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TWELFTH ITEM ON THE AGENDA

### Report of the Director-General

#### **Eighth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by France of the Labour Inspection Convention, 1947 (No. 81), submitted under article 24 of the ILO Constitution by the trade union “SUD Travail Affaires sociales”**

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## I. Introduction

1. In a communication received on 19 December 2011, the trade union “SUD Travail Affaires sociales” submitted a representation to the International Labour Office, under article 24 of the Constitution of the International Labour Organisation, alleging non-observance by France of the Labour Inspection Convention, 1947 (No. 81).
2. The Labour Inspection Convention, 1947 (No. 81), was ratified by France on 16 December 1950. France also ratified the Labour Inspection (Agriculture) Convention, 1969 (No. 129), on 28 December 1972.
3. The provisions of the ILO Constitution concerning the submission of representations are as follows:

*Article 24*

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

*Article 25*

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

4. The procedure for the examination of representations is governed by the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004).
5. In accordance with articles 1 and 2, paragraph 1, of the above Standing Orders, the Director-General acknowledged receipt of the representation, informed the Government of France and brought the matter before the Officers of the Governing Body.
6. At its 313th Session (March 2012), the Governing Body decided that the representation was receivable and appointed a committee for its examination composed of Ms Valérie Berset Bircher (Government member, Switzerland), Mr Jorgen Ronnest (Employer member, Denmark) and Mr Sam Gurney (Worker member, United Kingdom).
7. The Government sent its observations in a communication dated 7 May 2012.
8. On 8 November 2012, the Committee met for a preliminary examination of the case. The Committee met again on 19 March 2013, to examine the case and adopt its report.

## II. Examination of the representation

### A. The complainant's allegations

9. The trade union “SUD Travail Affaires sociales” alleges that the French authorities failed to comply with Article 6 of the Labour Inspection Convention, 1947 (No. 81), by not guaranteeing the independence of labour inspection from improper external influences during the highly publicized events that took place in the department of Seine-Maritime in 2010–11, thereby jeopardizing the action of labour inspection in general.

10. The trade union makes specific reference to the *Principes de déontologie pour l'inspection du travail* (Principles of deontology for labour inspection) published in 2010 by the Ministry of Labour, Social Relations, Family, Solidarity and Cities, which defines improper external influences as “any manoeuvre, pressure, intimidation, threat, blackmail, assault, defamation, malicious accusation, public smear campaign, or proposed or actual benefit designed to sway the course of the inspection for reasons that are directly or indirectly unrelated to the assignment”.

11. In particular, the complainant alleges that:

- On 3 November 2010, a labour inspector in the Seine-Maritime Department, in accordance with her prerogatives under the Labour Code, refused to grant the managing director of a company (the employer) permission to dismiss a staff representative on disciplinary grounds.
- On 5 November 2010, the employer submitted an appeal to the labour inspector for the reconsideration of her decision, which resulted in the inspector's second decision not to allow the dismissal on 18 November 2010.
- On 8 November 2010, the employer began a hunger strike, attracting media coverage, and a smear campaign against the labour inspectorate in the press and on the Internet, through his personal blog. The complainant refers to a large number of statements published in the press and on the Internet. It makes specific reference to a series of articles published in the daily newspaper “Paris-Normandie”, providing evidence of the media campaign carried out by the employer and of the messages published by the employer on his blog.
- On 10 November 2010, the day on which the employer was due to meet the labour inspector to discuss the reconsideration of her decision in the hope of having it overturned, the company's employees, during working hours and with their employer's agreement and support, organized a gathering in front of the premises of the Rouen labour inspectorate and blocked traffic in the city.
- Meanwhile, on 9 November 2010, the employer lodged an appeal before the Ministry of Labour, Employment and Health with a view to having the refusal to allow the dismissal overturned. The employees demonstrated in Paris in favour of the annulment, in front of the premises of the General Department of Labour.
- On 25 November 2010, the Minister of Labour overturned the labour inspector's decision and authorized the dismissal of the staff representative. The complainant organization indicates that appeals to a higher authority are normally handled within a period of four months and that the Minister's decision contradicted the report of the Haute-Normandie Regional Department of Enterprise, Competition, Consumer Affairs, Labour and Employment (DIRECCTE), which had recommended that he

should endorse the labour inspector's refusal to authorize the dismissal, particularly in light of the "procedural irregularities" that "substantially" invalidated the request to authorize the dismissal.

