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Chairperson: Mr Rorix Nuñez Morales
Président: M. Rorix Núñez Morales
Presidente: Sr. Rorix Núñez Morales

Discussion of individual cases *(cont.)*
Discussion sur les cas individuels *(suite)*
Discusión sobre los casos individuales *(cont.)*

Greece *(ratification: 1962)*

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
Convention (nº 98) sur le droit d'organisation et de négociation collective, 1949
Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98)

A Government representative (Ms ACHTSIOGLOU) stated that the late submission of the country's report had been due to human resources constraints and administrative changes at the Ministry of Labour pursuant to ILO recommendations, under the ongoing technical assistance project on labour administration. Nevertheless, the Government had managed to submit all reports requested under article 22 of the ILO Constitution for 2017,

along with the report requested under article 19, the Annual Review, and all questionnaires on the preparation of the items of the present session of the Conference, as well as the country's response to the Committee of Experts' comments regarding the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), due in 2018.

She emphasized that the current Government had promoted collective bargaining and fostered social dialogue. The restoration of two key principles of collective bargaining (the extension principle and the principle of favourability) had been set as a top priority by the Ministry of Labour, since those had been suspended by the previous government in 2011. Indeed, the Government had set collective labour rights at the epicentre of its growth strategy, in order for workers to pursue, through negotiations, a fair share of the wealth produced. The Government had been involved in long and tough negotiations with its creditors, namely the European Institutions and the International Monetary Fund (IMF), who strongly believed that a coordinated system of collective bargaining would hinder the country's return to growth and prevent unemployment from dropping. Finally, the Government's persistence to restore the system of collective bargaining had been successful, after many months of negotiations. Legislation, entering into force in August 2018, had already been adopted, restoring the two abovementioned fundamental principles.

The speaker considered that, even more important than the legislation itself, was the political mobilization that had taken place on the issue in 2017, and during the negotiations with the country's creditors for the need to restore the collective bargaining system. Under the second round of negotiations, the labour market issues had been strongly debated and prolonged, due to efforts to address the points raised by the Committee of Experts. The Government had been supported by the International Trade Union Confederation (ITUC), the European Trade Union Confederation (ETUC), several members of the European Parliament, the President of the European Commission and the ILO. The issue of collective bargaining had become emblematic, identified as part of the core of the European social

model and it was therefore surprising that, after such efforts, the Government had been called to provide explanations for the violation of the Convention.

For the past eight years, Greece had been under successive Economic Adjustment Programmes, a funding package from the Troika, consisting of the European Commission, the European Central Bank (ECB) and the IMF. As part of the conditions for receiving funding, the country had signed a Memoranda of Understanding (MoU) with the above creditors, under the terms of undertaking specific legislative, economic and political reforms. The reform package had been applied from 2010 to 2014 and aimed at reducing labour costs, not only by wage cuts, but also by imposing general restrictions on labour rights. In order to achieve the required internal devaluation, a number of severe measures had been adopted during that period, dismantling core elements of the Greek employment protection system. The result was severe deregulation of the labour market and of the legal framework, leading to violations of the Convention. More specifically, the reforms adopted in 2011 had led to the abolition of the extension and favourability principles, as well as to limitations to the time extension and after-effect of collective agreements. As a result, collective bargaining had stopped being a reality in the country. Bargaining coordination had dropped, earning inequality and low-pay incidence had increased significantly. At the same time, bargaining coverage had declined from approximately 85 per cent to less than 30 per cent of the workforce and individual contracts had been the largest share of the working population's employment reality. Accordingly, real annual salaries had decreased by 18 per cent and part-time work rose by 28 per cent. However, those policies had not been able to effectively contain rising unemployment, which reached 27.9 per cent and around 60 per cent among the youth. The Greek system of collective bargaining had experienced a "disorganized decentralization". Trust among the social partners, and between the social partners and the State had been considerably and negatively affected. That had been the reality that the Government had tried to reverse, in 2015, when a change of paradigm had taken place in Greece with a new Government focused on social rights. The new Government's objective

had been to alleviate the major humanitarian crisis that had led to the collapse of the Greek society between 2010 and 2014, and to pursue the recovery of the economy by reducing the high unemployment and empowering the workforce. The above negotiations had indeed resulted in the restoration of the two abovementioned fundamental principles: the extension of collective bargaining and the favourability principle. As already noted, the restoration of those principles had been legislated since May 2017 and would be put into force in August 2018. The last technical details had been agreed upon with the social partners recently, leaving no doubt that collective bargaining would be reinstated in the country in August 2018.

