workers should not be dismissed or refused reinstatement for engaging in legitimate trade union activities. The Committee requests the Government to take the necessary measures to ensure compliance with the reinstatement orders issued in favour of the 13 SITRAMSALT members, and to keep it informed of any developments in this respect.*

366. *The Committee further notes that the complainant organization maintains that: (i) while the members of SITRAMSALT attempted to return to their place of work, one of them was assaulted*

*physically by the mayor of the municipality, was insulted and threatened with death by the persons accompanying the mayor, and was locked in the offices of the municipal treasury by the mayor and another person; (ii) the mayor also made intimidating statements to the members of SITRAMSALT and to the judge who had ordered their reinstatement, and encouraged the population to attack them; and (iii) it filed a complaint with the Public Prosecutor's Office to request security measures for the reinstated workers and the judge who executed the reinstatement orders. The Committee further notes the Government's indication that: (i) preliminary proceedings were filed against the mayor in relation to the above-mentioned facts, but the mayor died, which extinguished his criminal liability; and (ii) the investigations determined that the alleged events occurred with the participation of another person, but that it was not possible to prove this, as the aggrieved worker did not come forward to testify, and it was therefore not possible to bring the matter before the courts. The Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see **Compilation**, para. 84]. The Committee requests the Government to take the necessary measures to ensure that the members of SITRAMSALT are able to exercise their rights in a climate that is free from violence, fear and intimidation of any kind.*

Municipality of Tiquisate

367. *The Committee notes the complainant organization's allegation that: (i) after the establishment of SEMOT in October 2015, the employer harassed and threatened its members, and suspended the payment of their wages, with the aim of pressuring them into leaving the trade union; (ii) the municipality resumed payment of the wages of the workers who had left the trade union, while the wages of the 102 workers who refused to do so continue to be withheld; (iii) the employer removed several unionized workers from their workplaces, in some cases violently; and (iv) in May 2016, the members of SEMOT initiated ordinary labour proceedings before the First Instance Labour and Social Welfare Court in the department of Escuintla to claim the payment of their wages and other outstanding benefits. The Committee notes that the Government merely informs that SEMOT filed a complaint regarding the withholding of its members' wages with the General Labour Inspectorate, and that the General Labour Inspectorate warned the municipality to abstain from retaliation of any kind against the members in question.*

368. *The Committee notes the alleged facts and the decision issued by the General Labour Inspectorate. The Committee also observes that, in the context of Case No. 2609 concerning numerous acts of anti-union violence, it examined the murder of a leader of SEMOT, and death threats against members of this trade union, urging the Government to take the necessary measures to prevent the commission of any further acts of anti-union violence against members of the trade union. The Committee recalls that coercing trade union members into leaving the trade union constitutes a serious violation of Conventions Nos. 87 and 98 that consecrate the right of workers to freely join the organization of their own choice and the principle of the adequate protection of this right. It also recalls that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Compilation**, paras 1199 and 1159]. In this context, the Committee requests the Government to conduct an impartial inquiry into the alleged acts of anti-union intimidation and discrimination against the members of SEMOT and, if the allegations are found to be true, to adopt appropriate measures of redress and penalties. The Committee also requests the Government to provide information on the outcome of the appeals filed before the First Instance Labour and Social Welfare Court in the department of Escuintla.*

369. *The Committee also notes that the complainant organization maintains that: (i) 81 members of SEMOT were dismissed in June 2016; and (ii) on 22 December 2016, an amparo appeal filed before the Pluripersonal Court of First Instance for Labour and Social Welfare of Escuintla by these workers was rejected, and the decision was appealed before the Constitutional Court. The Committee notes the Government's indication that the above-mentioned workers had been appointed by the former mayor between October 2015 and January 2016, and that the ruling of 22 December 2016 was upheld by the Constitutional Court on 3 July 2017. Duly noting the decisions issued, the Committee will not pursue the examination of this aspect of the case.*

Public Prosecutor's Office

370. *The Committee notes the complainant organization's allegations that: (i) following the establishment of SITRADICMP on 24 May 2007, the Public Prosecutor's Office attempted to transfer three leaders of the trade union, including its disputes secretary, Mr José Reyes Canales, and dismissed them for failing to comply with the transfers; (ii) the three leaders were reinstated after filing appeals before the Constitutional Court; (iii) the employer uploaded pornography onto the computers used by SITRADICMP, which led to the dismissal of two members of the trade union, who challenged these decisions and were reinstated; (iv) Mr Reyes Canales was also dismissed on these grounds after the necessary authorization was obtained; and (v) Mr Reyes Canales filed an appeal for review with the Chief Public Prosecutor, which was declared inadmissible, as well as an amparo appeal before the Supreme Court of Justice, which is being processed. The Committee notes the indication of the Public Prosecutor's Office, in its observations forwarded by the Government, that: (i) following disciplinary proceedings against him, it was established that Mr Reyes Canales should be dismissed for just cause; and (ii) by virtue of his right to immunity, judicial authorization to terminate the employment relationship was requested and obtained. It also notes that the Government confirms the dismissal of Mr Reyes Canales following the discovery of pornographic material on computer equipment allocated to him, and the reinstatement of the other four members of the SITRADICMP. The Committee duly notes these reinstatements, and the diverging opinions expressed by the complainant organization and the Public Prosecutor's Office concerning the true motive for the dismissal of Mr Reyes Canales. The Committee requests the Government to keep it informed of the outcome of the amparo appeal filed by Mr Reyes Canales before the Supreme Court of Justice.*

371. *The Committee notes the complainant organization's allegations that: (i) in the context of a campaign of anti-union stigmatization, the Chief Public Prosecutor attempted to take control of SITRADICMP through an agreement with some of its members, who simulated the holding of a trade union assembly and drafted false minutes; (ii) the Third Criminal Court for Drug Trafficking Offences and Environmental Crimes issued a ruling dated 12 May 2015 against three now-former members for the offence of continuous falsification of facts, and the ruling was upheld by the Judicial Chamber; and (iii) the officer from the Public Prosecutor's Office responsible for the case obstructed the criminal investigation that should also have targeted the Chief Public Prosecutor, her lawyer and her private secretary. While it notes that the Government has not provided replies concerning these allegations, the Committee, in view of the judicial decisions already issued in this regard and the vagueness of the allegations on the link between the convicted former trade union members and the Chief Public Prosecutor, will not pursue the examination of this aspect of the case.*

National Office of the Attorney-General

372. *The Committee notes the complainant organization's allegations that: (i) the Attorney-General's Office attempted to take control of STOPGN by placing individuals on its executive committee and advisory board during an extraordinary general assembly convened for STOPGN's trade union elections; (ii) after the failure of this assembly, persons associated with the employer unsuccessfully*

attempted to convene another assembly in the name of STOPGN; (iii) after the convening of a new assembly by the trade union and a failed attempt by the Attorney-General's Office to block the participation of members, the same persons associated with the employer interrupted this assembly, insulted and threatened the trade union officials, and tried to remove documentation by force; (iv) the head of services of the Attorney-General's Office then threatened to dismiss and to assassinate several members of the trade union; and (v) these events were reported to the General Labour Directorate and the General Labour Inspectorate. The Committee also notes the observations of the Attorney-General's Office provided by the Government, in which the Attorney-General's Office: (i) categorically denies any intervention in the organization of STOPGN's assemblies; (ii) maintains that the persons involved acted in their personal capacity; and (iii) emphasizes that, at the time of the alleged events, its head of services was a member of STOPGN's advisory board.

373. *Noting the diverging versions of the complainant organization and the Attorney-General's Office concerning the participation of the employer in the events that took place, and the trade union membership of its head of services at the time, the Committee recalls that the organization of trade union elections should be exclusively a matter for the organizations concerned, in accordance with Article 3 of Convention No. 87. It also recalls that the environment of fear induced by threats to the life of trade unionists has inevitable repercussions on the exercise of trade union activities, and the exercise of these activities is possible only in a context of respect for basic human rights and in an atmosphere free of violence, pressure and threats of any kind [see* ***Compilation****, paras 591 and 116]. The Committee expects the Government to take the necessary measures to ensure that STOPGN is able to exercise its legitimate activities without interference or intimidation of any kind, and to carry out the relevant investigations of the facts reported to the General Labour Directorate and the General Labour Inspectorate.*

374. *The Committee further notes that, according to the complainant organization, the Attorney-General's Office uses the media to promote campaigns of anti-union stigmatization and the approval of the Basic Act of the National Office of the Attorney-General, with the aim of repealing the protective measures resulting from the collective agreements on working conditions. In this regard, it notes that the Attorney-General's Office: (i) denies having attacked collective bargaining in the media; and (ii) states that two drafts of the Basic Act of the National Office of the Attorney-General are being examined by the Congress of the Republic of Guatemala, as Decree No. 512, which serves as a legal basis for its actions, is outdated. The Committee observes from the publicly available information that the above-mentioned Bills were debated in Congress in September and October 2018, but that no approval of the Bills was notified. In view of this information, and noting the general nature of these allegations, the Committee will not pursue the examination of the allegations.*

National Institute of Forensic Sciences

375. *The Committee notes the complainant organization's indication that: (i) following the registration of SINTRAINACIF on 14 May 2015, its organizers were dismissed; (ii) although the organizers were reinstated, a policy of anti-union persecution, harassment and discrimination continued to be applied, as INACIF workers were threatened with dismissal or transfer if they joined SINTRAINACIF; and (iii) the employer coerced members, making it clear that they would have to leave the trade union if they wished to receive a work promotion. The Committee notes that the Government forwarded the observations of INACIF, which maintains that its current administration, which began in July 2017, cannot be held accountable for internal policies related to past administrations, but that it has implemented a policy for respecting freedom of association, takes into consideration all workers who meet the necessary requirements, and granted promotions to several unionized workers. While it notes the changes that have occurred since July 2017, the Committee observes that INACIF does not deny the alleged events, which reportedly took place before the start of its current*

administration. The Committee trusts that the Government has ensured that all workers whose professional development may have been affected as a result of belonging to SINTRAINACIF have been duly compensated.

376. *The Committee notes that, according to the complainant organization, the employer attempted to remove Mr Juan Saca Aguilar, information and propaganda secretary of SINTRAINACIF, from his place of work, stopped providing him with instruments for work and assigning him duties, and initiated judicial proceedings to dismiss him for not reporting to work. The Committee notes INACIF's indication that Mr Saca Aguilar did not perform his duties while he was receiving remuneration, which constitutes gross misconduct, and the Government's indication that a request for authorization to dismiss Mr Saca Aguilar is being processed before the First Labour and Social Welfare Court. The Committee notes the contradictory versions of the complainant organization and INACIF regarding the events. In these circumstances, the Committee requests the Government to keep it informed of the outcome of the request for authorization to dismiss Mr Saca Aguilar which is pending before the First Labour and Social Welfare Court.*

377. *The Committee also notes that the complainant organization maintains that the employer changed the hours of Mr Marlon Alfonso Martínez, agency secretary of SINTRAINACIF, and assigned him additional duties to prevent him from participating in trade union meetings. It also notes INACIF's indication that its criteria for the allocation of shifts are not based on retaliation, that it has a limited number of staff, and that it gives priority to the interests of the population, without preventing workers from participating in trade union activity. The Committee recalls that the right to hold meetings is essential for workers' organizations to be able to pursue their activities and it is for employers and workers' organizations to agree on the modalities for exercising this right [see **Compilation**, para. 1585]. Noting the divergent positions expressed by the complainant organization and by the public institution, the Committee invites the Government to encourage the parties to find a mutual solution to this dispute.*

378. *The Committee also notes the complainant organization's allegation that INACIF filed ordinary labour proceedings to request the cancellation of SINTRAINACIF's registration, alleging, inter alia, that the workers who participated in the establishment of SINTRAINACIF had been hired on a temporary basis. The Committee notes that INACIF maintains that an employer's recourse to the labour justice bodies of the country does not constitute a violation of workers' rights. It also notes the Government's indication that, on 22 September 2017, the request was declared inadmissible by the Third Labour and Social Welfare Court, and that this decision was upheld by the Fifth Labour and Social Welfare Chamber on 8 May 2018. In this regard, the Committee recalls that all workers, without distinction whatsoever, whether they are employed on a permanent basis, for a fixed term or as contract employees, should have the right to establish and join organizations of their own choosing [see **Compilation**, para. 390]. In light of the judicial decisions issued, the Committee will not pursue the examination of this aspect of the case.*

379. *In general, the Committee observes that several of the allegations in this case refer to the question of compliance with judicial orders for reinstatement. The Committee recalls that it has referred to this matter on several occasions in other cases regarding the Government of Guatemala (see Case No. 2948, 382nd Report, June 2017, paragraph 379; Case No. 3062, 376th Report, October 2015, paragraph 585; Case No. 3042, 376th Report, October 2015, paragraph 568). The Committee also recalls that the road map adopted by the Government in October 2013 as a result of the complaint regarding Guatemala's non-observance of Convention No. 87, made under article 26 of the ILO Constitution, highlighted the importance and urgency of complying with and enforcing labour court rulings with the aim of strengthening the rule of law in the country. In view of the above, the Committee once again urges the Government to take, in consultation with the social partners, all necessary steps, including legislative measures if required, to ensure effective and prompt*

compliance with judicial orders for reinstatement. The Committee requests the Government to keep it informed in this respect, and observes that, within the framework of the road map adopted in 2013, the Government has, following the joint Mission of ILO, IOE, and ITUC undertaken from 20 to 23 September 2022, accepted the Office's technical assistance in this regard.

The Committee's recommendations

380. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to take the necessary measures to conduct an inquiry into the alleged acts of anti-union discrimination against the members of SINTRADEPORTES and, if found to be true, to take appropriate remedial measures and sanctions. The Committee requests the Government to keep it informed of any developments in this respect.

(b) The Committee expects the Government to take the necessary measures to ensure full compliance with the reinstatement orders issued in favour of the members of SITRASEC, and requests it to provide information on the outcome of the amparo appeals filed by the employer before the Supreme Court of Justice.

(c) The Committee trusts that the Government will ensure that fixed-term contracts are not used to hinder the enjoyment of the rights of freedom of association of the technicians specialized in secondary-level distance learning who work for the Ministry of Education.

(d) The Committee requests the Government to investigate the alleged acts of anti-union retaliation carried out by the municipality of Mixco, in particular the wage deductions and, if found to be true, to ensure the availability of appropriate remedies for the trade union leaders affected and the imposition of sufficiently dissuasive penalties. The Committee requests the Government to keep it informed in this regard, and of the outcome of the criminal complaint filed by the Union of Workers and Employees of the Municipality of Mixco.

(e) The Committee requests the Government to take the necessary measures to ensure compliance with the reinstatement orders issued in favour of 13 members of SITRAMSALT, and to keep it informed of any developments in this respect.

(f) The Committee requests the Government to take the necessary measures to ensure that members of SITRAMSALT are able to exercise their rights in a climate free from violence, fear and intimidation of any kind.

(g) The Committee requests the Government to conduct an impartial inquiry into the alleged acts of anti-union intimidation and discrimination against members of SEMOT and, if found to be true, to adopt appropriate measures of redress and penalties. The Committee also requests the Government to provide information on the outcome of the appeals filed before the Labour and Social Welfare Court of First Instance in the department of Escuintla.

(h) The Committee requests the Government to keep it informed of the outcome of the amparo appeal filed by Mr Reyes Canales before the Supreme Court of Justice.

(i) The Committee expects the Government to adopt the necessary measures to ensure that STOPGN is able to exercise its legitimate activities without interference or

intimidation of any kind, and to conduct the relevant inquiries regarding the facts reported to the General Labour Directorate and the General Labour Inspectorate.

(j) The Committee requests the Government to keep it informed of the outcome of the request for authorization to dismiss Mr Saca Aguilar, which remains pending before the First Labour and Social Welfare Court.

(k) The Committee once again urges the Government to take, in consultation with the social partners, all necessary steps, including legislative measures if required, to ensure effective and prompt compliance with judicial orders for reinstatement. The Committee requests the Government to keep it informed in this respect, and observes that, within the framework of the road map adopted in 2013, the Government has, following the joint Mission of ILO, IOE, and ITUC undertaken from 20 to 23 September 2022, accepted the Office's technical assistance in this regard.

Case No. 3326

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Guatemala presented by the National Federation of Workers (FENATRA)

Allegations: The complainant organization alleges that, after collective agreements on working conditions were signed with two enterprises in the transport sector, and following complaints to the General Labour Inspectorate, the members and officials of the trade unions of those enterprises were subjected to acts of interference, anti-union dismissals and non-compliance with the relevant court decisions

381. The complaint is contained in a communication of 24 May 2018 from the National Federation of Workers (FENATRA).

382. The Government sent observations in communications of 1 February, 26 April, 4 September and 8 October 2019, 17 February 2020, 15 April and 5 and 31 August 2021, and 1 February, 21 July and 29 September 2022.

383. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

384. In its communication of 24 May 2018, the complainant organization states that, in September 2015 and November 2016 respectively, two enterprise trade unions were established in the

transport sector, namely: (i) the Trade Union of Workers of the enterprise Expansión Corporativa Milenium S.A. (SINTRAEXCORMISA); and (ii) the Trade Union of Workers of the enterprise Rutas Metropolitanas de Transporte S.A. (SITRAERUMSA), for the purpose of defending the rights of the workers of the respective enterprises (hereinafter Enterprise 1 and Enterprise 2), which are known under the corporate identity of Transurbano (hereinafter the urban transport consortium). The complainant organization alleges that the above-mentioned trade unions submitted draft collective agreements on working conditions to both employers, but the employers never entered into direct negotiations on the agreements, as they always prevented the planned negotiation sessions from taking place. The complainant organization goes on to explain that the employers' refusal to enter into direct negotiations led to collective disputes of an economic and social nature being brought before the labour courts, and that following several sessions in the conciliation tribunals of the labour courts: (i) a collective agreement on working conditions between Enterprise 1 and SINTRAEXCORMISA was signed on 10 May 2017; and (ii) a collective agreement on working conditions between Enterprise 2 and SITRAERUMSA was signed on 26 October 2017.

385. The complainant organization alleges that, since the two collective agreements were signed, not only have the enterprises failed to respect the agreed terms, but they have also embarked on a campaign of retaliation against the executive committees and members of the two unions, in view of the complaints that the unions were constantly filing with the General Labour Inspectorate and other bodies, alleging labour rights violations. The complainant organization alleges in particular that, in March 2018, Enterprise 1 came up with a strategy designed to destroy SINTRAEXCORMISA, which involved drafting withdrawal letters, with signatures that had supposedly been certified by a notary, to coerce and intimidate workers into leaving the union under the pretext that they would obtain better economic and working conditions. In this regard, it provides a communication dated 13 March 2018, signed by the human resources manager of the urban transport consortium, notifying the union of 24 withdrawals of membership, as well as copies of three withdrawal letters, signed by the workers Mr José Irlando Salazar Hernández, Mr Willford Manolo Ramirez de León and Mr Saúl Humberto Chitiquez Castañeda.

386. The complainant organization also alleges the unlawful dismissal of workers by these enterprises, stating that the enterprises often do not comply with court decisions to reinstate workers and, if they do, they do not assign the workers any work, applying a form of psychological pressure to force them to resign. With regard to the dismissals, the complainant organization communicates a decision of the Sixth Labour and Social Security Court of 14 March 2018 concerning Mr Héctor Eduardo Jiménez Alvarado. The complainant organization specifies, in this regard, that the labour court ordered a criminal investigation into the crime of disobedience to be opened against those responsible for the failure to comply with the court reinstatement orders. It also states that the unions reported both enterprises for having appropriated the social security contributions deducted from the workers rather than making the payments to the Guatemalan Social Security Institute (IGSS).

387. Lastly, the complainant organization reports that an attempt was made to establish a round-table dialogue at the Ministry of Labour and Social Security between the enterprises and the trade unions, but that the process was undermined from the outset by the stalling tactics of the officials and legal advisers involved.

B. The Government's reply

388. In its communication of 4 September 2019, with regard to the allegations concerning the strategy of Enterprise 1 to force its workers to withdraw their union membership, the

Government states that: (i) according to the records of the computer system of the Public Prosecutor's Office for monitoring investigations, "there is no record of a complaint in 2018 concerning Mr José Irlando Salazar Hernández, Mr Willford Manolo Ramírez de León or Mr Saúl Humberto Chitiquez Castañeda"; (ii) there is a complaint against Enterprise 1, but these individuals are not mentioned as parties to the proceedings; and (iii) in the context of the complaint concerning the crime of disobedience, there is no information in the complaint to suggest that any coercion, threats or other crimes related to the trade union status of the individuals mentioned took place.

389. In its communications of 26 April 2019, 4 September 2019, 17 February 2020 and 15 April 2021, the Government reports on the status of Reinstatement Process No. 01173-2017-10024 concerning the unjustified dismissal of Mr Héctor Eduardo Jiménez Alvarado in Collective Dispute No. 011173-2016-00877, stating the following: (i) on 4 September 2017, the Sixth Labour and Social Security Court issued a decision ordering the reinstatement of Mr Jiménez Alvarado, the payment of outstanding wages and the payment of a fine by Enterprise 2; (ii) further to several decisions, in view of the enterprise's refusal to reinstate Mr Jiménez Alvarado, on 14 March 2018 the court issued a further decision by which it ordered that the proceedings against whoever was legally responsible should be referred to a criminal court for appropriate action; (iii) on 28 September 2018, the court ruled that the reinstatement of the plaintiff was deemed to have been implemented, by virtue of a brief presented by the defendant confirming that the reinstatement had taken place, and gave the defendant ten days to provide proof of the payment of outstanding wages.

390. With regard to the above-mentioned criminal proceedings concerning the refusal by Enterprise 2 to reinstate Mr Jiménez Alvarado, the Government states that, on 8 February 2019, the Sixth Labour and Social Security Court again referred the matter to a criminal court for appropriate action for the crime of disobedience, owing to the failure by Enterprise 2 to report that the outstanding wages had been paid; this referral was made on 16 May 2019 to the Centre for Auxiliary Services of the Criminal Justice Administration and then to the First Collegial Justice of the Peace Court, under Case No. 01186-2019-02135. The Government states in this regard that the Public Prosecutor's Office carried out investigative measures, which included taking a witness statement on 22 October 2019 from Mr Jiménez Alvarado, who stated that he had been reinstated to his post and had withdrawn from the labour proceedings that had been initiated. Lastly, the Government states that the Public Prosecutor's Office filed the charges with the supervisory judge and that a hearing for minor offences was scheduled for 1 September 2022.

391. In view of the above, the Government points out, in its communication of 4 September 2019, that the reinstatement process has been a concern of the State, given the commitments undertaken with a view to complying with the 2013 road map and in particular Indicator No. 5 relating to the significant increase in the percentage of reinstatement orders actually implemented for workers who are victims of anti-union dismissals.

392. In its communications of 1 February and 4 September 2019, 17 February 2020 and 1 February 2022, the Government provides information on the allegations concerning the crime of misappropriation and improper withholding of the social security contributions that were not paid to the IGSS, with the Fourth Court of the First Instance for Criminal Matters, Drug Trafficking and Crimes against the Environment of Guatemala supervising the investigation, under Case No. 01069-2017-00417. In its latest communication in this regard, the Government states that: (i) the Public Prosecutor's Office carried out the corresponding investigation, referring the case for an analytical, technical and multidisciplinary review by the Financial Analysis Department of the Directorate of Criminal Analysis with a request for the jurisdictional

supervisory body to issue the corresponding decision on the proceedings; and (ii) that it will inform the Committee of the outcome of the proceedings.

393. Lastly, in its communication dated 29 September 2022, the Government transmits information from the General Labour Inspectorate stating that: (i) a negotiating table was opened with the urban transport consortium, which was convened on eight occasions in January, February, March and June 2017; and (ii) the table was closed at that time by the Deputy Inspector General of Labour, without the latter specifying who had requested the closure, although the representatives of the trade union and employer parties were present.

C. The Committee's conclusions

394. *The Committee notes that the present case concerns allegations of retaliatory measures by two enterprises in the transport sector against members and officials of the trade unions of those enterprises, after collective agreements on working conditions were signed and following complaints against the enterprises to the General Labour Inspectorate. The allegations relate in particular to acts of coercion against workers so that they withdraw their trade union membership and to anti-union dismissals, and, with regard to the latter, to non-compliance with the relevant court decisions. The Committee notes that, for its part, the Government refers to the absence of any complaint concerning the alleged acts of coercion and it also provides detailed information on the judicial proceedings under way in connection with the dismissal of a worker from Enterprise 2.*

395. *With regard to the allegations that workers are being coerced to withdraw their trade union membership, the Committee takes note of the complainant organization's allegations that the collective agreement on working conditions between Enterprise 1 and SINTRAEXCORMISA of 10 May 2017 and the collective agreement between Enterprise 2 and SITRAERUMSA of 26 October 2017 were signed following several sessions in the conciliation tribunals of the labour courts. The Committee notes that the complainant organization alleges that it was after these collective agreements were signed and following the aforementioned complaints to the General Labour Inspectorate that the enterprises embarked on a campaign of retaliation against the executive committees and members of both unions. The Committee notes that the complainant organization alleges in particular that, in March 2018, Enterprise 1 had drafted withdrawal letters in order to force workers to leave the union under the pretext that they would obtain better economic and working conditions. The Committee notes in this regard that the complainant organization provided a copy of a letter from the human resources department of the urban transport consortium addressed to SINTRAEXCORMISA, dated 13 March 2018, informing it of the withdrawals, as well as copies of three letters of withdrawal signed by the workers Mr José Irlando Salazar Hernández, Mr Willford Manolo Ramirez de León and Mr Saúl Humberto Chitiquez Castañeda.*

396. *The Committee notes that, for its part, the Government states that the three workers concerned did not file a complaint in this respect and specifies that, in other complaints against Enterprise 1, either these persons do not appear as parties to the proceedings, or there is no information to suggest that any coercion, threats or other crimes related to the trade union status of the individuals mentioned had taken place.*

397. *While taking note of this information, the Committee observes that the number of withdrawals referred to in the present case is not limited to the three workers mentioned by the Government in its observations, but also includes the 21 other persons whose names appear in the above-mentioned letter from the human resources department of the urban transport consortium to SINTRAEXCORMISA. The Committee also notes that the texts of the three withdrawal letters provided by the complainant organization are identical and that reference is made in particular to an "irrevocable withdrawal" from the trade union.*

398. *In view of the various pieces of information provided by the Government and by the complainant organization and recalling that any coercion of workers or trade union officers to revoke their union membership constitutes a violation of the principle of freedom of association, in violation of Convention No. 87 [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1198], the Committee requests the Government to conduct an investigation to clarify the circumstances surrounding and reasons for the 24 withdrawals communicated to SINTRAEXCORMISA. The Committee requests the Government to keep it informed of the outcome of the investigation.*

399. *With regard to the allegations of anti-union dismissals, the Committee notes that the complainant organization alleges the unjustified dismissals of workers by Enterprises 1 and 2, stating that these enterprises often do not comply with court decisions to reinstate workers and, if they do, they do not assign the workers any work, applying a form of psychological pressure to force them to resign.*

400. *The Committee notes, however, that the complainant organization's allegations make specific reference only to Héctor Eduardo Jiménez Alvarado, who was dismissed in the context of Collective Dispute No. 011173-2016-00877. For this reason, the Committee will limit its examination of this allegation to the situation of the aforementioned worker.*

401. *The Committee takes note in this respect of the decision of the Sixth Labour and Social Security Court of 14 March 2018, which was provided by the complainant, and of the information stating that the labour court ordered a criminal investigation into the crime of disobedience to be opened against those responsible for the failure to comply with the court order to reinstate the worker.*

402. *The Committee notes that the Government states for its part that: (i) on 4 September 2017, the Sixth Labour and Social Security Court issued a decision ordering the reinstatement of Mr Jiménez Alvarado, the payment of outstanding wages and the payment of a fine by Enterprise 2; (ii) following several decisions that remained without effect, on 28 September 2018, the court finally deemed that the reinstatement of Mr Jiménez Alvarado had been implemented, without the issue of the payment of outstanding wages being settled; and (iii) the proceedings concerning the crime of disobedience stemming from the failure by Enterprise 2 to report that the outstanding wages have been paid are still pending, with a hearing for minor offences scheduled for 1 September 2022.*

403. *The Committee takes note of the information provided on the implementation of the court decisions concerning the situation of Mr Jiménez Alvarado, who obtained, on 4 September 2017, a decision from the Sixth Labour and Social Security Court ordering his reinstatement and the payment of his outstanding wages. The Committee notes that Enterprise 2 put off implementing this decision for a year, despite several rulings issued by the Sixth Court, and for this reason criminal proceedings were initiated against the enterprise. The Committee notes that, although the worker was reinstated, the enterprise did not fulfil the obligation to pay the outstanding wages and a hearing for minor offences is scheduled for 1 September 2022. The Committee requests the Government to provide information on the outcome of the proceedings against Enterprise 2 for the crime of disobedience concerning the payment of Mr Jiménez Alvarado's outstanding wages.*

404. *With regard to the legal proceedings concerning the complaints lodged by the trade unions against the two enterprises for the alleged appropriation of the social security contributions deducted from workers without these amounts being paid to the IGSS, the Committee notes that the allegations are not related to the exercise of trade union rights and therefore do not fall within its competence.*

405. *Finally, the Committee notes the information provided by the Government concerning the creation of a forum for dialogue with the urban transport consortium and the indication that it was closed and its activities were discontinued for unknown reasons. The Committee requests the Government*

to investigate and report the reasons of discontinuation of the activities of the above-mentioned dialogue forum and, if possible, to take the necessary action to resume it.

The Committee's recommendations

406. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to conduct an investigation to clarify the circumstances surrounding and reasons for the 24 withdrawals communicated to SINTRAEXCORMISA by Enterprise 1 and requests the Government to keep it informed of the outcome of the investigation.

(b) The Committee requests the Government to inform it of the outcome of the proceedings for the offence of disobedience against Enterprise 2 concerning the payment of the outstanding wages of Héctor Eduardo Jiménez Alvarado.

(c) The Committee requests the Government to investigate and report the reasons of discontinuation of the activities of the dialogue forum for urban transport and, if possible, take the necessary action to resume it.

Case No. 3369

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of India presented by the International Trade Union Confederation – Asia Pacific (ITUC–AP) supported by the International Trade Union Confederation (ITUC)

Allegations: Dismissal and detention of trade unionists for exercising their right to form and join a trade union of their choice following a strike

407. The complaint is contained in a communication dated 15 October 2019 from the International Trade Union Confederation – Asia Pacific (ITUC–AP). By a communication dated 22 September 2022, the International Trade Union Confederation (ITUC) associated itself with the complaint.

408. The Government of India transmitted its observations in a communication dated 27 October 2021.

409. India has neither ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

410. In its communication dated 15 October 2019, the ITUC–AP explains that Maruti Suzuki India Limited is a manufacturing company registered in India (hereafter, the Company). In June 2011, workers of the Company took steps to establish an independent union. Contrary to the management's insistence that workers sign up as members of the Maruti Udyog Kamgar Union (MUKU), allegedly controlled by the management, workers signed up to join the Maruti Suzuki Employees Union (MSEU). The ITUC–AP alleges that the management dismissed 11 trade union leaders as part of its attempt to deny workers their right to form an independent union. The workers embarked on a sit-down strike on 4 June 2011 and prevailed thereby establishing the MSEU. The MSEU and the management signed an agreement on 16 June 2011 in the presence of the Deputy Labour Commissioner, Gurgaon. The ITUC–AP alleges, however, that the agreement was not implemented by the management of the Company, which among others, reinstated the 11 terminated union officials.

411. The ITUC–AP alleges that a toxic industrial relations environment created by the management of the Company continued when the management took steps to retaliate against the union by giving various instructions that ended up slowing down operations and blaming the workers for embarking on a go-slow. On 29 August 2011, the management locked out workers and informed them that they could only re-enter on condition that they signed a bond of good behaviour renouncing their efforts to sabotage the operations through the go-slow. The union rejected this unilateral and retaliatory action of the management, refused to sign the bond and commenced protests to end the retaliation. The situation worsened with the management taking several retaliatory actions, including terminating contract workers who had joined the protests. The ITUC–AP indicates that following an agreement with the management, on 1 March 2012, the Maruti Suzuki Workers Union (MSWU) was registered by the Labour Department of the State of Haryana.