12. Subsequently, in its ruling of 30 June 2011, the Rouen Administrative Court, before which the staff representative had brought the case, considered that the dismissal procedure had been marred by "irregularities" and overturned the Minister's decision, in accordance with the Council of State's well-established case law in this area.
13. The complainant adds that pressure from various sources has been brought to bear on the labour inspector in this case. It specifically refers to certain communications from members of Parliament; the official stance of the French Building Federation, published by the employer on his blog; and to the direct intervention of a gendarme, in contact with the employer, and who did not state his identity, to persuade the inspector to authorize the dismissal, by expressing criticism of her actions and going so far as asking her to justify her decision to refuse the dismissal. This intervention is reported in two internal documents attached to the representation: an incident report document; and the report of the regional emergency and support unit. The complainant organization also refers to the smear campaign orchestrated by the employer in the press through his hunger strike; to the employer's manoeuvres to unite his personnel against the labour inspectorate; and to the correspondence between the employer and the management of the labour inspectorate to complain of harassment.
14. Moreover, according to the complainant organization, despite having sent repeated written requests to the Director of the Haute-Normandie DIRECCTE, and sending a petition signed by 150 staff members of the Seine-Maritime labour inspectorate to the Minister of Labour, no labour authority official has been willing to take steps to put a stop to these "improper external influences", or even to criticize them.
15. The trade union indicates that the Director of the Seine-Maritime Departmental Office of DIRECCTE has made only one rather hesitant appearance on regional television, and sent one press release to the "Paris-Normandie" newspaper stating that "the inspector should, in any event, be left to reach her decision calmly, without being put under pressure and in respect of the rule of law, and to take the time to consider the arguments put forward by the employer and the worker".
16. According to the complainant organization, at no point has the labour administration provided strong official support for the labour inspectorate in order to dispel the ambiguity that the employer's action has generated among the public. This lack of official support jeopardizes the independence of the inspectorate, which is guaranteed by international Conventions, and consequently compromises the work of inspectors, who are subject to improper pressure from a number of sources.
17. It also notes that, since 2007, the labour inspectorate has drawn up about ten violation reports against the employer, but that the Public Prosecutor has not yet arranged a single hearing before a correctional court. In particular, in September 2011, it was somewhat alarming when the Rouen Public Prosecutor reached a swift decision to file, without further action, the violation report that had been drawn up for contempt of the labour inspector in charge of overseeing the company at the time when the employer took umbrage against the decision to refuse him the right to dismiss one of his staff representatives.

18. According to the complainant organization, buoyed by the media, political and institutional support he has received, the employer has been able to get public opinion on his side, including within his company. It considers that there is a risk that the balance of power he enjoys by the public will thwart the independence of the labour inspectorate, which can no longer count on support from its management, the Ministry responsible, or on judicial or criminal support from the courts, in order to assert its authority.

## B. The Government's observations

19. In its communication of 7 May 2012, the Government indicates that France has established a legislative and regulatory mechanism, as well as an administrative structure to guarantee the independence of labour inspection in accordance with Article 6 of Convention No. 81 of the ILO. This mechanism was applied to the case referred to in this representation, in a difficult context, in human terms, for all those involved.

20. The Government also highlights that the publication in 2010 of the *Principes de déontologie pour l'inspection du travail*, containing a specific section on independence, highlights the importance given to this notion by the Ministry of Labour. In particular, the Government refers to the preface of the document that states that "the principle of independence is not just a right for the public officials concerned, but also a guarantee for citizens, enabling them to benefit from an organized public service that is not subject to any 'improper external influences'".