Moving on to the issue regarding the arbitration system in Greece, the speaker recalled that arbitration had always been a part of the Greek legal framework for resolving collective disputes. Article 22, paragraph 2, of the Greek Constitution provided that the general working conditions shall be determined by law, supplemented by collective agreements, and when free collective bargaining failed, by rules determined by arbitration. Since 1990 that system had been entrusted to an autonomous organization called Organization for Mediation and Arbitration (OMED), governed fully by the social partners. The Government was aware that the Committee of Experts had stated many times that the right of unilateral recourse to arbitration had not been considered compatible with the Convention. Nonetheless, the specific requirements of the Greek Constitution, as well as the repeated rulings of the Greek Supreme Courts, had to be respected by the Government. The Supreme Courts had ruled that the Convention's provisions and guidelines had already been implemented through the provisions of the Greek Constitution for free bargaining and arbitration and that there was no issue with respect to compatibility. In 2012, when the former Government had tried to abolish the unilateral recourse to compulsory arbitration, the full plenary of the Council of State had cancelled, in 2014, the abolition, ruling that it contradicted the provisions of the Greek Constitution. Furthermore, according to ruling No. 2307/2014 in Greece: (a) the establishment of an arbitration system was a constitutional obligation; (b) unilateral recourse

to arbitration was also a constitutional right; and (c) the scope of arbitral decisions should cover all issues that could be negotiated during collective bargaining and could not be limited only to the determination of wages. Pursuant to those constitutional obligations, the existing legal framework provided that the right of unilateral recourse to arbitration was only given to either party when: (i) the other party refused to participate in the mediation process; or (ii) after the submission of the mediator's proposal. That meant that the right could only be exercised when all possibilities for free negotiations had been exhausted.

In addition, a number of other provisions also restricted the role of arbitration in order to foster free collective bargaining, such as a second degree arbitration established (on appeal). That appeal would be examined by a five-member Commission, consisting of two arbitrators, two Supreme Court judges (from the Council of State and Areios Pagos) and one Counsellor of the Legal Council of the State. Moreover, mediators' proposals as well as arbitral decisions had to be fully justified and documented. Further, the judicial control of arbitral decisions had been increased and strengthened. Finally, in light of the provisions of the Convention, as well as the requirements of the Greek Constitution, the Government had recently initiated a tripartite dialogue on the basis of an independent expert's study on mediation and arbitration in collective bargaining. Following the tripartite dialogue, the Ministry of Labour was planning to introduce further amendments to arbitration, with a view to further enhancing free bargaining and good-faith negotiations between the parties and strengthen the mediation procedure. Through such amendments to the mediation procedure, free collective bargaining was expected to be further enhanced and arbitration would be limited to playing a supplementary role, in line with the Committee of Expert's recommendations, while preserving the constitutional particularities of Greece.

The speaker concluded by emphasizing the importance that the current Government gave to collective bargaining and to social dialogue. Under extremely hard conditions, the Government was reinstating a coordinated system of collective bargaining and guaranteeing the necessary legal requirements to foster social dialogue.

Les membres travailleurs ont regretté que le gouvernement ne se soit pas acquitté de son obligation de faire rapport, condition sine qua non d'un contrôle effectif de l'application des normes de l'OIT.

Faisant référence à l'observation de la commission d'experts, ils ont rappelé que, compte tenu du fait que les petites entreprises sont majoritaires sur le marché du travail grec, l'abandon du principe de faveur (loi nº 3845/2010), conjugué avec la possibilité pour les associations de personnes de conclure une convention collective d'entreprise, lorsque celle-ci n'a pas de syndicat (loi nº 4024/2011), avait des effets préjudiciables graves pour tout le fondement de la négociation collective dans le pays. Les chiffres repris dans le rapport de la commission d'experts sont jugés assez édifiants à ce propos: sur les 409 conventions collectives conclues en 2013, 218 l'ont été par des associations de personnes, et seulement 191 par des syndicats. Or le droit à la négociation collective garanti par l'article 4 de la convention est un droit prévu pour les organisations de travailleurs, et il est évident que des associations de personnes ne sont pas des organisations de travailleurs à proprement parler. A l'occasion d'observations précédentes de la commission d'experts, le gouvernement avait expliqué qu'une association de personnes est créée indépendamment du nombre total de travailleurs et pour une durée déterminée; que trois cinquièmes des travailleurs au moins sont requis pour créer une association de personnes, et que ces travailleurs sont protégés contre le licenciement antisyndical et peuvent déclencher des actions de grève, lorsque ceci n'est pas prévu par la législation. Les membres travailleurs considèrent que ces explications ne sont guère convaincantes. La recommandation (nº 91) sur les conventions collectives, 1951, prévoit certes que, en l'absence d'organisations de travailleurs, il est possible pour les représentants des travailleurs intéressés, dûment élus et mandatés par ces derniers en conformité avec la législation nationale, de conclure des conventions collectives. Toutefois, il ressort des travaux préparatoires de cette recommandation que cette possibilité a été introduite afin de prendre en considération les cas des pays où les organisations syndicales n'ont pas atteint un niveau de développement suffisant et afin que les principes posés par la

recommandation puissent être appliqués dans ces pays. Or la Grèce n'est certainement pas un pays où les organisations syndicales sont insuffisamment développées, et la législation nationale prévoit que, pour les travailleurs dans les PME, la représentation se fait via les syndicats sectoriels.

Les membres travailleurs se sont également référés à la convention (nº 154) sur la négociation collective, 1981, ratifiée par la Grèce, qui prévoit en son article 3, paragraphe 2, que des mesures appropriées devront être prises, chaque fois qu'il y a lieu, pour garantir que la présence de représentants non syndicaux ne peut servir à affaiblir la situation des organisations de travailleurs intéressées. Il en résulte trois conséquences: i) les principes et normes de l'OIT impliquent que les Etats sont tenus de promouvoir et développer la négociation collective: ii) cette négociation doit se faire à un niveau qui permette de faire participer les organisations des travailleurs; et iii) le fait de prévoir via la législation que des accords au niveau de l'entreprise peuvent déroger aux accords sectoriels et nationaux, dans un contexte où les organisations syndicales ne sont pas présentes au niveau de l'entreprise, constitue une violation des conventions et recommandations de l'OIT.