412. Subsequently, around 18 April 2012, the union presented its proposals for negotiation of a collective agreement. The ITUC–AP alleges that while the Company's management stalled and delayed the negotiations, the Labour Commissioner failed to inform the parties, especially the management, of the expectation that collective bargaining negotiations were to be conducted in good faith and to ensure that a conducive environment was created for these negotiations. The ITUC–AP argues that the management refused to negotiate and the Government failed to facilitate the process through conciliation or mediation mechanisms, among others. According to the ITUC–AP, in anticipation of a reaction from the union, the management brought in so-called "bouncers" camouflaged as workers.

413. The ITUC–AP and the ITUC allege that on the morning of 18 July 2012 a supervisor insulted a worker based on his caste. The supervisor was aware that the insult based on caste would generate major tension in the workplace. The worker who was insulted was later suspended. As expected, this issue raised tension and the management invited the police who were stationed outside the premises. There was also a meeting called between the union and the management to resolve the situation. The union and management continued their negotiation after close of work. According to the workers, the unfortunate incident of 18 July 2012 was a well-planned move by the Company's management to provoke workers. Some "bouncers" were called inside the factory premises to incite workers. The "bouncers" began picking fights with workers and the situation escalated. The police remained outside the premises even when the tension escalated. With the scuffle and the chaos, the union–management meeting broke down and the union officials went outside to verify what was happening. A fire began on the premises where the negotiations were taking place and spread; as a result of the incident, the

General Manager for Human Resources died of asphyxiation. The police intervened at that stage and arrested 148 workers and unionists. They were charged with murder, rioting and other serious charges under the Indian Penal Code. Among those in jail, eight were executive committee members of the MSWU. According to the complainants, over 150 workers were jailed on serious criminal charges including those who were not even present at the factory premises when the violent incident occurred on 18 July 2012. The District Court in Gurgaon rejected the workers' plea for bail on three occasions. The High Court of Punjab and Haryana also turned down the bail plea twice stating that the incident had lowered India's international reputation and that foreign investors were not likely to invest their money in India out of fear of labour unrest. The Supreme Court had granted bail to two workers in February 2015, 31 months after their arrest. In March 2015, the Gurgaon District Court granted bail to 77 out of the 148 workers arrested in connection with the violence which occurred at the Company. In August 2016, 18 workers were granted bail by the trial court. Five more workers, arrested in connection with the violent incident, were granted bail by a trial court on 13 September 2019. With this, 139 of the 148 workers arrested in the case so far are now out on bail. Four persons who have been granted bail are office bearers of the MSWU. According to the complainants, 13 trade union leaders remain in jail having been found guilty of the murder of the manager.

414. The complainants further allege that, after the incident, the management terminated the services of 550 permanent and 1,800 contract workers.

415. The ITUC–AP further alleges that in October 2015 when a new wage agreement was announced it only covered permanent and not temporary workers. The temporary workers sought to protest against this discrimination, but their peaceful assembly was violently crushed by the police. There were more than 3,000 temporary workers at the Company who had been demanding equal wages with permanent workers and rallied at the plant gates to show their discontent. Police responded by violently breaking up the demonstrations. Several workers were injured and arrested. The arrested persons were released on bail.

416. According to the complainants, the Government failed to: conduct an independent investigation into the incidents leading up to the events of 18 July 2012 and thereafter; ensure that the workers unfairly terminated and collectively punished for the events of 18 July 2012 had received redress including reinstatement; ensure that the right of the workers to peacefully strike in defence of their social and economic interest was upheld. The complainants consider that violent attacks, arbitrary attacks and unwarranted imprisonment of workers under such circumstances have seriously undermined the right of workers to form and join unions of their choice for the protection and defence of their social and economic interests. The complainants express serious concern that eight members of the former executive committee of the union remain in jail having been falsely accused and held collectively responsible for the events of 18 July 2012 without an independent investigation. It equally decries the detention of workers, in some cases for four years, on false charges. The complainants allege that workers who were unfairly dismissed are unable to find other jobs due to indirect blacklisting, their case having been widely circulated in the media and brought to the attention of other companies. Their families suffered a lot because of their false implication; they had to vacate their rental houses and had to withdraw their children from school and could hardly afford to eat.

417. The complainants consider that the Government must conduct an independent investigation into the events leading up to and occurring on the 18 July 2012 and thereafter, with a view to upholding the principles of freedom of association and the right to collective bargaining and ensuring that innocent workers are not victimized or collectively punished. They further consider that the Government must work expeditiously with the social partners to ensure that

the 117 workers found not guilty of any offence by the court in its judgment dated 12 March 2018 are immediately reinstated or fully compensated with all consequential benefits. Furthermore, the Government must ensure, as a matter of urgency, that workers who want to form or join a union in a company have the freedom and protection to do so and to freely bargain collectively for their conditions of service and to protect their interests. The Government must ensure that peaceful strikes are not sabotaged by employers or state officials and that there are consequences for any acts to intervene and undermine a peaceful strike after thorough investigations have been conducted.

B. The Government's reply

418. In its communication dated 27 October 2021, the Government provides the following information based on the observations received from the State Government of Haryana.

419. On 18 July 2012, major violence occurred in the Manesar plant of the Company during which there were incidents of fire and injuries inflicted on the management of the company, which resulted in the death of the senior human resources officer, Mr Awanish Kumar Dev, and physical disablement of many senior officers of the company. Before addressing the present complaint in relation to this incident and the consequences thereof, the Government outlines the chronology of the events as follows.

420. The Company was incorporated in 1983. It was a public sector undertaking until 2003. It has a registered worker's union since 1983. After the privatization of the Company, the MUKU was established. In 2006, another manufacturing unit was set up at a plant in Manesar. The workers of this new plant were members of the MUKU and thus enjoyed the same wage and other financial benefits given to workers of the Gurugram Unit. A collective agreement was concluded in 2009 by the MUKU and covered workers of both plants.

421. On 3 June 2011, a section of workers at the plant in Manesar applied for registration of a new union, the MSEU. On 4 June 2011, a strike started at the premises of the Company's plant in Manesar. According to the management, the strike occurred without any notice. The leaders of the strikers stated that the management was obstructing the formation of a separate union by the workers. On 6 June 2011, the management dismissed 11 of the striking workers, the office bearers of the MSEU, for instigating strikes. Conciliation proceedings were initiated by the Labour Department, but it could not be settled. All the disputed points and issues were referred for adjudication to the Industrial Tribunal-cum-Labour Court on 10 June 2011. Workers were prohibited from continuing the strike and both the management and the workers were directed by the Government's order dated 10 June 2011 to maintain industrial peace, law and order. On 16 June 2011, the dispute was settled pursuant to section 12(3) of the Industrial Disputes Act, 1947, through mediation by the Deputy Labour Commissioner. The crux of the agreement was that the dismissal of the aforesaid 11 office bearers was withdrawn by the management. The Government points out that while workers resorted to a prohibited strike, peace and normality were restored through the efforts of the Labour Department and 11 dismissed workers were reinstated.

422. The Government further explains that the application for the MSEU registration was rejected by the Registrar-cum-Labour Commissioner on 29 July 2011 on the grounds of forged signatures, lack of authenticity of election conducted on 29 May 2011, not fulfilling the statutory minimum membership requirement of 10 per cent of workers of the total workforce and also due to the strike resorted to on 4 June 2011.

423. The Government further explains that, according to the management, workers were resorting to a go-slow as well as to wilful and deliberate acts of sabotage endangering the plant. In this

connection, on 29 August 2011, the management asked its workers to sign a good conduct bond, but the workers refused and protested outside demanding withdrawal of the bond. During the dispute, around 33 workers were dismissed and 29 were suspended. The workers submitted a demand notice for reinstatement and quashing of all charges against the 33 dismissed and 29 suspended workers. The deadlock was resolved through a settlement under section 12(3) of the Industrial Disputes Act through mediation by the Deputy Labour Commissioner. The crux of the agreement was that workers would sign the bond before reporting for duty on 3 October 2011, the dismissal orders of 15 workers would be converted into suspension orders and 18 technical trainees whose training had been terminated would resume their training. This issue was thus resolved. On 7 October 2011, however, the workers went on strike again. The Government indicates that, according to the management, no prior notice had been given and some workers indulged in violence. The conciliation procedures were initiated by the Labour Department, but the parties could not agree. By the Government's order dated 12 October 2011 workers were prohibited from continuing the strike and the issue of legality of the strike together with other disputed issues were referred for adjudication to the Industrial Tribunal-cum-Labour Court. On 19 October 2011, the dispute was settled pursuant to section 12(3) of the Industrial Disputes Act through mediation by the Deputy Labour Commissioner. The Government points out that the facts as described above demonstrate that whenever the dispute arose, the Labour Department adopted a balanced approach and tried to get the dispute settled between the management and the workers.

424. On 10 February 2012, having corrected previous mistakes in the application, the workers applied for the registration of the MSWU. The union was registered by the Registrar-cum-Labour Commissioner on 23 February 2012 and subsequently presented a general demand notice for wage settlement. During the pendency of the demand notice, on 18 July 2012, workers of the plant resorted to violence at the factory premises and incidents of fire were reported. The General Manager for Human Resources died due to the said violence. This led to the registration of criminal cases against the erring workers and the matter was handed over to the police department for investigation. A proper investigation was carried out by the police and "first information reports" were registered against the wrongdoers.

425. Regarding the Government's alleged failure to act, the Government indicates that the incident of 18 July 2012, during which a senior manager lost his life due to the violence resorted to by workers inside the plant, was disgraceful. The Government points out that workers have resorted to strikes despite the fact that the Government of Haryana has prohibited the continuation of strikes on two occasions. Various conciliation meetings were held and the Labour Department was continuously in touch with both workers and management but the action of workers on 18 July 2012 changed the industrial environment for the worst. The police department has investigated the matter and initiated criminal action, as per the provisions of the criminal law, against the wrongdoers.

426. The Government indicates that a Special Investigation Team was constituted for proper investigation into the incident of 18 July 2012 and that, on the basis of the investigation, the police filed "first information reports" in respect of 148 workers under the criminal law. All the accused were subject to criminal trial before the Sessions Court and had the right to defend themselves. The Court found 31 guilty and convicted them and 117 workers were exonerated on the basis of the benefit of the doubt. The State appealed to higher courts against the acquittal of the 117 workers; the 31 accused workers appealed their conviction. The Government emphasizes that court decisions are always to be respected and accepted, that its judiciary is independent, its process is impartial and that justice would be done.

427. The Government indicates that suo moto cognizance was taken by the Haryana Human Rights Commission (HHRC) of the report dated 27 June 2013 of the International Commission for Labour Rights (ICLR), New York. The HHRC has ordered that the matter is sub judice and pending before the Court. The Government therefore considers that it is wrong to say that no inquiry or investigation has been conducted. On the contrary, the authorities concerned have investigated the incident and due process as per law of the land has been followed.

428. Regarding the complainant's allegation that the Government failed to ensure that the dismissed and collectively punished workers for the events of 18 July 2012 received redress, including reinstatement, the Government informs that 546 workers were dismissed by the management following the 18 July 2012 incident, and 377 workers have appealed their dismissal before the Labour Court; their cases are still pending. The Government indicates that further action will be taken as per the decision/order of the Court.

429. The Government indicates that while the Labour Department of the Government of Haryana protects peaceful legal strikes, violent strikes and sit-in strikes, where workers sit inside the plant, are not allowed, as they adversely affect industrial production and destroy the industrial peace and harmony of the industries around. While peaceful legal strikes have never been disturbed or sabotaged, illegal and violent strikes are not allowed. The Government points out that in this particular case workers have resorted to a strike, the continuation of which the Government of Haryana has prohibited and asked both the management and the workers to restore peace. If workers want to do a peaceful protest they can do so at the protest site earmarked for the purpose by the Deputy Commissioner of the area or in some area designated for conducting peaceful protests and strikes.

430. In conclusion, the Government points out that the Labour Department, Government of Haryana, respects the right of workers to organize and principles of freedom of association. It further emphasizes that workers who want to join a union have the freedom to do so. The right to freedom of association is enshrined in the Constitution of India; this right has been mandated in the Trade Union Act, 1926, pursuant to which, workers can apply for registration of a union after fulfilling the conditions as enshrined in the Act. According to the Government, India's conciliation system is also very effective for collective bargaining.

C. The Committee's conclusions

431. *The Committee notes the following background to this case, as described by the ITUC–AP and the ITUC, the complainants in this case, and the Government. Previously a public sector enterprise, the Company became private in 2003. In 2006, a second plant was set up at Manesar. In 2011, workers of the Manesar plant began a process of forming a union, independent from the existing MUKU. The registration of the MSEU was initially denied. The Committee notes a number of labour disputes in this connection, as described by both the complainant and the Government, which appear to have been settled at the time. In February/March 2012, the MSWU was registered. Subsequently, around 18 April 2012, the union presented its proposals for negotiation of a collective agreement.*

432. *The Committee further notes that the events that followed as alleged by the complainants and as presented by the Government differ. According to the complainants, the Company's management stalled and delayed the negotiations. The complainants argue that the management refused to negotiate and the Government failed to facilitate the process through a conciliation or mediation mechanism. According to the complainants, in anticipation of a reaction from the union, the management brought in so-called "bouncers" camouflaged as workers to incite workers; the former began picking fights with workers and the situation escalated. The complainants allege that on the morning of 18 July 2012, a supervisor insulted a worker based on his caste, knowing that such an*

insult would generate major tension in the workplace. The worker who was insulted was later suspended. The complainants allege that the issue raised tension and the management invited the police, who remained outside the premises even when the tension escalated. According to the complainants, during that time, the union and the management were in a meeting trying to resolve the situation, however, with the scuffle and the chaos, it broke down. A fire began on the premises where the negotiations were taking place and spread; as a result of the incident, the General Manager for Human Resources died of asphyxiation. At that stage, the police intervened and arrested 148 workers and unionists. They were charged with murder, rioting and other serious charges under the Indian Penal Code. According to the complainants, over 150 workers were jailed on serious criminal charges including those who were not even present in the factory premises when the violent incident occurred. The District Court in Gurgaon rejected the workers plea for bail on three occasions. The High Court of Punjab and Haryana also turned down the bail plea twice stating that the incident had lowered India's international reputation and that foreign investors were not likely to invest their money in India out of fear of labour unrest. The Supreme Court had granted bail to two workers in February 2015, 31 months after their arrest. In March 2015, the Gurgaon District Court granted bail to 77 out of the 148 workers arrested in connection with the violence that occurred at the Company. In August 2016, 18 workers were granted bail by the trial court. Five more workers, arrested in connection with the violent incident, were granted bail by a trial court on 13 September 2019. The complainants indicate that, as of the day of the complaint, 13 persons were still in jail having been found guilty of the murder of the manager. The complainants consider that the Government failed to conduct an independent investigation into the incidents leading up to the events of 18 July 2012 and thereafter. The complainants express serious concern that eight members of the former executive committee of the union remain in jail having been falsely accused and held collectively responsible for the events of 18 July 2012 without an independent investigation. It decries the detention of workers, in some cases for four years, on false charges.

433. *The Committee notes that, according to the Government, the incident of 18 July 2012 during which a senior manager lost his life was due to the workers' violence during a strike, the continuation of which the Government had prohibited on two occasions. The Government indicates that while various conciliation meetings were held and the Labour Department was continuously in touch with both workers and management, the action of workers on 18 July 2012 changed the industrial environment for the worst. The police investigated the matter and initiated criminal action, as per the provisions of the criminal law, against the wrongdoers. The Government refutes the complainants' allegation that no proper investigation of the incident took place and indicates that a Special Investigation Team was constituted for proper investigation of the 18 July 2012 incident and that on the basis of the investigation the police filed criminal charges in respect of 148 workers. All of the accused were subject to a criminal trial before the Sessions Court and had the right to defend themselves. The Court found 31 guilty and exonerated 117 workers. The State appealed the acquittal of the 117 workers; the 31 accused workers appealed their conviction. The Government emphasizes that court decisions are always to be respected and accepted and that its judiciary is independent, its process is impartial and that justice would be done. The Government also indicates that suo moto cognizance was taken by the HHRC of the report dated 27 June 2013 of the ICLR, New York. The HHRC has ordered that the matter is sub judice and pending before the Court.*

434. *At the outset, the Committee deeply regrets the loss of life of a senior human resources officer of the company and physical disablement of other senior officers that occurred during the events of 18 July 2012. The Committee recalls that penal sanctions should only be imposed if, in the framework of a strike, violence against persons and property or other serious violations of the ordinary criminal law are committed, and this, on the basis of the laws and regulations punishing such acts [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 955]. The Committee further recalls that criminal sanctions may only be imposed if during a strike*

*violence against persons or property or other infringements of common law are committed for which there are provisions set out in legal instruments and which are punishable thereunder [see **Compilation**, para. 972]. The Committee understands that the Court found 31 guilty and exonerated 117 workers and that appeals are pending against both the guilty verdicts and the acquittals. It further understands that pending appeal, among those found guilty, 13 workers (among them eight trade union office bearers) remain in jail while others were released on bail. The Committee recalls that it has pointed out that where persons have been sentenced on grounds that have no relation to trade union rights the matter falls outside its competence. It has, however, emphasized that whether a matter is one that relates to the criminal law or to the exercise of trade union rights it is not one which can be determined unilaterally by the government concerned. This is a question to be determined by the Committee after examining all the available information and, in particular, the text of the judgment [see **Compilation**, para. 181]. The Committee observes that copies of relevant judgment(s) relating to the 13 workers still imprisoned who have been refused bail pending appeal have not been provided. The Committee therefore requests the Government and the complainant organization to provide a copy of all relevant court decisions.*

435. *The Committee notes that the events in this case took place almost ten years ago and expresses its deep concern at the length of the legal proceedings, which are still pending. It recalls the importance it attaches to such proceedings being concluded expeditiously, as justice delayed is justice denied [see **Compilation**, paras 169–170]. The Committee expresses the firm expectation that the pending cases will be concluded without further delay.*

436. *Regarding the complainants' allegation that after the incident the management terminated the services of 550 permanent and 1,800 contract workers and that the Government failed to ensure that the workers unfairly terminated and collectively punished for the events of 18 July 2012 had received redress including reinstatement, the Committee notes that, according to the Government, 546 workers were dismissed by the management following the incident, that 377 workers appealed their dismissal before the Labour Court and that their cases are still pending. The Government indicates that further action will be taken as per the decision/order of the Court. The Committee notes that according to the Company, whose comments the Government forwarded with its reply, any reinstatement is subject to the decision by the relevant court. The Committee recalls in this respect that the longer it takes for a procedure – particularly concerning the reinstatement of trade unionists – to be completed, the more difficult it becomes for the competent body to issue a fair and proper relief, since the situation complained of has often been changed irreversibly, people may have been transferred, etc., to a point where it becomes impossible to order adequate redress or to come back to the status quo ante [see **Compilation**, para. 1143]. It further recalls that delay in the conclusion of proceedings giving access to remedies diminishes in itself the effectiveness of those remedies, since the situation complained of has often been changed irreversibly, to a point where it becomes impossible to order adequate redress or come back to the status quo ante [see **Compilation**, para. 1144]. Furthermore, in cases in which proceedings concerning dismissals had already taken 14 months, the Committee requested the judicial authorities, in order to avoid a denial of justice, to pronounce on the dismissals without delay and emphasized that any further undue delay in the proceedings could in itself justify the reinstatement of these persons in their posts [see **Compilation**, para. 1146]. The Committee recalls that respect for the principles of freedom of association requires that workers should not be dismissed for engaging in legitimate trade union activities. It further recalls that the Government must ensure an adequate and efficient system of protection against acts of anti-union discrimination, which should include sufficiently dissuasive sanctions and prompt means of redress, emphasizing reinstatement as an effective means of redress [see **Compilation**, paras 1164 and 1165]. The Committee firmly expects that the judicial procedures will be concluded without delay given that ten years have elapsed since the dismissals. If it appears that the dismissals occurred as a result of involvement by the workers concerned in the activities of*

*a union, the Government must ensure that those workers are reinstated in their jobs without loss of pay [see **Compilation**, para. 1169]. The Committee requests the Government to provide detailed information on the status of each of the pending court cases.*

437. *The Committee notes the ITUC–AP allegation that in October 2015, when a new wage agreement was announced, it only covered permanent and not temporary workers and that the peaceful assembly of temporary workers who sought to protest this alleged discrimination was violently crushed by the police. According to the complainant, there were more than 3,000 temporary workers at the Company who had been demanding equal wages with permanent workers and rallied at the plant gates to show their discontent. The ITUC–AP alleges that the police responded by violently breaking up the demonstrations, that several workers were injured and arrested and that the arrested persons were released on bail. The Committee requests the Government to provide its observations thereon.*

The Committee's recommendations

438. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government and the complainant organization to provide a copy of all relevant court decisions.

(b) The Committee expresses its deep concern at the length of the legal proceedings and expresses the firm expectation that the pending cases will be concluded without further delay given that ten years have elapsed since the dismissals. If it appears that the dismissals occurred as a result of involvement by the workers concerned in the activities of a union, the Government must ensure that those workers are reinstated in their jobs without loss of pay. The Committee requests the Government to provide detailed information on the status of each of the pending court cases.

(c) The Committee requests the Government to provide its observations on the ITUC–AP allegations in relation to the October 2015 demonstration.

Case No. 3411

Definitive report

Complaint against the Government of India presented by
- the Centre of Indian Trade Unions (CITU) and
- the All India Trade Union Congress (AITUC)

Allegations: The complainant organizations allege that the Essential Defence Services Bill, introduced to Parliament to replace the promulgated Essential Defence Services Ordinance, prohibits all types of industrial actions in defence production organizations and provide for the possibility of dismissal and the imposition of excessive penalties in the event of infringement, thereby violating the workers' right to freedom of association

439. The complaint is contained in communications from the Centre of Indian Trade Unions (CITU) and the All India Trade Union Congress (AITUC), dated 24 and 28 July 2021, respectively.

440. The Government of India transmitted its observations in communications dated 19 January and 30 September 2022.

441. India has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

442. In their communications dated 24 and 28 July 2021, the CITU and the AITUC explain that India has a large defence material production and services setup, consisting of some 44 industrial establishments, as well as research institutions catering to the needs of the military and supplying equipment for civil purposes. More than 75 per cent of Indian defence forces needs are produced and supplied by its ordnance factories, which employ thousands of workers, and which are owned by the Department of Defence Production (DDP) under the Ministry of Defence.

443. The complainants allege that the central Government has been actively moving towards the privatization of the sector and that to pave the way for and to facilitate this process, 41 ordnance factories, which have been functioning under the Ordnance Factories Board (OFB), are being sought to be corporatized in seven entities, registered as seven separate companies under the Companies Act. The complainants indicate that one of the reasons behind calling a strike/industrial dispute by workers in the defence sector was the threat of losing jobs emerging out of privatization and the threat of losing the Exchequer of the Government, which would no longer gather profit and invest that surplus for the greater need of the country. Through dialogue, the Ministry of Defence, acknowledging that the

privatization move would be stalled, settled the issue. Consequently, the unions withdrew their strike notice served on the Government. The complainants allege, however, that the Government, in violation of written agreements with the unions, decided to continue with the corporatization of the ordnance factories, pushing them towards privatization. In response, the unions served a notice of industrial action for breach of assurance given by the Government. The Federations of the Defence Civilian Employees have taken a decision to go on an indefinite strike after following all the procedures laid down in the Industrial Dispute Act, 1947, and the Recognition Rules for the Trade Unions of Ministry of Defence.

444. The complainants allege that instead of treating the issue as an industrial dispute, the Government decided to crush the democratic rights of employees by promulgating a draconian Essential Defence Services Ordinance (EDSO), 2021, which curbed the right of workers in the defence sector to strike and imposed all types of punitive measures, such as dismissal from service without inquiry and imprisonment for up to two years with other consequences. The complainants indicate that when tabling the Essential Defence Services Bill in Parliament, the Government stipulated its objectives and the reasons for its adoption as follows:

> 5. As Parliament was not in session and urgent legislation was required to be made, the President promulgated the Essential Defence Services Ordinance, 2021 on the 30th June, 2021, which, *inter alia*, provides for the following, namely: –
>
> (a) to define the expressions "essential defence services" and "strikes";
>
> (b) to empower the Central Government to prohibit strike in essential defence services;
>
> (c) to provide for disciplinary action, including dismissal, against employees participating in strikes;
>
> (d) to provide for penalties for illegal strikes, instigation thereof and providing for financial aid to such illegal strikes;
>
> (e) confer power on any police officer to arrest without warrant any person who is reasonably suspected to have committed any offence under the proposed legislation.

445. According to the complainants, the Bill takes away the fundamental rights of workers guaranteed by the national Constitution. They indicate that while the definition of the term "strike" has been provided for in the Industrial Disputes Act, 1947, the Bill has a different definition making it much wider so as to cover various forms of non-strike trade union activities/actions and leaving a greater power to the authorities to suppress almost all trade union activities:

> 2(1)(b): "strike" means the cessation of work, go-slow, sit down, stay-in, token strike, sympathetic strike or mass casual leave, by a body of persons engaged in the essential defence services, acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so engaged to continue to work or to accept employment, and includes –
>
> (i) refusal to work overtime, where such work is necessary for the maintenance of the essential defence services;
>
> (ii) any other conduct which is likely to result in, or results in, cessation or retardation or disruption of work in the essential defence services.

446. Thus, according to the complainants, the Bill debars workers from expressing any kind of discord or protest, including through gate meetings, shouting slogans even on non-strike issues, etc. They further point out that pursuant to section 3 of the Bill, the Central Government is empowered to issue an order prohibiting a strike, if necessary, in the interest of:

(i) sovereignty and integrity of India; (ii) security of any State; (iii) public order; (iv) public interest; (v) decency; or (vi) morality. The complainants indicate that this is beyond the scope described in the existing legislation, which does not allow the Government to arbitrarily declare a ban on an industrial action by workers. Thus, according to the complainants, the Bill has taken severe recourse to crush industrial actions, in violation of the Indian Trade Unions Act, 1926:

> 18. Immunity from civil suit in certain cases.–
>
> (1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.
>
> (2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Union.

447. The complainants describe the Bill as draconian for trade unions and their members because it punishes the commencement of and participation in an illegal strike by imprisonment for a term of up to one year or with a fine which may extend to 10,000 Indian rupees, or with both; and the instigation of illegal strikes by imprisonment for a term of up to two years or with a fine which may extend to 15,000 rupees, or with both.

448. The complainants indicate that it is not clear from the Bill who decides that the strike is illegal. They further consider that the legislation targets trade union leaders by providing for harsher penalties, which has an effect of prohibiting trade unions in practice. Furthermore, the complainants consider that the Bill violates workers' fundamental rights enshrined in the national Constitution as, like the Ordinance, it directs the police force to arrest any person without showing any reason or without any warrant.

449. The complainants further point out that the Bill gives unfettered power to the police administration for arbitrary actions, or judicial authority to a lower court against the impugned person for action without any scope to defend or appeal for justice. Like the Ordinance, the Bill ensures such arbitrary action is lawful and unchallengeable:

> 12. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 all offences in this Ordinance shall be tried in a summary way by any Metropolitan Magistrate or any Judicial Magistrate of the first class, specially empowered in this behalf by the State Government and the provisions of sections 265 to 267 (inclusive) of the said Code shall apply to such trial:
>
> Provided that in case of conviction for any offence in a summary trial under this section, it shall be lawful for such Magistrate to pass a sentence of imprisonment for any term for which such offence is punishable under this Ordinance. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 all offences punishable under this Ordinance shall be cognisable and non-bailable.

450. Furthermore, the complainants indicate that in addition to imprisonment and monetary penalty, the Bill provides for summary dismissal.

> 13. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences punishable under this Act shall be cognizable and non-bailable.

> 14. Any reference in this Act to any law which is not in force in any area and to any authority under such law shall, in relation to that area, be construed as a reference to the corresponding law in force in that area and to the corresponding authority under such corresponding law.
>
> 15. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer for anything which is in good faith done or intended to be done under this Act.
>
> 16. The provisions of this Act and of any order issued thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force.

451. The complainants express their concern that the Government will extend this Bill to other sectors to gradually curb the fundamental rights of workers by making industrial actions illegal and punishable and refer in this respect to Clause 17, which would appear to be applicable to the port sector:

> 17. In the Industrial Disputes Act, 1947 Section 2, in Clause (n), sub clause (ia), for the words "or dock" the words "or dock or any industrial establishment or unit engaged in essential defence services" shall be substituted.

452. The complainants conclude that the Bill is aimed at prohibiting all industrial actions/strikes by employees and unions in the defence sector and at destroying trade unions in that sector. They request the Committee to recommend to the Government to withdraw it.

B. The Government's reply

453. In its communication dated 19 January 2022, the Government explains that the Indian ordnance factories are the oldest and largest factories under the Department of Defence Production of the Ministry of Defence. The ordnance factories form an integrated base for production of defence hardware and equipment, with the primary objective of self-reliance in equipping the armed forces with the state-of-the-art battlefield equipment. In order to improve the autonomy, accountability and efficiency in ordnance supplies, the Government has decided to convert 41 production units of OFB into seven Defence Public Sector Undertakings (DPSUs), 100 per cent Government-owned entities to be registered under the provisions of the Companies Act, 2013.

454. The Government indicates that against the said decision of the Government, and despite the Government's assurances that it would take care of the conditions of service of the OFB employees, the recognized trade union federations have expressed their intention to go on an indefinite strike.

455. The Government indicates that in view of the situation prevailing at the northern borders at the time, it was felt essential that an uninterrupted supply of ordnance items to the armed forces be maintained for the defence preparedness of the country and the ordnance factories continue to function without any disruptions. It was necessary for the Government to have the power to meet the emergency and ensure the maintenance of essential defence services in all establishments connected with defence, in public interest, or interest of the sovereignty and integrity of India, or security of any State, or decency, or morality.

456. The Government indicates that the Bill has now been passed by both Houses of Parliament and with the assent of the President of India became an Act – the Essential Defence Services Act (EDSA). The Government considers that the Act does not violate ILO fundamental principles and rights at work, which include freedom of association and the right to collective bargaining; it only prohibits strikes, which is not a fundamental right under the Constitution of India.

457. The Government further indicates that the ordnance factories are not being privatized and that the complainants' apprehension is not based on any facts. The Government informs that as per the Rules, except for employees of the OFB Headquarters Kolkata, the OFB New Delhi Office, OF Schools and OF Hospitals, who have been transferred to the Directorate of Ordnance (Coordination & Service) to be formed under the DDP, all employees of OFB (Group A, B and C) have been transferred (deemed deputation) for an initial period of two years as from 1 October 2021 (date of commencement of business by the new corporate entities). The Government details the conditions of services of employees on deemed deputation as follows:

(a) Each of the new DPSUs is required to frame rules and regulations related to service conditions of the absorbed employees and seek an option for permanent absorption from the employees on deemed deputation to that respective DPSU, within a period of two years. It is important to mention that the service conditions of the absorbed employees would not be inferior to the existing ones. A committee would be constituted by the DDP for guiding the new DPSUs in this regard so that the absorption package given is attractive.

(b) Till such time the employees remain on deemed deputation to the new entities, they shall continue to be subject to all extant rules, regulations and orders, as are applicable to the Central Government servants, including related to their pay scales, allowances, leave, medical facilities, career progression and other service conditions.

(c) The pension liabilities of the retirees and existing employees will continue to be borne by the Government from the MOD budget. For the employees recruited after 1 October 2004, the New Pension Scheme applicable to the Central Government employees is in force and the same may be adopted by the new corporate entities, including continuation of all special provisions applicable to the Central Government employees under the National Pension System.

(d) The conditions of payment of pensionary benefits to the employees of OFB on absorption to the new corporate entities would be regulated in accordance with Rule 37-A of the Central Civil Services (pension) Rules, 1972.

458. The Government indicates that unless the OFB employees chose to opt for permanent absorption in the new DPSUs, they would continue as Central Government servants and their pay scales, allowances, leave, medical facilities, career progression and other service conditions will also continue to be governed by the extant rules, regulations and orders, as are applicable to the Central Government servants.

459. As to the new legislation, the Government indicates that under section 2(1)(b) of the Act, the definition of "strike" has been enlarged to include strikes in any form such as "go-slow", "sit down", "stay-in", "token strike", "sympathetic strike" or "mass casual leave". The Government explains that this aims at preventing participation in any form of strikes, which is prejudicial to the security of the State, public interest, sovereignty and integrity of India, public order, or decency or morality in essential defence services.