21. The Government presents the facts as follows:

- On 3 November 2010, a Seine-Maritime labour inspector refused to authorize the employer in question to proceed to the dismissal for misconduct of a protected employee, who held the positions of deputy staff delegate and deputy member of the works council in the company's single staff delegation. He had worked as a carpenter in the company since 2006, during which time he was reported to have stolen goods.
- On 5 November 2010, the employer submitted an appeal against the refusal to the labour inspector and threatened to go on a hunger strike if his request was not accepted.
- On 8 November 2010, the employer began a hunger strike and a media campaign to denounce the decision of the labour inspector with the support of his employees.
- On 10 November 2010, while the company's employees were staging a demonstration in support of the employer in front of the *cité administrative* to put pressure on the labour inspector, the Director of the Departmental Office and the sectoral Deputy Director went to the company to meet the employer in order to stress the importance of allowing the labour inspector to institute proceedings objectively and to remind him of the modalities of the administrative proceedings under way.
- On 16 November 2010, the regional office for Haute-Normandie submitted a communication to the daily newspaper "Paris-Normandie" recalling the rules on the dismissal of protected employees and insisting on the fact that "the inspector should, in any event, be left to reach her decision calmly, without being put under pressure and in respect of the rule of law, and to take the time to consider the arguments put forward by the employer and the worker". In addition, interviews with the administration expressing views to this effect were broadcast on local television.

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- On 18 November 2010, the decision to refuse the dismissal was confirmed by the labour inspector, who identified substantial procedural irregularities invalidating the dismissal procedure.
  - The company lodged an appeal before the Minister of Labour, with a view to having the refusal to allow the dismissal overturned. On 25 November 2010, the Minister of Labour decided to overturn the decision taken by the labour inspector and authorized the dismissal of the employee, on the grounds that there was sufficient evidence of the charges of misconduct brought against him and that there was no link between the employee's role as a representative and his dismissal.
  - On 27 January 2011, the Ministry of Labour, Employment and Health filed a complaint before the Public Prosecutor's Office in Paris, to initiate proceedings against internet sites and their hosts for having released statements that could be construed as constituting offences of public defamation and insult against a public official, that is, the labour inspector.
  - On 28 March 2011, in response to a written complaint sent by the employer on 16 February, in which he complained of the tenacity of the labour inspectorate in inspecting his company, the Regional Director reminded him that "the duties and activities of the labour inspectorate shall not be subjected to multiple interventions or to threats of legal action".
  - On 19 April 2011, the labour inspector carried out an inspection visit in the company in question, along with the sectoral Deputy Director, in order to reaffirm the role and the presence of labour inspection services in that company.
  - On 22 April 2011, the labour inspector submitted a violation report for contempt of the labour inspection official to the Rouen Public Prosecutor.
  - On 11 May 2011, the Director of the Departmental Office, and the sectoral Deputy Director, accompanied the labour inspector to an interview at the Public Prosecutor's Office in Rouen to submit the violation report for contempt to the court judges and explain its impact on the service.
  - On 30 June 2011, the Administrative Court of Rouen overturned the decision by the Minister of Labour to authorize the dismissal.
  - On 21 September 2011, the Rouen Public Prosecutor decided to file without further action the violation report for contempt submitted by the labour inspector, considering that the statements made by the employer "as disagreeable as they may have been, do not appear to have undermined the dignity or the respect due to the labour inspection service". The Prosecutor also considered that the statements published by the employer on his blog were not directly addressed to the labour inspector and did not constitute an act of contempt against her.
- 22.** In reply to the allegations by the complainant organization regarding the non-observance by France of Article 6 of Convention No. 81, the Government states that the French administration cannot be accused of non-observance of the abovementioned Article.
- 23.** The Government states that, in this case: (i) the labour inspector freely took the decision that subsequently became the subject of remedies provided for by law; (ii) she received support from both the Ministry and from her superiors; (iii) legal action was initiated by the Ministry against the persons attacking the reputation of the labour inspectorate.