Les membres travailleurs ont en outre souligné que le Comité de la liberté syndicale avait eu l'occasion d'observer, dans des cas concernant l'Espagne et la Grèce, que «la mise en place de procédures favorisant systématiquement la négociation décentralisée de dispositions dérogatoires dans un sens moins favorable que les dispositions de niveau supérieur peut conduire à déstabiliser globalement les mécanismes de négociation collective ainsi que les organisations d'employeurs et de travailleurs et constitue en ce sens un affaiblissement de la liberté syndicale et de la négociation collective à l'encontre des principes des conventions n^{os} 87 et 98». Dès lors, il incombe au gouvernement de prendre les mesures appropriées afin de promouvoir de manière effective le droit à la négociation collective avec les organisations de travailleurs.

S'agissant du recours à la procédure d'arbitrage obligatoire, les membres travailleurs ont estimé que la nature du système existant avait pour effet de renforcer la position des

employeurs en leur permettant de ne pas participer aux procédures de résolution des différends. Aussi est-il demandé au gouvernement, dans la réponse que ce dernier va apporter à la décision du Conseil d'Etat jugeant inconstitutionnelle la suppression du recours institutionnel à l'arbitrage, d'adopter une approche consistant à restaurer des mécanismes de négociation collective effectifs.

Enfin, pour ce qui est de la protection contre le licenciement antisyndical soulevé dans l'observation de la commission d'experts, les membres travailleurs considèrent qu'elle s'inscrit dans le cadre de la mise en œuvre des formes de travail flexibles (flexibilité dans la prérogative de la direction d'une entreprise de mettre un terme aux contrats de travail à plein temps, imposition unilatérale d'horaires de travail réduits, durée plus longue du recours autorisé aux agences de travail temporaire, allongement de la période d'essai et de la durée maximale des contrats à durée déterminée). Toutes ces modalités ont pour conséquence de rendre les travailleurs plus vulnérables aux pratiques déloyales et aux licenciements injustifiés. Il est dès lors nécessaire que des mesures soient prises afin de veiller à ce que les travailleurs bénéficient d'une protection adéquate contre les discriminations portant atteinte à la liberté syndicale.

Les membres travailleurs ont terminé leur propos en faisant observer que la question de la décentralisation de la négociation collective et celle du rôle joué par les associations de personnes ne sont pas seulement le fait du gouvernement. Il s'agit de mesures conditionnelles, de diktats, imposés à la Grèce depuis 2010 dans les négociations avec la Commission européenne, la Banque centrale européenne et le Fond monétaire international. Il y a lieu de préciser que l'achèvement du programme d'ajustement n'implique nullement la fin des mesures conditionnelles imposées par les créanciers qui réaffirment que la Grèce restera sous stricte surveillance. Dès lors, l'examen du cas de ce pays constitue plutôt une opportunité pour les membres travailleurs de rappeler que la logique de l'austérité avec toutes ses conséquences dramatiques sur les travailleurs et les sociétés sont incompatibles avec les principes et normes fondamentales de l'OIT.

The Employer members stated that they shared the concern of the Worker members and of the Committee of Experts that the Government had not submitted a report to the Committee of Experts in time for that Committee to fully consider the issue. That limited the Conference Committee's ability to consider recent information. The Convention required that measures appropriate to national conditions be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. Referring to the decision of the Council of State on the unconstitutionality of the provision in Act No. 4046 of 14 February 2012 providing for the suppression of unilateral recourse to compulsory arbitration, the Employer members indicated that the Government appeared to be encouraging the use of compulsory arbitration as a replacement for voluntary negotiation. The Committee of Experts had noted the issues raised by the Hellenic Federation of Enterprises and Industries (SEV) and its concern regarding the Government's unilateral recourse to compulsory arbitration to circumvent collective bargaining. The Employer members expressed their concern that no response had been provided to the concerns raised by the SEV.

The Employer members expressed surprise that the Government had indicated that one of its top priorities was the restoration of a system of collective bargaining, as the Government had also indicated that arbitration had always been a part of the Greek legal system, even if the Committee of Experts had made numerous observations that a system of compulsory arbitration did not meet the obligation under the Convention. The Government had stated that it considered the decision of the Council of State in light of its Constitution. The Government's statement appeared to imply that it had discharged its obligations under the Convention, as a result of recent amendments, and that the onus then fell on workers' and employers' organizations. Compulsory arbitration had a distortionary impact on the labour market and could materially affect the outcome of negotiations. In 1978, the mission

report of the International Programme for the Improvement of Working Conditions and the Environment (PIACT) concerning Greece had stated that systematic recourse to compulsory arbitration resulted not only in excluding the establishment of a tradition of dialogue between the social partners, but also in deterring the labour organizations from designing policy. The prediction that systematic recourse to compulsory arbitration would stifle collective bargaining had been accurate.