460. The Government further indicates that all provisions of the Industrial Disputes Act, 1947 on conciliation and adjudication, collective bargaining and every step which otherwise workers could have taken under it, are still available to them, except for instigating, supporting and participating in strikes. The existing framework for industrial relation mechanisms under various statutes will continue. The Government explains that the provisions of the Industrial Disputes Act (including the conciliation proceedings) are not sufficient to prevent or prohibit strikes in industrial establishments that are engaged in essential services or notified as "public utility service". The procedure for conciliation and adjudication provided for in the Industrial Disputes Act is available to workers, except instigating, supporting and participating in strikes; the grievances of defence civilian employees can be settled within the existing framework of

labour laws, especially the Industrial Disputes Act, without resorting to strikes, which is not a fundamental right. However, if any act prejudicial to the functioning, safety or maintenance of the essential defence services is committed, the police officers have been given the powers to arrest. The Government points out that the provisions of the EDSA apply only to the employees working in essential defence services. The Act does not take away the right to peaceful protest by employees following the due process of law, only strikes have been prohibited as this is not a fundamental right.

461. The Government explains that the EDSA empowers it to regulate the maintenance of defence production and related services. This Act aims at ensuring an uninterrupted supply of ordnance items to the armed forces for the defence preparedness of the country. The Act is not taking away the right to assemble peacefully and to form associations or unions which has been guaranteed as a fundamental right under Part III of article 19 of the Constitution of India. However, the same article provides for reasonable restrictions on this right:

> ... nothing in sub clause (b) of the said clause shall affect the operation of the existing law or prevent the government from making any law in so far as the law imposes reasonable restrictions on the right conferred by the said sub-clause, in the interest of sovereignty and integrity of India, security of State, public order decency or morality.

462. The Government further indicates that the EDSA covers any establishment or undertaking dealing with production of goods or equipment required for any purpose connected with defence. It also covers any service in any establishment of, or connected with, the armed forces or in any other establishment or installation connected with defence. Pursuant to Part III of article 33 of the national Constitution, Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to: (a) members of the Armed Forces; or (b) members of the forces charged with the maintenance of public order; or (c) persons employed in any bureau or other organization established by the State for the purpose of intelligence or counter intelligence; or (d) persons employed in or in connection with, telecommunication systems set up for the purposes of any forces, bureau or organization referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

463. The Government indicates that the right to collective bargaining is still available to the unions and the immunity provided for under the Trade Union Act has not been taken away. Furthermore, in no way does the EDSA interfere with the right of organizations to draw up their constitutions and rules, elect representatives in full freedom, etc. The Act does not intend to crush industrial actions by workers/employees. The Government reiterates that the Act is limited in its application to the essential defence services, in which the Central Government can prohibit strikes by a special or general order if the circumstances so necessitate; all other services and sectors are not covered by this Act. The situation in the northern borders of India had necessitated ensuring a continuous supply of arms, ammunition and other defence equipment to the armed forces and that situation still continues. According to the EDSA, any person who instigates or incites other persons to take part in, or otherwise acts in furtherance of, a strike which is illegal under the Act, shall be punishable with imprisonment, or a fine or both. The similar provisions already exist in the Industrial Disputes Act, 1947, under which, those going on an illegal strike can be arrested, imprisoned, fined, or both.

464. The Government points out that the Act has a sunset clause. It shall cease to have effect on the expiry of one year from the date on which it received the assent of the President. By its communication dated 30 September 2022, the Government informs that the Act ceased to have effect after expiry of the given period.

465. The Government further points out that on the one hand, Convention No. 87 allows for the armed forces to be excluded from its application, and on the other, it is not bound by Conventions Nos 135 and 151, which it had not ratified.

C. The Committee's conclusions

466. *The Committee notes that the CITU and the AITUC, complainants in this case, allege that the Essential Defence Services Bill introduced in Parliament to replace the promulgated earlier Essential Defence Services Ordinance prohibits all types of industrial action in defence production organizations and provides for the possibility of dismissal and imposition of excessive penalties in the event of infringement, thereby violating the workers' right to freedom of association. The Committee notes that the Essential Defence Services Act was adopted and received the assent of the President on 11 August 2021.*

467. *The Committee notes the circumstances that led to the promulgation of the Ordinance and then the submission of the "Bill to provide for the maintenance of essential defence services so as to secure the security of nation and the life and property of public at large and for matters connected therewith or incidental thereto" to Parliament. Specifically, the Ordinance and the Act were adopted following threats of strikes against the Government's intention to reorganize ordnance factories into undertakings to be registered under the Companies Act, 2013, which the complainants claim paved the way for the privatization of factories. The Committee notes that the Government denies that ordnance factories are being privatized and explains that the Act was adopted to prevent strikes in the sector, especially during the political turbulence at India's northern boarders.*

468. *The Government points out that workers in this sector enjoy all freedom of association rights, that is the right to establish trade unions, to draw their constitutions and rules, to elect their representatives, to bargain collectively, to protest, etc., except for the right to strike. The Government points out that the Act is limited to essential defence services only. The Government considers that the right to strike is not a fundamental right and workers in this sector can be prohibited from exercising it. Accordingly, pursuant to the Act, resorting to strikes in essential defence services can be prohibited by the Central Government by a special or general order if the circumstances so necessitate. The Government further points out that all other relevant legislation (the Trade Union Act and the Industrial Disputes Act) is still in force. In this respect, the Government points out that the procedures for conciliation and adjudication provided for in the Industrial Disputes Act remain available to workers. The Government indicates that the Act has a clause providing for its expiration one year following the Presidential assent on 11 August 2021 and that accordingly the Act ceased to have effect after the expiry of the given period.*

469. *The Committee notes the Government's argument that Convention No. 87 allows for the armed forces to be excluded from its application. While observing that the Government has not ratified Convention No. 87, in reply to this argument the Committee recalls that the members of the armed forces who can be excluded from the application of Convention No. 87 should be defined in a restrictive manner [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 344]. It further recalls that civilian workers in the manufacturing establishments of the armed forces should have the right to establish organizations of their own choosing without previous authorization, in conformity with Convention No. 87 [see **Compilation**, para. 348]. The Committee has also considered that it is clear that the International Labour Conference intended to leave it to each State to decide on the extent to which it was desirable to grant members of the armed forces and of the police the rights covered by Convention No. 87. It also held that the same considerations apply to Conventions Nos. 98, 151 and 154 [see **Compilation**, para. 1253].*

470. *Regarding the Government's argument that the right to strike is not a fundamental right, the Committee recalls that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests [see **Compilation**, para. 752]. The Committee considers, however, that in exceptional circumstances, the right to strike can be restricted or prohibited. In this respect, the Committee recalls that to determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population's interests [see **Compilation**, para. 836].*

471. *The Committee notes that pursuant to section 2 of the Act, "essential defence services" means:*

> *(i) any service in any establishment or undertaking dealing with production of goods or equipment required for any purpose connected with defence;*
>
> *(ii) any service in any establishment of, or connected with, the armed forces of the Union or in any other establishment or installation connected with defence;*
>
> *(iii) any service in any section of any establishment connected with defence, on the working of which the safety of such establishment or employee employed therein depends;*
>
> *(iv) any other service, as the Central Government may, by notification in the Official Gazette, declare to be essential defence services, the cessation of work of which would prejudicially affect the –*
>
> > *(I) production of defence equipment or goods; or*
> >
> > *(II) operation or maintenance of any industrial establishment or unit engaged in production of goods or equipment required for any purpose connected with defence; or*
> >
> > *(III) repair or maintenance of products connected with defence;*

It further notes that pursuant to section 3:

> *(1) If the Central Government is satisfied that in the –*
>
> > *(a) public interest; or*
> >
> > *(b) interest of the sovereignty and integrity of India; or*
> >
> > *(c) security of any State; or*
> >
> > *(d) public order; or*
> >
> > *(e) decency; or*
> >
> > *(f) morality,*
> >
> > *it is necessary or expedient so to do, it may, by general or special order, prohibit strikes in the essential defence services.*
>
> ...
>
> *(3) An order made under sub-section (1) shall be in force for six months, but the Central Government may, by a like order, extend it for any period not exceeding six months, if it is satisfied that in the public interest it is necessary or expedient so to do.*

472. *The Committee observes that the services described above as a whole and the situations in which strikes can be declared illegal therein are excessively broad, especially as the prohibitions may be ordered outside of any acute national emergency and may encompass the production of goods and defence equipment not immediately needed for the defence of the country but intended, for example, for export. The Committee thus considers that insofar as the Act restricts the freedom of association rights of a broad-range of civilian workers in the manufacturing establishments of the armed forces who are not carrying out services that would endanger the life, personal safety or health of whole or part of the population, and recalling that until the adoption of this Act they were guaranteed full exercise of these rights under the Trade Union Act, these workers should be able to exercise one of the essential means to promote and defend their economic and social interests.*

473. *The Committee nevertheless recalls that when a service that is not essential in the strict sense of the term but is part of a very important sector in the country is brought to a standstill, measures to guarantee a minimum service may be justified [see **Compilation**, para. 868]. In this respect, the Committee recalls that minimum service should be restricted to the operations which are necessary to satisfy the basic needs of the population or the minimum requirements of the service, while ensuring that the scope of the minimum service does not render the strike ineffective [see **Compilation**, para. 874]. It further recalls that negotiations over the minimum service should be ideally held prior to a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment. Any disagreement should be settled by an independent body, like for instance, the judicial authorities, and not by the ministry concerned [see **Compilation**, para. 876].*

474. *Regarding the responsibility for declaring a strike illegal, the Committee recalls that it should not lie with the Government, but with an independent and impartial body and that to declare a strike or work stoppage illegal, the judicial authority is best placed to act as an independent authority [see **Compilation**, paras 909 and 910]. The Committee observes that under section 4 of the Act, where the Government issues an order declaring a strike illegal, "any police officer may take all such measures as such officer may deem fit including the use of police force, if he considers necessary, to remove any person". The Committee recalls that the authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order. The intervention of the police should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order [see **Compilation**, para. 935].*

475. *Regarding sanctions set forth by sections 6–8 of the Act for the participation in or instigation of a strike declared illegal, as well as for providing financial aid to such strikes, which may involve imprisonment, fines or both, the Committee recalls that penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association. All penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike [see **Compilation**, para. 966].*

476. *The Committee further notes that pursuant to section 5 of the Act,*

> *(1) Any person –*
>
> *(a) who commences a strike which is illegal under this Act or goes or remains on, otherwise takes part in, any such strike; or*
>
> *(b) who instigates or incites other persons to commence, or go or remain on, or otherwise take part in, any such strike,*
>
> *shall be liable to disciplinary action (including dismissal) in accordance with the same provisions as are applicable for the purpose of taking such disciplinary action (including dismissal) on any other ground under the terms and conditions of service applicable to him in relation to his employment.*
>
> *(2) Notwithstanding anything contained in any other law for the time being in force or under the terms and conditions of service applicable to any person employed in the essential defence services, before dismissing any person under sub-section (1), no inquiry shall be necessary if the authority empowered to dismiss or remove such person is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry.*

*The Committee considers that when trade unionists or union leaders are dismissed for having exercised the right to strike, the Committee can only conclude that they have been punished for their trade union activities and have been discriminated against [see **Compilation**, para. 958]. Respect*

*for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [see **Compilation**, para. 1142].*

477. *While observing that the Act is no longer in force, in view of all of the above considerations, the Committee highlights the importance of social dialogue in the process of adopting legislation, which may have an effect on workers' rights, including those intended to alleviate a serious crisis situation [see **Compilation**, para. 1546]. The Committee expects that in the future, the Government will ensure that full and frank consultation with the social partners take place on any proposed legislation affecting their rights.*

The Committee's recommendations

478. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee expects that in the future, the Government will ensure that full and frank consultation with the social partners take place on any proposed legislation affecting their rights.

(b) The Committee considers that this case is closed and does not call for further examination.

Case No. 2508

Interim report

Complaint against the Government of the Islamic Republic of Iran presented by
- the International Confederation of Free Trade Unions (ICFTU, the initial complainant in 2006 before merging into the International Trade Union Confederation, ITUC) and
- the International Transport Workers' Federation (ITF)

Allegations: The complainants denounce acts of repression against the local trade union at a city bus company, as well as the arrest and detention of large numbers of trade unionists

479. The Committee last examined this case (submitted in 2006) at its October 2021 meeting, when it presented an interim report to the Governing Body [see 396th Report, approved by the Governing Body at its 343rd Session, paras 427–452]. [5]

480. The complainants sent additional observations and new allegations in communications dated 7 and 28 September 2022.

[5] Link to previous examination.

481. The Government forwarded its observations in communications dated 11 February and 19 October 2022.

482. The Islamic Republic of Iran has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

483. At its November 2021 meeting, the Committee made the following recommendations [see 396th Report, para. 452]:

(a) The Committee welcomes the measures taken by the Government in relation to the ratification of Conventions Nos. 98 and 144 and expects that the ratification process will soon come to its conclusion. It requests the Government to keep it informed of the developments with regard to the outcome of the examination of feasibility of ratification of Convention No. 87.

(b) The Committee expresses the firm expectation that in full consultation with representatives of workers and employers, the Iranian legislation will be rapidly brought into line with the freedom of association principles, by allowing trade union pluralism. In particular, it requests the Government to review the "Guidelines on the establishment of associations of culture, arts and media professionals and the related confederations" and the "Procedure of establishment and activity of associations of culture, arts and media professionals and the related confederations", so as to allow all workers and employers in cultural, artistic and media-related professions to establish and join organizations of their own choosing at all levels. It requests the Government to provide information on the progress made in this regard.

(c) The Committee once again urges the Government to ensure that workers at the Tehran and Suburbs Bus Company are free to choose the union they wish to join and that the SVATH may recruit members, represent them and organize its activities without interference from the authorities or the employer and requests the Government to keep it informed of the measures taken and developments in this regard.

(d) Recalling that no one should be imprisoned for exercising their right to freedom of association, the Committee requests the Government to provide information about the concrete actions attributed to Messrs. Mohammadi, Azimzadeh and Ehsani Raad, including details of the "collusion" they were allegedly involved in and the nature of the acts that were being prepared in that context and their relation to the external or internal security of the State and to provide copies of the relevant court judgments. The Committee urges the Government further to ensure the immediate release of Mr Ehsani Raad should his conviction be due to his trade union activities.

(e) The Committee draws the Governing Body's attention to the extremely serious and urgent nature of this case.

B. The complainants' new allegations

484. In communications dated 7 and 28 September 2022, the International Trade Union Confederation (ITUC) and the International Transport Workers' Federation (ITF) sent additional observations and new allegations.

485. The ITUC denounces the rearrest of many trade unionists and workers in Iran for the sole reason that they peacefully exercise their rights of expression and demonstration demanding better wage conditions, in particular on the occasion of May Day. The complainant indicates that in this context, Mr Reza Shahabi, a member of the Executive Board of the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH) as well as Mr Rasoul Bodaghi, a

member of the Iranian Teachers' Association were rearrested and are now detained. The complainant alleges that Mr Shahabi and other colleagues of his were arrested on 12 May 2022, on the pretext of having met Ms Cécile Kohler and Mr Jacques Paris, two French tourists who are trade unionists in their country, while Mr Rasoul Bodaghi was arrested with many other teachers on 1 May. According to the ITUC, when Mr Shahabi was able to communicate with his family, he indicated that the meeting with Mr Paris and Ms Kohler was a lunch in public that had led to a usual, banal discussion between trade unionists.

486. The ITUC indicates that Mr Paris and Ms Kohler are both members of the Force Ouvrière Federation of National Education and Vocational Training (FNEC FP–FO). They arrived in Iran on 29 April 2022 and were expected to return to France no later than 8 May. As their families remained without news of them, they expressed concern to the French authorities. On 11 May 2022, Iranian State television, citing the Ministry of Intelligence (hereafter MOI), announced news of their arrest, accusing them of having "entered the country with the aim of triggering chaos and destabilizing the society". A video montage was broadcast on Iranian television on 17 May, clearly indicating that they were tracked by intelligence services from the moment of their arrival on Iranian soil until their arrest on their way to the airport.

487. The ITUC adds that Iranian State television described Mr Paris and Ms Kohler as spies who "intended to foment unrest in Iran by organizing union demonstrations" and affirmed that "the MOI monitored them during meetings of organization and coordination with persons who consider themselves members of the teachers' union". On 6 July 2022, Mr Massoud Setayeshi, the spokesperson for the Iranian judiciary, announced in a press conference in Tehran that Mr Paris and Ms Kohler were "accused of association and collusion with the aim of undermining the security of the State". The complainant affirms that the video broadcast on Iranian State television shows that Mr Paris and Ms Kohler visited the country without any fear, publicly and in full view of everyone.

488. The ITUC adds that until now the Islamic Republic of Iran has not permitted any consular visit from the French Embassy in Tehran with Mr Paris and Ms Kohler. The French Government, like the families of the two French unionists, remain totally uninformed of their situation and their state of physical and psychological health. Their place and conditions of detention remain officially unknown: they would be in Tehran, still in solitary confinement. The ITUC denounces these arrests and detentions, which they affirm have no other basis than to suppress all trade union action in Iran, as well as the absence of basic visitation rights, which amounts to treatment banned under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

489. In a communication dated 28 September 2022, the ITF denounced the arrest on 17 May 2022 of Mr Hassan Saeedi, a prominent leader of the SVATH. According to the complainant, Mr Saeedi was arrested by nine intelligence agents following a night raid on his home. The ITF adds that Mr Saeedi was then subjected to several days of interrogation in Ward 209 of Evin Prison. His detention has been extended every month since his arrest. He was purportedly arrested and detained for his participation in May Day protests.

C. The Government's reply

490. In its communication, the Government indicates that it has thoroughly considered the Committee's previous report concerning this case and affirms that in view of the paramount importance of freedom of association as a fundamental labour right and principle, it has followed up on the Committee's recommendations. It further indicates that the principle of freedom of association is upheld in the Iranian Constitution and other laws, and that

furthermore, a new approach is adopted in order to strengthen tripartism and review the existing laws and regulations and bring the status quo into conformity with international standards and principles.

491. With regard to the process of ratification of international labour Conventions, the Government indicates that the draft law on ratification of Convention No. 98 was approved in the plenary session of the Parliament on 12 July 2022 and was then submitted for approval to the Guardian Council of the Constitution. Note 1 of the draft law emphasizes that "the Ministry of Cooperatives, Labour and Social Welfare is the executive authority in charge of applying this law. Within six months of the adoption of the law, the Ministry shall draw up and submit to the Council of Ministers for approval the relevant executive by-law. The Ministry shall prepare all draft norms required for enforcing the law and shall submit them to competent authorities for approval"., The Government adds that the draft law on ratification of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), is under review and examination in the relevant parliamentary committees. As regards ratification of Convention No. 87, the Government indicates that the subject has been put before an expert working group where various proposals are put up for discussion and debate.

492. Regarding legislative reform, the Government indicates that two working groups were formed within the Ministry of Labour (MOL). The first is composed of labour law experts and representatives of competent public authorities and aims at identifying Labour Code provisions that require reviewing. Second, the Tripartite Working Group of International Labour Standards, is formed with a view to drawing up concrete proposals aimed at implementing and enhancing laws and regulations that relate to all international labour Conventions, regardless of their status of ratification. This working group holds monthly meetings with the participation of representatives of workers and employers' confederations. The issue of Chapter VI of the 1990 Labour Law was recently put on the agenda of this working group. This matter was debated in tripartite meetings held on 3 and 30 January 2022 where it was decided to:

- Use the draft revised Chapter VI prepared in August 2002 in collaboration with the International Labour Organization as the basis for the current review process. The representatives of workers and employers were required to share their views in this regard with the Ministry of Labour in the coming month, so that the general lines of a new draft can be drawn and discussed in the next meeting of the working group.
- The regulations under Chapter VI, including the by-law on trade unions and employers' associations under section 131(5) of the Labour Law will be examined in the next meeting of the working group from the standpoint of their consistency with the provisions of Convention No. 87.
- The revision of the guidelines concerning culture, arts and media professional organizations shall be put on the agenda of competent institutions, where the modifications required in order to ensure compliance with the principles of freedom of association enshrined in Convention No. 87 shall be identified, and a draft revised version be drawn up and submitted to competent authorities for final approval. The Government further indicates that, if required, the technical assistance of the Office may be solicited for the finalization of the draft.

493. With regard to the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH), the Government reiterates that the employers and workers enjoy the right to establish organizations and these organizations can conduct activities without any hindrance. Therefore, workers in this profession can also establish their organizations; however, legal formalities

should be respected, and the existence of an employment relationship between the applicants and the company must be established. The Government rejects the claim that the said organization is not authorized to conduct activities, as more than 12,000 workers and employers' organizations are registered all over the country and conduct activities in compliance with current laws. Sections 199 and 200 of the 1990 Labour Law abolished all preceding labour and agricultural laws and the regulations adopted under the new law replaced those previously in force. In the implementation of section 131(5) of the Labour Law, the "bylaw on establishment, the scope of duties and powers, and the forms of operation of trade associations and their confederations" was adopted in 1992 and was revised twice, on 10 August 1998 and 25 October 2010 respectively. The latest revised version of the by-law is binding and applicable. Article 24 of the by-law requires that the organizations that are governed by it should bring their structure, organization and constitution into conformity with its provisions. One of the purposes of this provision is to remove foreign appellations such as "syndicate" and replace them with the Persian substitute appellation *anjoman-e-senfi* as is reflected in the Labour Law. The Government emphasizes that the new regulations equally protect the principle of freedom of association and free activity of professional organizations and the change from foreign to indigenous appellations does not in any way affect the substance of these rights. The Government rejects a dispute focusing on words and emphasizes that the applicants of the said profession have, like other registered organizations, the right to establish organizations and conduct their activities in conformity with the rules enshrined in the currently applicable by-laws. The Government is not aware of any application submitted by the said organization in conformity with the applicable rules. If it receives an application for the establishment or adjustment of the organization pursuant to the current rules, the application will be examined and acted upon. In this regard, the Government draws the attention of the Committee to the necessity of taking into consideration the legal framework applicable in the Member States.

494. With regard to the situation of Mr Jamil Mohammadi and Mr Jafar Azimzadeh, the Government indicates that Mr Jafar Azimzadeh was released after serving his sentence and Mr Jamil Mohammadi has not appeared for the execution of his sentence and he is not currently incarcerated.

495. With regard to the situation of Mr Shapour Ehsani Raad, the Government indicates that he was sentenced to five years imprisonment and has been in jail since 16 June 2020. With regard to his charges, the Government indicates that he was condemned for: participation in and organization of illegal gatherings, relationships with dissidents with the aim of acting against national security, publishing articles and using subversive words and language and calling for consensus and confrontation against the Islamic Republic, calling for a revolution, propaganda against the State aiming at actions against national security through exercising influence and enticement in virtual networks as well as cooperation with pseudo-media outlets and networks supported by foreign services. The Government adds that the arrest and imprisonment of Mr Shapour Ehsani Raad had nothing to do with his union activities or affiliation.

496. With regard to court judgments, the Government indicates that pursuant to section 380(2) of the Code of Criminal Procedure, in cases concerning crimes against internal and external security of the State, the sentence is not notified in writing, but is shown to the interested person who is in this way informed of its full content and can make a written copy of it on the spot.

497. With regard to the situation of Ms Cécile Kohler and Mr Jacques Paris, the Government indicates that they are prosecuted on charges of assembly and collusion with the intention of committing crime against the security of the State and have been in provisional detention since

7 May 2022 in accordance with the order of the investigating judge at Tehran Prosecutor's Office. To this date, no final judgment has been issued regarding their cases.

498. With regard to the situation of Messrs. Reza Shahabi and Rasoul Bodaghi, the Government indicates that they are prosecuted on charges of assembly and collusion with the intention of committing crime against the security of the State and have been in provisional detention since, respectively, 12 May and 30 April 2022, in accordance with the order of the investigating judge at Tehran Prosecutor's Office. To this date, no final judgment has been issued regarding their cases.

499. In its communication dated 19 October 2022, the Government provides information with regard to the situation of Mr Alireza Saghafi and Ms Haleh Safarzadeh who it states entered prison on 12 March 2022 for serving a sentence for assembly and collusion with the intention of committing crime against the security of the State. On 9 April 2022 Mr Saghafi received another sentence to three more years of imprisonment on similar charges. The Government provides details about the medical care provided to the couple while in detention and indicates that they were transferred to Karaj detention facility for humanitarian reasons and have received visits of their children. The Government finally adds that Mr Saghafi has not yet served one third of his sentence, furthermore he has an additional conviction and the crime he is convicted for is one of the exceptions to the applicability of the rule on conditional release, therefore, he cannot yet benefit from leniency measures. With regard to Ms Safarzadeh, the Government indicates that the prison has been informed that a request for electronic tagging can be submitted to the classification council on her behalf.

500. The Government indicates that in recent years, the ILO has not played an active role with regard to technical cooperation and provision of technical assistance to the Member States. It further indicates that the ILO has refused to provide technical cooperation to the Islamic Republic of Iran. The Government expresses its deep regret and hopes that an appropriate decision is made in this regard. The Government emphasizes that the Committee should pay due attention to this issue in its review and any comments.

D. The Committee's conclusions

501. *The Committee recalls that this case, lodged in 2006, concerns acts of repression against the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH), as well as the arrest, detention and condemnation of large numbers of trade union members and officials, and the inadequate legislative framework for the protection of freedom of association.*

502. *Regarding the process of ratification of Conventions, the Committee notes the Government's indication that the draft law on the ratification of Convention No. 98 was adopted by the Parliament and was then submitted to the Guardian Council of the Constitution for approval, while the draft law concerning the ratification of Convention No. 144 is still before the competent Parliamentary committee. Regarding Convention No. 87, the Committee notes that working groups within the Ministry of Labour (MOL) examine the extent of compatibility of domestic legislation with the Convention with a view to coming up with proposals of legislative reform to ensure consistency between the provisions of the Convention and national legislation. The Committee notes the further steps taken by the Government to advance the ratification of these fundamental Conventions and expects that the ratification process in the Parliament will soon come to a conclusion and that the work within the MOL will soon produce concrete proposals. It requests the Government to keep it informed of developments in this regard.*

503. *With regard to the legislative reform process, the Committee notes the Government's indications that Chapter VI of the Labour Law and the regulations and by-laws adopted under this chapter, in*

particular the by-law adopted under section 131(5), are subject to review by the tripartite working group within the MOL. Recalling that since the beginning of the examination of this case and other cases concerning freedom of association in Iran, it has noted that these texts contain provisions that establish trade union monopoly at the work unit, sectoral, provincial and national levels. The Committee welcomes the Government's indication that a draft prepared with the collaboration of the Office is taken as the basis for the review of Chapter VI and firmly expects that the review process will result in a legislative reform that will at last allow for union pluralism at all levels in Iran. It requests the Government to keep it informed of any progress in this regard.

504. *With regard to the guidelines and procedures concerning culture, arts and media professional organizations, the Committee notes the Government's indication that these texts are subject to review by competent authorities with a view to drawing up draft revisions that would remove their inconsistencies with the principles of freedom of association. The Committee recalls that in its previous examination of this case, it had noted that these texts, like Chapter VI of the Labour Law and the relevant by-laws and regulations, do not allow for union pluralism. It expects that the review process will result in the repealing of provisions establishing union monopolies at all levels and requests the Government to keep it informed of developments in this regard. While noting the Government's complaint that the ILO has not provided technical cooperation to it, the Committee observes that technical assistance has always been offered and available to it within the context of this case and that the Government indicates that it will solicit technical assistance if required. The Committee therefore once again recalls that the technical assistance of the Office remains available to it should it so desire.*

505. *With regard to the SVATH, the Committee notes the Government's indications, in particular that the union should comply with legal formalities enshrined in the Labour Law of 1990 and the by-law adopted under its section 131(5), and that if it submits an application in conformity with this legal framework, its application will be examined. It further notes that the Government suggests that the union must replace the word "syndicate" in its name. The Committee recalls that the SVATH was formed in 1968, namely 22 years before the enactment of the currently applicable Labour Law. It understands that according to the Government, the SVATH is expected to make a new application for registration.*

506. *The Committee notes that while in the first part of its communication concerning the legislative reform process, the Government indicates that Chapter VI of the Labour Law which concerns workers' and employers' organizations, and the by-law adopted under section 131(5) of the Labour Law are subject to a revision process with a view to bringing them into conformity with the principles of freedom of association, it affirms that the SVATH should comply with this legal framework which does not recognize union pluralism. The Committee notes that section 131(4) of the Labour Law provides that "workers in a unit, can have only one of the three following [forms of representation]: Islamic labour council, Anjoman-e-senfi (union), or workers' representatives" and that the ongoing existence of an Islamic Labour Council within Tehran and Suburbs Bus Company would appear to impede any registration request from the SVATH. It recalls that already at its first examination of this case 15 years ago, it had noted, regarding the question of the registration of the union, "the Government's statement that the current legal framework does not permit the existence of both an Islamic Labour Council and a union at the same enterprise and that it has no record of any registration on the part of the union" [see Case No. 2508, 346th Report, June 2007, para. 1190]. As the law remains unchanged to date, the Committee notes with deep concern that the Government's latest communication, as far as it concerns the SVATH, denotes no progress whatsoever during the past 15 years. The Committee considers that the case of the SVATH illustrates how the current legal framework in the Islamic Republic of Iran fails to recognize the fundamental right of workers to establish and join organizations of their own choosing. As the current legal framework does not*

allow for the registration of the SVATH, in violation of the principle of freedom of association, and in view of the extremely slow pace of the legal reform process, the Committee is bound once again to urge the Government to ensure that the SVATH can function without hindrance through its de facto recognition, and by ensuring that its officials and members are not arrested, detained and prosecuted for legitimate trade union activities.