24. *On point (i)*, the Government observes that, under articles L2411-5 and L2411-8 of the Labour Code, the employer called on the services of the labour inspectorate to obtain an authorization to dismiss the protected employee. Having carried out an inquiry, the labour inspector in question freely took a decision to refuse the dismissal and confirmed that decision, following an appeal for reconsideration submitted to her. The decision was taken in accordance with the regulations established in the Labour Code and was in no way influenced by the employer's threat to go on hunger strike or by the media pressure exerted by him.
25. The Government refers to article R2422-1 of the Labour Code, which states that a decision taken by the labour inspectorate can be challenged by lodging an appeal before the Ministry within two months of the decision's notification. The Minister of Labour can then confirm the decision or overturn it on the basis of a different interpretation of the case submitted.
26. The Government points out that the possibility of filing an appeal to a higher authority is a general principle in French law that is available to all parties, and cannot therefore be considered as the exercise of an "improper external influence" jeopardizing the independence of labour inspection. The decision taken by the Minister can then be subject to an appeal before the administrative courts.
27. Thus, on 25 November 2010, the protected employee filed a request before the Administrative Court of Rouen to overturn the decision taken by the Minister of Labour to authorize the dismissal. The Administrative Court decided to overturn the decision taken by the Minister, who implicitly rejected the appeal lodged before him. The labour inspector's decision to refuse the dismissal was thereby confirmed, and the employee in question was thereafter able to request his reinstatement in the company.
28. *On point (ii)*, the Government indicates that, contrary to the allegations of the complainant organization, support was given to the labour inspector. In particular, the Ministry of Labour made the functional protection service available to the labour inspector. This service provides advice and assistance to public officials challenged in the exercise of their duties. She was also supported by her local management.
29. As regards the functional protection service, the Government refers to article 11 of Act No. 83-634, of 13 July 1983, on the rights and obligations of public officials, guaranteeing the protection of public officials in the performance of their duties. This protection is warranted by the specific nature of assignments given to public officials, which expose them to situations of conflict with public service users in the performance of their duties. Article 11, paragraph 3, states that "the public administration is responsible for protecting public officials against any threats, violence, assault, insult, defamation or contempt to which they could be subject in the performance of their duties, and to remedy any damage caused as a result thereof".
30. In the light of this provision, the Ministry of Labour wished to rationalize state support for its officials in situations of conflict or violence and has set up a national network of lawyers to provide public officials with legal assistance and advice, and covers the fees of the lawyers appointed by officials to defend their interests.
31. The Government indicates that it has also set up a psychological support service provided by psychologists from the network of national psychologists of the Institute of Post-traumatic Psychological Support, Prevention and Research (IAPR), and that this was offered to the inspector in question. The inspector was in contact with one of the national network psychologists, but did not wish to receive assistance from a lawyer regarding the legal action for contempt.

32. As regards the support she received from her superiors, the Government states that it is inaccurate to say that the French administration remained silent, given that it made efforts throughout to recall the legal basis for the intervention of the labour inspectorate and the legitimacy of its action, namely through a press release and interviews broadcast on local television.
33. The Government indicates that the administration's statements were poorly transmitted by the media, which in a state governed by the rule of law guaranteeing freedom of expression and thought chose to highlight the sensational side of the case rather than the legal reasoning behind it. In this regard, the Government stresses that the consequent exercise of the freedom of the press and media pressure cannot be considered as an "improper external pressure" under the terms of Article 6 of Convention No. 81 of the ILO. It adds that the support expressed by various persons is also a matter of freedom of expression and thought.
34. Regarding the pressure allegedly exerted by an anonymous gendarme, according to the complainant organization, the Government indicates that the administration has no information in this regard.
35. The Government states that the administration was mindful of the need to support the labour inspector and to recall the legitimacy of labour inspection assignments, namely through inspection visits to the company (on 10 November 2010 and 19 April 2011) and the interview at the Public Prosecutor's Office in Rouen (11 May 2011).
36. *On point (iii)*, the Government indicates that, on 21 September 2011, the Public Prosecutor decided not to act upon the violation report for contempt submitted by the labour inspector, on 22 April 2011, against the employer, on the grounds that he did not consider the facts to be sufficiently serious to warrant criminal proceedings. The decision of the Public Prosecutor was made on the grounds that the employer's written statements were not directly addressed to the labour inspector and that nothing indicated that the employer wished to make the labour inspector aware of those statements. Moreover, the statements did not appear to undermine the dignity of, and respect due to, the labour inspector's role. The Government also indicated that, in view of these elements, the inspector in question did not file an appeal against this decision, in accordance with the prerogatives established under articles 40-2 and 40-3 of the Code of Criminal Procedure.
37. The Government highlights that this decision is in line with the normal legal framework establishing legal proceedings in France and that it does not jeopardize the independence of the labour inspectorate.
38. The Government also indicates that, contrary to the statements made by the complainant organization, the Ministry of Labour took measures to protect the labour inspector and to put a stop to the attacks on the reputation of the labour inspectorate in the press and on the Internet. In particular, the Government points to various bailiff's reports and warnings issued to the authors and to the hosts of the websites concerned. Moreover, the Director-General for Labour and the Directors of the General Administration and Modernization of Services filed a complaint under the Act of 29 July 1881 on the freedom of the press before the Public Prosecutor's Office in Paris following the online publication, in November 2010, of statements that could be construed as constituting offences of defamation against a public official, depositary or agent of the public authority and of public insult of a public administration or public official. This complaint is still under investigation, owing in particular to difficulties in identifying the author of one of the websites concerned.