The Employer members disagreed with the Worker members' assertion that the status quo favoured employers in the country. However, they agreed that the Government should reinstate effective collective bargaining mechanisms. Legislative provisions that allowed either party to unilaterally request compulsory arbitration for the settlement of a dispute or collective agreement did not promote voluntary collective bargaining, stifled collective bargaining and were contrary to the Convention.

The Employer members urged the Government to ensure that neither a decision of a national court nor any legislative amendments imposed compulsory arbitration for the settlement of disputes or collective agreements as the normal course. They further called on the Government to discuss the existing arbitration system with the social partners with a view to achieving compliance with international labour standards. Full and robust social dialogue with workers' and employers' organizations at the national level was necessary to resolve the concerns identified on the use of compulsory arbitration, including its scope. Lastly, the Employer members called on the Government to take immediate measures in that respect and to provide a full report on the measures taken to the Committee of Experts in advance of its session in 2018.

The Worker member of Greece (Ms TZOTZE-LANARA) expressed appreciation for the support provided by the ILO in supervising compliance with labour standards and providing technical assistance and noted that the Government had not resolved human resources issues in the country leading to non-compliance with its ILO reporting obligations. Collective bargaining destabilized by repeated statutory limitations had still not been

effectively restituted and the significant interventions in the voluntary nature of collective bargaining and in the principle of the inviolability of freely concluded collective agreements, raised by the Committee on Freedom of Association, had not been effectively addressed. A number of issues were at stake, including the statutory infringement to set the minimum wage at poverty levels and further reduce it for young workers; the evisceration of the National General Collective Agreement (NGCA) by removing the right of its signatory social partners to bargain collectively; erosion of sectoral collective bargaining; annulment of fundamental principles protecting terms of pay and work, such as the extension of collective agreements and the favourability principle; and conferral to non-elected associations of persons the ability to conclude binding enterprise-level agreements. Those measures had deprived the social partners of the fundamental right and means to advance and defend their economic and social interests, resulting in a decline in collective bargaining coverage from over 80 per cent of the workforce to just over 30 per cent. Furthermore, successive measures had wiped out remaining institutional safeguards that had been ensuring a level playing field at labour markets, bearing upon collective dismissals, pension cuts and the right to strike, and the authorities had ignored the strong appeal by the Committee on Freedom of Association to review, with the social partners, all the contested measures and their impact. To address the adverse cumulative impact of the measures on the exercise of the right to bargain collectively and conclude collective agreements, it was necessary to ensure the unequivocal compliance of domestic law and practice with the Convention and the national constitutional order. Although the adoption of section 5 of Act No. 4475/2017, reinstating the extension of collective agreements and the favourability principle, was welcomed, the Government had undertaken to streamline and codify existing labour law which implied the consolidation and perpetuation of every harmful legislation since 2010, including provisions that overtly violated the Convention.

With regard to the arbitration procedure, the Government did not fully comply with the decision of the Plenary of the Council of State No. 2307/2014 and the nature of the existing

system was mainly subsidiary. The labour market was fully deregulated, workers suffered significant institutional disadvantage and abusive employer practices hindered the conclusion of collective agreements, for instance, employers avoided participation or denied their designation as an employer organization. In 2013, the Committee requested the Government to establish a functioning model of social dialogue to promote collective bargaining but tripartite social dialogue had degenerated in a superficial fragmented procedure and any existing dialogue should be credited only to the social partners and the ILO.

Consequently, the Committee was called on to: reaffirm previous recommendations and conclusions by the ILO supervisory bodies and request the tripartite review of the mentioned measures based on their impact assessment, with a view to rendering legislation and practice compatible with the rights enshrined in the Convention; emphasize that collective bargaining institutions could not be effectively restored without repealing all statutory interventions that violated the Convention, including associations of persons, and section 2(7) of Act No. 3845/2010 derogating the scope of collective agreements; reiterate that public authorities should refrain from any interference restricting the right to free collective bargaining or impeding its lawful exercise; and renew its emphasis on the need to reinstate the standing and practice of tripartite social dialogue, urging the State to respect the autonomy and the representativeness of the social partners, as well as collective bargaining outcomes.

The Employer member of Greece (Mr KYRIAZIS) recalled the two main issues discussed: firstly, enterprise-level collective agreements and associations of persons and secondly, the issue of compulsory arbitration. With regard to the competence of associations of persons to represent workers at the level of a firm where a trade union did not exist, such measures were in full accordance with ILO standards, actively promoted collective bargaining and social dialogue and should therefore not be changed. Special regulations allowing trade union sections in small companies would, in the country's specific context,

be seen as a Government intervention in the way workers organized of their own free will and there should thus be no legislative amendments, irrespective of whether a favourability principle existed in the laws or not.

The existing system, to the extent that it included unilateral recourse to compulsory arbitration, had been found by ILO supervisory bodies to be against ILO standards. The arbitration system was dominant and central in Greek industrial relations but recourse to compulsory arbitration stifled the development of collective negotiations and in practice caused absence of industrial action and of development of collective bargaining. Although from an employer's viewpoint, practically eliminating industrial action might appear as positive, near-zero strikes on salary issues was a symptom that the system had consistently provided easy solutions accommodating the workers' side and constituted a fundamental distortion of the collective bargaining environment. Such distorted environment was one of the main reasons explaining why social dialogue between workers and employers had been almost non-existent in the past ten years.