507. *In this regard, the Committee notes with deep concern the complainants' allegations concerning the renewed arrest of Mr Reza Shahabi, member of the Executive Board of the SVATH on the pretext that he had met with two French trade unionists who had travelled to Iran on a tourist visa; and the arrest of Mr Hassan Saeedi, purportedly for his participation in May Day protests. It also notes with deep concern the Government's indication that Messrs. Shahabi and Bodaghi are once again charged with assembly and collusion with the aim of committing crime against the security of the State. The Committee notes that Mr Shahabi, Mr Bodaghi and Mr Saeedi remain in detention at the date of the examination of the case. The Committee further notes that according to the complainant, Mr Shahabi has told his family that the meeting with the French unionists, that apparently gave rise to his arrest, was a lunch in public that had led to a usual discussion between trade unionists.*

508. *The Committee also notes with deep concern the allegations of the complainant concerning the arrest and incommunicado detention of Ms Cécile Kohler and Mr Jacques Paris, two French trade unionists who were visiting Iran around May Day 2022, and who were arrested just before leaving the country on 8 May, detained incommunicado without access to consular assistance, and charged with the crime of association and collusion with the aim of committing crime against the security of the State for having met with Iranian trade unionists and labour activists, in particular members of teachers' organizations and the SVATH. It notes that the Government confirms the arrest, detention, and prosecution of the two French unionists on the abovementioned charges.*

509. *The Committee recalls in this regard that principles of freedom of association include a right of affiliation to international organizations, which flows from the solidarity of interests of workers or employers, a solidarity of interests that is not limited to the national economy. Moreover, it is a fully legitimate trade union activity to seek advice and support from other well-established trade union movements in the region to assist in defending or developing the national trade union organizations, even when the trade union tendency does not correspond to the tendency or tendencies within the country, and visits made in this respect represent normal trade union activities [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1051]. These rights include the right of unionists of any nationality to contact and meet each other when in a given country and discuss matters of common interest and concern. The Committee recalls that it is an infringement of the principles of freedom of association to arrest, detain and prosecute unionists for having made such contacts and participated in such meetings.*

510. *Furthermore, the Committee recalls that the right to organize public meetings and processions, particularly on the occasion of May Day, constitutes an important aspect of trade union rights; and that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike, public meetings or processions, particularly on the occasion of May Day [see* ***Compilation****, paras 212 and 156].*

511. *The Committee recalls that it is one of the fundamental rights of the individual that a detainee be brought without delay before the appropriate judge and, in the case of trade unionists, freedom from arbitrary arrest and detention and the right to a fair and rapid trial are among the civil liberties which should be ensured by the authorities in order to guarantee the normal exercise of trade union rights, and detained trade unionists, like anyone else, should benefit from normal judicial proceedings and have the right to due process, in particular, the right to be informed of the charges brought against them, the right to have adequate time and facilities for the preparation of their*

*defence and to communicate freely with counsel of their own choosing, and the right to a prompt trial by an impartial and independent judicial authority [see **Compilation**, paras 163 and 167]. Furthermore, the Committee recalls that regardless of the grounds for the arrests, according to the UN Standard Minimum Rules for the Treatment of Prisoners, solitary confinement shall be used only in exceptional cases as a last resort for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. Prolonged solitary confinement – solitary confinement for more than 15 consecutive days – amounts to torture and shall be prohibited (see the resolution adopted by the UN General Assembly on 17 December 2015 (the Nelson Mandela Rules), A/RES/70/175, Rules 43–45).*

512. *In view of the above, the Committee urges the Government to immediately release all Iranian and French trade unionists arrested and detained merely for having met and discussed matters of common workers' interest. The Committee further urges the Government to ensure that all those arrested in this case are provided with due process guarantees, including immediate consular assistance for Ms Kohler and Mr Paris, and to refrain from using solitary confinement as a tool of psychological pressure. The Committee requests the Government to keep it informed of the measures taken in this regard.*

513. *The Committee takes note of the Government's indication that Mr Jafar Azimzadeh was released after serving his sentence and that Mr Jamil Mohammadi is not incarcerated as he did not appear for the execution of his sentence. It requests the Government to ensure that Mr Mohammadi's sentence is not executed should he have been convicted due to his trade union activities.*

514. *The Committee, while noting that the Government has specifically requested that the information concerning the condemnation and imprisonment of Mr Alireza Saghafi and Ms Haleh Safarzadeh, also on charges of assembly and collusion with the aim of committing crime against the security of the State, be drawn to its attention observes that their situation has not been raised before the Committee.*

515. *The Committee further notes the Government's indications concerning Mr Shapour Ehsani Raad. It observes that the concrete acts for which Mr Ehsani Raad is sentenced to five years imprisonment include organization of gatherings that the Government qualifies as illegal, publishing articles, and expression of opinions on media channels and social networks that the Government considers are supported by foreign services.*

516. *The Committee recalls that in cases involving the arrest, detention or sentencing of a trade union official, the Committee, taking the view that individuals have the right to be presumed innocent until found guilty, has considered that it was incumbent upon the Government to show that the measures it had taken were in no way occasioned by the trade union activities of the individual concerned. Furthermore, in cases where the complainants alleged that trade union leaders or workers had been arrested for trade union activities, and the governments' replies amounted to general denials of the allegation or were simply to the effect that the arrests were made for subversive activities, for reasons of internal security or for common law crimes, the Committee has always followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the arrests, particularly in connection with the legal or judicial proceedings instituted as a result thereof and the result of such proceedings, in order to be able to make a proper examination of the allegations. The Committee has emphasized that when it requests a government to furnish judgments in judicial proceedings, such a request does not reflect in any way on the integrity or independence of the judiciary. The very essence of judicial procedure is that its results are known, and confidence in its impartiality rests on their being known [see **Compilation**, paras 158, 178 and 180]. Following this long-standing practice, in all cases where trade unionists were put to trial in the Islamic Republic of Iran, it has always requested the Government to*

communicate a copy of the judgment. The Government has never communicated a judgment, despite repeated requests. In this regard, the Committee notes with concern the Government's indication that in accordance with section 380(2) of the Code of Criminal Procedure, in cases concerning crimes against internal and external security of the State, not only is the judgment not made public, but it is not even notified in writing to the person on trial. The Committee understands that these sentences are treated as confidential documents in the Iranian justice system. In view of the fact that it has already noted that trade unionists are often sentenced on the grounds of sections 500 and 610 of the Islamic Penal Code, concerning propaganda against the State and association and collusion against the external and internal security of the State, the Committee understands that the judgments against them are excluded from public scrutiny on the basis of section 380(2) of the Code of Criminal Procedure.

517. *In view of the above, the Committee is bound to note that it would appear that one important aspect of the right to a fair trial is systematically violated in all cases concerning trade unionists sentenced for a "crime against the security of the State". The Committee notes with deep concern that Mr Shapour Ehsani Raad, among others, has been sentenced in this manner and has been in prison since 16 June 2020. It also notes with deep concern that the Iranian and French trade unionists arrested in May 2022 risk to be subjected to similar treatment in contravention of international law. The Committee therefore requests the Government to take all the necessary measures to ensure that when trade unionists are prosecuted, their right to a fair trial is duly respected, and that in particular the judgments issued are made public. Finally, as the acts that the Government attributes to Mr Ehsani Raad do not seem to go beyond the exercise of freedom of expression by a trade unionist, and in the absence of more detailed information on the grounds of his condemnation, the Committee once again urges the Government to ensure his immediate release.*

The Committee's recommendations

518. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following:

(a) The Committee notes the further steps taken by the Government for the ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and expects that the process of ratification of Conventions Nos 98 and 144 will soon come to conclusion and that the expert and tripartite working groups within the Ministry of Labour working on the compatibility of national law with Convention No. 87 will soon produce concrete proposals. It requests the Government to keep it informed of developments in this regard.

(b) The Committee notes the government measures taken to review Chapter VI of the Labour Law, the by-law on establishment, the scope of duties and powers, and the forms of operation of trade associations and their confederations, and the guidelines and procedures concerning arts, media, and culture professional organizations, with a view to bringing them into conformity with the principles of freedom of association. It firmly expects that these review processes will result in a legislative reform that will at last allow for union pluralism at all levels in Iran. It requests the Government to keep it informed of any progress in this regard. The Committee once again recalls that the technical assistance of the Office remains available to it should it so desire.

(c) The Committee once again urges the Government to ensure that the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH) can function without hindrance through its de facto recognition pending legislative reform, and by ensuring that its officials and members are not arrested, detained and prosecuted for legitimate trade union activities.

(d) The Committee urges the Government to immediately release Mr Reza Shahabi, Mr Hassan Saeedi, Mr Rasoul Bodaghi, Ms Cécile Kohler, Mr Jacques Paris and all other trade unionists arrested and detained merely for having met and discussed matters of common workers' interest. The Committee further urges the Government to ensure that all those arrested in this case are provided with due process guarantees, including immediate consular assistance for Ms Kohler and Mr Paris, and to refrain from using solitary confinement as a tool of psychological pressure. The Committee requests the Government to keep it informed of the measures taken in this regard.

(e) The Committee requests the Government to take all the necessary measures to ensure that when trade unionists are prosecuted, their right to a fair trial is duly respected, and that in particular the judgments issued are made public.

(f) The Committee once again urges the Government to ensure Mr Shapour Ehsani Raad's immediate release. It further requests the Government to ensure that Mr Mohammadi's sentence is not executed should he have been convicted due to his trade union activities.

(g) The Committee draws the Governing Body's attention to the extremely serious and urgent nature of this case.

Case No. 3408

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Luxembourg presented by the Luxembourg Association of Banking and Insurance Employees (ALEBA)

Allegations: The complaint organization denounces the withdrawal of the sectoral representativeness of the ALEBA by the Minister of Labour

519. The complaint is contained in a communication from the Luxembourg Association of Banking and Insurance Employees (ALEBA) dated 20 April 2021. The ALEBA sent further information in communications dated 2 and 8 June 2021.

520. The Government sent its observations in a communication dated 16 March 2022.

521. Luxembourg has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). However, it has not ratified the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

522. The complainant organization claims that the Minister of Labour, by way of a ministerial order of 2 March 2021 issued at the request of the Independent Trade Union Confederation of Luxembourg (OGB-L) and the Luxembourg Confederation of Christian Trade Unions (LCGB) made in a communication dated 12 November 2020, withdrew from the Luxembourg Association of Banking and Insurance Employees (ALEBA) the status of representative sectoral trade union on the grounds that, with representativeness of 49.22 per cent in the March 2019 elections to the Chamber of Employees, it no longer fulfilled the required conditions set out under article L.161-7(2) of the Labour Code, which requires representation of 50 per cent of votes to justify sectoral trade union recognition. The complainant organization points out that the score of 49.22 per cent corresponds to the score of the two confederations put together and that these confederations took two years to realize that said representation by the ALEBA was insufficient in terms of article L.167-1(2) of the Code. The complainant organization alleges that the result of the elections at the time "had been accepted by everyone" and that the Minister had announced to the press the day after the elections that the ALEBA, despite its score being 0.78 per cent below the 50 per cent threshold, retained its status of representative sectoral union. This reversal would have the effect, in the words of the complainant organization, of "undermining the ALEBA in the ongoing talks".

523. According to the complainant organization, this 50 per cent obligation contradicts article L.162-1(3) of the Code, according to which "a trade union or unions, which individually or together have obtained at least 50 per cent of votes at the most recent elections of staff representatives in the enterprises or establishments that fall within the scope of the collective agreement, must be admitted to the negotiating committee [for a collective agreement]". The criteria contained in article L.161-7(2) and article L.162-1(3) would therefore appear to differ. In any case, these provisions have the effect of protecting the so called nationally representative trade union confederations.

524. The complainant organization notes that its complaint is a direct continuation of the one it submitted to the Committee in 1998 (Case No. 1980) in which it denounced the fact that, under the terms of the 1965 Collective Labour Agreements Act and the case law interpretation of it, in order to claim representativeness and to sign a collective agreement alone, a workers' organization had to demonstrate its size in terms of numbers on the national territory and also be present in several sectors of economic life. The complainant recalls that, in its examination of the case, the Committee questioned this dual requirement for representativeness and that the Administrative Court, in two decisions dated 28 June 2001 (judgments 12533C and 12534C), also rejected the requirement for multisectoralism called for by the State.

525. Furthermore, the complainant organization observes that the Committee recommendation appears to have only been partially incorporated into national legislation, as article 7 of the Collective Labour Relations Act of 30 June 2004, which became article L.161-7 of the Labour Code, requires sectoral trade unions within the meaning of article L.161-6 to have representation of 50 per cent of votes at the most recent elections of the Chamber of Employees to justify their sectoral trade union recognition. Lastly, the complainant organization denounces the fact that the provisions of article 9 (1) of the Act of 30 June 2004, relating to trade unions participating ex officio in the negotiating committee for a collective agreement, were not fully incorporated into the Labour Code, meaning that article L.162-1(1) of the Code is now only aimed at multisectoral trade unions, while abovementioned article 9 (1) was also aimed at sectoral trade unions. The consequence of this is that the ALEBA can no

longer represent employees ex officio in the negotiation of a collective agreement, including in its own sector.

B. The Government's reply

526. In its communication dated 16 March 2022, the Government provides the following information as to the facts:

(i) the ministerial order issued by the Minister of Labour on 2 March 2021, whereby the ALEBA had its recognition of sectoral representativeness withdrawn, was issued in accordance with the procedure set forth in article L.161-8 of the Labour Code. This ministerial order was issued on the request of the OGB-L and the LCGB, in accordance with legal provisions;

(ii) following the partial denunciation by the Luxembourg Bankers' Association (ABBL) of the collective agreement for bank employees dated 11 November 2020, the ALEBA allegedly began negotiations with the ABBL on its own initiative, as well as with the Association of Insurance and Reinsurance Companies (ACA), which resulted in them reaching an agreement in principle regarding the renewal of the respective collective agreements for a period of three years;

(iii) the ministerial order was issued on the basis of the detailed report by the Labour and Mines Inspectorate (ITM) submitted to the Minister on 23 February 2021. Following analysis of the legal criteria, the ITM concluded that in the 2019 trade elections the ALEBA had not reached the threshold of 50 per cent of votes stipulated in article L.161-7(2) of the Labour Code and that consequently the request for withdrawal submitted jointly by the OGB-L and the LCGB was founded in terms of the quantitative criteria;

(iv) Following the publication of the ministerial order of 2 March 2021, the ALEBA lodged an appeal before the Administrative Court of Luxembourg on 26 March 2021 to cancel or otherwise amend the ministerial order. The case will be examined on 17 January 2023 before the Third Chamber for oral proceedings;

(v) The application for interim measures lodged by the ALEBA on 26 March 2021 before the Administrative Court of Luxembourg was rejected on 4 May 2021.

527. The Government rejects the allegations relating to the alleged non-compliance of national law with the Committee's recommendation of March 2001 regarding trade union representativeness. On the contrary, the Government considers that the Act of 30 June 2004 complies with both the Committee's recommendation and the judgments handed down by the Administrative Court in June 2001, aiming to clearly establish criteria for representativeness. It notes that the ALEBA is making these claims over 15 years since the publication of the 2004 Act. Until the withdrawal of the recognition of sectoral representativeness by way of the ministerial order of 2 March 2021, the ALEBA had never voiced the slightest criticism or contested the validity of the Act of 30 June 2004, subsequently codified in articles L.161-1 et seq. of the Labour Code.

528. Regarding the alleged contradiction between article L.161-7 of the Labour Code (which requires representation of 50 per cent of votes at the most recent elections of the Chamber of Employees to justify sectoral trade union recognition) and article L.162-1 (3) of the Code (whereby a trade union or unions, which individually or together have obtained at least 50 per cent of votes at the most recent elections of staff representatives must be admitted to the negotiating committee for a collective agreement), the Government considers that there is no contradiction between these two legal instruments as the purpose of their content is not the

same. According to the Government, article L.161-7 of the Code stipulates the condition of thresholds to be respected in order to justify sectoral representativeness, while article L.162-1 of the Code relates to the composition of a negotiating committee for a collective labour agreement. In this regard, article L.162-1 (3) applies to all trade unions that meet the 50 per cent criteria, irrespective of any sectoral or national representativeness.

529. Regarding the result of the elections to the Chamber of Employees in which the ALEBA obtained 49.22 per cent of the vote, the Government indicates that it is due to disputes with the OGB-L and the LCGB at the time of the negotiation of the collective agreement in the banking sector that the two confederations finally contested this representativeness. The Government points out that no application for withdrawal of sectoral representation had been made following the results of these 2019 elections, which could be considered as recognition of sectoral representativeness in the case of the ALEBA despite the failure to meet the 50 per cent threshold, but in no case would this constitute an acquired right.

530. Lastly, the Government observes that the ALEBA can obviously submit lists at the next elections and on that occasion reach the threshold required for it to be able once again to seek recognition of its status as most representative trade union in this particularly important economic sector. Consequently, the ALEBA is not irrevocably losing its sectoral representativeness.

C. The Committee's conclusions

531. *The Committee notes that in the present case the complainant organization complains about the withdrawal of the sectoral representativeness of the ALEBA by the Minister of Labour following the result of elections to the Chamber of Employees in March 2019, which allegedly had the effect of influencing its ability to legitimately negotiate and conclude collective agreements in the banking and insurance sector. The Committee observes that it is the second time, coming 20 years after the first, that the ALEBA has submitted to it a matter relating to the representative status of the complainant organization as a sectoral organization.*

532. *The Committee notes that: (i) article 7 of the Collective Labour Relations Act of 30 June 2004, which became article L.161-7 of the Labour Code, requires that sectoral trade unions within the meaning of article L.161-6 have representation of 50 per cent of votes at the most recent elections of the Chamber of Employees to justify their sectoral trade union recognition; and (ii) it is on this basis that the Minister of Labour, by way of a ministerial order of 2 March 2021 issued at the request of the OGB-L and the LCGB, withdrew from the ALEBA the status of representative sectoral trade union on the grounds that, with representativeness of 49.22 per cent in the March 2019 elections to the Chamber of Employees, it no longer fulfilled the required conditions to be a representative sectoral trade union. The Committee notes that, according to the Government, the ministerial order was issued, in accordance with the procedure set out in article L.161-8 of the Labour Code, on the basis of the detailed report by the ITM submitted to the Minister on 23 February 2021, which concluded that in the 2019 trade union elections the ALEBA had not reached the threshold of 50 per cent of votes stipulated in article L.161-7(2) of the Code and that consequently the request for withdrawal submitted jointly by the OGB-L and the LCGB was founded in terms of the quantitative criteria.*

533. *The Committee notes that, according to the complainant organization, the 50 per cent obligation contradicts article L.162-1(3) of the Labour Code, according to which a trade union or unions, which individually or together have obtained at least 50 per cent of votes at the most recent elections of staff representatives in the enterprises or establishments that fall within the scope of the collective agreement, must be admitted to the negotiating committee [for a collective agreement]. The criteria contained in article L.161-7(2) and article L.162-1(3) would therefore appear to differ. The Committee*

notes in this regard that the Government does not consider there to be any contradiction between these two instruments, as the purpose of their content is not the same: article L.161-7 of the Code stipulates the condition of thresholds to be respected in order to justify sectoral representativeness, while article L.162-1 of the Code relates to the negotiating committee for a collective labour agreement; furthermore, article L.162-1(3) of the Code applies to all trade unions that meet the 50 per cent criteria, irrespective of any sectoral or national representativeness.

534. *The Committee notes these observations. It notes that sectoral recognition within the meaning of article L.161-7 entitles the organization concerned to a series of prerogatives, including participation in collective bargaining as well as in the signing of collective agreements in the sector concerned, participation in the conclusion of national and cross-industry agreements, the submission of lists in elections of staff representatives, participation in certain enterprise decisions, the granting of training leave and the appointment of workers' representatives to certain bodies.*

535. *The Committee notes that in the 2019 elections to the Chamber of Employees, the OGB-L obtained 31.58 per cent of the vote, the LCGB 19.20 per cent, as compared to 49.22 per cent for the ALEBA. The Committee observes that this reduction in sectoral representativeness compared to the previous elections to the Chamber of Employees means that the ALEBA would no longer have sufficient weight to allow it to sign a collective agreement alone. The Committee also notes that, when articles L.161 - 7 and L-162-1 of the Labour Code are read together, in addition to the signature, it is the participation of the sectoral organization in collective bargaining that no longer seems to be acquired. Indeed, the Committee notes that in order to be admitted to the negotiating committee, when the conditions set out in article 161-7 are not met, either: (i) a unanimous decision must be taken by the trade unions eligible to sit on the negotiating committee in accordance with article L.162-1(2) of the Code (that is trade unions with general national representativeness); or (ii) … the trade union(s) has or have individually or together obtained at least 50 per cent of votes at the most recent elections of staff representatives in the enterprises or establishments that fall within the scope of the collective agreement (article L.162-1(3)). The Committee observes that the ALEBA does not meet this condition either: according to the results of the elections to appoint staff representatives reported by the complainant, the OGB-L and the LCGB together account for 27.57 per cent of the workforce in the finance sector, as compared to 30.09 per cent for the ALEBA.*

536. *The Committee wishes to recall that in a case where, in the light of national conditions, the right to engage in collective bargaining had been restricted to the two most representative national unions of workers in general, it considered that this should not prevent a union representing the majority of workers of a certain category from furthering the interests of its members. The Committee therefore recommended that the Government be requested to examine the measures that it might take under national conditions to afford this union the possibility of being associated with the collective bargaining process so as to permit it adequately to represent and defend the collective interests of its members [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1385]. The Committee considers in this case that, although it fell below the 50 per cent threshold in the 2019 elections to the Chamber of Employees, the ALEBA remains the most representative trade union in its sector, which the Government does not dispute, and it should consequently be able to continue to defend the collective interests of its members.*

537. *In these circumstances, the Committee invites the Government to take the necessary measures, as appropriate, to ensure that the most representative trade union of a sector concerned can fully defend the interests of its members, particularly by participating in the negotiation of relevant collective agreements. The Committee requests the Government to keep it informed of the decision to be handed down by the Administrative Court of Luxembourg on the substance of the case.*

The Committee's recommendation

538. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:

> **The Committee invites the Government to take the necessary measures, as appropriate, to ensure that the most representative trade union of a sector concerned can fully defend the interests of its members, particularly in the framework of the negotiation of relevant collective agreements. The Committee requests the Government to keep it informed of the decision to be handed down by the Administrative Tribunal of Luxembourg on the substance of the case.**

Case No. 3076

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of the Maldives
presented by
– the Tourism Employees Association of Maldives (TEAM)
supported by
– the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

Allegations: Disproportionate police force used against striking workers; arbitrary arrest of TEAM members and leaders; unfair dismissal of nine workers including TEAM leaders who participated in and led a strike; and non-enforcement of the court ruling ordering their reinstatement without loss of pay. Additional allegations refer to anti-union discrimination of TEAM union members at two other hotel establishments

539. The Committee last examined this case (submitted in April 2014) at its June 2021 meeting, when it presented an interim report to the Governing Body [see 395th Report, paras 252–283 approved by the Governing Body at its 342nd Session]. [6]

540. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) provided additional information in communications dated 18 August 2021 and 24 May 2022.

541. The Government provided its observations in a communication dated 23 May 2022.

[6] Link to the previous examination.

542. The Maldives has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

543. At its June 2021 meeting, the Committee made the following recommendations on the matters still pending [see 395th Report, para. 283]:

(a) The Committee requests the Government and the complainant, to provide information on the current employment status of the dismissed TEAM union leaders and members at Hotel A. [7]

(b) As regards the issue of compensation in relation to the unjustified terminations at Hotel B, [8] observing the complainants' intention to seek judicial review of the Supreme Court ruling, the Committee urges the Government to institute a thorough review of the allegations related to the anti-union nature of these dismissals with a view to ensuring that, in the event that the allegations are proved, the employees concerned are paid adequate compensation to remedy all damages suffered and prevent any repetition of such acts in the future.

(c) The Committee requests the Government once again to take the necessary measures to ensure that the judicial proceedings relating to allegations of unfair dismissals at Hotel C [9] are speedily concluded so as to avoid unreasonable delays, and that the decision is promptly and fully implemented by the parties concerned.

(d) The Committee requests the Government once again to take the necessary measures to ensure that the union at Hotel C can freely exercise its legitimate trade union activities, including the right to organize assemblies and display union banners, without any interference from the management and that the dismissed trade union officials have reasonable access to trade union members and premises so as to be able to exercise their representative functions. The Committee further invites the Government to reach out to the parties and encourage them to engage in good faith collective bargaining as a means to create and maintain harmonious labour relations and prevent labour-related disputes.

(e) Recalling that the legislative aspects of the case have been referred to the CEACR, the Committee trusts that the Government will ensure the adoption of the necessary legislation to fully assure freedom of association and collective bargaining rights.

(f) Concerning the case-specific allegations, the Committee requests the Government once again to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprises concerned, on the questions at issue.

B. Additional information from the complainants

544. In its communications dated 18 August 2021 and 24 May 2022, the IUF alleges that no progress has been made in resolving any of the three cases at Hotels A, B and C and points to a lack of protection of trade union rights, both in law and in practice.

545. In relation to Hotel A, the complainants reiterate that, in February 2021, the Supreme Court upheld the November 2016 High Court decision, according to which reinstatement of the nine victimized TEAM leaders and members did not require return to the same workplace. They

[7] The One & Only Reethi Rah Resort.

[8] Conrad Maldives Rangali Island Resort.

[9] The Sheraton Maldives Full Moon Resorts & Spa.

indicate that the ruling was the final step in the legal process, that six union members made out-of-court settlements but that three other workers, including TEAM Secretary-General, are still unemployed and seek reinstatement. According to the complainants, the Government has not taken any measures to initiate a dialogue between the workers and the management to settle the dispute and reinstate the three remaining unionists.

546. Concerning Hotel B, the complainants indicate that, in July 2021, TEAM submitted a request for a review of the February 2021 Supreme Court judgment, which found that although there was no basis for redundancy of the terminated workers, the payment received by those workers in lieu of notice was sufficient compensation. In its request for judicial review, TEAM expressed concerns at the undue delay in the judicial process – the Supreme Court ruling was made ten years after the unionists' dismissal – which effectively penalized the 22 union members seeking reinstatement and pointed out that this prolonged period was used as one of the reasons why reinstatement of the workers was not feasible in the view of the Supreme Court. Further addressing the Court's reasoning that international protest actions over the unfair dismissals had undermined trust to the extent that reinstatement at the hotel was no longer feasible or desirable, TEAM claimed that the protests conducted were legitimate trade union activities with no bearing on the ability of the dismissed union members to return to work and that it was beyond the Supreme Court's mandate to determine whether trust had been eroded to the extent that return to work was not viable. Finally, TEAM put forward that despite the Employment Law providing for the remedy of reinstatement, re-employment or compensation in case of unfair dismissal, the Supreme Court ruled that there was unfair dismissal without however ordering any of the measures foreseen by the law. In August 2021, the Supreme Court decided not to further review the case, finding no gross injustice in its February 2021 ruling. In this regard, the complainants emphasize that there is no other legal remedy possible and allege that the Government is not taking any measures to arrive at an out-of-court settlement.

547. With regard to Hotel C, the complainants state that in November 2020, the Supreme Court upheld the decision of the High Court which considered the dismissals of three unionists justified, even though they were dismissed by reason of peaceful assembly. While no legal remedy is possible, the dismissed union leaders are looking for reparation. The complainants further allege that union activities were banned in the resort and that the Government has not taken any measures to ensure that workers enjoy freedom of association at the workplace, including the right to engage in peaceful union activities or collective bargaining.

548. In relation to the above cases, the complainants allege that they have been ongoing for ten years, that there has still not been an independent investigation into police action and the arrest of TEAM members in December 2008, April 2009 and May 2013 and that workers and their representatives are frustrated by delays in judicial proceedings.

549. The complainants also raise more general concerns in relation to the situation of freedom of association, alleging that there is increasing fear in hotel resorts throughout the country and that even though TEAM has been educating its members on the right to organize and bargain collectively as a fundamental right, the Government's intention and measures mean that these rights are not accessible in practice. Furthermore, there has been no progress to ensure that protection of trade union rights, in particular the right to freedom of assembly and protection against anti-union discrimination, is fully guaranteed both in law and in practice, and the Government has taken no action to adopt the Industrial Relations Act. In the complainants' view, the adoption of the Industrial Relations Act, on the basis of the draft presented in the ILO Technical Memorandum of June 2013, which was the result of a tripartite consultation process, would provide for the legislative measures necessary for the protection of trade union rights, in particular the right to freedom of assembly and protection against anti-union discrimination.

C. The Government's observations

550. In its communication dated 23 May 2022, the Government provides its observations on the situation at Hotels A, B and C, as well as on the legislative framework that, in its view, guarantees trade union rights.

551. In respect of Hotel A, the Government informs that its communication from January 2021 (previously addressed by the Committee) already exhaustively dealt with the allegations made and reiterates that out of the nine dismissed workers, one was reinstated as per the decision of the Employment Tribunal, three entered into out-of-court settlement agreements and withdrew any complaints against the employer and five did not report to work after being reinstated, which the employer considered as a rejection of their reinstatement. The Government believes that there are thus no pending claims concerning the dismissed workers at Hotel A.

552. In relation to Hotel B, the Government provides detailed information on the judicial proceedings concerning the 21 dismissed workers. It indicates that the Employment Tribunal found their dismissals unlawful and ordered reinstatement, as well as payment of salaries and allowances, and that the cases were then heard by the Higher Court, before being addressed by the Supreme Court. This court ruled that there was indeed no situation of redundancy at the Hotel but that the payment given by the employer in lieu of notice was just compensation and that reinstatement to previous positions was not possible due to a break of trust between the parties and the considerable time that has elapsed since the date of termination. With regard to the workers' claim that their dismissal was based on participation in a strike, the Supreme Court observed that during the examination of the cases by the Employment Tribunal, the complainants submitted that they could not state that their dismissal was mainly due to their engagement in trade union activities, that the Employment Tribunal did not find sufficient evidence to support this claim and that it could therefore not be taken into account in deciding the case. According to the Government, the allegations of anti-union discrimination raised during the proceedings were thus unfounded. It adds, however, that in the proceedings before the High Court and the Supreme Court, the workers asked to uphold the remedy of additional compensation ordered by the Employment Tribunal and therefore have a right to claim such compensation, but have not yet requested it. In May 2022, the Supreme Court informed that it had refused the application for judicial review of its decision, whereby the complainants exhausted the available domestic judicial proceedings.

553. Concerning Hotel C, the Government indicates that the Employment Tribunal considered that the dismissal of three workers was not justified but did not find reinstatement necessary due to the workers' negligence and ordered compensation instead. On appeal, the High Court overturned the Employment Tribunal's decision, considering the dismissals as lawful and finding that there was no ground to order reinstatement, a ruling confirmed by the Supreme Court. In a different case touching four other TEAM members, the Employment Tribunal decided that while substantive fairness of the dismissals was proven by the employer, the procedural fairness was not and therefore ordered compensation to the workers for unfair dismissal. On appeal, the High Court considered that procedural fairness was also followed in the dismissals and that the workers' activities were not exercised in accordance with the Freedom of Peaceful Assembly Act, therefore finding the Employment Tribunal's decision invalid. This decision was not appealed. According to the Government, the cases relating to Hotel C have thus been concluded by final decisions of the courts and other trade union rights, including the right to organize assemblies, are guaranteed by the existing legal framework.

554. In relation to the general allegations concerning a lack of appropriate legislative framework to guarantee trade union rights, the Government informs that the Associations Act, formulated in consultation with a wide range of stakeholders and ratified in May 2022, provides a more comprehensive framework for the exercise of the right to freedom of association, in particular on registration, general rights and obligations, including the right to strike, accountability and dissolution. A comprehensive study was also conducted to determine whether the current draft of the Industrial Relations Bill addresses issues of protection of workers' and employers' rights, trade union formation and recognition, trade union rights, collective bargaining, dispute resolution mechanisms and tripartite labour dialogue forums. Since it is a policy of the current administration to hold public consultations on draft bills before they are passed by Parliament, the draft Industrial Relations Bill will be soon open for public consultation. The Government adds that a grievance mechanism has been in place since April 2011 for employers and workers to address grievances before engaging in a strike and this mechanism ensures that the right to strike is only subject to safety, security and the rights of others at the workplace.

555. With regard to the alleged lack of an effective framework to ensure protection against unfair dismissals, the Government indicates that the Employment Act prohibits unlawful termination of employment without a reasonable cause and that the burden of proof is on the employer. The 2020 amendments to the Employment Act provide further guidelines on a number of legal issues, including dismissal for redundancy, and the 2021 General Regulation on Employment further details the protections granted in the Employment Act. In addition, the Employment Act establishes an independent Employment Tribunal empowered to receive complaints concerning violations of its provisions.

556. As to the alleged lack of legislation guaranteeing the right to freedom of expression and assembly, the Government contends that both rights are guaranteed by the Constitution and the right to freedom of peaceful assembly is also ensured by the Freedom of Peaceful Assembly Act, 2013. However, as is the case in many other democratic countries, these rights cannot be exercised without limits.

557. The Government concludes by emphasizing that, over the years, it has worked tirelessly to improve and establish a comprehensive legislative framework that guarantees workers' rights in line with ratified Conventions. The Employment Tribunal is operational and has been active in dealing with and resolving complaints submitted to it. The Government does not interfere in the exercise of the Employment Tribunal or the courts. In this particular case, neither the Government nor the Employment Tribunal were able to establish the complainants' claim of anti-union discrimination in relation to the termination of their employment. While the Government encourages workers to fully exercise their rights granted under the local laws and ratified Conventions, it is important to exhaust all local mechanisms when seeking redress and exercising their rights.

D. The Committee's conclusions

558. *The Committee recalls that this case refers to events that took place at Hotel A between November 2008 and May 2013 and concerns allegations of disproportionate use of police force against striking workers, repeated arrest and detention of TEAM leaders, their dismissal, and non-enforcement of the court ruling ordering their reinstatement without loss of pay. The case also refers to allegations of anti-union discrimination targeting TEAM members at two other hotel establishments – Hotels B and C.*

559. *The Committee takes due note of the additional information provided by the complainants and the Government's observations, which concern the developments in all three hotel establishments, as well as updated information on the general situation of freedom of association in the country.*

560. *Concerning the situation of the dismissed TEAM officials in Hotel A (recommendation (a)), the Committee recalls that following an initial ruling of the Employment Tribunal ordering the reinstatement of nine dismissed workers, in February 2021, the Supreme Court upheld the High Court decision of November 2016, according to which reinstatement of the victimized union leaders and members did not require reinstatement in the same workplace and that employers could exercise considerable discretion in determining the meaning and modalities of reinstatement. The Committee takes due note of the information provided by the complainants and the Government on the current employment status of the concerned unionists but observes that it is partially contradictory. While the complainants allege that the Government has not taken any measures to initiate a dialogue between the workers and the management so as to settle the dispute concerning the three remaining unionists, including TEAM Secretary-General, who have not been reemployed and seek reinstatement, the Government asserts that all pending claims concerning Hotel A have been addressed – one worker was reinstated, three concluded out-of-court agreements and five were offered reinstatement but did not come to work, which was understood by the employer as having turned down the offer of reinstatement.*

561. *Acknowledging the lack of details and clarity as to the circumstances of the workers' return to work or the refusal to do so raised by the Government, the Committee cannot but observe that 13 years after an initial court decision ordered their reinstatement, some union leaders and members have not yet been reemployed and have no further legal remedy beyond the modalities that may be exercised by the employer. In these circumstances and considering that at least three workers, including TEAM Secretary-General, continue to seek reinstatement, the Committee urges the Government to actively engage with the parties and encourage dialogue between them with a view to finding an out-of-court settlement for those unionists who wish to be reinstated, as the parties were able to do for other dismissed workers. The Committee trusts that all parties will engage in this process in good faith and will make all reasonable effort to find an agreeable solution to this long-standing issue.*

562. *With regard to the allegations of anti-union discrimination at Hotel B (recommendation (b)), the Committee recalls that 22 TEAM members had allegedly been unfairly dismissed because of their participation in a peaceful work stoppage and that despite prolonged court proceedings the dismissed workers had yet to be reinstated. Although the Supreme Court, in its February 2021 judgment, upheld the High Court decision regarding unfair dismissal, it overturned the original decision of the Employment Tribunal ordering reinstatement and compensation and considered that the payment received by those workers in lieu of notice was sufficient compensation. The Committee notes the complainants' indication in this regard that TEAM submitted a request for a review of the ruling in July 2021. In its request, TEAM expressed concerns at the undue delay in the judicial process – the Supreme Court ruling was made ten years after the unionists' dismissal – which effectively penalized the 22 union members seeking reinstatement and argued that, contrary to what the Supreme Court stated, legitimate trade union activities of conducting protests had no bearing on the ability of the dismissed union members to return to work. TEAM also put forward that although the Supreme Court ruled that there was unfair dismissal, it did not order any of the measures foreseen by the Employment Law to address unfair dismissal – reinstatement, re-employment or compensation. The Committee further notes the Government's extensive observations on the judicial proceedings before the Employment Tribunal, the High Court and the Supreme Court and observes, in particular, the Government's assertion that, according to the courts, no evidence was furnished during the proceedings to support the claim of anti-union discrimination raised by the workers in*

relation to their dismissal and that this could therefore not be taken into consideration when deciding the case. The Committee also notes that, in August 2021, the Supreme Court decided not to further review the case and that, according to the complainants, the Government is not taking any measures to arrive at an out-of-court settlement. The Government for its part contends that the dismissed workers have a right to claim additional compensation, as per the order of the Employment Tribunal, but that no such claim has yet been made.