39. The Government indicates that these actions are governed by the general principles and regulations regarding the freedom of the press, and the freedom of expression of the parties in this case. The Government, therefore, highlights the difficulty of striking an ideal balance between the need to protect public officials and the possibility guaranteed by public freedoms to carry out public debates in society and in a free press.
40. In conclusion, in the light of all these elements, the Government considers that the representation submitted by the complainant organization is unfounded.

### III. Conclusions

41. The Committee has based its conclusions on the allegations of the complainant organization, the observations transmitted by the Government under the present procedure and the information previously transmitted by the Government in the reports on the application of the Conventions ratified under article 22 of the ILO Constitution.

#### A. Preliminary remarks

42. The Committee is called upon to determine whether, as the complainant organization claims, in this case, the Government failed to respect the provisions of Article 6 of Convention No. 81, which guarantee the independence of the labour inspectorate of *improper external influences*. This Article is complemented by Article 18 in respect of the penalties for obstructing labour inspectors in the performance of their duties.

43. Other facts cited by the complainant organization appear to be relevant to the question of the cooperation of the labour inspectorate with the courts and the police, which is covered by Article 5(a) of the Convention. The Article provides that: “The competent authority shall make appropriate arrangements to promote effective co-operation between the inspection services and other government services and public or private institutions engaged in similar activities.”

44. In accordance with Article 6 of Convention No. 81:

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

45. Article 18 of the Convention provides that:

Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

46. The principle contained in Article 6 is an essential principle on which the effectiveness of the inspection system depends. As far back as 1957, the Committee of Experts on the Application of Conventions and Recommendations underlined that this independence can only be real if labour inspectors are able “to point out, without fear of open or covert reprisal, that the methods followed in a given undertaking are contrary to the law and must therefore be changed. Any hesitation on the part of an inspector, whatever his official status, to draw attention to abuses and to call for their elimination, is bound to sap the

effectiveness of his work.”<sup>1</sup> The Committee also underlined, in its 2006 General Survey on labour inspection, that problems of physical safety, such as threats, insults or physical attacks, can also seriously affect the work of the labour inspectorate.<sup>2</sup> As indicated in the *Principes de déontologie pour l’inspection du travail* published by the Ministry of Labour, “the agent must be protected from any improper external influence: the risk and likelihood of interference, pressure, intervention, or even threats, can be real, bearing in mind the position occupied by the labour inspection system within social and economic relations”.<sup>3</sup>

47. The Committee notes that, according to a communication from the Ministry of Labour on the functional protection of labour inspectors dated 2 August 2011, attached to the Government’s reply, which begins by recalling the tragic murder of two labour inspectors by an employer in 2004, labour inspectors face more than 100 incidents involving contempt, death threats and other threats each year. Furthermore, in its annual activity report for the year 2011, the central labour inspection authority notes a significant increase in the number of requests for functional protection submitted between 2010 and 2011 by labour inspectors in the wake of threats, death threats, violence and assault. The Committee notes that, according to the reports submitted under article 22 of the ILO Constitution, following the tragic event of 2004, the support provided by the authorities to inspectors has been included as one of the main pillars of the plan for developing and modernizing labour inspection.

## B. Legal and operational measures

48. The Committee draws attention to the fact that France has given effect to the provisions of Article 6 of Convention No. 81, which guarantee the independence of the labour inspectorate of *improper external influences*, as well as to Article 18 through various legislative and regulatory provisions and operational measures. The Committee wishes to mention the following texts that are relevant to the present case.
49. The Committee notes the decision of the Constitutional Council No. 2007-561 of 17 January 2008, regarding the re-codification of the Labour Code, which recalls in its recital that “the independence of labour inspection must be consistent with the fundamental principles of the right to work as set out in article 34 of the Constitution”.