Act No. 4303/2014 adopted after the 2014 Council of State decision had reinstated compulsory arbitration but it was essentially the same as the previous laws that had been found by ILO bodies to infringe the Convention and the Government intended to keep it that way. However, even in the framework of that decision, the situation could be improved drastically by adjusting the scope of compulsory arbitration to be as close as possible to ILO standards. The proposal was for compulsory arbitration to be accepted as the ultimate measure for resolving collective disputes strictly in the following cases: (1) where the employer was an entity belonging to general government or where it provided essential services; (2) in sectors of the economy where the resolution of a collective dispute was necessary for reasons of public interest that was at risk at the moment of the dispute – apart from general government and essential services, a collective dispute at firm- or occupational-level could not be conceived as putting at risk the public interest and compulsory arbitration should thus not be allowed for disputes at those levels; for sectoral, regional or national-level

disputes, risk of public interest should be proven, if it was to merit recourse to compulsory arbitration; (3) if one of the parties refused in bad faith to enter into negotiations; (4) if negotiations had definitively failed and such failure had been proven by several cumulative conditions (at least one year had passed since the expiration of the previous collective agreement; the minutes of negotiations showed that one side refused to accept the realistic proposals of the other; and all means of union pressure had been used). Unilateral recourse to compulsory arbitration was thus not acceptable if strike action had not been undertaken to exert pressure on the employer. Although the proposal would not achieve full compliance with ILO standards, it could present significant improvement as an interim measure, until an opportunity arose to settle the matter at the level of the Constitution or its interpretation.

Furthermore, substantial improvements should be made in the existing framework of the OMED, including procedures to establish true representativeness for both sides of the dispute, strong safeguards for ensuring independence and professional qualification of arbitrators and mediators, standards for decisions to be adequately substantiated concerning their economic impact and full-scale self-government of the OMED by the social partners regarding its administrative or legal setup, funding and internal processes of arbitration and mediation.

In December 2017, the SEV had extended to the General Confederation of Greek Workers (GSEE) a formal invitation to discuss a brand-new arbitration system but since the GSEE had expressed the wish to return to the initial system that had existed before the crisis and to abolish the reforms of Act No. 4303/2014, which had brought back compulsory arbitration but had some marginal improvements over the old system, the discussion had not continued. As for the Government, it lacked any willingness to make the slightest move in the indicated direction, as demonstrated by the absence of any reference to the proposed changes in a technical document drafted with the country's creditors, which thus represented an explicit binding commitment of the Government to continue flouting the Convention, as well as Convention No. 154 for the foreseeable future. To conclude, the speaker suggested

that if the Government was sincere about reviving collective bargaining, it should start by taking steps to comply with the Convention and if the workers believed in free collective bargaining as the main pillar for effective social dialogue, they should find the courage to denounce compulsory arbitration.

The Worker member of the United Kingdom (Ms REED) recalled that the ability for independent trade unions and employers to engage in free collective bargaining to defend and promote their members' interest was a core value of the ILO. Effective collective bargaining systems ensured that workers and employers had an equal say in negotiations and that the outcomes were fair and equitable. It was deeply regrettable that labour law reforms introduced since 2010 at the request of Greece's creditors and the Troika had led to the dismantling of collective bargaining machinery and significantly weakened the position of workers in the labour market, depriving them of the institutional means needed to address economic hardship. In 2012, the national minimum wage – which had previously been set by collective bargaining, and had provided a safety net for low-paid workers – was substantially reduced. The collective bargaining system had been seriously weakened with the removal of mechanisms for the extension of sectoral-level agreements and precedence being given to enterprise-level agreements. Reforms had also limited the duration and content of collective agreements, as well as their effect on individual contracts after their expiry and imposed severe restrictions on the right for parties unilaterally to request arbitration. Those measures had discouraged free collective bargaining as they permitted employers to impose lower wages and worse working conditions and compelled trade unions to either accept employers' terms or risk even greater salary losses and fewer negotiating rights. Moreover, there was no guarantee that lower salaries agreed at a sectoral level would not be further reduced through the proliferation of less favourable enterprise-level agreements. The dismantling of collective bargaining institutions, the accompanying wage suppression and other austerity measures had had wide-ranging impacts, including a dramatic increase in the risk of poverty or social exclusion. Consequently, the speaker called

upon the Government to refrain from interfering with the collective autonomy of the social partners and reinstate the collective bargaining machinery as a matter of urgency.

The Employer member of Spain (Mr SCHWEINFURTH ENCISO) indicated that non-compliance of a Member State of the European Union with ILO standards for so many decades was worrying, not only for the Greek employers. The crisis of recent years had shown the interconnection between the economies of European countries. In periods of crisis it was all the more important for social partners to have a shared understanding of the problems in each country, as it was not possible to achieve results without such collective understanding and sharing the responsibility for the solution. The lack of a culture of effective collective negotiations was probably one of the reasons of the delay in approving structural reforms. Social dialogue could not be built instantaneously but needed preconditions and was based on the gradual construction of mutual trust and respect among social partners engaging in continuous exchanges through collective negotiations. True social dialogue would be beneficial both to the Greek economy and to other partners in the European Union. Moreover, compulsory arbitration was contrary to the acquis communautaire. The ETUC had reiterated that the requirement for compulsory arbitration to be abolished raised no misgivings and that its abolition would bring the situation in line with ILO Conventions and the European Social Charter. In conclusion, there was support for the proposals of the SEV to urge the Government to comply with ILO and European standards.

The Worker member of Germany (Ms VOLLMANN) indicated that the reforms adopted by Greece since 2010 had been in conflict with the Convention. Under pressure from the Troika, the Government had weakened the validity of the NGCA and replaced negotiations of the social partners on minimum wage setting by legislation. The Government had also eliminated the favourability principle and weakened enterprise collective agreements. The negotiating position of the independent trade unions had been undermined by allowing associations of persons to act and negotiate as workers' representatives. The

devastating effects of the decentralization of collective bargaining were undeniable. Enterprise collective agreements had become the predominant form of collective bargaining, accounting for over 90 per cent of all agreements in 2015. Almost half of them had been negotiated with associations of persons. The number of sectoral collective agreements had fallen from 65 in 2010 to only 12 in 2015. In view of the disproportionate number of small and micro-enterprises in Greece, coverage under collective bargaining agreements had decreased from 85 per cent before the crisis to an estimated 10 per cent in 2016. Wage cuts were highest where negotiations were carried out at the enterprise level and with associations of persons rather than with representative unions. Dialogue through collective bargaining had become difficult or in some instances had completely stopped. The continuation of that situation put at risk collective rights and the democratic participation of workers. Therefore, the speaker called upon the Government to restore the institutional framework as soon as possible, so that a functioning social partnership and free collective bargaining could be guaranteed at all levels, in particular at the enterprise and national levels. Furthermore, the representation of workers' interests by associations of persons instead of by trade unions should be legally prohibited. The speaker called on the Member States of the European Union to support Greece in re-establishing a peaceful society and rebuilding a democratic and fair collective bargaining system.

La membre travailleuse de la France (M^me^ ALEXANDRE) a estimé qu'il était regrettable que les programmes d'ajustement économiques mis en œuvre en Grèce depuis un certain nombre d'années aient fait l'économie d'un dialogue social effectif, constat partagé à la fois par les travailleurs et les employeurs. En dépit des recommandations des organes de contrôle formulées à plusieurs reprises, les seuls formats de dialogue social effectif sont ceux qui impliquent la présence du BIT dans le cadre de l'assistance technique. Les accords bipartites entre travailleurs et employeurs sont tout simplement ignorés et des mesures concernant le droit du travail, et la négociation collective ont été prises en dehors de toute consultation avec les partenaires sociaux. Ces derniers ont clairement demandé de

réinstaurer un dialogue social tripartite effectif dans le cadre d'un accord sur la négociation collective générale en mars 2018, demande déjà formulée dans des déclarations communes en 2015 et 2016. Alors que la Grèce a ratifié la convention (nº 144) sur les consultations tripartites relatives aux normes internationales du travail, 1976, les partenaires sociaux ne sont même pas conviés à travailler sur les rapports dus par la Grèce. L'oratrice a demandé la restauration du dialogue social tripartite dans un cadre structuré et dont les procédures respectent l'expérience et les connaissances des partenaires sociaux.

Le membre employeur de la France (M. ROCH) a déclaré que la question de l'arbitrage obligatoire en Grèce devait être examinée au regard des conventions nos 98 et 154, toutes deux ratifiées par la Grèce, ainsi qu'au regard de la recommandation (nº 92) sur la conciliation et l'arbitrage volontaires, 1951, et de la recommandation (nº 163) sur la négociation collective, 1981. Le recours unilatéral à l'arbitrage obligatoire est un problème persistant et contraire aux principes fondamentaux de l'OIT. En résumé, la législation grecque accorde le droit d'entrer, sans consentement de l'autre partie, dans un processus de médiation et, par la suite, dans un processus d'arbitrage, si la convention collective n'aboutit pas. La décision arbitrale est ensuite assimilée à une convention collective normalement conclue, même en l'absence de l'accord des parties, et possède la même force contraignante qu'une convention collective. L'orateur a montré qu'il existait des contradictions juridiques évidentes entre les instruments précités et la législation nationale et a souligné que le gouvernement ne répondait pas aux préoccupations exprimées par la SEV, quand elle affirme que le recours à l'arbitrage obligatoire unilatéral vient étouffer la négociation collective. Il est temps que le gouvernement prenne des mesures en vue d'assurer la mise en conformité de la législation avec les conventions de l'OIT, l'histoire ayant prouvé que le système d'arbitrage obligatoire, par sa nature même, minait la négociation collective, principe fondamental du dialogue social.

The Worker member of Portugal (Mr PRAÇA), also speaking on behalf of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Workers' Union

of Spain (UGT-E), stated that the labour market restructuring explicitly imposed by Greece's creditors violated core ILO Conventions and deprived workers of institutional means to defend themselves and to bargain collectively. Combined with a sizeable informal economy, the dismantling of collective bargaining magnified the negative cumulative impact on employment, exacerbated already existing disparities and severely compromised the right to work. Statistics were provided on the unemployment rate in the country which, despite a recent decrease, amounted to the highest in the European Union. Unemployment was often long-term and touched over 1 million people, in particular young people, showing that it increasingly acquired structural characteristics. Furthermore, while full time jobs decreased, the number of part-time workers, rotation and shift jobs – the so called flexible forms of employment – increased and such precarious jobs could not contribute to sustainable job growth. The deregulation of labour relations had thus led to the worsening of the basic protection indicators of employment and a dramatic increase of enterprise-level collective bargaining agreements.

The Worker member of Sweden (**Ms NYGREN**), speaking on behalf of the ETUC, stated that the rule of law could only be upheld if member States complied with international legal standards, even in times of economic difficulties. The case concerned human rights. The collective bargaining system in Greece had been radically restricted and dismantled, leading to violations. Greek trade unions had taken various legal measures with a view to reinstating the industrial relations system and the right to collective bargaining as well as the guarantee and enforcement of agreements. As a result, since 2011, national courts, international supervisory bodies and special procedures had identified violations of international standards on human rights, including labour and social security rights. Such bodies had expressed deep concern regarding the impact of austerity measures and deep regret when their recommendations had not been followed. Nonetheless, there had been no progress regarding respect in practice for the rights guaranteed in the Convention. That included the decision to establish the minimum wage by law without bargaining with the

social partners and allowing enterprise agreements to be concluded with associations of persons that did not have guarantees with regard to elections and representativeness. The ETUC had criticised austerity measures and had expressed its solidarity and support for the GSEE, asking the Government to proceed in full and frank dialogue with that Confederation. Human rights needed to be guaranteed and respected. The speaker concluded by urging the Government to take the necessary measures in order to comply with the Convention, including through amending its legislation.

An observer representing Public Services International (PSI) and Education International (EI) (Mr RUBIANO) regretted that once again the Government had not submitted its report to the Committee of Experts, thus avoiding its obligations under the ILO Constitution and Conventions. That prevented an honest discussion regarding the public sector, where the enforcement of the Memoranda of 2010 was having devastating consequences. There were no collective bargaining agreements in the public sector in Greece, including in public education. It was to be recalled that in Greece over 95 per cent of schools were public and teachers' salaries and working rights were determined by regulations of the Ministry of Finance and the Ministry of Labour. Equal rules applied to all public servants across all public sectors. All collective bargaining agreements had been abolished since the enforcement of the Memoranda of 2010 and replaced by individual contracts of employment. However, even before the enforcement of the Memoranda, the salary increases for all public servants were unilaterally decided by the State without any consultation. With regard to teachers, some further increases had been given after large-scale strikes and mobilizations. But in the last one, the Ministry of Education had issued civil mobilization orders for teachers, abolishing de facto their right to strike, a decision that had later been supported by the courts. Social dialogue did not exist anymore. For instance, while the Federation of Secondary School Teachers (OLME) participated in the National Council of Education and had to be invited in the Committee for Education Affairs of the Parliament to be consulted on every new legislative act put forth, the State was not required to take into

consideration the OLME's views. In 44 years of union action some form of dialogue had been established between the union and the sole employer of public school teachers in Greece, the Ministry of Education. Yet, that dialogue could not be defined as "social dialogue" in the strict sense because it did not lead to an agreement between both parties. True social dialogue needed to be genuine, meaningful and effective.

The Government representative reiterated that the extension principle and the principle of favourability that had been suspended since 2010 and 2011 respectively, would be restored in August 2018. In the current Government's view, both principles were extremely important for a stable, effective and coordinated system of collective bargaining, and that had been the reason for the Government's insistence on their restoration. The principles reversed the power imbalance between the parties; fostered social dialogue and incentivized the parties to engage in it; they unified rules and created a level playing field; they reduced income inequality and achieved a fair distribution of national income. Moreover, there were a number of economic/efficiency benefits in having coordinated collective bargaining structures, such as reduction in transaction costs, higher productivity, lower unemployment and social peace. Hence, the re-establishment of an organized and fully functioning system of free collective bargaining had always been and still remained at the core of the holistic growth strategy that the Government had drafted and presented to the Eurogroup the past month. The strategy was based on a model of socially fair and sustainable growth, in which social rights were prerequisites, not bottlenecks, to economic growth.

Regarding the issue of unilateral recourse to compulsory arbitration, the Government planned to introduce some further amendments to arbitration with a view to enhance free bargaining and good-faith negotiations between the parties. The amendments included the following: (1) the mediator would have the ability to refrain from any proposal, blocking temporally the path to arbitration, if it was reasonably believed that there was still room for negotiation in good faith between the parties. In such a case, the parties would return to direct negotiations; (2) unilateral recourse to compulsory arbitration would be only

permitted: (i) to whichever party had come to mediation, if the other party had refused to participate; or (ii) to whichever party had accepted the mediator's proposal, which the other party had rejected. The first condition penalized the party that had shown bad faith by refusing to participate in the mediation process, while the second ensured that the right of unilateral recourse to compulsory arbitration was only given to the party that had shown good faith and a consensual behaviour by accepting the mediator's final proposal.

The speaker questioned the Employer members' argument that arbitration undermined collective bargaining and pointed out that statistical data proved that mediation and arbitration had a supplementary role to collective bargaining. Arbitral decisions in general represented only a small part of the total collective bargaining agreements. In particular, during the past 28 years the average rate of arbitral decisions had been 12 per cent. Since 2014, only 7.7 per cent of collective disputes had led to mediation and only 2.3 per cent of them had been resolved with an arbitral decision. Finally, over 55 per cent of the cases which had led to mediation and arbitration, had been resolved on the basis of consensus by the parties without the need of an arbitral decision. The speaker also reiterated that the amendments to the arbitration processes had been decided following extensive tripartite dialogue which had included the SEV. A few of the proposals submitted by the SEV had been taken on board, while the majority had been considered contrary to both the Greek Constitution and the Council of State's ruling previously mentioned.

The speaker concluded that the above proved the Government's goal, strategy and priorities to enhance workers' bargaining power, increase their income and thus set the preconditions for a socially fair and inclusive growth. It was important that those preconditions had been set, as the Greek economy was entering a phase of strong recovery. Recession was behind and the country had returned to positive growth rates. The Government had taken all the measures for the new growth model to become a reality. It was now up to the social partners to use in good faith the tools given to them, and to proceed with collective agreements that would serve social peace and promote social justice.

The Employer members recalled that several speakers had highlighted the lack of social dialogue at the national level. They had noted with concern that the Government's intervention suggested a resistance to adopting measures to come into full compliance with the Convention with respect to the issue of compulsory arbitration. The Employer members further reiterated their concern that the Government had not submitted a report on the application of the Convention to the Committee of Experts. While statistical information had been provided to the Conference Committee, it was necessary that the information be submitted to the Committee of Experts. Referring to the obligation under Article 4 of the Convention to encourage and promote the full development and utilization of machinery for voluntary negotiation, it was stated that the use of recourse to compulsory arbitration in the Greek system did not promote voluntary negotiation and that the Committee of Experts had repeatedly stated that the obligations in the Convention were not consistent with regular and repeated recourse to compulsory arbitration. It was the Employer members' position that compulsory arbitration was not compatible with Article 4 of the Convention, and that existing law and practice in Greece did not seem to be justified by any acceptable exception. Therefore, the Government should introduce changes that banned unilateral recourse to compulsory arbitration, in line with the requirements of the Convention. The Government's reference to the ruling of the Council of State on constitutional obligations was not a complete answer on that issue. The Employer members urged the Government to re-establish without delay the ban on unilateral recourse to compulsory arbitration, requested it to report to the Committee of Experts on measures taken in that respect and to avail itself of ILO technical assistance in order to come into compliance with the Convention.

Les membres travailleurs ont souhaité lever le malentendu concernant le recours à l'arbitrage obligatoire. Ils n'ont pas soutenu que celui-ci était favorable aux employeurs; en revanche, c'est le contexte et la situation générale dans laquelle se trouve le marché du travail grec qui leur sont favorables. Il ressort des discussions au sein de la commission que l'arbitrage obligatoire prévu en Grèce vise à pallier les insuffisances des mécanismes de

négociation collective. Les membres travailleurs ont ensuite réitéré qu'un pays comme la Grèce, dont le marché du travail est composé essentiellement de petites entreprises et qui décide de confier la négociation collective à des associations de personnes, ne garantit pas ce droit de manière effective. Si la convention ne s'oppose pas à ce qu'une négociation puisse se mener à des niveaux différents, le choix du niveau de la négociation doit être laissé aux parties, et les autorités ne peuvent fixer de manière unilatérale et générale que les accords conclus au niveau inférieur peuvent déroger aux accords supérieurs. C'est aux parties elles-mêmes qu'il revient de décider s'il y a lieu ou non de permettre à des accords sectoriels ou d'entreprise de déroger aux accords généraux. Cette décision est donc elle-même soumise à la négociation collective.

Au moment de répondre à la décision du Conseil d'Etat concernant l'arbitrage obligatoire, il appartient au gouvernement d'adopter une approche globale passant par la réinstauration des mécanismes de négociation collective effectifs. Il lui appartient également de veiller à prendre les mesures nécessaires pour protéger les travailleurs contre tout acte de discrimination antisyndicale. Ce point revêt une importance particulière eu égard à la situation de l'emploi en Grèce et à la multiplication des formes flexibles de travail. La commission se doit de réaffirmer les recommandations et conclusions antérieures des organes de contrôle de l'OIT et de demander l'examen sans retard des mesures susmentionnées dans le cadre d'un examen tripartite fondé sur leur analyse d'impact, en vue de rendre le système législatif et la pratique compatibles avec les droits consacrés par la convention. Il importe enfin de réaffirmer que les pouvoirs publics devraient s'abstenir de toute ingérence qui restreindrait le droit à la libre négociation collective ou entraverait son exercice légal et de rétablir d'urgence le statut et la pratique du dialogue social tripartite, afin de montrer que l'Etat respecte l'autonomie collective, la représentativité et les résultats de la négociation collective.

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The sitting closed at 5.58 p.m.
La séance est levée à 17 h 58.
Se levantó la sesión a las 17.58 horas.