563. *The Committee understands from the above that more than 11 years after their termination was found to be unjustified, the 22 TEAM union leaders have now exhausted all available judicial proceedings at the national level, have not obtained reinstatement and have not received any compensation except the original redundancy payment, but are, according to the Government, entitled to additional compensation for unfair dismissal, as per the order of the Employment Tribunal. Recalling in this regard that the compensation should be adequate, taking into account both the damage incurred and the need to prevent the repetition of such situations in the future [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1173], the Committee trusts that the concerned workers will be able to receive such compensation without delay and that the Government will take an active role in facilitating the process. The Committee requests the Government to keep it informed of any steps taken in this regard. Further observing the prolonged nature of the proceedings, which in the complainants' view penalized the 22 union members seeking reinstatement, the Committee must recall that justice delayed is justice denied. Delay in the conclusion of proceedings giving access to remedies diminishes in itself the effectiveness of those remedies, since the situation complained of has often been changed irreversibly, to a point where it becomes impossible to order adequate redress or come back to the status quo ante [see* ***Compilation****, paras 170 and 1144]. In these circumstances, the Committee urges the Government to take the necessary measures to ensure that allegations of anti-union discrimination are examined in the framework of national procedures which should be prompt so that the necessary remedies can be really effective.*

564. *With respect to Hotel C, the Committee recalls that the allegations concern mass disciplinary proceedings affecting around 100 union members and targeted anti-union dismissals (or non-renewal of contracts) of ten TEAM members (recommendation (c)). The Committee observes from the information provided by the complainants and the Government that, in November 2020, the Supreme Court upheld the decision of the High Court which considered the dismissals of three unionists as justified, thus overturning the initial decision of the Employment Tribunal. The Government also informs about an additional case, where the High Court also considered the dismissals of four other unionists as justified since they had not acted in accordance with the Act on Freedom of Peaceful Assembly. While taking due note of the above and of the Government's indication that cases relating to Hotel C were concluded by final court decisions, the Committee observes that the Government does not provide details on the manner in which the alleged anti-union nature of the acts was given consideration in the Courts' final determination of the cases. It wishes to emphasize in this regard that, according to the allegations, the dismissals occurred when the Hotel's workers attempted to organize and were accompanied by mass disciplinary proceedings designed to intimidate union members and prevent the union from functioning [see 391st Report, October 2019, paras 393–394]. In these circumstances, noting that the dismissed union leaders continue to seek a remedy for their dismissal, the Committee urges the Government to bring the parties at Hotel C together with a view to finding an out-of-court solution for the concerned unionists and requests the Government to keep it informed of the steps taken in this regard.*

565. *The Committee further recalls that the complainants also previously alleged a number of impediments to the exercise of trade union activities at Hotel C (recommendation (d)) and observes that the Government and the complainants have different opinions in this respect. While the*

Government contends that trade union rights, including the right to organize assemblies, are guaranteed by the existing legal framework, the complainants allege that union activities were banned in the resort and that the Government has not taken any measures to ensure that workers enjoy freedom of association at the workplace, including the right to engage in peaceful union activities or collective bargaining. In view of these concerns, the Committee urges the Government to take the necessary measures to ensure that the union at Hotel C can freely exercise its legitimate trade union activities, including the right to organize assemblies and display union banners, without any interference from the management, and that those dismissed trade union officials who continue to have representative functions within the union have reasonable access to trade union members and premises so as to be able to exercise their representative functions. To this effect, the Committee encourages the Government to bring the parties together to clarify and remove any possible obstacles that may prevent the union from freely exercising its legitimate trade union activities and to incite the parties to engage in good faith collective bargaining as a means to create and maintain harmonious labour relations and prevent labour-related disputes.

566. *The Committee further notes with concern the complainants' more general allegations that there is increasing fear in hotel resorts throughout the country and frustration at the delays in judicial proceedings and that despite education of unionists, the right to organize and the right to bargain collectively are not accessible in practice as a result of the Government's actions and attitude. The complainants also point out that the incidents of police action and arrests of unionists in December 2008, April 2009 and May 2013, which formed the initial complaint in the present case, have not yet been investigated. The Government, on the other hand, puts forward that it has been working tirelessly to improve and establish a comprehensive legislative framework that guarantees workers' rights, that the Employment Tribunal is operational and active in dealing and resolving complaints submitted to it and that the Government encourages workers to fully exercise their rights granted under local laws and ratified international Conventions. In light of the conflicting information, the Committee must recall that a genuinely free and independent trade union movement can only develop where fundamental human rights are respected. The Government has the duty to defend a social climate where respect for the law reigns as the only way of guaranteeing respect for and protection of individuals. The ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government [see* ***Compilation****, paras 71, 72 and 46]. The Committee also wishes to underline that it had previously addressed the allegations of police violence and arrests of unionists resulting from confrontations between the striking workers and the intervening police officers and recalled in this regard that the exercise of freedom of association is incompatible with violence or threats of any kind, whether they be against employers, workers or other actors of society [see 395th Report, paras 274–275]. In view of the above and given the persistent concerns raised by the complainants, the Committee urges the Government to step up its efforts and take all necessary measures to ensure that workers in hotel resorts can freely exercise their legitimate trade union activities, without fear or intimidation of any kind.*

567. *Finally, the Committee notes that the complainants also point to the persistent lack of adequate legislation in the country to guarantee the right to freedom of association and assembly and protection against anti-union discrimination (recommendation (e)), alleging in particular that the Government has taken no action to adopt the Industrial Relations Act, despite the fact that a draft had been formulated as a result of a tripartite consultation process in June 2013. The Committee notes the detailed information provided by the Government, both on the existing legislative framework that it claims guarantees trade union rights, freedom of expression and freedom of assembly, as well as on the ongoing or planned legislative amendments. It notes, in particular, the adoption of the 2022 Associations Act, which the Government informs was formulated in consultation with a wide range of stakeholders and provides a more comprehensive framework for the exercise of the right to freedom of association. Taking due note of the above and recalling that*

the legislative aspect of this case has been previously referred to the Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts), which addressed the issue in its latest examination of the application of Conventions Nos 87 and 98, the Committee expects the Government to ensure the adoption of further necessary legislation to fully assure freedom of association and collective bargaining rights. The Committee also invites the Government to submit the 2022 Associations Act to the Committee of Experts for its consideration.

The Committee's recommendations

568. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee urges the Government to actively engage with the parties in Hotel A and encourage dialogue between them with a view to finding an out-of-court settlement for those unionists who wish to be reinstated, as the parties were able to do for other dismissed workers. The Committee trusts that all parties will engage in this process in good faith and will make all reasonable effort to find an agreeable solution to this long-standing issue.

(b) In view of the Government's assertion that the dismissed workers at Hotel B are entitled to additional compensation for their dismissals, the Committee trusts that the concerned workers will be able to receive adequate compensation without delay and that the Government will take an active role in facilitating the process. The Committee requests the Government to keep it informed of any steps taken in this regard. The Committee also urges the Government to take the necessary measures to ensure that allegations of anti-union discrimination are examined in the framework of national procedures which should be prompt so that the necessary remedies can be really effective.

(c) The Committee urges the Government to bring the parties at Hotel C together with a view to finding an out-of-court solution for the dismissed unionists who continue to seek a remedy for their dismissal and requests the Government to keep it informed of the steps taken in this regard. The Committee further urges the Government to take the necessary measures to ensure that the union at Hotel C can freely exercise its legitimate trade union activities, including the right to organize assemblies and display union banners, without any interference from the management, and that those dismissed trade union officials who continue to have a representative function within the union have reasonable access to trade union members and premises so as to be able to exercise their representative functions. To this effect, the Committee encourages the Government to bring the parties together to clarify and remove any possible obstacles that may prevent the union from freely exercising its legitimate trade union activities and to incite the parties to engage in good faith collective bargaining as a means to create and maintain harmonious labour relations and prevent labour-related disputes.

(d) The Committee urges the Government to step up its efforts and take all necessary measures to ensure that workers in hotel resorts can freely exercise their legitimate trade union activities, without fear or intimidation of any kind.

(e) Recalling that the legislative aspects of this case have been previously referred to the Committee of Experts on the Application of Conventions and Recommendations, the Committee expects the Government to ensure the adoption of further necessary legislation to fully assure freedom of association and collective bargaining rights.

The Committee also invites the Government to submit the 2022 Associations Act to the Committee of Experts for its consideration.

Case No. 3382

Definitive report

Complaint against the Government of Panama presented by the Authentic Federation of Workers (FAT)

Allegations: The complainant organization alleges that a hotel enterprise committed a series of acts that are contrary to freedom of association and collective bargaining

569. The complaint is contained in a communication from the Authentic Federation of Workers (FAT) received on 18 February 2020.

570. The Government of Panama sent its observations in communications dated 30 September 2021 and 28 September 2022.

571. Panama has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

572. In its communication received on 18 February 2020, the FAT indicates that on 22 February 2019, the Industrial Union of Hotel Workers and Related Activities (SITEHOSTAC), which is affiliated with the FAT, submitted a list of claims to the Directorate-General for Labour (DGT) in the Ministry of Labour and Social Development (MITRADEL) with a view to resolving a number of labour violations as well as negotiating a collective labour agreement with HARTIN TRADING S.A. (HOTEL SORTIS) (hereinafter "the enterprise"). The complainant alleges that the enterprise refused to discuss the aforementioned list and that, after exhausting all terms established by law regarding the conciliation process and subsequent negotiation, SITEHOSTAC requested arbitration in view of the constant refusal of the enterprise and the fact that it had not put forward any proposal throughout the process. The complainant states that SITEHOSTAC requested arbitration in order to resolve the conflict, as permitted under section 452 of the Labour Code, and that the enterprise responded by submitting an application for *amparo* [protection of constitutional guarantees] to the Supreme Court of Justice in order to avoid, or at least delay or prevent, the collective bargaining that it is obliged to undertake under section 401 of the Labour Code.

573. The complainant further indicates that SITEHOSTAC provided a list of trade union members to the enterprise and requested it to deduct the union dues established in its statutes, as set out in section 373 of the Labour Code. The complainant alleges that the enterprise refuses to deduct union dues from the salaries of trade union members and has not handed over the said dues to the trade union, thereby committing an unfair labour practice as described in section 388, paragraph 5, of the Labour Code, by making an omission designed to influence

workers in the enterprise to withdraw from or not join the trade union and to violate freedom of association.

574. In addition, the complainant alleges that the enterprise does not allow trade union leaders to have direct contact with the workers, by not authorizing the paid or unpaid leave necessary for them to do so. It is alleged that this occurred with Mr Luis Hendricks, Mr Arquímedes Rodríguez and Mr Samy Ríos, demonstrating that the enterprise is interfering in trade union activity and preventing them from exercising their right of assembly and organization. The complainant indicates that in 2001, the Inter-American Court of Human Rights found against Panama for impeding, among other things, the right of assembly of trade unionists *(Baena-Ricardo* et al. *v. Panama)*.

575. The complainant further alleges that the enterprise relocated workers affiliated with the union in an arbitrary manner and posted them to remote areas, lacking facilities such as sanitation, thereby discriminating against them for being trade union members. Moreover, the complainant alleges that since MITRADEL carried out an inspection of the enterprise in September 2019, which culminated in the enterprise being fined for employing undocumented foreign workers, the enterprise, which attributed the request for the said inspection to the union, changed the working hours of unionized workers and union leaders, forcing them to work shifts from 11 p.m. to 7 a.m. to avoid contact with other workers. The complainant alleges that the enterprise punishes union members in an arbitrary and reckless manner by forcing them to work dawn shifts once they join the union, thus undermining the quality of family life and preventing trade union work in the case of union leaders.

576. The complainant further alleges that the enterprise denied workers and union leaders Mr Luis Hendricks, Mr Arquímedes Rodríguez and Mr Benjamín Villanero access to work from 19 September 2019 until they were reinstated by order of the DGT contained in Order No. 050-DGT-19 of 27 September 2019, with which the enterprise has not fully complied to date since it has not paid the workers for the days on which they were denied access. The complainant indicates that although at the time of their reinstatement, by order of MITRADEL, the enterprise indicated that it had never dismissed them, the reports of the inspections that were carried out show that they were indeed denied access to the enterprise, being told, in an express statement of verbal dismissal, that they could not enter in order to work because they were "personae non gratae in the enterprise".

577. The complainant also alleges that the enterprise forces union members by means of threats, coercion, blackmail and any other means to withdraw from the union and that it has dismissed workers merely for belonging to the union. It alleges specifically that the enterprise threatened or forced Mr Jonny Lasso, Mr Kevin Sánchez and Mr Ariel Gómez to withdraw from the union. The complainant additionally alleges that in recent months, the enterprise has dismissed workers affiliated with the union, who have been called on to accept and sign a mutual agreement terminating the employment relationship and, if they did not do so, were threatened with a letter of dismissal, all with the intention of weakening the union and to obtain control over the workers. It is alleged that this serious situation occurred with Mr Roger Almengor and Mr Francisco Banda.

B. The Government's reply

578. In its communication dated 30 September 2021, the Government provides information concerning the various administrative and judicial actions relating to the issues raised in the complaint.

579. The Government attached a copy of Note No. 606-DGT-21 in which the DGT within MITRADEL indicates that in the records and archives of the DGT there is a list of claims submitted by SITEHOSTAC on 22 February 2019 for the negotiation of a collective bargaining agreement and relating to violations of the labour laws by the enterprise under the following sections of the Labour Code: 17, 18, 39, 57, 128(3) and (10), 134, 138(4) and (5) (alleging that the enterprise forces workers, by coercion or by any other means, to withdraw from, or constrains them from joining, the union), 140, 148, 181, 182, 183, 185, 186, 187, 188, 191 and 197 (arbitrary change of shifts). In the Note, the DGT indicates that the dispute ended with the issuance of an arbitration award, of which SITEHOSTAC was notified on 4 December 2020 and the enterprise on 29 January 2021. In the same Note, the DGT also indicates that SITEHOSTAC made no claim, complaint or allegation against the enterprise for violation of articles 128(20) and 161(8) of the Labour Code concerning deductions of union dues of SITEHOSTAC members.

580. The Government gives the following account of the events that led to the aforementioned arbitration award:

- On 22 February 2019, SITEHOSTAC submitted the aforementioned list of claims to the DGT alleging violations of labour laws and for the purpose of negotiating the 2019–21 collective agreement. On 22 March 2019, the DGT provided the enterprise with a copy of the aforementioned list, with a time limit of five days to reply. The enterprise lodged an *amparo* appeal before the Supreme Court of Justice against the notification order of 22 March 2019 issued by the DGT, arguing that the list of claims did not contain a request for the negotiation of a collective bargaining agreement but another type of claim and, therefore, that the order to negotiate a collective agreement not formally requested by the union constituted a violation of due process. In a decision issued on 10 December 2019, the Supreme Court of Justice concluded that there was no evidence of any infringement of the constitutional guarantee of due process and denied *amparo*.

- On 15 May 2019, SITEHOSTAC submitted a formal declaration of strike action to MITRADEL. The strike was to commence on 17 May for an indefinite period due to the failure to reach an agreement. Also on 15 May, SITEHOSTAC submitted a formal request for arbitration to the DGT. By a record of 15 May 2019, issued by the Labour Relations Department of MITRADEL, the strike declared for 17 May was called off due to the fact that SITEHOSTAC had decided to submit the dispute to arbitration. The Government indicates that the enterprise did not wish to sign the said record and filed an application for review and appeal against the aforementioned record, which were rejected as unfounded.

- Between March and August 2020, the DGT requested SITEHOSTAC and the enterprise to appoint arbitrators to represent them in the Arbitration Tribunal. Following the appointment of the president of the Arbitration Tribunal, as well as the respective arbitrators from the worker and employer sectors, an arbitration award was issued in which the collective agreement of 2020–23 was registered. The Government adds that on 30 August 2019, SITEHOSTAC submitted a new list of claims and violations, which was not admitted on the grounds that a list had been submitted by the same union and it was therefore indicated that until the first list was resolved, a new list could not be submitted.

581. The Government further indicates that various allegations have been submitted to the National Directorate of Labour Inspection and that on 19 September 2019, a general inspection was conducted by SITEHOSTAC in order to verify an allegation relating to: (i) workplace harassment and anti-union persecution of workers Mr Benjamín Villanero, Mr Luis Hendricks and Mr Rodrigo Méndez; (ii) gratuity payments of all departments; (iii) the number of foreign

workers and their permits; (iv) whether recent dismissals, such as that of Mr Francisco Banda, were justified; and (v) whether workers were given rest breaks between rotating shifts.

582. The Government reports that after having conducted the aforementioned inspection it was decided, as indicated in Decision No. 054-DGT-53-20 of 13 March 2022, to impose a penalty of 200 Panamanian balboas (equivalent to US$200) on the enterprise for having violated Act No. 7 of 2018 concerning measures to prevent, prohibit and punish discriminatory acts. In addition, after verifying whether the foreign workers in the enterprise had work permits, it was decided, by Decision No. 410-DGT-5-19 of September 2019, to impose a fine of 37,000 balboas on the enterprise for non-compliance with section 17 of the Labour Code.

583. With regard to the allegation that the enterprise denied Mr Roger Almengor, Mr Luis Hendricks, Mr Arquímedes Rodríguez and others access to work, the Government indicates that: (i) on 25 September 2019, the National Directorate of Labour Inspection attended the enterprise in order to ascertain the aforementioned events and, by Orders Nos 050-DGT-19 and 051-DGT-53-19 of 27 September 2019, the DGT ordered that Mr Arquímedes Rodríguez and Mr Luis Hendricks be reinstated; (ii) the workers' representative filed a complaint for contempt of the aforementioned Orders by the enterprise and sought verification, inter alia, as to whether both had been reinstated and whether they had been paid wages for the days on which they had been denied access to the enterprise; (iii) on 30 September 2019, the day of execution of the reinstatement order, the Chief of the Human Resources Department said that the workers could not be reinstated because neither one had been dismissed; (iv) by Order No. 030-DGT-53-20 dated 24 January 2020, the DGT dismissed the application for a fine for contempt against the enterprise filed by the workers' representative, who submitted an appeal against the order, which remains pending; and (v) on 12 February 2020 the DGT admitted an application for a fine for violation of labour standards and granted the enterprise a period of three days to submit evidence and arguments that it deemed appropriate, which remains pending.

584. By a communication dated 28 September 2022, the Government informs the Committee that the records and files of the DGT contain a list of claims concerning violations of labour legislation by the enterprise that was submitted by SITEHOSTAC on 29 October 2021. The Government indicates that the enterprise was notified of the list on 13 December 2021, that the conciliation process began on 23 December 2021, that according to the minutes of the mediation session held on 5 January 2022 the parties stated that they had engaged in dialogue and reached an agreement on the complaints contained in the list, and that consequently negotiations on the list had ended.

C. The Committee's conclusions

585. *The Committee notes that in the present case, the complainant alleges that a series of anti-union acts have been committed by a hotel enterprise against leaders and members of SITEHOSTAC. The complainant specifically alleges that the enterprise does not deduct union dues, does not grant union leave, arbitrarily relocates union members and threatens them so that they withdraw from the union, denied three union leaders access to work and dismissed two union members and that it has refused to negotiate a collective agreement. In its reply, the Government provides information on various actions taken principally by the DGT in relation to a number of the issues raised in the complaint and on penalties imposed on the enterprise in this regard.*

586. *In relation to the allegation that the enterprise refused to negotiate with SITEHOSTAC a list of claims that it submitted on 22 February 2019 to the DGT in order to resolve a number of labour violations and to negotiate a collective agreement, the Committee notes the Government's indication that:*

(i) after several appeals submitted by the enterprise and a strike notice by the union, the dispute was referred to arbitration; and (ii) the arbitration process concluded with the issuance of an arbitration award whereby the collective agreement for the period 2020–23 was registered. The Committee therefore understands, on the basis of the information provided by the Government, that the issue relating to the list of claims submitted by SITEHOSTAC in 2019 appears to have been resolved. The Committee also notes that, according to the information provided by the Government, SITEHOSTAC submitted a further list of claims on 29 October 2021 concerning violations of labour legislation by the enterprise and that in a mediation session on 5 January 2022 the parties reached an agreement in this connection. The Committee observes that that list of claims was not for the purposes of negotiating a collective agreement and that it is not apparent from the information provided that the violations of labour law were in relation to trade union matters.

587. *With regard to the allegation that the enterprise does not deduct union dues, while it notes the Government's indication that the DGT has no record of any allegation in this regard, the Committee observes that the complainant attached copies of letters sent by SITEHOSTAC to MITRADEL on 9 and 13 September and 6 November 2019, alleging, inter alia, that the enterprise was refusing to deduct union dues of members despite having been formally requested to do so on several occasions. The Committee notes that although it is apparent from the documents attached by the Government that a general inspection of the enterprise was conducted on 19 September 2019, it is not apparent that the issue of union dues was the subject of the inspection. Noting that the Government attached a copy of the draft collective agreement submitted to the DGT by SITEHOSTAC on 22 February 2019 and taking into account that it contains a clause relating to the deduction of union dues, the Committee expects that this issue has been resolved with the issuance of the aforementioned arbitration award and requests the Government to ensure that this aspect of the complaint is definitively resolved. Noting also that the draft collective agreement also contains a clause relating to the granting of union leave, the Committee expects that the allegation that the enterprise did not grant such leave has also been resolved with the issuance of the arbitration award and requests the Government also to ensure that this aspect of the complaint is definitively resolved.*

588. *With regard to the allegation that the enterprise arbitrarily relocates members and changes the working hours of unionized workers and trade union leaders, requiring them to attend or leave work in the early morning, preventing union activities in the case of the leaders, while the Committee notes that the Government does not strictly refer to this allegation, the Government indicates that SITEHOSTAC filed allegations of anti-union persecution with the National Directorate of Inspection and that, after having conducted an inspection on 19 September 2019, in March 2020 the enterprise was subject to a penalty for violation of Act No. 7 of 2018 concerning measures to prevent, prohibit and punish discriminatory acts. In the absence of specific information from the Government concerning the alleged relocations and recalling that no person shall be prejudiced in employment by reason of trade union membership or legitimate trade union activities, whether past or present [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1074], the Committee requests the Government to ensure that SITEHOSTAC leaders and members are not subject to discriminatory treatment on the basis of their union membership or activities.*

589. *Concerning the allegation that the enterprise denied union leaders Mr Luis Hendricks, Mr Arquímedes Rodríguez and Mr Benjamín Villanero access to work, until they were reinstated by order of the DGT, and that they were not paid wages for the days on which they were unable to enter the enterprise, the Committee notes the Government's confirmation that the workers were reintegrated by order of the DGT. The Committee also notes the Government's indication that a number of appeals filed in relation to the request to impose a fine on the enterprise in respect of these events remain pending. The Committee notes these elements and expects that any pending*

appeal will be resolved promptly and in accordance with freedom of association and that, if the alleged anti-union nature of the exclusion of trade union leaders from their workplaces is established, they receive the wages due to them.

590. *The Committee notes the allegation that the enterprise threatened and forced Mr Jonny Lasso, Mr Kevin Sánchez and Mr Ariel Gómez to withdraw from the union and threatened SITEHOSTAC members Mr Roger Almengor and Mr Francisco Banda so that they would accept and sign a mutual agreement to terminate the employment relationship, indicating that if they did not do so they would be given a letter of dismissal, all with the intention of weakening the union. While noting that the complaint does not contain specific documents relating to the situation of the aforementioned workers, and that the complainant does not indicate whether they instigated administrative and/or judicial proceedings in this respect, the Committee notes that the Government has not sent any observations in respect of these allegations. Recalling that direct threat and intimidation of members of a workers' organization and forcing them into committing themselves to sever their ties with the organization under the threat of termination constitutes a denial of these workers' freedom of association rights [see **Compilation**, para. 1100], the Committee requests the Government to ensure that workers in the enterprise are able to exercise their union activities without pressure or hindrance.*

591. *The Committee notes that although it is apparent from the foregoing that allegations have been brought in respect of most of the matters at hand in this complaint and that on various occasions both the DGT and the National Directorate of Labour Inspection have intervened, conducting inspections, imposing penalties and ordering the reinstatement of workers, the Committee does not have at its disposal full information concerning the final settlement of a number of allegations of anti-union acts contained in the present complaint. Noting that the Government reported that, subsequent to the submission of the present complaint, an arbitration award was issued to resolve the collective dispute between the enterprise and SITEHOSTAC, and that in January 2022 the trade union and the enterprise engaged in dialogue and reached an agreement on alleged violations of labour legislation, and having not subsequently received further information from the complainant, the Committee requests the Government to continue taking the necessary measures to ensure that SITEHOSTAC and its members are able to exercise their trade union activities without hindrance within the enterprise and to ensure that all issues raised in the present complaint are satisfactorily resolved. The Committee also expresses the hope that relations between SITEHOSTAC and the enterprise have improved and expects that the necessary efforts will be made to ensure that they succeed in governing their relations through social dialogue and collective bargaining.*

The Committee's recommendations

592. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to continue taking the necessary measures to ensure that SITEHOSTAC and its members are able to exercise their trade union activities within the enterprise without hindrance and to ensure that all aspects of the present complaint have been satisfactorily resolved.

(b) The Committee expects that any pending appeal relating to the reinstatement of trade union leaders will be resolved as soon as possible and requests the Government to ensure that if the alleged anti-union nature of the exclusion of trade union leaders from their workplaces is established, they have received the wages due to them.

(c) The Committee expresses the hope that relations between SITEHOSTAC and the enterprise have improved and expects that the necessary efforts will be made so that they succeed in governing their relations through social dialogue and collective bargaining.

(d) The Committee considers that this case is closed and does not call for further examination.

Case No. 3306

Definitive report

Complaint against the Government of Peru presented by the Autonomous Confederation of Workers of Peru

Allegations: The complainant organization alleges the violation of the right to collective bargaining of a workers' union in the informal economy, as well as anti-union acts by an enterprise in the fishing sector. It also denounces the arrest of union leaders and their sentencing to prison terms following a protest

593. The complaint is contained in communications dated 8 September 2017 and 19 February 2018 from the Autonomous Confederation of Workers of Peru.

594. The Government sent its observations on the allegations in communications dated 23 August, 2 October and 22 November 2018, as well as 22 January and 5 April 2019.

595. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

596. In its communication dated 8 September 2017, the complainant indicates that, in November 2013, dockworkers in the informal economy sector of the Villa María del Triunfo market formed the Union of Dockworkers, Hydrobiological Product Vendors and Associated Activities of Villa María del Triunfo – Lima (hereinafter "the union") in order to improve their precarious employment situation. The complainant reports that the union was recognized and registered by the Ministry of Labour and Employment Promotion (hereinafter "the MTPE") through a certificate of automatic registration on 13 January 2014.

597. The complainant states that the enterprise Servicios Industriales Pesqueros S.A. (hereinafter "the enterprise"), which owns the aforementioned market where several vehicle owners operate as wholesalers and retailers of hydrobiological products, refused to recognize the union, arguing that all requests were dealt with on an individual basis.

598. The complainant indicates that in July 2014, the union submitted a list of demands to the enterprise that: (i) essentially referred to conditions of work connected to the functioning of

the market (for example, the management of emergencies occurring within the market, the development of internal regulations on implementing adequate signage for pedestrians in the market, a suitable plan for the parking of trucks so that they do not block access to and from the market, and toilet facilities maintained in good condition), in order to ensure compliance with the minimum standards established by the Health and Safety at Work Act (No. 29783); and (ii) requested that workers have access to the market without having to pay a daily fee.

599. The complainant states that: (i) in September 2014, the enterprise filed an appeal of opposition to the processing of the above-mentioned list of demands before the MTPE; (ii) despite this, the union entered into direct negotiations with the owners of the enterprise; and (iii) on 1 October 2014, upon failure to reach an agreement and in view of the enterprise's refusal to submit a counter-proposal, the union sent a notarized letter to the enterprise, stating that if it did not receive its proposals within 72 hours, it would request conciliation before the MTPE.

600. The complainant maintains that the enterprise, instead of seeking a solution through dialogue, started to engage in anti-union practices. It claims that the enterprise pressured the vehicle owners (who contract stevedoring services directly) to dismiss the union leaders, and refers to the case of Mr Anthony Ilasaca Zuasnabar, Assistant General Secretary of the union, who reported this pressure to the MTPE and to the Villa María del Triunfo police station. The complainant further claims that the enterprise refused to allow the truck owners to enter the market to unload and sell their hydrobiological products, resulting in the union's board of directors having to intervene and insist that they finally be granted access. According to the complainant, these acts were aimed at preventing union members from working and intimidating not only the workers but also the owners of the product, thereby neutralizing any attempt to organize.

601. The complainant reports that the union held an information meeting on 14 October 2014 on the actions to be taken to prevent abusive practices by the enterprise, which led to a public and peaceful protest on 15 October 2014. It states that this protest triggered a work stoppage for approximately three hours.

602. The complainant submits that, as a result of this protest, the enterprise filed a complaint with the Public Prosecutor's Office against the seven union leaders (Mr Ilasaca Zuasnabar, as well as Messrs Carlos López Ramírez, Carlos López Castillo, Hilmer López Pajares, Daniel Flores Ruesta, Carlos Minaya Panamá and John Zavala Panduro), accusing them of multiple offences (vandalism, violations of personal freedom, damage to property, disorder, etc.). According to the complainant, these allegations are part of a criminal strategy by the enterprise to discourage union membership through fear and to remove the union leaders.

603. The complainant maintains that, with unusual speed, the Public Prosecutor's Office maliciously determined that the case was complex and referred it to the First Criminal Prosecutor's Office of Villa María del Triunfo. The complainant maintains further that, without prior notification delivered to his home, Mr Ilasaca Zuasnabar was arrested and taken handcuffed to a cell to have his statement taken.

604. The complainant reports that on 13 March 2017, the First Specialized Criminal Court of Villa María del Triunfo imposed sentences of six years' imprisonment on the union leaders for offences against public order and peace, and for disorder to the detriment of the enterprise. It states that the union leaders had to go into hiding to avoid serving these unjust sentences.

605. The complainant further states that in a decision dated 26 December 2014 (Executive Decision No. 524-2014-MTPE/1/20.2), the MTPE declared the enterprise's appeal of opposition to the

processing of the list of demands submitted by the union to be founded and ordered its draft collective agreement to be shelved.

606. The complainant underlines that there are rules in domestic legislation to regulate the work and protect the rights of longshore dockworkers. It points out that Act No. 25047 and its implementing regulations (Supreme Decree No. 010-2011-TR), which grant these workers certain benefits, establish a relationship between them and the enterprises managing the markets, land terminals or similar establishments where they work, in order to facilitate their application.