<sup>1</sup> ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 40th Session, Geneva, 1957, p. 160, para. 56.

<sup>2</sup> ILO: *General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)* International Labour Conference, 95th Session, Geneva, 2006, p. 72, para. 222.

<sup>3</sup> Ministère du Travail, des Relations Sociales, de la Famille, de la Solidarité et de la ville, Direction générale du travail (DGT), “*Principes de déontologie pour l’inspection du travail*” (Principles of Deontology for Labour Inspection) (Paris, DGT, 2010), p. 15.

50. The Committee further notes that, in accordance with article D8121-2 of the Labour Code, agents participating in labour inspection activities may refer any act committed by an administrative authority that constitutes a direct or personal violation of the conditions in which they should be able to perform their duties to the National Council of Labour Inspection (CNIT).<sup>4</sup>
51. Moreover, the offence of obstructing labour inspectors in the performance of their duties is referred to and penalized in article L8114-1 of the Labour Code. In addition, in accordance with article L8114-2 of the Labour Code: “The provisions of articles L433-3, L433-5 and L433-6 of the Criminal Code, which refer to and penalize acts of violence, contempt and resistance against judicial police officers are applicable to the perpetrators of similar acts against labour inspectors.”
52. The functional protection of state agents is established under article 11 of Act No. 83-634 of 13 July 1983, which was amended to include the rights and obligations of public officials. In accordance with article 11, paragraph 3, of the Act: “The public administration is responsible for protecting public officials against any threats, violence, assault, insult, defamation or contempt to which they could be subject in the performance of their duties and, if necessary, to remedy any damage caused as a result thereof.” The legal, psychological and organizational measures prescribed by the aforementioned Act of 1983 are complemented by various operational memoranda from the Ministry of Labour.
53. Furthermore, in 2010, the Ministry of Labour published the *Principes de déontologie pour l’inspection du travail* in collaboration with the ILO, which includes a chapter on the independence of labour inspectors.

### **C. The protection of the labour inspector against improper external influences**

#### ***The pressure exerted on the labour inspector, including by means of a smear campaign***

54. The Committee notes that, according to the complainant organization, in this case the labour inspector was subjected to pressure from various sources. In particular, it alleges that no senior official of the labour administration wished to take measures to halt the undue pressure being exerted through a smear campaign targeting the labour inspectorate, and that the administration never dispelled the ambiguity in public opinion occasioned by the actions of the employer, thereby placing the independence of the labour inspectorate in jeopardy.
55. The Committee notes that the Government does not contest the existence of such pressure but maintains that the labour inspector freely took a decision that subsequently became the subject of remedies provided for by law; that legal action was initiated by the Ministry against those persons attacking the reputation of the labour inspectorate; and that the labour inspector received support from both the services of the Ministry and her superiors.

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<sup>4</sup> According to the information provided by the Government in its report submitted in 2012 under article 22 of the Constitution of the ILO, CNIT, established in 2007 and operational since 2008, is an independent consultative authority, the primary vocation of which is to offer a guarantee to agents participating in labour inspection activities, whatever their hierarchical position, so that they may perform their duties with complete impartiality and free from improper external influences. The provisions relating to CNIT are codified in articles D8121-1 to D8121-12 of the Labour Code.