607. According to the complainant, the Peruvian State has failed to take appropriate measures to ensure compliance with its collective bargaining obligations, in particular in the informal economy sector, and that the Government has not implemented the measures suggested in this regard by the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

608. In its communication dated 19 February 2018, the complainant reports that on 18 September 2017, an appeal lodged by the trade union leaders against the ruling dated 13 March 2017 was declared founded by the High Court of Justice of South Lima. The complainant indicates that, following this decision, Mr Minaya Panamá, who had been imprisoned, was released. However, it claims that the enterprise is using the aforementioned criminal proceedings as an excuse to deny the trade union leaders entry to the market.

B. The Government's reply

609. In its communication dated 23 August 2018, the Government first provides the enterprise's observations concerning the allegations in the present case. The enterprise states that it is the owner of the wholesale market Terminal Pesquero de Villa María del Triunfo, a place where hydrobiological products are traded every day, with the participation of wholesale and retail traders.

610. The enterprise indicates that in August 2014, the union requested that collective bargaining begin and that, in September 2014, the Collective Bargaining Subdirectorate of the MTPE ordered a file to be opened and notified the parties to initiate collective bargaining. The enterprise states that it opposed the processing of the union's list of demands, pointing out that for collective bargaining to take place, there must be a link between the trade union organization and the enterprise.

611. The enterprise indicates that on 26 December 2014, the MTPE, through Executive Decision No. 524-2014-MTPE/1/20.2: (i) resolved to declare its opposition appeal founded, given that none of the enterprise's workers were members of the union; (ii) pointed out that union members paid on a daily-fee basis to work at the terminal; and (iii) maintained the right of the parties to seek other mutually beneficial resolution mechanisms.

612. The enterprise also emphasizes that: (i) the union has not lodged any appeal against the aforementioned ruling; (ii) according to the General Executive Decision No. 007-2012-MTPE/2/14 of the MTPE, trade union organizations of branch of activity must prove that they have sufficient representation to establish collective bargaining at the enterprise level; and (iii) it is inferred from article 41 of the Collective Labour Relations Act that in order to engage in collective bargaining, the trade union organization must have legitimate status.

613. As regards the alleged anti-union practices, the enterprise rejects the allegation that it pressured the vehicle owners to dismiss the union leaders and points out that the complainant has not provided any evidence in this regard. It also rejects the allegation that it did not allow

the truck owners to enter the market. The enterprise claims that, given that none of its workers are members of the union, there is no reason or justification for any anti-union conduct or practice.

614. With regard to the arrest and sentencing of the union leaders, the enterprise denies having planned a criminal strategy to discourage union membership and remove the leaders. It maintains that it only denounced two union leaders (Mr Ilasaca Zuasnabar and Mr López Pajares) in relation to the events of 15 October 2014 and that this action is a legitimate exercise of its right to bring to the attention of the Public Prosecutor's Office the commission of a criminal offence.

615. In communications dated 23 August, 2 October and 22 November 2018, and 22 January and 5 April 2019, the Government provides its own observations on the complaint. With regard to the list of demands submitted by the union, the Government confirms that Executive Decision No. 524-2014-MTPE/1/20.02 dated 26 December 2014 declared the opposition formulated by the enterprise against the processing of the list of demands in question to be founded, as it was noticed that the union did not have the legitimate status to request collective bargaining. The Government indicates that the aforementioned executive decision is a final administrative act, since the union has not challenged it before the judiciary. Consequently, the corresponding collective bargaining project has been shelved.

616. With regard to the allegations concerning the criminal proceedings arising from the enterprise's complaint, the Government confirms that on 13 March 2017, the First Specialized Criminal Court of Villa María del Triunfo sentenced the trade union leaders to effective prison terms for offences against public order, offences against public peace, and disorder to the detriment of the enterprise, and that, on 18 September 2017, this ruling was overturned by the High Court of Justice of South Lima.

617. Furthermore, the Government informs that an appeal for annulment filed by the enterprise against the ruling dated 18 September 2017 was declared inadmissible in a resolution dated 17 October 2017, and that an exceptional complaint filed by the enterprise against the aforementioned resolution was declared unfounded by the Supreme Court of the Republic on 2 October 2018. The Government therefore requests the Committee, if it deems it appropriate to do so, to declare the present case definitively closed, as there has been no violation of the union's rights.

C. The Committee's conclusions

618. *The Committee notes that, in the present case, the complainant alleges that the right to collective bargaining of a dockworkers' union in the informal economy was violated and that the enterprise that owns the hydrobiological products market in the city in question committed anti-union acts in order to obtain the dismissal of the union's leaders. It notes that the complainant also denounces the arrest of union leaders and the prison sentences imposed on them as a result of a criminal complaint filed by the above-mentioned enterprise following a protest by the union. The Committee notes that the enterprise denies these allegations and that the Government claims that there has been no violation of the trade union's rights.*

619. *The Committee takes note of the chronology of events provided by the complainant, the Government and the enterprise, namely: (i) in November 2013, dockworkers in the informal economy sector of the Villa María del Triunfo market founded the trade union; (ii) on 13 January 2014, the trade union was recognized and registered by the MTPE; (iii) in July 2014, the trade union submitted a list of demands to the enterprise; (iv) in August 2014, the union requested the MTPE to initiate collective bargaining between the parties; (v) in September 2014, the enterprise filed an appeal of opposition*

to the processing of the list of demands before the MTPE, despite which the parties entered into direct negotiations; (vi) on 1 October 2014, following the failure of the negotiations, the union informed the enterprise of its intention to request conciliation before the MTPE; (vii) on 14 October 2014, the union held an information meeting on the actions to be taken to prevent abusive practices by the enterprise; (viii) on 15 October 2014, following an information meeting held the previous day, the union staged a protest which triggered a work stoppage of approximately three hours; (ix) following this protest, the enterprise filed a criminal complaint with the Public Prosecutor's Office against the seven union leaders; (x) on 26 December 2014, the MTPE declared the appeal of opposition to the processing of the list of demands that had been filed by the enterprise to be founded (Executive Decision No. 524-2014-MTPE/1/20.2); (xi) on 13 March 2017, the First Specialized Criminal Court of Villa María del Triunfo sentenced the union leaders to six years' imprisonment for offences against public order, offences against public peace, and disorder to the detriment of the enterprise; (xii) on 18 September 2017, a ruling of the High Court of Justice of South Lima overturned this ruling; and (xiii) on 17 October 2017, an appeal for annulment filed by the enterprise against the aforementioned ruling was declared inadmissible by resolution and, on 2 October 2018, an exceptional complaint filed by the enterprise against that resolution was declared unfounded by the Supreme Court.

620. *With regard to the alleged violation of the trade union's right to collective bargaining, the Committee notes that in Executive Decision No. 524-2014-MTPE/1/20.2, copies of which were provided by the complainant and the Government, the MTPE: (i) declared the enterprise's appeal of opposition to the processing of the list of demands founded, on the grounds, inter alia, of the enterprise's assertions that it has no stevedoring jobs and that none of its workers are members of the union, as well as the fact that union members pay on a daily-fee basis to work at the terminal; and (ii) maintained the right of the parties to seek other mutually beneficial resolution mechanisms. On the other hand, the Committee understands that the union considered the enterprise to be its interlocutor for collective bargaining, given that: (i) the list of demands dealt mainly with conditions of work relating to the functioning of the market, which is owned by the enterprise, and requested the removal of the daily fee for access to the market; and (ii) Act No. 25047 and its implementing regulations, which grant certain benefits to dockworkers, establish a relationship between these workers and the enterprises managing the markets. The Committee notes that dockworkers are directly employed by the vehicle owners operating in the above-mentioned market. The Committee recalls that it has requested a Government to take the necessary measures to ensure that workers who are self-employed could fully enjoy trade union rights for the purpose of furthering and defending their interest, including by the means of collective bargaining; and to identify, in consultation with the social partners concerned, the particularities of self-employed workers that have a bearing on collective bargaining so as to develop specific collective bargaining mechanisms relevant to self-employed workers, if appropriate [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1285]. In light of the above, the Committee requests the Government to create an enabling environment for workers in the informal economy, including dockworkers in the Villa María del Triunfo market, to exercise their rights to organize and bargain collectively, as well as to participate in social dialogue in the context of the transition to the formal economy. The Committee invites the Government to avail itself of the technical assistance of the Office in this regard.*

621. *Regarding the allegations of anti-union practices, the Committee notes that the complainant alleges that: (i) following unsuccessful negotiations between the parties, the enterprise pressured the vehicle owners (who contract the stevedoring services) to dismiss the union leaders, which led Mr Ilasaca Zuasnabar to file complaints with the MTPE and the Villa María del Triunfo police station; and (ii) the enterprise denied access to the market to the vehicle owners who continued to hire the services of union members and the union's board of directors had to intervene to resolve the situation. The Committee further notes the reply of the enterprise forwarded by the Government, in which the*

*enterprise: (i) denies the allegations; (ii) points out that the union has failed to provide any evidence of the alleged pressure; and (iii) maintains that it has no reason to commit such acts, as none of its workers are members of the union. While taking due note of the diverging positions of the complainant organization and the enterprise on the events, the Committee recalls that no person should be prejudiced in employment by reason of legitimate trade union activities and cases of anti-union discrimination should be dealt with promptly and effectively by the competent institutions [see **Compilation**, para. 1077]. In light of the above, the Committee trusts that the Government has ensured that none of the union members have been affected in their access to employment because of their legitimate trade union activities and that the relevant investigations have been carried out into the complaints filed by Mr Ilasaca Zuasnabar with the MTPE and the Villa María del Triunfo police station.*

622. *As for the allegations concerning the arrest and sentencing of the trade union leaders, the Committee notes that the complainant states that: (i) the complaint filed by the enterprise following the union's protest is part of a criminal strategy to discourage trade union membership and remove the trade union leaders; (ii) as a result of the ruling of 13 March 2017 of the First Specialized Criminal Court of Villa María del Triunfo, Mr Minaya Panamá was imprisoned and the other trade union leaders had to go into hiding to avoid serving their respective sentences; and (iii) following the overturning of the said ruling, the enterprise has used the criminal proceedings against the trade union leaders as an excuse to deny them access to the market. The Committee also notes that the enterprise maintains that it only denounced two union leaders in connection with the union's protest, which is a legitimate exercise of its right to bring a criminal offence to the attention of the Public Prosecutor's Office. The Committee observes that: (i) in the ruling of 13 March 2017, the trade union leaders were initially sentenced to six years' imprisonment for "offences against public order", "offences against public peace" and "disorder" to the detriment the enterprise; and (ii) the aforementioned ruling was overturned by the High Court of Justice of South Lima on the grounds that it had not been established that the workers had used violence against persons or public or private property by taking advantage of the formation of a tumultuous gathering. The Committee takes due note of this ruling and its confirmation by the Supreme Court. The Committee recalls in this respect that workers should enjoy the right to peaceful demonstration to defend their occupational interests [see **Compilation**, para. 208]. The Committee trusts that the Government has taken the necessary steps to ensure that the trade union leaders subject to the above-mentioned rulings have been able to return to their place of work. The Committee expects that the Government will be able to provide adequate compensation to the workers who had been imprisoned and who were released following the judgments of the Superior Court of Justice of Lima and the Supreme Court.*

The Committee's recommendations

623. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government create an enabling environment for workers in the informal economy, including dockworkers in the Villa María del Triunfo market, to exercise their rights to organize and bargain collectively, as well as to participate in social dialogue in the context of the transition to the formal economy.

(b) The Committee invites the Government to avail itself of the technical assistance of the Office in this regard.

(c) The Committee expects that the Government will be able to provide adequate compensation to the workers who had been imprisoned and who were released following the judgments of the Superior Court of Justice of Lima and the Supreme Court.

(d) The Committee considers that this case is closed and does not call for further examination.

Case No. 3310

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Peru presented by
- the General Confederation of Workers of Peru (CGTP)
- the Federation of Workers in the Lighting and Power Industry of Peru and
- the National Union of Workers of the Peruvian National Migration Authority (SINTRAMIG)

Allegations: The complainant organizations denounce systemic violations of the freedom of association of the members of two trade unions from the public sector, including the non-authorization of the deduction of trade union dues, disciplinary proceedings that led to suspensions and dismissals of members, non-compliance with a collective agreement and with an arbitration award, and the refusal to bargain collectively

624. The complaint is contained in a communication from the General Confederation of Workers of Peru (CGTP), dated 25 August 2017, and in additional communications from the CGTP, dated 21 May 2018, the Federation of Workers in the Lighting and Power Industry of Peru, dated 20 February 2019, and the National Union of Workers of the Peruvian National Migration Authority (SINTRAMIG), dated 17 August 2020.

625. The Government of Peru sent its observations on the allegations in communications dated 28 December 2017, 5 February, 18 September, 2 October, 12 and 30 November 2018, 30 April, 11 July 2019, 3 and 31 January, 2 December 2020, 4 January, 10 February, 8 June 2021 and 10 August 2022.

626. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

National Migration Authority

627. In its communication dated 25 August 2017, the CGTP alleges the existence of systemic violations of the freedom of association of the members of SINTRAMIG (previously called the "National Union of Public Servants of the National Migration Authority (SINSERPUBMIG)"), and denounces in particular: (i) the refusal by officials from the administration of the National Migration Authority (hereinafter "the Authority") to authorize the payroll deduction of trade union dues; and (ii) disciplinary proceedings against the General Secretary, Mr Guillermo Huamán, members of the executive committee and all members of the trade union, as reprisals and punishment for having filed a complaint for corruption of officials before the First Provincial Public Prosecutor's Office for Corporate Affairs specializing in corruption offences committed by officials.

628. In its communication dated 17 August 2020, SINTRAMIG reiterates the allegations made by the CGTP in its communication dated 25 August 2017, and reports that: (i) the deduction of regular monthly union dues was recently initiated; (ii) following the disciplinary proceedings against its members, many workers were removed or suspended; and (iii) in 2019, a collective agreement was signed on the basis of a list of demands from 2018. However, the collective agreement was not fulfilled, and its implementation was distorted through the distribution of electronic food cards to members of another trade union in a discriminatory manner.

629. SINTRAMIG also denounces that: (i) provincial public prosecutors are appointed on a provisional basis with the aim of initiating criminal proceedings against trade union leaders and members; and (ii) a list of demands submitted in 2019 remains unresolved despite being accepted for processing by the Ministry of Labour and Employment Promotion (MTPE) and the National Civil Service Authority (SERVIR).

Public electricity enterprise

630. In its communication of 21 May 2018, the CGTP alleges the existence of systemic violations of the freedom of association of the members of the Arequipa Electricity Generating Enterprise SA (EGASA) Trade Union (hereinafter the "public enterprise union"), and denounces in particular the refusal by officials from the public enterprise to: (i) provide for payroll deductions of extraordinary trade union dues; and (ii) grant trade union facilities for travel and per daily expenses to members of the executive committee of the trade union in relation to organizational events held at the national level by the Federation of Workers in the Lighting and Power Industry of Peru. The CGTP also denounces the distorting of an arbitration award (optional arbitration) through which the collective bargaining procedure was completed in 2017, and which determined an increase in the basic wages of the members of the public enterprise trade union. It denounces in particular the incorporation into basic wages of collateral benefits (electrical-related risk, family benefits and shift differential pay) in order to distort the effects of the arbitration award. In this regard, the CGTP reports that the public enterprise union encouraged the filing of ordinary labour proceedings before the Ninth Labour Court of Arequipa in April 2017.

631. In its communication dated 20 February 2019, the Federation of Workers in the Lighting and Power Industry of Peru provides additional evidence relating to the allegations of distortion of the 2017 arbitration award presented by the CGTP.

B. The Government's reply

National Migration Authority

632. In its communications of 28 December 2017 and 5 February 2018, the Government forwards the observations of the Authority concerning the allegations made against it by the CGTP. With regard to the authorization of the payroll deduction of trade union dues, the Authority indicates that SINTRAMIG failed to address the observations that it provided concerning: (i) the submission of the account number in the name of the trade union (and not in the name of Mr Huamán) for the payment of the withheld deductions; and (ii) proof of the legal representation of the trade union, duly registered in the Trade Union Registry managed by the MTPE. Consequently, it was unable to proceed with the deduction and payment of the trade union dues, in accordance with Supreme Decree No. 003–2017–TR. Regarding the disciplinary proceedings against SINTRAMIG members, the Authority states that they are in response to alleged violations of the Internal Regulations for Civil Servants and related rules, and that they are not on the grounds of the exercise of trade union rights.

633. In its communication of 12 November 2018, the Government provides information on developments in the disciplinary proceedings against Mr Huamán and the members of the SINTRAMIG executive committee. It indicates that: (i) 13 disciplinary proceedings were conducted, including 7 against Mr Huamán; (ii) out of those 7 proceedings, 3 resulted in a penalty being issued; and (iii) the 6 proceedings against the other members of the executive committee resulted in a decision to exonerate those subject to the proceedings. In its communication of 11 July 2019, the Government indicates that Mr Huamán lodged appeals against the disciplinary decisions before the Civil Service Tribunal, and that: (i) one was declared unfounded, as the Tribunal maintained a six-month suspension of Mr Huamán for insulting two employees from the Authority; (ii) one was upheld, as the Tribunal rescinded a six-month suspension of Mr Huamán for insulting the General Manager and another worker from the Authority; and (iii) in one, the Tribunal declared null and void the disciplinary decision owing to a violation of due administrative process.

634. In its communication of 30 April 2019, the Government indicates that, in a letter dated 9 March 2018, SINTRAMIG communicated its institutional account number to enable the payment of trade union dues. It maintains that all payments deducted since November 2017 in the form of trade union dues have been made.

635. In its communication of 4 January 2021, the Government forwards the observations of the Authority concerning the allegations made against it by SINTRAMIG. Regarding the collective agreement concluded in 2019 (in force for the period 2019–20), it states that: (i) all the clauses have been implemented; (ii) the provision of food was replaced by the distribution of electronic food cards for staff who were already receiving food, in accordance with the collective agreement; and (iii) Mr Huamán filed appeals with several bodies on the grounds of alleged non-compliance with the collective agreement by the Authority, which were rejected.

636. Concerning the list of demands made in 2019 (submitted for the period 2021–22), the Authority indicates that, to date, regular meetings have been held with SINTRAMIG to address issues specific to its members, but that pursuant to the third supplementary transitional provision of Emergency Decree No. 014-2020, during the fiscal year 2020, lists of demands could only be submitted by trade unions of public sector bodies that did not have or had not initiated any collective bargaining that included economic conditions in 2016, 2017, 2018 and 2019.

637. The Authority furthermore rejects the allegations regarding the appointment of the provincial public prosecutors, underlining that each state body is governed by its own functional

autonomy. In this regard, the Government indicates, in its communication dated 10 February 2021, that the Eleventh Provincial Criminal Prosecutor's Office received a complaint against Mr Huamán and other persons for the offence of breach of public confidence, provided for in section 427 of the Criminal Code, and that it has made inquiries in order to ascertain whether the alleged facts are true.

638. Regarding the administrative disciplinary proceedings, the Authority indicates that the Technical Secretariat for Administrative Disciplinary Proceedings is responsible for the investigation and initiation of administrative proceedings for approximately 1,200 workers, including both SINTRAMIG members and non-members, and that it is in charge of over 300 files based on objective facts, which are supported by evidence and which are in accordance with the regulations established by the SERVIR.

639. In its communication dated 8 June 2021, the Government indicates that the administrative disciplinary procedures against SINTRAMIG members led to the dismissal of three workers (who are not trade union leaders) and to the imposition of suspensions of between five days and six months for three other workers, including Mr Huamán. It indicates that the three dismissed workers filed appeals with the Civil Service Tribunal and that those appeals were declared unfounded. The Government also reports that a monitoring exercise, which was carried out at the Authority by SERVIR following a complaint by SINTRAMIG, concluded that the body had not engaged in anti-union conduct in removing the aforementioned workers. In its communication of 10 August 2022, the Government forwards additional observations by the Authority, which indicates that the suspended workers have been reinstated and that, to date, there are no pending administrative disciplinary procedures against those workers or against any SINTRAMIG leader.

Public electricity enterprise

640. In its communications of 18 September 2018 and 11 July 2019, the Government provides the observations of the public enterprise on the allegations made against it by the CGTP. The public enterprise denies the allegations, emphasizing that they have not been corroborated by any means of evidence. It indicates that: (i) it is a public enterprise that must comply with the guidelines established by the State; (ii) all the requests submitted by the public enterprise union concerning deductions of ordinary or extraordinary trade union dues have been duly addressed, and that there are no pending requests or claims in this regard; and (iii) it pays for travel for up to three times a year and daily expenses for two days per person at each opportunity, in order for members of the trade union's executive committee to attend the events organized by the Federation of Workers in the Lighting and Power Industry of Peru.

641. With regard to the arbitration award concerning the collective bargaining in 2017, the public enterprise states that it has strictly complied with the terms of the arbitration award, which establish that it must grant a general increase of 100 Peruvian sols on the basic remuneration of workers belonging to the trade union up to the limit or ceiling of the wage scale corresponding to each occupational category. The public enterprise also maintains that family benefits are being paid in accordance with the terms established, but that it will strictly abide by the decisions of the judicial authority in relation to the legal proceedings in the Ninth Labour Court of Arequipa, following the appeal filed by the public enterprise union.

642. The Government also states, in its communication of 31 January 2020, that the National Labour Inspection Authority (SUNAFIL) conducted inspections in the public enterprise and did not find any violation of the social and labour legislation pertaining to the matters denounced by the CGTP (remuneration, labour discrimination for union-related reasons, collective relations).

C. The Committee's conclusions

643. *The Committee notes that, in the present case, the complainant organizations allege the existence of systematic violations of the freedom of association of the members of two public sector trade unions. The Committee notes the complainant organizations denounce in particular: (i) the refusal to authorize the deduction of trade union dues, disciplinary proceedings that resulted in suspensions and dismissals, the non-compliance with a collective agreement and the refusal to bargain collectively by the Authority; and (ii) the refusal to provide for the deduction of trade union dues and to grant facilities for travel and daily expenses, and the non-compliance with an arbitration award by a public electricity enterprise. The Committee notes that the two public entities deny the aforementioned allegations and that the Government states that there is no violation of trade union rights, as reportedly demonstrated by a series of administrative and judicial decisions.*

National Migration Authority

644. *Concerning the allegations made by the CGTP that the Authority did not authorize payroll deductions of the trade union dues of SINTRAMIG members, the Committee notes that the Authority states that it was not able to proceed with the deductions as SINTRAMIG did not address its observations on the need to provide an institutional account number and proof of its legal representation. It also notes the Government's indications that, in March 2018, SINTRAMIG forwarded its account number, and that all the deductions since November 2017 have been paid. Noting that the start of the deduction of trade union dues was confirmed by SINTRAMIG in a subsequent communication, the Committee will not pursue the examination of this aspect of the case.*

645. *Regarding the alleged disciplinary processes against SINTRAMIG leaders and members, the Committee notes the complainant organizations' allegations that administrative procedures were initiated against all members of the trade union as reprisals for having filed a complaint for corruption of officials, and that these procedures resulted in suspensions and dismissals. The Committee also notes the information provided by the Government in this regard, according to which: (i) a series of administrative proceedings were initiated against SINTRAMIG members, including seven against its General Secretary, Mr Huamán, and six against other members of the executive committee of the trade union; (ii) while the other members of the executive board were exonerated, Mr Huamán and two members were suspended, and three other members were dismissed; (iii) appeals filed by the dismissed workers were declared unfounded by the Civil Service Tribunal; and (iv) a monitoring exercise carried out at the Authority by SERVIR concluded that the Authority had not engaged in anti-union conduct in relation to the dismissals. The Committee also notes that, according to the Authority, the administrative disciplinary proceedings were in response to alleged violations of the Internal Regulations for Civil Servants and other related rules, and were not on the grounds of the exercise of trade union rights. The Committee duly notes the decisions issued by the Civil Service Tribunal and the result of the monitoring exercise carried out by SERVIR in relation to the dismissed workers. The Committee observes at the same time that a significant number of disciplinary proceedings were initiated against the General Secretary and members of the executive committee of SINTRAMIG and against members of the trade union. While not all the proceedings resulted in penalties, the Committee observes that the Authority did not deny the allegation that all SINTRAMIG members had reportedly been subject to disciplinary proceedings at some point. In this regard, the Committee recalls that it drew attention to the fact that initiating administrative proceedings against union officials without sufficient grounds might have an intimidating effect on union officials [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1102]. In light of the above, the Committee encourages the Government to take measures to foster a climate of trust and the development of harmonious industrial relations between the Authority and SINTRAMIG.*

646. *Concerning the allegation that the provincial public prosecutors are appointed on a provisional basis in order to initiate criminal proceedings against SINTRAMIG members, the Committee notes that the Authority underlines that each state body is governed autonomously. It also notes the Government's indication that the Eleventh Provincial Criminal Prosecutor's Office received a complaint against Mr Huamán in his capacity as General Secretary of SINTRAMIG and other persons for the alleged offence of breach of public trust. Observing that it has not been provided with any details on the specific facts that gave rise to the aforementioned criminal complaint, the Committee recalls that, while persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, the arrest of, and criminal charges brought against, trade unionists may only be based on legal requirements that in themselves do not infringe the principles of freedom of association [see* ***Compilation****, para. 133]. The Committee trusts that, in the context of the examination of the criminal complaint against Mr Huamán, the competent authorities will fully take into account freedom of association. The Committee requests the Government to keep it informed of the outcome of the examination and of any decision taken in that regard.*

647. *Concerning the alleged non-compliance with a collective agreement concluded in 2019 (for the period 2019–20), the Committee notes that SINTRAMIG reports the discriminatory distribution of electronic food cards, while the Authority states that, according to the collective agreement, this measure was only targeted at workers who already received food. The Committee also notes the Authority's indication that Mr Huamán denounced the failure to comply with the collective agreement before several courts and that all his petitions were rejected. Noting the diverging opinions expressed by SINTRAMIG and the Authority on the scope of the clauses of the collective agreement concerning food, the Committee recalls that it previously considered that disputes arising out of the interpretation of a collective agreement should be submitted to an appropriate procedure for settlement established either by agreement between the parties or by laws or regulations as may be appropriate under national conditions [see 383rd Report, Case No. 3081, para. 431]. The Committee therefore considers that this conflict should be resolved through the appropriate national mechanisms or before the competent national judicial authorities.*

648. *Concerning the alleged refusal by the Authority to bargain collectively, the Committee notes SINTRAMIG's allegation that a list of demands submitted in 2019 (for the period 2021–22) remains unresolved despite having been accepted for processing by the MTPE and SERVIR. It also notes the Authority's indication that regular meetings are held with SINTRAMIG, but that according to the third supplementary provision of Emergency Decree No. 014-2020, adopted on 22 January 2020, only trade unions of public sector bodies that did not have or had not initiated any collective bargaining that included economic conditions in 2016, 2017, 2018 and 2019 were able to submit their list of demands in the fiscal year 2020. However, the Committee observes from publicly available information that: (i) Act No. 31114, adopted on 22 January 2021, repealed the Emergency Decree No. 014-2020; and (ii) on 30 April 2021, Act No. 31188 on collective bargaining in the public sector was adopted. In this context, the Committee trusts that the Government will take the necessary measures to ensure that the members of SINTRAMIG are able to fully exercise their right to collective bargaining with a view to renewing the agreement signed in 2019 with the Authority.*

Public electricity enterprise

649. *Regarding the allegations of the CGTP that the public enterprise refused to provide for the deduction of the trade union dues of the members of the public enterprise union and to grant travel and daily expenses to leaders of the trade union for events organized by the Federation of Workers in the Lighting and Power Industry of Peru, the Committee notes the public enterprise's indication that: (i) all the requests submitted by the trade union regarding deductions of trade union dues were duly addressed; and (ii) it paid for travel for two leaders of the trade union for up to three times per year*

*and the daily expenses for two days per person at each opportunity in order for them to attend the aforementioned events. The Committee recalls that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious relations and should therefore be avoided [see **Compilation**, para. 690]. It furthermore recalls that, in accordance with the Workers' Representatives Recommendation, 1971 (No. 143), workers' representatives should be afforded the necessary time off, without loss of pay or social and fringe benefits, for attending trade union meetings, training courses, seminars, congresses and conferences, and the appropriate facilities in order to carry out their functions promptly and effectively, provided that the granting of such facilities does not impair the efficient operation of the undertaking concerned. Noting, on one hand, the general nature of the allegations and, on the other, the conflicting versions of the CGTP and the public enterprise, the Committee invites the Government to ensure that the deduction of the trade union dues of the members of the public enterprise union, and the possibility for the trade union leaders to attend the events organized by the Federation of Workers in the Lighting and Power Industry of Peru, are addressed on the basis of the criteria outlined above.*

650. *Concerning the alleged non-compliance with the 2017 arbitration award, the Committee notes the CGTP's allegation that: (i) the public enterprise included collateral benefits, such as family benefits, in the basic wages to distort the effects of the planned wage increase; and (ii) the public enterprise union filed ordinary labour proceedings before the Ninth Labour Court of Arequipa in this regard. The Committee notes that the public enterprise maintains that it has strictly complied with the terms of the arbitration award, but that it will respect the decision of the judicial authority in relation with the proceedings filed by the trade union. Noting the appeal filed by the public enterprise union and recalling its abovementioned analysis on the differences of interpretation of collective agreements, the Committee invites the parties to continue to have recourse to the competent judicial authorities at the national level to resolve this dispute.*

The Committee's recommendations

651. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee trusts that, in the context of the examination of the criminal complaint against Mr Huamán, the competent authorities will fully take into account freedom of association. The Committee requests the Government to keep it informed of the outcome of the examination and of any decision taken in that regard.

(b) The Committee trusts that the Government will take the necessary measures to ensure that the members of SINTRAMIG are able to fully exercise their right to collective bargaining, with a view to renewing the agreement signed in 2019 with the Authority.

Case No. 3404

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Serbia presented by the Trade Union of Workers – National Bank of Serbia

Allegations: The complainant alleges that, as a result of several acts of anti-union interference, it lost the majority of its members to another union supported by the employer and was eventually deprived of its status of representative trade union, which prevented it from exercising its right to bargain collectively. The complainant also alleges the employer committed acts of anti-union discrimination against some of its members

652. The complaint is contained in communications dated 14 December 2020 and 2 April 2021 submitted by the Trade Union of Workers – National Bank of Serbia.

653. The Government of Serbia transmitted its observations on the allegations in communications dated 30 March and 31 December 2022.

654. Serbia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

655. In its communication dated 14 December 2020, the complainant alleges that after it filed an initiative for entering into a collective agreement with the National Bank of Serbia (hereinafter "NBS") as the sole representative trade union on 31 May 2013, the employer, through several of its departments and certain employees working at the Institute for Manufacturing Banknotes and Coins (hereinafter "IMBC"), used the Trade Union Organization of Independent Trade Unions of the National Bank of Serbia (hereinafter "TUOITUNBS") to obstruct its work in order to avoid collective bargaining.

656. The complainant indicates that the NBS, which is the central bank of Serbia, is regulated by the Law on the National Bank of Serbia, but that the provisions of the Labour Law apply to any matters not regulated thereunder. The complainant states that when the TUOITUNBS was founded in September 2011, it consisted of up to 20 employees of the IMBC, which is a specialized organization within the NBS. The complainant alleges that it was then established within the whole NBS with the logistic support of the employer.

657. The complainant alleges that the Governor of the NBS attended an electoral meeting of the TUOITUNBS on 5 July 2013 and that she is a member of that union, although forbidden from being a member pursuant to the Law on the National Bank of Serbia. Similarly, the complainant

affirms that the Deputy Head of the General Affairs Department of the NBS is a member of the TUOITUNBS. It also denounces that Mr Vladeta Cuk, who was the Secretary General of the TUOITUNBS from 5 July 2013 to the second half of 2018, acted as the employer's representative in labour disputes with employees while also acting as a representative of the TUOITUNBS in court disputes alongside the employer.

658. According to the complainant, perfidious sabotage was conducted by the Human Resources Department of the NBS, which gave new hires automatic membership in the TUOITUNBS upon signing their employment contracts, while either omitting to inform them of the existence of the complainant or advising them that it was not desirable to join it. The complainant therefore argues that their employment was conditioned on them joining the TUOITUNBS.

659. The complainant also alleges that in the second half of 2013, it was sabotaged by an associated group of people, who registered its members from the branches of Novi Sad, Kragujevac, Belgrade and Uzice as members of the TUOITUNBS. It states that the Human Resources Department was not allowed to make such changes, and that its requests for information as to why no salary deductions for union dues were made in the above-mentioned branches were left unanswered. Furthermore, the complainant affirms that some of its members were pressured into cancelling their membership and joining the TUOITUNBS by representatives of the latter who had been appointed as their superiors.

660. Moreover, the complainant alleges that even though section 223 of the Labour Law provides that the representativeness of a trade union shall be established by the employer in the presence of interested trade unions, it never received notice of the procedure for granting representativeness to the TUOITUNBS, nor the decision by which it was granted on 11 September 2013. It therefore states that it was never able to assess the fulfilment of all prescribed conditions for the operation of the TUOITUNBS within the NBS. The complainant also points out that no information on the representativeness or status of the TUOITUNBS was published on the website of the NBS at that time.

661. The complainant states that it lost practically half of its members upon submitting its initiative for collective bargaining to the employer, which largely contributed to the deterioration of the working conditions of the employees, as the regulation of employment relationships is now based on kinship and interest grouping. The complainant informs that out of the 1,300 members that it had in August 2012, only 250 remain.

662. The complainant indicates that it filed several complaints with the Ministry of Labour against the employer's lobbying and discrimination, to which it received no response. It further indicates that on 9 February 2019, it filed a criminal complaint against an organized anonymous group on reasonable doubt that 24 criminal offences, including discrimination, were committed against it, but has not received any response.

663. In its communication dated 2 April 2021, the complainant reiterates the information that was previously submitted. It also informs that the TUOITUNBS was originally established in the IMBC by the Autonomous Trade Union of Employees in Banks, Insurance Companies and Other Financial Organizations of Serbia (SS BOFOS), which is an umbrella union of bank employees, insurance companies and other financial organizations in Serbia. It argues that the employees of the NBS who are not deployed in the IMBC cannot be part of the TUOITUNBS. The complainant also states that SS BOFOS, as a third party, is prohibited by law to influence the decision-making bodies of the NBS, and that the employees of the NBS cannot associate with employees of the financial sector since they are performing tasks of supervision over their employers.

664. The complainant states that on 13 August 2018, the NBS established again that the TUOITUNBS met the requirements for representativeness provided by sections 218 and 219 of the Labour Law (that is: is set up and active on the basis of principles of freedom of trade union organization and activity; is independent from public bodies and employers; is funded mostly from membership fees and own sources; and its membership comprises no less than 15 per cent of the total number of employees with the employer). It indicates that the NBS also determined that the complainant did not meet these criteria due to an insufficient number of affiliates, after which the employer therefore terminated their negotiations for a collective agreement.

665. The complainant indicates that it appealed the above-mentioned decisions before the High Court of Belgrade, which confirmed them on 16 December 2020. It further indicates that it requested the Board for Determining Representativeness of Trade Unions and Associations of Employers of the Ministry of Labour to determine its representativeness and to establish that the TUOITUNBS was not a representative union within the NBS, but on 27 January 2021, the Board rejected the first request and refused to act upon the second.

666. Moreover, the complainant alleges acts of anti-union discrimination by the employer. In this regard, it states that a member of its negotiating team for the collective bargaining procedure, Mr Vladimir Rabrenovic, was prevented from entering a building of the NBS for seven years, and that a decision of the High Court of Belgrade established that there had been discriminatory treatment. The complainant further alleges that during the collective bargaining procedure, one of its affiliates, Ms Vesna Spasenovic, was mobbed by her supervisor, which affected her employment status. It indicates that the dispute ended after a peaceful settlement was reached.

667. The complainant also affirms that its President, Mr Blazo Knezevic, is deployed in shift mode on the exit ramp of the underground garage in the NBS's building in Slavija, lost his time off for union work, and is prevented from meeting other members during working hours.

B. The Government's reply

668. In its communication dated 30 March 2022, the Government provides the observations of the NBS, which rejects the allegations. The NBS indicates that there are two organized trade unions within it, the TUOITUNBS and Trade Union of Workers – National Bank of Serbia (hereinafter "TUW–NBS"), but that only the TUOITUNBS is representative.

669. The NBS states that the complainant's claims that the TUOITUNBS was organized by the employer's representatives are incorrect and malicious, as the NBS has no right to restrict freedom of association or prohibit trade union pluralism. According to the NBS, the fact that its employees decided to join the TUOITUNBS is exclusively the result of the latter's activity to attract them to membership through its policy and actions, as all employees are free to join any of the unions.

670. The NBS indicates that the presence of its Governor at the TUOITUNBS's founding assembly was merely courteous and due to protocol. It insists that she is not a member of any trade union organization and has never been. With respect to Mr Cuk, it believes that the question of whether she performed the duties of a legal representative of the NBS in labour disputes is irrelevant and points out that similar duties are performed by Ms Vesna Spasenovic, who is a prominent representative of the TUW–NBS.

671. The NBS also emphasizes that it does not pressure any employees, including its new hires, regarding membership in the TUOITUNBS, as they are free to choose and possibly join any of

the unions. Moreover, it explains that its new employees are not provided with notices or statements on any trade union organization, since they can obtain such information within the NBS's internal web platform, where on the same page there is information on both the TUW– NBS and the TUOITUNBS.

672. Furthermore, the NBS denies the alleged illegal registration of members of the TUOITUNBS in the branches of Belgrade, Uzice, Novi Sad and Kragujevac, indicating that its Directorate for Human Resources and Organizational Affairs acted exclusively on the basis of the signed membership applications or withdrawal notices that were submitted by trade union members and deducted union dues accordingly.

673. The NBS also denies any influence of its management on the establishment and operation of the TUOITUNBS. It argues that the fact that some members of the TUOITUNBS perform managerial duties in the NBS is not relevant, as employees cannot be restricted from membership in any trade union organization, nor does their membership in trade union organizations limit their professional promotions.

674. Moreover, the NBS refutes the allegation that it denied information to the TUW–NBS during the first determination of the representativeness of the TUOITUNBS. The NBS indicates that the decision of 11 September 2013 was published on its notice board and was therefore available to all employees. It further indicates that the President of the TUW–NBS acknowledged the existence of the other representative union in a letter sent to the Governor of the NBS on 29 April 2015 and called for cooperation between the two trade unions in the collective bargaining procedure in a letter sent to the TUOITUNBS on 25 September 2017.

675. The NBS also states that the allegations that it tried to obstruct the collective bargaining procedure are untrue and unfounded. It indicates that the negotiations for concluding a collective agreement were initiated separately by both the representative unions and affirms that it approached them seriously and in good faith by appointing a negotiating committee. According to the NBS, a total of 12 negotiating meetings were held, with representatives of the TUW–NBS not attending three negotiating meetings (out of 11 to which they were invited while the trade union was representative). It stresses that it did not differentiate between the TUW– NBS and the TUOITUNBS, but always encouraged them to cooperate and act together in the interest of the employees that they represent.

676. The NBS indicates however that on 13 August 2018, it was determined through the procedure prescribed by the Labour Code that the TUW–NBS had lost its representativeness and that the TUOITUNBS, with 1,064 members out of a total of 2,333 employees in the NBS, was the only representative trade union. It explains that with the loss of its representativeness, the TUW– NBS also lost the opportunity to be a signatory of a collective agreement, in accordance with section 248 of the Labour Law. The NBS therefore argues that this distinction was justified and there was no discriminatory behaviour on its part.

677. The NBS informs that the TUW–NBS has so far initiated four disputes against it before the courts of general jurisdiction, namely: (i) Case No. P1. 116/18, in which the High Court in Belgrade, in a decision dated 16 December 2020, rejected as unfounded all claims, including with respect to the annulment of the decisions on the representativeness of the TUW–NBS and the TUOITUNBS; (ii) Case No. P1. 12/19, in which the High Court of Belgrade issued a final decision rejecting in its entirety the request for declaration of a collective agreement; (iii) Case No. P1. 143/19, in which the First Basic Court of Belgrade rejected a claim for annulment of a decision by which the President of the TUW–NBS was deprived of the right to 64.5 hours of paid union work per month due to the insufficient number of trade union members; and

(iv) Case No. P1. 128/19, in which the High Court in Belgrade is currently pre-examining the admissibility of a lawsuit alleging discriminatory behaviour by the NBS and 35 persons.

678. The NBS also indicates that the TUW–NBS initiated a procedure to determine its representativeness before the Board for Determining the Representativeness of Trade Unions and Associations of Employers of the Ministry of Labour which, in a decision dated 27 January 2021, rejected the request after establishing that the TUW–NBS had failed to submit evidence on meeting the representativeness criteria.

679. In its communication dated 30 March 2022, the Government transmits additional observations from the NBS, in which it indicates, with respect to the court verdict which established discriminatory treatment in relation with Mr Rabrenovic, that the verdict does not have any connection with his trade union engagement or the TUW–NBS. It explains that Mr Rabrenovic was allowed to enter the building all the time, but with the issuance of a special identification card because he worked in another business facility. The NBS informs that it appealed the decision before the Supreme Court of Cassation, but nevertheless fully complied with it and adjusted its technical standards. Regarding the alleged mobbing of Ms Spasenovic, the NBS denies that she was ever discriminated against or abused, and stresses that the agreement that was concluded did not acknowledge that discrimination had occurred.

680. With respect to the allegations concerning Mr Knezevic, the NBS explains that he performs work at the workplace of the officer for physical and technical security and fire protection, and that he is deployed according to the Rulebook on systematization jobs in the NBS. The NBS also indicates that he lost his right to paid union work when the TUW–NBS lost its representative status, in accordance with the Labour Law

C. The Committee's conclusions

681. *The Committee notes that, in the present case, the complainant alleges that after it filed an initiative for entering into a collective agreement with the NBS, the latter committed several acts of anti-union interference in its capacity as employer with the aim of increasing the representativeness of another union, the TUOITUNBS, as a result of which the complainant lost hundreds of members, as well as its status of representative trade union, and was therefore unable to continue the collective bargaining procedure. It further notes that the complainant alleges that some of its members were subjected to acts of anti-union discrimination by the employer. The Committee notes that the Government, for its part, submits the observations of the NBS, which denies most of the allegations against it.*

682. *With respect to the formation of the TUOITUNBS within the IMBC, the Committee notes that the complainant indicates that the union was created in 2011 by the SS BOFOS, which is an umbrella union in the financial sector. The Committee notes that, according to the complainant: (i) only employees who are deployed in the IMBC should be part of the TUOITUNBS; and (ii) the employees of the NBS cannot associate with a third party which represents employees over whom they perform tasks of supervision. The Committee observes that both these points concern the alleged anti-union interference carried out by the employer to facilitate the installation of the TUOITUNBS within the whole NBS after the TUW–NBS filed an initiative for entering into a collective agreement on 31 May 2013. In this regard, the Committee notes that the complainant states that: (i) the Governor of the NBS is a member of the TUOITUNBS and attended its electoral meeting on 5 July 2013; (ii) the Deputy Head of the General Affairs Department of the NBS is also a member of the TUOITUNBS; (iii) Mr Vladeta Cuk, who was the Secretary General of the TUOITUNBS from 5 July 2013 to the second half of 2018, acted as the employer's representative in labour disputes with employees during the same period; (iv) the Human Resources Department of the NBS automatically registered its new hires*

as members of the TUOITUNBS; (v) an associated group of people registered the affiliates of the TUW– NBS from the branches of Novi Sad, Kragujevac, Belgrade and Uzice as members of the TUOITUNBS; (vi) representatives of the TUOITUNBS were appointed as the superiors of certain members of the TUW–NBS and pressured the latter into cancelling their membership and joining the TUOITUNBS; (vii) the TUW–NBS was never informed of the procedure for granting representativeness to the TUOITUNBS, nor of the decision by which it was granted on 11 September 2013; (viii) the TUW– NBS, whose membership decreased from 1,300 members in 2012 to 250, lost its status of representative trade union on 13 August 2018, which means that it is no longer allowed to bargain collectively with the NBS; and (ix) the TUW–NBS filed several complaints with the Ministry of Labour alleging lobbying and discrimination by the employer, as well as a criminal complaint alleging that it was the subject of 24 criminal offences, including discrimination, by an organized anonymous group.

683. *The Committee further notes that the NBS, in response to these allegations, states that: (i) they are false, as its employees decided to join the TUOITUNBS exclusively because of that union's policy and actions; (ii) its Governor has never been a member of the TUOITUNBS and her presence at its founding assembly was merely courtesy and due to protocol; (iii) the fact that certain members of the TUOITUNBS perform managerial duties in the NBS is not relevant, as they cannot be restricted from trade union membership; (iv) the question of whether Mr Cuk acted as a legal representative of the NBS in labour disputes is also irrelevant; (v) its employees, including its new hires, are not pressured and are free to join any of the unions; (vi) no illegal registration occurred with respect to the branches of Belgrade, Uzice, Novi Sad and Kragujevac, as its Directorate for Human Resources and Organizational Affairs only acted based on signed membership applications or withdrawal notices that were submitted by trade union members; (vii) the TUW–NBS was not denied information regarding the first determination of the representativeness of the TUOITUNBS, as the decision of 11 September 2013 was published on the NBS's notice board; (viii) the TUW–NBS acknowledged the existence of two unions at the workplace in a communication of 2015 sent to the NBS and called for their cooperation in the collective bargaining procedure in a communication of 2017 sent to the TUOITUNBS; (ix) the NBS did not obstruct the collective bargaining procedure, as it negotiated in good faith with both trade unions until the TUW–NBS lost its representativeness; and (x) the High Court in Belgrade is currently pre-examining the admissibility of the criminal complaint that was presented by the TUW–NBS.*

684. *The Committee observes that the NBS admits that its Governor attended the founding assembly of the TUOITUNBS shortly after the TUW–NBS filed an initiative to bargain collectively, and considers it irrelevant that its Deputy Head of its General Affairs Department is a member of the TUOITUNBS and that the Secretary General of the TUOITUNBS, who was elected at the above-mentioned assembly, acted as the employer's representative in labour disputes with employees during her mandate. The Committee recalls the importance it attaches to protection being ensured against acts of interference by the employers designed to promote the establishment of workers' organizations under the domination of the employer. It further recalls the importance of ensuring the independence of the parties in collective bargaining and stresses that negotiations should not be conducted on behalf of employees or their organizations by bargaining representatives appointed by, or under the domination of, employers or their organizations [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 1215 and 1214].*

685. *The Committee also notes the contradictory information provided by the complainant and the NBS with respect to the alleged automatic registration of new employees as members of the TUOITUNBS, the alleged illegal transfer of the TUW–NBS's members from the branches of Novi Sad, Kragujevac, Belgrade and Uzice to the TUOITUNBS, and the alleged pressures exercised on certain members of the TUW–NBS to join the TUOITUNBS. In this regard, the Committee recalls that workers shall have*

*the right to join organizations of their own choosing without any interference from the employer [see **Compilation**, para. 1189]. The Committee requests the Government to institute an independent investigation without delay into the allegations of anti-union interference by the NBS and, if acts of interference are identified, to ensure that corrective measures and sufficiently dissuasive sanctions can be taken. The Committee requests the Government to keep it informed of any developments in this regard and to provide information on the outcome of the complaints filed with the Ministry of Labour and the criminal complaint that is being examined by the High Court of Belgrade.*

686. *With respect to the alleged acts of anti-union discrimination against members of the TUW–NBS during the collective bargaining procedure, the Committee notes that, according to the complainant: (i) the High Court of Belgrade established that Mr Vladimir Rabrenovic, who was prevented from entering a building of the NBS for seven years, had been subjected to discriminatory treatment; and (ii) a dispute involving Ms Vesna Spasenovic, who was mobbed by her supervisor and saw her employment status affected, ended after a peaceful settlement was reached. The Committee further notes that the NBS states in this regard that: (i) it fully complied with the court verdict concerning Mr Rabrenovic by adjusting its technical standards, even though the verdict was not related to his trade union engagement and has been appealed before the Supreme Court of Cassation; and (ii) Ms Spasenovic was never discriminated against or abused, and no acknowledgement of that was made in the agreement that was reached between the parties. The Committee recalls that no person shall be prejudiced in employment by reason of trade union membership or legitimate trade union activities, whether past or present [see **Compilation**, para. 1074]. Duly noting the NBS's indication that the judicial decision issued regarding Mr Rabrenovic was fully complied with, as well as the information provided regarding the settlement reached with Ms Spasenovic, the Committee will not pursue its examination of this aspect of the case.*

687. *The Committee also notes that the complainant alleges that its President, Mr Blazo Knezevic, lost his time off for union work and is prevented from meeting its affiliates during working hours. It notes that the NBS, for its part, indicates that Mr Knezevic lost his right to paid union work as a result of the TUW–NBS's loss of its representative status, in conformity with the Labour Law, and that this decision was confirmed by the First Basic Court of Belgrade. The Committee observes however that the NBS does not reply to the allegation that Mr Knezevic is prevented from meeting the members of TUW–NBS during his working hours. In this regard, it recalls that the right to hold meetings is essential for workers' organizations to be able to pursue their activities and it is for employers and workers' organizations to agree on the modalities for exercising this right [see **Compilation**, para. 1585]. The Committee invites the Government to encourage dialogue between the parties with a view to finding a mutually agreeable solution to this aspect of the dispute.*

The Committee's recommendation

688. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:

> **The Committee requests the Government to institute an independent investigation without delay into the allegations of anti-union interference by the NBS and, if acts of interference are identified, to ensure that corrective measures and sufficiently dissuasive sanctions can be taken. The Committee requests the Government to keep it informed of any developments in this regard and to provide information on the outcome of the complaints filed with the Ministry of Labour and the criminal complaint that is being examined by the High Court of Belgrade.**

Case No. 3407

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Uruguay presented by the Surgical Anaesthesia Union of Uruguay (SAQ)

Allegations: The complainant alleges favouritism by the Government towards another trade union, exclusion from collective bargaining, and interference by the Government in bipartite collective bargaining and in the designation of essential services

689. The complaint is contained in a communication from the Surgical Anaesthesia Union of Uruguay (SAQ) dated 20 February 2020. The SAQ sent additional information in a communication dated 28 May 2021.

690. The Government provided its observations in a communication dated 30 September 2021.

691. Uruguay has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

692. In a communication dated 20 February 2020, the SAQ states that it was formed in 1993 when surgical anaesthetists decided to change their trade union representation, which to that point had been undertaken by the Medical Union of Uruguay (SMU), on the understanding that this union no longer represented or defended their interests. The complainant states that it is a category trade union, which represents more than 2,000 doctors and which, since its creation, has concluded countless collective agreements both in the public and private sectors. They also state that, in the country, there are three operational trade unions that represent doctors: the SMU (which represents doctors who are not surgical anaesthetists in Montevideo), the Medical Federation of the Interior (FEMI) (which organizes doctors outside Montevideo) and the SAQ (which represents surgical anaesthetists across the whole country). The complainant states that these organizations are not exclusive and that it is normal for some doctors to be members of two or three of those organizations.

Discrimination, harassment and favouritism of a trade union connected to the Government

693. The complainant alleges that: (i) up until 2005, they participated actively in collective bargaining, concluding countless collective health sector agreements, both within the public and private sectors; (ii) following the rise to power of the *Frente Amplio* Government in 2005, there have been a series of changes in the relationship with the Government; (iii) there was a special relationship between those who had been leaders of the SMU and the new

Government, to the extent that many of those in leadership positions in the SMU took up positions in the Government; and (iv) this special link has led to the fact that the Government has favoured the SMU above the other medical trade unions and has supported that union repeatedly in its intent to eliminate the existing trade union plurality in the sector.

694. The complainant alleges that, since 2005, the Government began to systematically favour the SMU as the organization that should represent all doctors in all fields of practice, and that the SMU has managed to sign agreements in which surgical anaesthesia has been reformulated without the participation of the SAQ, and even going against the wishes of that organization. In addition, the complainant alleges that the Government of that era applied pressure on and harassed the directors of the complainant organization, making statements and accusations against its officials, which were submitted to the National Medical College.

695. The complainant states that, in 2005, the Government convened the Health Advisory Councils and that, although more than 30 trade union and social organizations were invited with the aim of gathering their opinion regarding a reform of the national health system, the Government specifically excluded the complainant. The complainant alleges that, after presenting a grievance in that regard to the judiciary, it was finally invited to participate in those Councils. The complainant alleges that, although, during the period 2007–12 they managed to continue participating in collective bargaining in all areas, from 2012 a process began, under which they were systematically and conscientiously excluded by the Government from every collective bargaining process, with the clear complacency of the SMU. The complainant alleges that, in 2012, the Government and the SMU planned to reformulate doctors' way of working and remuneration, with a view to fixing a single salary for all doctors, irrespective of their specialty and any associated risks, favouring those who practised general medicine and to the detriment of those practising medical specialties. The complainant alleges that the ulterior motive of that reform was to eliminate the agreement that related specifically to surgical anaesthetists, which had been negotiated by the SAQ more than two decades previously.

Exclusion from collective bargaining in Wage Councils

696. The complainant notes that the Wage Councils, tripartite collective bargaining bodies in the private sector, were relaunched in the country in 2005, and that, although it is true that neither the SAQ nor the FEMI are formally a part of Group 15 (health and related services) under the Wage Councils, both were invited by the Ministry of Labour and Social Security (MTSS) to participate with the right to speak but without vote. The complainant demonstrates that, until 2012, the SAQ, the FEMI and the SMU participated in Group 15 and, although the vote for the workers in this group was held by the SMU, which was designated by the executive authorities as the most representative trade union because of the number of its members, the SMU participated together with the other trade unions, respecting the position of the FEMI and the SAQ.

697. The complainant alleges that, although the Medical Labour Commission was created in 2010 and it was determined that a delegation designated by the SAQ was going to be able to participate when positions in the surgical anaesthesia specialty were being negotiated, in 2012 they were excluded from the invitation to participate in the Wage Council negotiations and that the name of the Medical Labour Commission was changed to the Multipartite Advisory Commission (CMA), excluding the SAQ from the Commission. Furthermore, they allege that, in 2015, high-availability positions (CAD) were negotiated in the specialty of general surgery, without the complainant ever being invited to participate in collective bargaining and, although at the end of 2015 they signed an agreement that enabled them to participate in meetings of

the CAM when matters relating to surgical anaesthesia were to be dealt with, the SAQ was allowed to attend but was never given the option of taking the floor.

698. The complainant alleges that the SMU and the Government planned and imposed the use of high-availability positions in the private sector, establishing a system of semi-exclusivity (or complete exclusivity) in which productivity (the fundamental mechanism of remuneration for surgical anaesthetists negotiated by the SAQ) became a completely residual aspect, and in which the thing that had been an incentive before became a punishment (under which, doctors that did not meet determined goals saw their base salary reduced by up to 25 per cent). The complainant alleges that these positions were designed without their participation and against their express will, despite the fact that they are specifically designed for surgical anaesthetists.

699. The complainant demonstrates that, as its members were denied from putting themselves forward for high-availability positions, the executive authorities required enterprises to only hire workers using this type of contract under the penalty of fines and punishments. The complainant indicates that the high-availability positions could not be implemented because the collective of surgical anaesthetists and the SAQ had spoken out against these positions and had repeatedly condemned this situation by means of labour conflicts, and as a result few or no anaesthetists or surgeons responded to the recruitment call for these positions. Faced with this situation and as their actions had not yielded any fruit, the executive authorities, in agreement with the SMU, proceeded in the 2018 Wage Councils to take another step forward to attack the surgical anaesthetists and resolved to directly reduce their salaries through the shady and oblique method of recategorizing surgical procedures, decreasing the total salary that general surgeons received for performing surgery, that is to say, a direct wage reduction.

700. In a communication sent on 28 May 2021, the complainant indicates that, although it is true that the current Government, which came into power on 1 March 2020, responds to different power groups than those that occupied positions in the moment that the complaint was submitted and that the special relationship that existed between the authorities of the previous Government and the SMU and the particular favouritism of the State towards the SMU no longer exist, the SAQ continues to be invited to participate in collective bargaining only to the extent that the SMU considers it to be relevant. The complainant considers that, although it was surely as a result of the change in Government that it has begun to participate in collective bargaining in the Wage Councils, to all intents and purposes, their appearance at the Wage Councils continues at the mercy of the SMU; they are not invited to those Councils by the MTSS, rather it is the SMU that invites them (usually they are invited incorrectly and late) and they are only invited to participate with the right to speak but without the right to vote except through the SMU, which does not represent or defend their interests. The complainant alleges that they have always been told, despite their opposition, that the decisions taken by the SMU and the Government are final. The complainant also considers that there is no guarantee that the SMU would not decide from one day to the next to prevent them from participating in the Wage Councils.

Exclusion from collective bargaining in the State Health Services Administration

701. The complainant alleges that: (i) the state health enterprise known as the State Health Services Administration (ASSE), with which, historically, multiple agreements had been negotiated, excluded them from the negotiations in which high-availability roles (FAD) for surgical anaesthetists were approved; and (ii) in 2007, collective bargaining agreements were signed with the SMU through which those roles were implemented for general surgeons and surgical anaesthetists working in the ASSE, modifying agreements concluded between the ASSE and the SAQ in 2008, which is to say that a collective bargaining agreement that was in force was

violated in a unilateral and illegal manner. The complainant alleges that the SMU acts primarily in the defence of doctors that are not surgical anaesthetists (and of those, not even in defence of doctors from the interior of the country), and does not act in defence of anaesthetists.

702. The complainant states that they have presented requests for annulment to the Administrative Court (TCA) against the resolutions of the ASSE, which were used to approve the collective bargaining agreements with the SMU that implemented the high-availability positions in general surgery and surgical anaesthesia, since those agreements were to the detriment of the working conditions of those doctors and were approved without their participation. The complainant indicates that the TCA has not yet issued a judgment on those requests for annulment.

Designation of the most representative organization

703. The complainant states that the designation of the most representative organization is not determined by an independent body that guarantees the necessary impartiality, but rather that it is the executive authorities that designate the most representative organization for each sector in the groups identified by the Wage Councils. According to the information provided by the complainant, in the case of the Group 15 Wage Council, relating to the health sector, the SMU was designated as the most representative organization for doctors, despite the fact that it lacked the necessary independence from the Government.

704. The complainant states that, given that they had been excluded from Group 15 and that the representation of medical workers in that group had been granted to the SMU as the most representative organization, they had posed the possibility of creating a surgical anaesthesia subgroup within Group 15 that would be made up of the same delegations of the main group, but would also include – given the existence of an additional place – a delegate of the SAQ, and it would be in that environment that any matter relating to the categories, salaries and working conditions of surgical anaesthetists and surgeons should be discussed and resolved. The complainant states that similar solutions have been implemented in other sectors of activity, in which, in the face of the existence of a trade union for a profession, subgroups or chapters have been favoured in which decisions can be negotiated that encompass all the enterprises of the sector covering specific jobs or tasks. That is the case, for example, in Group 13 (transport) where Subgroup 12 (air transport) was created, in which there are multiple chapters that deal with matters relating to national and foreign companies, but also the various professions involved (airline pilots, pilots of aerial application aircraft, ground staff, etc.), providing each group with their own environment in which negotiation can take place, in which the floor is given to specific trade unions that represent the workers. The complainant states that the executive authorities have refused to create a subgroup within Group 15 with an area of operation limited to surgical anaesthetists, which would have removed all of the problems relating to the representativeness of the SMU, as that subgroup would have enabled the SAQ to participate and represent its workers as the workers' organization that is undeniably the most representative of surgical anaesthetists.

Alteration of the principle of bilateral collective bargaining – Intervention by the executive authorities

705. The complainant states that: (i) the Wage Councils are tripartite and the majority of votes are cast by the executive authorities such that it can occur and it has occurred that workers or employers do not agree with a proposal, and in the end the proposal is approved against their will because of the votes cast by the Government; (ii) there is a type of compulsory arbitration which follows the best of hypotheses and guidance provided by the executive authorities in

the most serious cases, but in addition to this general violation, which the law limits to minimum wage and categories of activity, this interference in the health sector has been great and exceeds even the scope of the law itself, as, in essence, collective bargaining has been brought under control, subjecting it to the health policy that the executive authorities intends to implement, and (iii) the Government has incessantly intervened and promoted aspects that go beyond minimum wages and categories, constantly getting involved in aspects that are set in accordance with national regulations resulting from bipartite collective bargaining, violating the principles of bilateralism and of free and voluntary negotiation.

706. The complainant alleges that the executive authorities have been making proposals that modify working conditions and remuneration for workers, an area which should be the sole responsibility of the workers' and employers' organizations involved and alleges that this has been particularly evident in two areas in which the executive authorities have intervened in collective bargaining:

- The first example is the creation and implementation of the high-availability positions, which reformulated surgical anaesthesia (they promote and almost require employment in a single position, which leads to a loss of technical independence and a deterioration in professional development which affects surgical anaesthetists), getting involved in aspects that go beyond minimum wages and categories and economically punishing those health institutions that do not employ doctors using that type of contract (they are punished economically by not receiving funds from the National Health Fund). These positions were designed by the executive authorities and the SMU against the wishes of many doctors and almost all surgical anaesthetists and they were also not promoted by enterprises, which, in the majority of cases, did not agree with them. The high-availability positions changed labour relations in the health sector and are promoted by the Government as they form part of its health policy.

- The second matter in which the executive authorities have intervened in collective bargaining is in the recategorization of surgical procedures, an aspect which has an impact on the remuneration of surgical anaesthetists. The complainant alleges that: (i) the executive authorities have developed and presented to enterprises and to the SMU a recategorization proposal, which modifies the various categories of general surgical procedures, which in turn leads to a reduction in the total wage bill that currently is earned by surgical anaesthetists; (ii) as no anaesthetists or surgical anaesthetists wanted to accept the high-availability positions, the executive authorities resolved to directly attack their form of remuneration through the shady and oblique method of recategorizing surgical procedures, and (iii) the recategorization proposal had the negative result of reducing the salaries of general surgeons, who in the end were "obliged" to accept the transformation of their positions into high-availability positions, and at the same time it served to finance a proposal issued by the SMU, which intended to reduce the workload of every doctor working in the polyclinic system to four patients per hour, penalizing the doctors who were members of the SAQ and benefiting its own members, because that reduction in the number of patients per hour in the polyclinic was only applied to doctors who were not surgical anaesthetists. The complainant considers that the wage reduction was proposed (and to a certain extent, imposed) by the executive authorities, violating the principle of bilateral collective bargaining.

707. The complainant states that: (i) following intense efforts, they were finally permitted to attend the "Recategorization Committee" to "accompany" the SMU, but without the right to speak, that is to say, to attend as a simple observer; (ii) in the end, only two meetings of the Committee

were held, in which it was clear that the recategorization had already been agreed between the State and the SMU; (iii) in the final meeting, and in spite of their negative opinion regarding signing the recategorization of surgical anaesthetic procedures, which would lead to a wage reduction, the SMU unilaterally approved the document; and (iv) the severity of the situation lies not only in the direct wage reduction, but also in the fact that the wage reduction was formally proposed (and to a certain extent, imposed) by the executive authorities, violating the principle of bilateral collective bargaining by the Government making a direct intervention to modify the form of remuneration of workers in the enterprises in question.

Mechanism for declaring an essential service

708. The complainant states that in the last decade, various disputes have occurred, many of them related to the question of representativeness, and alleges that, in the disputes of 2007 and 2012 (among others), the work of surgical anaesthetists was declared to be essential, without the necessary budget being provided for that work. The complainant alleges that: (i) the essential nature of work did not only affect emergency services but also any surgery or other activity carried out at the polyclinic, such as the coordinated care provided in outpatient clinics, and considers that the way in which the designation was used was a way of removing the right to strike; and (ii) the declaration of essential work was used as a way of bringing an end to the dispute without proposing mechanisms for arbitration or alternative mediation, they simply prohibited strike action and prevented the trade union from being able to act to pursue its demands. The complainant indicates that, although the law provides for work to be declared essential, that covers essential (minimal) services and not all activity and that those services should be "maintained through emergency shifts", the executive authorities disregarded this by declaring essential all work carried out by surgical anaesthetists (including, for example, normal polyclinics).

709. In the light of the above, the complainant asks: (i) whether it is valid to declare work essential when there is continuity of care provided by the trade union presence in accordance with a duty roster, which is guaranteed by the trade union and regarding the existence of which there is no controversy; (ii) whether it is valid that the declaration of work as essential and the prohibition against taking trade union action should encompass surgery in all its forms, including care in polyclinics, coordinated care, etc., as it has been used and not only to encompass those services which are, owing to their nature, truly essential; and (iii) whether it is valid to prohibit the exercise of the right to strike without offering any other alternative method for solving the dispute or to discuss the set of demands issued by the trade union.