56. The Committee notes that the legal remedies applicable in this case were duly respected and that, ultimately, the decision of the Minister of Labour that overturned the dismissal of the staff representative was, in turn, overturned by the Administrative Court of Rouen, thereby reinstating the decision of the labour inspector. Nevertheless, the Committee considers it unfortunate that, in this case, the Minister did not take into account the opinion of the Haute-Normandie DIRECCTE, which referred to “procedural irregularities” that “substantially” invalidated the request to authorize the dismissal.
57. As regards the legal actions taken against the persons attacking the reputation of the labour inspectorate, the Committee will not deal with decisions taken by the competent authorities. In this respect, it notes in particular that a reasoned decision was taken by the Rouen Public Prosecutor to file without further action the violation report drawn up against the employer for contempt. As regards the actions still pending, the Committee notes that, according to the Government, the General Director for Labour and the Directors of the General Administration and Modernization of Services invoked the Act of 29 July 1881 concerning the freedom of the press and filed a complaint with the Public Prosecutor’s Office in Paris on 27 January 2011 following the online dissemination in November 2010 of statements that could be construed as constituting the offence of public defamation against a public official or agent of the public authority and the offence of public insult against a public administration or a public official. The complaint is still under investigation, owing, in particular, to difficulties in identifying the author of one of the websites concerned.
58. The Committee hopes that the Government will take all measures necessary to ensure that the investigation in question moves forward as quickly as possible in order to establish the facts, to determine whether illegal acts were committed, to identify the culprits and to initiate the relevant legal procedures.
59. The Committee also notes the various forms of support provided or offered by the administration. It draws particular attention to the fact that the labour inspector was accompanied by hierarchical superiors on three occasions for the purposes of support during the inspections of the company (on 10 November 2010 and 19 April 2011) and on the occasion of the interview at the Public Prosecutor’s Office in Rouen to present the judges with the violation report for contempt submitted by the labour inspector (on 11 May 2011); the fact that on 16 November 2010, the Regional Office of Haute-Normandie sent a press release to the newspaper “Paris-Normandie” recalling the regulations applicable to the dismissal of protected employees and underlining that “the inspector should, in any event, be left to reach her decision calmly, without being put under pressure and in respect of the rule of law, and to take the time to consider the arguments put forward by the employer and the worker”, and that, according to the complainant organization, one or, according to the Government, more interviews with the administration on that issue were broadcast on local television; the fact that on 28 March 2011, in response to a written complaint from the employer dated 16 February 2011, in which he complained of the rigour of the labour inspectorate in inspecting his company, the regional director reminded him that “the duties and activities of the labour inspectorate shall not be subjected to multiple interventions or to threats of legal action”.
60. However, the Committee regrets the fact that some institutional aspects, in particular the need to promote the authority of the labour inspectorate in the view of employers, workers and in local public opinion, were not more firmly addressed when the case began, as this could have helped avoid the unfortunate developments that have been brought to the Committee’s attention.

61. In this regard, the Committee wishes to recall the importance attached to the image of the labour inspectorate as a respected authority in public opinion, which enables it to effectively perform its duties. The importance of its image was already underscored in 1948, shortly following the adoption of Convention No. 81, in the context of the preparatory conference on labour inspection, which preceded the Asian Regional Conference in 1950. It was stated that “in the industrially more advanced countries, informed public opinion, aware of the importance which attaches to securing effective application of labour legislation, provides a favourable environment for the more efficient discharge of labour inspectors’ duties and contributes toward the development of inspectors into the kind of trusted adviser who can count on the confidence of employers and workers alike to obtain more effective results”.<sup>5</sup>
62. In its observation published in 2011 on the application of Convention No. 81 by France, the Committee of Experts had noted that a “relationship of trust is needed to create the climate of confidence that is essential to enlisting the cooperation of employers and workers with labour inspectors. It must be possible for inspectors to be feared for their authority to report offences, and at the same time to be respected and approachable as preventers and advisers.”<sup>6</sup>
63. The Committee shares the Government’s opinion as regards the difficulty of striking an ideal balance between the need to protect the agents of the labour administration and the fundamental freedom of public debate in society and in a free press.
64. Nevertheless, the Committee finds that when the primary goal of pressure exerted through the media is “to denounce” a decision taken by the labour inspectorate, as indicated by the Government in this case, this pressure can have such an adverse effect on public opinion and on the parties over which the labour inspectorate has been called to exert its authority, that it can constitute an impediment to the performance of its main duties of inspection, guidance and prevention. Referring to the *Principes de déontologie pour l’inspection du travail*, the Committee underlines the fact that independence is asserted within the framework of a legal system built on respect for laws, regulations and the provisions of Conventions in force, and for *res judicata*.<sup>7</sup>
65. The Committee regrets that, when the case began, the labour administration did not firmly draw the attention of the employer to his fundamental obligation to *strictly* limit himself to legal remedies and to not exert pressure that constitutes *an improper external influence* and that could be construed as an attempt to obstruct the labour inspector in the performance of her duties in accordance with Article 18 of Convention No. 81 and articles L8114-1 and L8114-2 of the Labour Code. The Committee further considers that the legal obligations of the employer could also have been mentioned more clearly in the context of the communications with the media, thereby raising public awareness of the importance of enforcing labour law and of the labour inspectorate effectively performing its duties.

<sup>5</sup> ILO: *Report I: Labour inspection* for the Asian Regional Conference, (Geneva, ILO, 1949), pp. 8–9. The Kandy Conference was held in November 1948 to prepare for the examination of the question of labour inspection by the Asian Regional Conference.

<sup>6</sup> ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III, Part (1A), International Labour Conference, 100th Session, p. 531.

<sup>7</sup> Ministère du Travail, des Relations Sociales, de la Famille, de la Solidarité et de la ville, DGT, op. cit., supra, note 3, p. 16.

## Other matters

### The violation reports drawn up against the employer

66. The Committee notes that, according to the allegations of the complainant organization, the labour inspectorate has drawn up about ten violation reports against the same employer since 2007 but, to date, the Public Prosecutor has not arranged a single hearing before a correctional court. Apart from the violation report for contempt drawn up against the employer (see paragraph 57 above), the Government has provided no response in this respect. The Committee does not have sufficient information to assess the facts concerning the other violation reports and, in particular, does not know whether a decision on all of them has already been taken.
67. Given that the matter of cooperation between the labour inspectorate and the judicial authorities remains one of great importance for the effective functioning of the labour inspection system, the Committee wishes to draw the Government's attention to its 2007 general observation concerning, in particular, Article 5(a) of the Convention, which underlines the importance of taking appropriate measures in consultation with the social partners in order to strengthen effective cooperation between the labour inspection system and the judiciary, and to ensure that the judicial authorities afford the violation reports of the labour inspectors the diligence and in-depth examination they deserve.

### The intervention of a gendarme

68. The complainant organization alleges that the independence of the labour inspector was placed in jeopardy by the pressure reportedly exerted upon her by an anonymous gendarme two days after the decision to refuse to authorize the dismissal was taken. The Committee finds that the information provided in this regard is not precise enough to enable it to examine this matter. However, the Committee wishes to underline that, in accordance with Articles 5(a) and 18 of Convention No. 81, labour inspectors should, on the contrary, be able to call upon the support of the police in the event of them being obstructed in the performance of their duties. The 2006 General Survey on labour inspection also indicates that the possibility of calling upon the support of the police is all the more significant if effective measures are in place to ensure rapid implementation and in particular to ensure the physical safety of the inspector and allow the planned inspections to take place smoothly.<sup>8</sup>

## IV. The Committee's recommendations

69. *In the light of the conclusions set out above concerning the issues raised in the representation, the Committee recommends the Governing Body to:*
- (a) *approve the present report;*
  - (b) *invite the Government to draw useful conclusions from this case and, in consultation with the social partners, to continue to take such measures as might be necessary to ensure that in future no improper external influence in the form of pressure exerted upon labour inspectors is tolerated by invoking all the legal provisions applicable to the case, and to ensure that the image of the labour inspectorate is not tarnished in the eyes of*

<sup>8</sup> International Labour Conference, 95th Session, op. cit., supra, note 2, p. 56, para. 157.

*employers, workers and in public opinion in general as a result of such incidents;*

- (c) invite the Government to take all measures necessary to ensure that the investigation of the complaint filed by the Director-General for Labour and the Directors of the General Administration and Modernization of Services concerning the offences of public defamation and public insult against a public official moves forward as quickly as possible in order to establish the facts, to determine whether illegal acts were committed, to identify the culprits and to initiate the relevant legal procedures;*
- (d) bring these conclusions to the attention of the Committee of Experts on the Application of Conventions and Recommendations;*
- (e) make the report publicly available and close the procedure initiated by the representation of the trade union “SUD Travail Affaires sociales”, alleging non-observance by France of Convention No. 81.*

Geneva, 19 March 2013

*(Signed)* V. Berset Bircher  
Chairperson

J. Ronnest

S. Gurney