Legal proceedings initiated by the SAQ against the MTSS

710. The complainant states that, according to Decree No. 367/007 of 23 August 2007, the agreement was reached in the Group 15 Wage Council, Health Services, to create the Continuing Medical Education Fund, to which contributions would be made by enterprises, and they allege that the MTSS only transferred funds to the SMU and that the SAQ never received such funds. The complainant also states that in 2019, they initiated legal proceedings against the MTSS, reclaiming the payment of the amount that, in their understanding, should have been transferred by the institutions concerned, in compliance with the 2007 agreement, and that had never been paid to the complainant. According to the complainant's statement, in the agreements reached under the framework of the Wage Councils, it had been agreed that those funds should have been transferred directly to the SAQ and not to the SMU. The legal proceedings are ongoing.

B. The Government's reply

711. In its communication dated 30 September 2021, the Government states that, in the country, there is complete trade union freedom and independence, which includes a system of collective bargaining with a long history and that Uruguay was one of the first countries to accept, promote and protect not only collective bargaining, but also the other two pillars of collective labour rights, the right to strike and freedom of association. In addition, it highlights that the legal system in Uruguay is characterized by trade union pluralism, and that, as a result, the collective rights to organize and to collective bargaining are granted to all established collective organizations.

Trade union discrimination, harassment and favouritism of a trade union connected to the Government

712. With regard to the alleged relationship between the Government authorities and the SMU leadership, and the resulting lack of independence of the latter, the Government highlights that, since 1 March 2020, the political leadership of the State has been in the hands of different political parties than those that had been leading the country during the facts that have been included in the complaint. The Government states, however, that the design of the representation of labour interests by the Wage Councils and the remuneration structure and working conditions agreed under those Councils have not been modified, and therefore the assertion of the supposed intention to favour the other trade union organization through a supposed preference towards that institution is unfounded. The Government states that, at the current time, the SAQ has been participating in collective bargaining that has been formally convened under the Wage Councils, participation which is not the result of an invitation issued by the MTSS but rather by the SMU, and that it participates with the right to speak but without vote. With regard to the assessments made by the SAQ regarding the State's intention to reformulate the form of medical practice and its remuneration in order to favour those practising general medicine over those practising other specialties, as well as to generate a single agreement for the sector, the Government highlights that, unlike in other countries, in Uruguay, in addition to the coexistence of the private and public subsectors of health, the financing of comprehensive healthcare providers that provide health coverage for the population is almost entirely public, as there is a joint fund composed of contributions from workers, enterprises and the State, as well as a direct allocation from the national budget. For this reason, the way in which healthcare spending is implemented by healthcare providers is a relevant variable, both for the Ministry of Public Health (MSP) and for the Ministry of Economy and Finance (MEF), in order to guarantee the efficiency of the system and ensure quality universal health coverage for the population. In this regard, collective bargaining is a relevant space to establish public human resources policies, which, furthermore, are developed in agreement with the main actors in the sector. The Government states that neither the MEF nor the MSP formally participate in the Wage Councils, as, during the tripartite collective bargaining carried out under their framework, the executive authorities are represented by the MTSS, therefore, the invitation and participation of the MSP is to provide oversight and advice.

713. Notwithstanding the above, the Government highlights that the reform of medical practice was carried out through a long process of negotiation in which, at every opportunity, there was consensus between the parties that were participating in the collective bargaining, representatives that were not nominated arbitrarily, but rather in accordance with the criteria of representativeness established by legal regulations, over which the MSP does not have any influence. Furthermore, it emphasizes that all the reports that form part of the new medical

agreement, which was agreed within the framework of the Wage Councils, were signed by all the delegations, thus indicating that there is consensus among all participants.

714. The Government indicates that the SAQ has participated in discussions that took place in committees that operate under the framework of the MSP and that it was in those committees that the new medical practice regime was agreed, and highlights the following instances of collective bargaining: (i) from 2010 to 2012, the Medical Labour Commission was operational, which was part of the Group 15 Wage Council and in which it was established when matters relating to a specialty would be discussed, the representative of the SMU would attend with a representative of the Commission and in the case of the surgical anaesthesiology specialty, the representative should be appointed by the SAQ, and (ii) from 2012 to 2019 the Multipartite Advisory Commission (CAM) was operational, coordinated by the MSP, with the participation of the executive authorities and the SMU and the wide participation of institutions from within the sector, with the goal of monitoring changes that were established by the agreement signed by the Wage Councils that took place on 5 November 2012. The Commission drew up proposals that were subsequently the subject of discussion and approval by the Wage Councils and, in those meetings, proposals were agreed to reform all medical specialties, in particular those relating to surgical anaesthesia; in 2015 a proposal for high-availability positions in general surgery was drawn up, and the SAQ participated in various meetings during the preparation of that proposal, but the final wording was not shared. For that reason Report No. 16 of the CAM, which the rest of the parties had signed, included a clause that would allow the discussion to be continued for six months following the agreement. The Government states that the continuing discussion referred to above took place in the MTSS, and members of Group 15, the Uruguayan Society of Surgery and the SAQ participated therein. The Government therefore considers that it is not true that the SAQ was not allowed to participate in the process of determining the working conditions that could affect workers in the specialties that it represents.

Collective bargaining in the State Health Services Administration

715. The Government states that during all these years, the State Health Services Administration (ASSE), a state enterprise, listened to the SAQ and that, in May 2008, the three medical trade unions signed a framework agreement with the ASSE that establishes the bases for the remuneration of medical positions within that enterprise. That agreement also established a monitoring committee, as a result of which multiple reports were issued that reflected bipartite agreements to implement what had been agreed in the framework agreement. The Government adds that, for the ASSE, it has been fundamental to try and retain and incentivize the professionals working in the enterprise, and, in that regard, the introduction of the high-availability positions (negotiated for the private sector by the Wage Councils) opened up the possibility for the ASSE to contract new members of staff in certain specialties, where the competence in some specialties that are considered to be critical was determined by the value that each institution was able to pay. The Government states that, in this way, it was understood that the environment for discussing the high-availability roles should be a mirror of the environment in which the high-availability positions were discussed by the Group 15 Wage Council, for which a CAM had been established in the public sector. The Government explains that the high-availability roles only changed the work model, they are not compulsory, they require a public call and that in recent years there have been many instances in which they were discussed with representatives of the SAQ, and several of the proposals made by SAQ representatives were included in the agreements that were signed. Furthermore, on 4 September 2017, when the MSP requested the MTSS to convene the public sector CAM to discuss the high-availability roles in anaesthesiology, the SMU noted on the record that it had

invited the Society of Anaesthesiology and the SAQ, but that these associations had indicated in writing that they would not be attending the meeting.

716. The Government states that, although the ASSE receives all trade unions that request meetings in order to enter into dialogue, receive proposals and provide information in accordance with current national and international regulations for the purposes of collective bargaining and signing agreements, it only holds meetings with the most representative trade union organization. The Government understands that the proposal of the SAQ refers to difficulties in the relationships between trade unions in which the ASSE cannot, and should not, interfere. The Government also states that, although the SAQ has initiated legal proceedings to annul agreements signed by the ASSE with the purpose of implementing the high-availability roles on the grounds of the harm that these types of roles cause for its workers, those roles do not harm any of the rights that surgical anaesthetists working in the ASSE currently hold. In all cases, there is an economic benefit for all those who put themselves forward for those positions. The high-availability roles only change the work model, they are not compulsory and they require a public call. The Government states in addition that according to a resolution issued by the SAQ assembly dated 30 November 2015, it instructed its members not to put themselves forward for high-availability roles made available by the ASSE and indicated that it would punish any members that did so; warning that the punishment could even lead to the suspension of membership, for those who took up the position for which they had put themselves forward.

Designation of the most representative organization

717. The Government states that through greater representativeness, it is possible to reconcile trade union plurality with the need to have single representation for certain actions, while highlighting that the determination of the most representative organization is only required when there is no agreement between the various trade union organizations that represent the workforce, thus making it possible that it is the organizations themselves that define the matter, consolidating their platforms and their demands, agreeing on strategies, etc. Where an agreement does not exist, once it has been determined which is the most representative organization on the basis of the objective criteria (independence, as proposed by the SAQ, but also the age of the union, continuity of operation and number of members) provided for in article 14 of Law No. 18566 (the law which establishes the fundamental principles and rights of the collective bargaining system), that determination confers a legal status on the union that benefits it to a certain extent, without that implying any denial of the rights possessed by the rest of the trade unions, which are inherent in the idea of freedom of association.

718. The Government states that, in the current legal framework, the most representative organization has the following prerogatives: (i) to appoint non-governmental representatives to the ILO; (ii) to form part of the Superior Council for Collective Bargaining in the Public Sector and the Superior Tripartite Council (the body that coordinates and governs the system of labour relations and which comprises six delegates from the executive authorities, six delegates from the most representative employers' organizations and six delegates from the most representative workers' organizations, and which is responsible for classifying tripartite groups for collective bargaining by branch of activity or production chain and designates the negotiating organizations in each area); (iii) to form part of the Wage Councils and negotiation at the branch level in the public sector, because it is the most representative organizations in each sector that form part of the Wage Council for that sector, and the topics to be discussed in those Councils, such as, among others, the creation of subgroups, trade union licences, categories, wages, etc., should be proposed by those organizations; and (iv) to negotiate and

conclude general collective agreements at the branch or enterprise level or with a public or private sector body. The Government states that, on the basis of the provisions set out in article 14 of Law No. 18566, the privilege of the most representative organization refers both to the signing of the agreement as well as to the exclusive representation of workers in the collective bargaining process, and as such does not infringe upon the right to trade union plurality.

719. The Government states that on 3 October 2018, the SAQ presented a statement requesting that Group 15 should vote on the formation of a subgroup to cover the activities carried out by surgical anaesthetists and that that statement gave rise to MTSS File No. 2081-13-2-0002313, as a result of which, the Group 15 Wage Council met on 7 November 2018, stating among other things that, in accordance with applicable regulations, all groups of activity, as well as subgroups, should refer to a branch of activity or production chain, and for that reason it did not consider it to be appropriate to create subgroups for professions or roles. The Government has attached a copy of the report produced by the delegates appointed by the executive authorities to the Group 15 Wage Council, which indicates, among other things, that the classification of the various Wage Councils is carried out on the basis of a branch of activity or production chain; in the case of Group 15 the branch of activity covers: "Health and related services. Hospitals, sanatoriums. Collective medical care institutions (mutual societies, medical cooperatives, trade union care centres). Private medical care institutions with full or partial coverage, clinical analysis laboratories, medical clinics, dialysis. Mobile emergency services. Rehabilitation centres. Care services, health centres, homes for the elderly, fitness clinics that provide medical services and services for doctors. Dental services (including dental products, prosthesis and dental clinics). Clinics and laboratories that provide veterinary analysis services". In that report, it states that, although Law No. 10449 provides for the creation by the Wage Councils of "special or expert subcouncils" in order to facilitate the study of or research into a particular problem, the subgroups should correspond to one of the areas indicated, or if that is not the case, should be related to a production chain.

720. The Government considers that the existence of a subgroup related to the work of surgical anaesthetists would not on its own resolve the dispute concerning representation that exists in the sector, given that it is the delegation of the group that designates the representatives for the subgroups. The Government states that the way in which the delegates are elected to the Wage Councils is explicitly provided for in article 10 of Law No. 18566 and in article 6 of Law No. 10449 and that it is the Superior Tripartite Council that designates the employers' and workers' organizations that will participate in each area; these organizations communicate the appointed delegates to the executive authorities. The Government explains that the delegates for subgroups are appointed by the representatives of the main group and that they act as advisers to the main delegation. The Superior Tripartite Council does not appoint the negotiating organizations for the subgroups, rather, it only refers to the most representative organizations of each group of activity.

721. The Government mentions that, in general, it has understood that, where there is more than one professional organization in a given area, the first alternative is an inter-union agreement between the various organizations, which allows for their joint attendance at the negotiations. The Government states that there is no unanimous agreement concerning which should be the competent body to determine the most representative organization at the enterprise or institutional level in cases where that is under debate, and that there are various positions that could be taken in that regard:

- On the one hand, the Law on Collective Bargaining in the Private Sector, No. 18566, establishes that, for the purposes of negotiation under the Wage Councils, it is the Superior

Tripartite Council that is responsible for designating the employers' and workers' organizations that will participate in each area.

- In other cases, when the dispute relates to bipartite negotiations, the competent body should be the National Labour Directorate, as Law No. 18566 indicates that it is the Directorate that is competent as it is the body of the MTSS that is responsible for mediation and conciliation in cases of collective disputes, including disputes between trade unions. However, the fact that the body provides mediation and conciliation does not mean that it has the competence to issue a ruling in a dispute between two trade union organizations.
- Another position proposes that the competent authority would be the General Labour Inspectorate, in light of its duties relating to monitoring compliance with labour regulations. Nevertheless, as one can appreciate, monitoring compliance with regulations is not the same as issuing a ruling on which is the most representative organization on the basis of the criteria established in the law.
- Many indicate that the intervention of the MTSS would constitute an act of interference and consider that the matter should be addressed in the civil courts due to their residual competence and taking into account the independent nature of the judiciary. Some are opposed to this hypothesis given that disputes between trade unions are atypical collective disputes and, as such, should not be subject to the courts.

722. As the Government states, the National Labour Directorate would have indicated that the fact that a determination made by the MTSS constituted an act of interference in the trade union organizations, contrary to the provisions of Convention No. 87, and for that reason, disputes related to representativeness should, in the first instance, be dealt with through dialogue and the trade unions themselves reaching an agreement on the composition of representation, emphasizing that the delegation from the executive authorities has always collaborated in that regard, always in its role of providing mediation and conciliation, as it has done on several occasions.

723. The Government highlights that: (i) negotiation has always been carried out together with all the trade union organizations that have representation at the Council level throughout the whole process, and that this arises from a single agreement, signed on 9 October 2018, which contains aspects relating to general salaries for medical and non-medical workers and in which it was agreed that a committee should be created to update the categories for the classification of surgical interventions, with the participation of SMU delegates, accompanied by the FEMI and a delegate of the SAQ; (ii) this negotiation provided for the participation of the SAQ and was created with the aim of "reviewing the classification of surgical anaesthesia interventions in the current categories, as well as the eventual creation of new categories, including the review of the current table and the incorporation of interventions that are not included in the table"; and (iii) another of the objectives of this negotiation was to define the modifications to be made as of January 2019 to the surgical anaesthesia variable according to the general adjustment chart provided for in the general agreement, (fourth clause of the Agreement of 9 October 2018 (general part)); this negotiation was responsible for covering "the activities carried out by doctors trained in surgical anaesthesia specialties" as proposed by the SAQ.

724. The Government states that: (i) according to the information provided by the delegates of Group 15, between 2015 and 2019 the SAQ continued to participate, without signature, in various negotiations (the Government mentions these negotiations in its reply); (ii) since 2020, there were new avenues for the SAQ to participate in tripartite collective bargaining and in the Wage Councils; and (iii) meetings have been held under the auspices of the Collective Bargaining Division with various enterprises in the health sector.

Government interference in collective bargaining: Creation of high-availability positions and the recategorization of surgical procedures

725. The Government states that Law No. 10449 created the tripartite Wage Councils with the fundamental goal of establishing a minimum wage for each category in each branch or sector of activity and that, in this regard, it is logical that the sectoral wage policy is aligned with the goals of the National Integrated Health System, the implementation of which is the responsibility of the MSP. The Government states that it does not share the statement made by the complainant that the design of the high-availability positions prevents a worker from holding more than one job, reduce incentives to work and to specialize and affect their technical independence. In addition, they state that compulsory exclusivity was not stipulated in any case and that these positions were designed from the perspective of healthcare services in order to improve the quality of care and patient safety. The Government highlights the fact that the high-availability positions, agreed by the Wage Councils, do not affect the rights acquired by health professionals who had other wage agreements that they could consider more beneficial and that they only apply to contracts that had already been signed, in cases where there was an agreement between the worker and the employer. In addition, it highlights that there is no legal restriction preventing a private health services provider from agreeing, individually or through bilateral negotiation at the lower level of negotiation, wage conditions that are more beneficial than those agreed by the Wage Councils; therefore, the Government denies the existence of coercive activity on the part of the State towards private service providers to prevent them from negotiating the above-mentioned conditions with the SAQ. The Government states that the criminal justice system has not processed any complaint that involves threats or violence by members of the executive authorities towards healthcare providers.

726. With regard to the recategorization of surgical procedures, the Government states that the discussion regarding the review of the categories for the classification of surgical interventions took place in the Wage Councils, which agreed to create a working committee for the recategorization of surgical procedures, which would be attended by the MSP, the MEF and the SMU (which would be accompanied by a representative of the FEMI and a delegate of the SAQ). The Government states that, in the report dated 22 March 2019 of that committee, the new categories of surgical interventions were defined for general surgery, which required a change in the structure such that some interventions increased in value and others decreased. It also states that the goal of the recategorization was to incorporate procedures that were not provided for in the previous agreement, recognizing the changes that have occurred, as a result of technological advancements, in the various procedures that had already been agreed. The Government highlights that the Society of Surgery of Uruguay, which is part of the SAQ, actively participated in the whole negotiation process and attaches a copy of the note issued by that Society analysing the recategorization proposal.

Declaring an essential service

727. The Government states that traditionally, as there is no legal definition in the legal system of the concept of essential service, the MTSS has a certain amount of discretion when establishing the essential nature of work, with the resulting need to maintain services through emergency shifts, the interruption of which determines that a strike or lock-out is illegal, according to the provisions of article 4 of Law No. 13720. The Government considers, in this regard, that the innate essential nature of medical activity in certain cases is not debatable, and therefore, it is necessary to maintain, as close to normal as possible, hospital care in in-patient, urgent and emergency services, highlighting that the Administrative Court (TAC) has not declared the

annulment of any other rulings of the executive authorities that have declared medical services to be essential.

Legal proceedings initiated by the SAQ against the MTSS

728. The Government states that: (i) in 2019, the SAQ initiated legal proceedings against the MTSS, in which they requested the payment of the amount that, in their understanding, should have been paid to them in compliance with an agreement concluded in 2007, in which the Continuing Medical Education Fund was created; and (ii) on 9 September 2021, ruling No. 51/2021 was issued, which dismissed all the terms of the proceedings, since the SAQ had recognized that the funds were in the possession of the SMU, which is the organization that had represented them in the signing of the agreement, and that the MTSS had complied with the assumed commitment and that it did not possess any amount of the money that belonged to the SAQ.

C. The Committee's conclusions

729. *The Committee observes that, in the current complaint, the complainant, which represents surgical anaesthetists, alleges favouritism on the part of the Government towards another trade union, exclusion from instances of collective bargaining, interference of the Government in instances of bipartite collective bargaining, as well as aspects relating to the declaration of essential services. The Committee takes note of the fact that the Government provides replies to these allegations and that it states that, in the country, there is complete trade union freedom and independence and that it has a system of collective bargaining with a long history.*

Favouritism by the Government towards another trade union organization

730. *The Committee takes note that, although in its complaint the complainant alleges that since 2005, and in particular since 2012, the Government exerted pressure and harassed the union and excluded it and marginalized it in every instance of collective bargaining, favouring the SMU, with whom it had a special relationship, in a later communication it indicates that the current Government, in power since 1 March 2020, responds to other groups of power that are different from those that were occupying positions in the moment in which the complaint was submitted, and that the special favouritism towards the SMU no longer exists. The Committee takes note that, in that regard, the Government states that, although, since 1 March 2020, the political leadership of the State has been in the hands of different political parties than those that had been leading the country during the facts that formed the basis of the complaint, the design of the representation in the Wage Councils and what was agreed by those Councils has not been changed, leaving the allegation of favouritism towards the SMU unfounded. The Committee takes due note of the information provided by the Government. While recalling that any favourable or unfavourable treatment by the public authorities of a particular trade union as compared with others, if it is not based on objective pre-established criteria of representativeness and goes beyond certain preferential rights related to collective bargaining and consultation, would constitute an act of discrimination which might jeopardize the right of workers to establish and join organizations of their own choosing [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 515], the Committee notes that the complainant states that at the current time, the alleged anti-union discrimination against the SAQ and the favouritism towards the SMU no longer exists and will therefore not pursue its examination of this aspect of the complaint.*

Trade union representativeness in collective bargaining

731. *The Committee takes note that the complainant alleges that: (i) to date, it continues at the mercy of the SMU with regard to its participation in the Wage Councils; (ii) participates with the right to speak but without vote through the SMU, which does not represent nor defend its interests; and (iii) there is no guarantee that, tomorrow, the SMU will not stop allowing its participation in the Councils. In addition, it alleges that the executive authorities designate which is the most representative organization in the Wage Council groups when an independent third party should do that, and that the authorities have refused to create a subgroup within Council Group 15 (Health and related services) for surgical anaesthetists, which would eliminate the problems of representation, despite the fact that there are subgroups in other branches of activity.*

732. *The Committee takes note that, in that regard, the Government states that: (i) since 2020, the SAQ has been invited to the Councils by the SMU and has participated with the right to speak but without vote; (ii) the Wage Councils are made up of the most representative organizations, which negotiate and sign collective agreements erga omnes; (iii) there is no legal restriction preventing private healthcare providers from agreeing, individually or through bilateral negotiation at the lower level of negotiation, wage conditions that are more beneficial than those agreed by the Wage Councils; (iv) the Superior Tripartite Council, composed of the executive authorities and the most representative organizations, is the body that designates the organizations that participate in the Wage Councils; (v) the privilege of the most representative organization refers to the signature of agreements as well as representation in the negotiation, not violating trade union plurality; (vi) the determination of the most representative trade union is only required when there is no agreement between trade union organizations, making it possible for the organizations themselves to determine the matter; (vii) where there is no agreement, the legitimacy to negotiate is granted to the most representative organization in accordance with the criteria provided for in article 14 of Law No. 18566 (age of union, number of members …); (viii) there is no unanimous agreement with regard to which body should be the competent body to determine which is the most representative organization at the enterprise or institutional level in cases where that is under debate and that the disputes relating to representativeness should first be addressed by means of dialogue, and that the executive authorities have always collaborated by providing mediation; (ix) the SAQ has taken the floor in various meetings of Group 15 and in some of those meetings decided not to sign the records of those meetings; and (x) in 2018, Group 15 considered the possibility of creating subgroups and concluded that it was not appropriate to open subgroups for professions or roles.*

733. *The Committee observes that: (i) article 11 of the Law on Collective Bargaining in the Private Sector, No. 18566, establishes that collective bargaining at the level of branch of activity or production chain can be carried out either through the Wage Councils or through bipartite collective bargaining; (ii) the negotiation of working conditions for surgical anaesthetists by the Wage Councils forms part of a wider negotiation environment, which encompasses all medical specialties and for which the negotiating agent is, currently, the SMU; and (iii) according to the Government, there would be no legal restriction preventing the complainant from agreeing, through bilateral collective bargaining with private healthcare providers, working conditions that are more beneficial than the conditions agreed by the Wage Councils. The Committee also observes that, although the Government assures that, since 2020, the SAQ has been invited by the SMU and has participated in the Group 15 Wage Council with the right to speak but without vote, the complainant alleges that the SMU does not represent nor defend its interests and that there is no guarantee that it will allow them to continue to participate in the Councils.*

734. *The Committee recalls, in this regard, that systems based on a sole bargaining agent (the most representative) and those which include all organizations or the most representative organizations in accordance with clear pre-established criteria for the determination of the organizations entitled*

to negotiate are both compatible with Convention No. 98. It also recalls that the granting of exclusive rights to the most representative organization should not mean that the existence of other unions to which certain involved workers might wish to belong is prohibited; in addition, minority organizations should be permitted to carry out their activities and at least to have the right to speak on behalf of their members and to represent them. On the other hand, the Committee has considered that in order to determine whether an organization has the capacity to be the sole signatory to collective agreements, two criteria should be applied: representativeness and independence. According to the Committee, the determination of which organizations meet these criteria should be carried out by a body offering every guarantee of independence and objectivity [see ***Compilation*** *paras 1360, 1388 and 1374].*

735. *Taking into account that Law No. 18566 establishes that the collaboration and consultation are fundamental principles and rights of the collective bargaining system and emphasizes the promotion of mutual understanding and good relations between the organizations themselves, the Committee trusts that, within the framework of the collective bargaining system currently in operation in the country, the SAQ will continue having the opportunity to express its opinions in the meetings that concern it. In addition, recognizing the independence that workers' and employers' organizations enjoy in the country to define their representatives in collective bargaining processes, the Committee requests that the Government should take the necessary measures, in full consultation with the social partners, to ensure that, if there is no agreement between the parties concerned, the determination of the most representative employers' or workers' organization is not left to the discretion of the Government, but rather to a body that offers every guarantee of independence and objectivity. The Committee requests the Government to keep it informed in this regard.*

Negotiation in the public sector with the National State Health Services Administration

736. *The Committee takes note that the complainant alleges that in 2017, the ASSE signed collective agreements with the SMU, through which the high-availability roles were implemented in surgical anaesthesia specialties and that those roles modified agreements that the SAQ had concluded with the ASSE in 2008, violating in a unilateral and illegal manner a collective bargaining agreement that had been in force. The SAQ has introduced actions before the TCA to annul the ASSE resolutions, through which collective agreements were approved between the ASSE and the SMU in general surgery and surgical anaesthesia which harmed their working conditions and were approved without its participation.*

737. *The Committee takes note that, in that regard, the Government states that: (i) although the ASSE receives all trade unions that request meetings in order to enter into dialogue and conduct collective bargaining and sign agreements, it holds some meetings only with the most representative trade union; (ii) in May 2008, the three medical trade unions signed a framework agreement with the ASSE, which establishes the bases for the remuneration of medical positions in the ASSE and that agreement established a monitoring committee, as a result of which, multiple reports were issued that reflected bipartite agreements to implement what had been agreed in the framework agreement; and (iii) there are difficulties in the relationship between trade unions in which the ASSE cannot, nor should not interfere.*

738. *The Committee observes that, according to publicly available information, in December 2021 and April 2022 the TCA handed down rulings relating to the demands submitted by the SAQ which ruled in favour of that union, annulling the ASSE resolutions that standardized agreements signed between the ASSE and the SMU in 2017 and 2018 in which the high-availability positions were implemented for general surgeons, anaesthetists and gynaecologists who worked in the ASSE. The Committee observes that, in those rulings, the TCA indicated that the agreements between the ASSE and the SMU*

had changed the working conditions decided upon in previous agreements between the ASSE and the SAQ, disregarding the salary increases agreed therein.

739. *The Committee recalls, as mentioned before, that systems of collective bargaining with exclusive rights for the most representative trade union and those where it is possible for a number of collective agreements to be concluded by a number of trade unions within a company are both compatible with the principles of freedom of association. The Committee also recalls that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground [see **Compilation**, paras 1351 and 1336]. Observing that the rulings of the TCA return the situation to its previous state and stipulate that, in order to comply with the rulings, they should establish the bases for a negotiation between the ASSE and the SAQ, the Committee trusts that the negotiations will be conducted in a harmonious manner.*

Principle of bilateral collective bargaining

740. *The Committee takes note that the complainant alleges that the executive authorities have violated the principle of bilateral collective bargaining and the principle of free and voluntary negotiation, because it has made proposals that modify the working and wage conditions of the workers, an area that, in its opinion, should be exclusively the responsibility of workers' and employers' organizations. The Committee takes note that the complainant alleges that: (i) the high-availability positions, designed by the executive authorities and the SMU against its will, reformulated the work of surgical anaesthetists, getting involved in aspects that go beyond minimum wage and wage categories and economically punishing the health institutions that do not contract doctors using that mode of employment; and (ii) the executive authorities have interfered in the recategorization of surgical procedures, which is nothing more than a hidden wage decrease, because it has an impact on the remuneration of surgical anaesthetists; and although, following intensive negotiations, the complainant was allowed to attend the recategorization committee accompanied by the SMU, they did not have the right to speak.*

741. *In that regard, the Committee takes note that the Government states that: (i) the financing of comprehensive healthcare providers that provide health coverage for the population is almost entirely public and therefore the way in which spending in healthcare is implemented by healthcare providers is a relevant variable for the purposes of guaranteeing the efficiency of the system and ensuring quality universal health coverage; and (ii) collective bargaining is a relevant environment to establish public human resources policies that are developed in agreement with the main actors in the sector. It also states that: (i) private healthcare providers can agree, individually or through bilateral negotiation, on more beneficial wage conditions than those agreed by the Wage Councils, therefore, the Government denies the existence of coercive activity on the part of the State towards private service providers to prevent them from negotiating the above-mentioned conditions with the SAQ; (ii) the SAQ participated in discussions in which proposals were drawn up for the high-availability positions, designed from the perspective of healthcare services in order to improve the quality of care and patient safety and which do not affect the rights acquired through more beneficial wage agreements; and (iii) the recategorization of surgical procedures took place in the Wage Councils in the framework of a committee in which the SMU was accompanied by a delegate from the SAQ.*

742. *The Committee recalls that, in a previous case relating to Uruguay, it indicated that, although the fixing of minimum wages can be the object of tripartite decisions, Article 4 of Convention No. 98 encourages the promotion of bipartite negotiation to fix working conditions, for which any collective agreement on fixing employment conditions should be the result of an agreement between employers or employers' organizations on the one hand and workers' organizations on the other*

hand [see 356th Report, Case No. 2699, para. 1389]. The Committee recalls that the monitoring of legislative aspects in that case was referred to the Committee of Experts on the Application of Conventions and Recommendations and that, since then, this question has been being examined by the Committee of Experts on the Application of Conventions and Recommendations within the framework of the application of Convention No. 98.

Declaring essential work

743. *The Committee takes note that the complainant alleges that in the last decade various disputes have occurred and that there has been an irregular and abusive use of the mechanism for declaring an essential service given that, in the disputes of 2007 and 2012 (among others), the work of surgical anaesthetists was declared to be essential in its totality (including, for example, normal polyclinics), without having proposed alternative mechanisms for solving the disputes. In that regard, the Committee takes note that the Government states that, as there is no legal definition in the legal system of the concept of essential service, the MTSS enjoys a certain amount of discretion when establishing the essential nature of work, with the resulting need to maintain services through emergency shifts, the interruption of which determines that a strike or lock-out is illegal. It also indicates that the TCA has not annulled any ruling relating to the declaration of the essential nature of medical service. Recalling that the hospital sector can be considered to be an essential service and that the Committee has acknowledged that the right to strike can be restricted or even prohibited in the public service or in essential services in so far as a strike there could cause serious hardship to the national community and provided that the limitations are accompanied by certain compensatory guarantees [see **Compilation**, paras 840 and 827], the Committee trusts that the Government will ensure that these workers are provided the necessary compensatory guarantees.*

Legal proceedings initiated by the SAQ against the MTSS

744. *The Committee takes note that, according to the information provided by the Government, on 9 September 2021 ruling No. 51/2021 was issued which dismissed the claim presented by the SAQ against the MTSS in relation to the funds that, according to the allegations, had been deposited with the SMU but not the SAQ. The Committee takes note that, in that ruling, it indicated that the SAQ had confirmed that the MTSS had transferred the entirety of the funds deposited by the enterprises to the SMU; as a result it concluded that the MTSS did not possess the quantity of money that belonged to the SAQ. The Committee takes due note of the ruling and recalls that a situation that does not involve any dispute between the Government and the trade union organizations, but rather involves a conflict within the trade union movement itself, is the sole responsibility of the interested parties themselves [see **Compilation**, para. 1610].*

745. *Lastly, and in general terms, trusting that the adoption of the above-mentioned measures, in consultation with the social partners, will contribute to maintaining the efficient promotion of collective bargaining in the country, the Committee reminds the Government that the technical support of the Office is at its disposal.*

The Committee's recommendations

746. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee trusts that, in the framework of collective labour relations in force in the country, the SAQ will continue having the opportunity to express its opinions in the instances that concern it.

(b) The Committee requests the Government to adopt the necessary measures, in full consultation with the social partners, to ensure that, in case of a lack of agreement between the parties concerned, the determination of the most representative employers' or workers' organization is not left to the discretion of the Government but rather to a body that offers all the guarantees of independence and objectivity. The Committee requests the Government to keep it informed in this regard.

(c) The Committee trusts that negotiations between the SAQ and the ASSE will be carried out in a harmonious manner.

(d) The Committee trusts that, should restrictions be imposed on the right to strike in anaesthetic and surgical activities, the Government will ensure that these workers are provided the necessary compensatory guarantees.

(e) Trusting that the adoption of the above-mentioned measures, in consultation with the social partners, will contribute to maintaining the effective promotion of collective bargaining in the country, the Committee reminds the Government that the technical support provided by the Office is at its disposal.

Geneva, 3 November 2022

(Signed) Professor Evance Kalula
President

Points for decision: