

## Committee on the Application of Standards

**Date:** 20 May 2021

*Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 20 May 2021.*

### ▶ Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

#### Tajikistan

#### Labour Inspection Convention, 1947 (No. 81)

**(Ratification: 2009)**

The Government has provided the following written information.

#### Replies to the observations of the CEACR:

Information on the relationship between the State Inspection Service for Labour, Migration and Employment (SILME)

The Labour Code, the Trade Unions Act, and the Regulations on the Trade Unions Labour Inspectorate, approved by executive committee resolution of the Council of the Federation of Independent Trade Unions, set out the rights and obligations of trade union labour inspectors.

Article 22 of the Act entitles the trade unions and their associations to exercise oversight of compliance with the national legislation and to make unimpeded visits to a public or private enterprise where trade union members are working, in order to conduct checks on compliance with the national labour legislation by employers and company officials (Version No. 1673 of 2 January 2020). In accordance with article 357 of the Labour Code, the Federation of Independent Trade Unions has established its own inspectorate, which controls and supervises compliance with occupational safety and health standards and regulations. The Labour Code entitles trade union inspectors to make unimpeded checks on organizations' compliance with OSH requirements and to submit proposals for mandatory consideration by officials in addressing any breaches of OSH regulations that are found.

The trade union inspectorate operates under the direction of the executive boards of the national and regional trade union committees concerned with the protection of workers'

rights and with oversight and compliance monitoring of working conditions and OSH, in all branches of the national economy.

With a view to strengthening trade union supervision of OSH matters, supplementary wording was introduced to the Trade Unions Act in Version No. 1673 of 2 January 2020. Thus, when trade union inspectors discover breaches of workers' labour and social rights and health-care entitlements, they are entitled to:

- compile reports and issue mandatory compliance orders;
- take part in the investigations of industrial accidents and occupational diseases conducted by State labour inspectors, and carry out an independent inspection;
- impose the requirement for a work stoppage in the event of a threat to workers' life and health;
- present proposals for mandatory consideration by employers and relevant State entities in remedying defects and breaches in safety, OSH, and labour standards.

The trade union inspectors work closely with the State labour supervisory bodies. In 2020, despite the limitations imposed by the COVID-19 pandemic, they conducted over 600 OSH surveys in various branches of the economy, including more than 70 jointly with labour inspectors from the SILME, the Industrial and Mining Inspectorate and the Power Systems Inspectorate.

With a view to raising the effectiveness of the collaboration between SILME and trade union inspectors the Council for the Coordination of the Activities of Inspection Bodies was set up. The Council has held annual meetings aimed at coordinating the activities of State and social labour inspectors, which have been attended by representatives of the Industrial and Mining Inspectorate, the Power Systems Inspectorate and the Health and Epidemiological Inspectorate. However, recently it has not been possible to hold these meetings, for a number of reasons including the pandemic. It may be necessary to revive the Committee with technical assistance from the ILO regional office.

The Ministry of Labour, the SILME and the Federation of Independent Trade Unions regularly exchange information on a wide range of issues affecting cooperation on labour inspections, as well as holding joint round tables, seminars and conferences on OSH, labour inspection and other topics.

Thus, throughout 2020 and the first quarter of 2021, representatives of the Industrial and Mining Inspectorate and the SILME consistently invited the trade union inspectorate, together with trade union leaders and representatives, to join their investigations into fatal industrial accidents, or those resulting in serious injury or harm to two or more people.

Representatives of the Federation of Independent Trade Unions and the trade union inspectorate play a consistent role in all meetings of the Ministry of Labour departments concerned with social partnership, labour inspection and OSH. They also contribute actively to the measures taken by the Ministry of Labour and SILME to improve collaboration on matters such as labour and OSH inspections, delays and arrears in the payment of workers' earnings, and informal employment.

The SILME collaborates with inspectors from the Federation of Independent Trade Unions to hold regular round tables, seminars, conferences and other events involving the social partners, employers and workers on matters affecting OSH and the labour legislation.

## Status and conditions of service of State and trade union labour inspectors

Chapter 40 of the Labour Code provides the legal basis for the establishment of the State and non-State labour inspection intended to ensure compliance with the national legislation on labour and employment (SILME and trade union inspectorates), as well as for the monitoring of safe operations in industry and mining (Industrial and Mining Inspectorate).

The SILME is a central executive arm of the State. It exercises State supervision and control of compliance with the national legislation on labour, migration and employment, facilitates the assessment of working conditions at institutions and organizations - regardless of form of ownership or hierarchical status - sole traderships and physical entities which use hired labour. The SILME inspectors are public employees (civil servants) whose status and working conditions are guaranteed under the Civil Service Act and thus ensure them stable employment. In accordance with this Act, wage levels, increments (according to a wage scale reflecting professional seniority) and increases (annual, not less than 15-20 per cent) of labour inspectors are determined by presidential decree.

In the 20 years since the SILME was formed, the regular staff complement of the State labour inspectorate has remained fairly stable. The profile of the SILME staff complement is as follows:

- in 2001 there were 60, of whom 35 worked for regional offices;
- in 2007 there were 72, of whom 38 worked for regional offices;
- in 2014, owing to the abolition of positions in the SILME concerned with pension scheme supervision, the number reverted to 60, of whom 31 worked for regional offices;
- since July 2020 there have been 28 inspectors at headquarters and 32 in the regional offices.

The length of service of SILME labour inspectors in the Ministry of Labour system varies as follows: three with over 20 years, sixteen with over 15 years, sixteen with over ten years, 12 with over five years and 13 with 3-5 years. The SILME has one of the lowest staff turnovers among the State organs. SILME workers are assured the necessary working conditions. Labour inspectors at headquarters and in the regional and territorial offices are provided with adequate office accommodation and equipment (computers, printers, scanners, faxes, copiers, three-part portable toolkits (laboratories) to measure workplace conditions, subsistence expenses, etc.).

All SILME employees are provided with personal internet access, and at headquarters, with technical assistance from the ILO Moscow office, a functioning information and resource centre and a library on OSH matters have been installed, equipped with a slide projector and an interactive screen giving access to the internet resources of the ILO, the SILME, the Ministry of Labour and other information sites.

At the legislative level, the Civil Service Act and the Regulations on the SILME, and others, contain provision for effective social protection measures (mandatory life assurance and health insurance for inspectors (as public servants) and their families, pension provision, etc.), define the powers, rights and obligations of labour inspectors, and prescribe the

penalties for obstructing inspectors' legal activities, circumventing the legal requirements, threatening inspectors' life and health, and other offences.

The SILME is supported fully from public funds (wages, subsistence costs, equipment, furniture, etc.). The SILME has 60 employees with public servant status (not counting secretarial staff, drivers, cleaners, etc.). These include 28 headquarters staff and 32 public servants in eight regional offices.

The Federation of Independent Trade Unions currently comprises 17 trade union branch committees covering all sectors of the national economy and employing 24 labour inspectors. In accordance with article 35 (3) of the Trade Unions Act, full-time labour inspectors are paid from the trade union budget.

### The moratorium on inspections and developments in this regard

Law No. 1269 of 25 December 2015 on Inspections of Economic Entities states that all State control and inspection bodies must provide written notification of an upcoming planned inspection to organizations and entrepreneurs entitled to hire workers, at least five days in advance, and must not conduct inspections of new organizations during their first two years of operation. The exception is organizations belonging to the high-risk group; these are subject to visits by labour inspectors not more than twice per year, regardless of the starting date of their operations.

In this connection, the number of inspections of enterprises deemed to be high-risk under the terms of the above-mentioned Law on Inspections of Economic Entities must not exceed 10 per cent of the total number of organizations liable for inspection in a calendar year.

In 2018, in order to provide governmental support for manufacturers, create new jobs, strengthen the country's industrial potential and expertise, reduce the number of ungrounded and repeat inspections, cut down on corruption, establish favourable conditions for businesses and improve the investment climate, and with technical advice from the International Finance Corporation (IFC) and the World Bank, the Government declared a moratorium on all types of inspection of manufacturing enterprises until 1 January 2021. That moratorium has now expired.

The above-mentioned legal provisions do not cover the supervisory and verification powers of trade union labour inspectors. Trade union inspection bodies are not obliged to agree their inspection plans and activities annually with the Council for the Coordination of the Activities of Inspection Bodies, attached to the Government. The main reason for this is that, under the existing national legislation, trade unions function independently from governmental bodies and any interference in their legal activities is unlawful.

In order to ensure the effectiveness of SILME's inspection work, we have agreed a number of measures with the Council for the Coordination of the Activities of Inspection Bodies. Thus, during the moratorium, on instruction from the SILME leadership and subject to reasonable grounds (serious infringements of OSH regulations at enterprises which endanger workers' life and health, other violations of labour regulations), and also in response to complaints, claims and enquiries (in writing or online, via a hotline, and the SILME site) made by workers and other persons, labour inspectors have conducted unscheduled and surprise inspections at such enterprises (i.e. without the required prior written notification) in connection with issues of compliance with labour legislation, OSH standards and regulations, while guaranteeing the confidentiality and anonymity of the

complaints and claims. The results of these inspections have been made available to the Council for Coordination and to the claimants, and widely publicized on the official websites of the SILME, the Ministry of Labour and the SILME Facebook page, and by information agencies and media outlets.

The inspections conducted by the SILME since the beginning of 2021 have complied fully and unrestrictedly with the provisions of the Labour Inspection Convention, 1947 (No.81).

It is important to note that, when labour inspectors receive messages and communications suggesting sufficient grounds for the presence of violations of OSH standards and regulations and other labour standards, unscheduled and surprise inspections may be carried out without prior notification to enterprises, provided notification is given to the Coordinating Council.

During the moratorium the judicial authorities and the representatives of the Council for the Coordination of the Activities of Inspection Bodies regularly and without fail looked into the complaints and claims received from the persons concerned, at all industrial facilities without exception, regardless of the moratorium and moreover with the mandatory involvement of SILME inspectors.

During 2020 and the first quarter of 2021, the SILME, acting in accordance with its work plan and in response to requests from law enforcement agencies, instructions and directions from the Government and the Ministry of Labour, and also communications, claims and complaints from workers and legal persons, carried out 2,443 inspections at enterprises, of which 1,957 were scheduled, 457 unscheduled, 28 repeated and one supplementary.

Labour standards were at the root of 2,204 of these inspections, while 163 involved safety or OSH, 42 concerned employment and 35 migration. Over the reporting period, 155 (154 in 2019) joint inspections were conducted with other State inspection bodies and trade union inspectors.

A total of 10,922 infringements were detected, of which 8,329 concerned labour, 1,617 were breaches of safety and OSH regulations, 308 concerned migration and 668 related to employment matters. During 2020 and the first quarter of 2021, the overall activities of the SILME helped to refund to the national budget and reimburse to citizens a total amount of TJS 42,127, 000. Out of this sum, TJS 30,053, 400 comprised unpaid earnings and 3,475, 800 was compensatory pay.

In all the above-mentioned cases of infringement, appropriate action was taken against the perpetrators according to the law, through the issue of mandatory compliance orders designed to eliminate the problem, and the imposition of administrative sanctions.

A total of 130 files were sent to law enforcement agencies for action. Criminal proceedings were initiated against 44 responsible officials. For having committed administrative offences in the sphere of labour, migration and employment, a total of 422 employers and other responsible officials in organizations were handed fines over the reporting period amounting to TJS 520,000, paid into the national budget.

In the course of their inspections at enterprises and organizations, the SILME officials also give special attention to OSH matters, additional safeguards for women, persons with family responsibilities and children, the prohibition of workplace discrimination, the

conclusion of collective (branch and regional) agreements (contracts) and individual employment contracts, the furtherance of social justice and the improvement of working conditions for women and children.

In accordance with the requirements of the Law on Inspections of Economic Entities, and with the exception of inspections carried out by governmental decree, a State inspection body must notify an entity in writing of its intention to conduct an inspection, within five working days of the starting time. Written notification is the key element in conducting a scheduled inspection and the inspection bodies are entitled to begin an inspection not earlier than five and not later than ten working days from the day when the economic entity receives such notification.

The number of inspections of high-risk enterprises, comprising those with harmful and hazardous working conditions as defined in the provisions of the above-mentioned Law on Inspections of Economic Entities, must not exceed 10 per cent of the overall total of organizations inspected in a calendar year.

It should be recalled here that the above-mentioned provisions do not cover the supervisory and verification powers of trade union labour inspections. Trade union inspection bodies are not obliged to agree their inspection plans and activities annually with the Council for the Coordination of the Activities of Inspection Bodies. The exception is organizations belonging to the high-risk group; these are subject to visits by labour inspectors not more than twice per year, regardless of the starting date of their operations.

For the purposes of ensuring that labour inspectors' work is fully in accordance with the international obligations of Tajikistan, the position of the SILME leadership regarding compliance with the requirements of Convention No. 81 was officially transmitted to the Council for the Coordination of the Activities of Inspection Bodies.

A protocol resolution of the Council for Coordination assigned the Ministry of Justice, the Committee for State Property Investment and Management and other relevant governmental agencies the task of considering this matter and submitting the necessary proposals for harmonizing the relevant legislation.

Accordingly, on the instructions of the SILME and where there were sufficient grounds (serious infringements of OSH standards, other violations of the labour regulations), and also in response to complaints, claims and enquiries made by workers and other persons, labour inspectors have conducted unscheduled and surprise inspections at such enterprises (i.e. without the required prior written notification) on issues of compliance with labour legislation, OSH standards and regulations, while guaranteeing the confidentiality and anonymity of the complaints and claims.

Now, checks by SILME labour inspectors comply fully and unrestrictedly with the provisions of Convention No.81.

The question of the frequency of visits to enterprises is decided by labour inspectors on the basis of the information available about the status of enterprises' compliance with OSH and labour regulations.

A due diligence checklist for inspections was compiled by SILME experts in accordance with the requirements of ILO Convention No.81, the Labour Code and the SILME Statute

adopted by Government Decision in 2014 and amended on 21 July 2020. This document formalized the wide powers of labour inspectors to conduct unscheduled, surprise, targeted and verification inspections. The checklist for the inspections conducted by SILME labour inspectors in 2018 was duly entered in the register of local statutory legislation of the Ministry of Justice. If necessary, the SILME can supply more detailed information on these matters.

It is important to note that labour inspectors, on receiving messages and communications suggesting sufficient grounds for the presence of violations of OSH standards and regulations and other labour standards, can carry out unscheduled, surprise, targeted and verification inspections without prior notification to enterprises, and notify the Coordinating Council afterwards. Moreover, during the moratorium the judicial authorities and the representatives of the Council for the Coordination of the Activities of Inspection Bodies regularly and without fail looked into the complaints and claims received from the persons concerned, at all industrial facilities without exception, regardless of the moratorium, and moreover with the mandatory involvement of SILME inspectors.

**Information on the manner in which state labour inspectors are empowered to take steps with a view to remedying defects observed in plants, layout or working methods, which they may have reasonable cause to believe constitute a threat to the health or safety of workers, in accordance with Article 13**

Pursuant to section 3 (7) of the Regulations on the SILME, adopted by Government Decision No. 299 of 3 May 2014, with amendments of 24 July 2020, SILME labour inspectors are granted sweeping powers to take steps to deal with infringements and defects in this regard.

In 2020 the government department responsible for assessing working conditions and SILME regional inspectors conducted 118 inspections and detected 1,218 infringements of OSH standards and regulations, while in the first quarter of 2021 they carried out 45 inspections and found 399 such infringements. Also in 2020, in connection with plans for the construction of new and reconstruction of industrial facilities, as well as of machinery, mechanisms and industrial equipment labour, inspectors issued 168 reports containing 1,456 requirements to take the necessary steps to remedy infringements of OSH regulations, and in the first quarter of 2021, 49 such reports containing 383 requirements. In 2020 and the first quarter of 2021, SILME labour inspectors, following review of complaints and communications from workers, acted immediately on 265 occasions to detect and remedy violations of working conditions by officials. In 2020, fines amounting to TJS 241,044 were imposed on 200 employers and other company officials for infringements of the OSH standards and regulations, while in the first quarter of 2021, the fines imposed on 95 employers and other company officials amounted to TJS 121,020; this became income for the national budget.

**Information on the application in practice of inspectors' temporary suspension powers under section 30 of Law No. 1269 related to safety and health**

Under section 7(3) of the SILME Regulations, an inspector is entitled to halt the activities of enterprises and production sites in order to remedy infringements of the OSH requirements, if their activities threaten the life and health of workers. During 2020 and the first quarter of 2021, there were 95 cases in which SILME inspectors halted activities completely at enterprises, production sites and industrial sole traderships where accidents had occurred, in order to fully remedy infringements of OSH requirements and ensure



that inspectors' legal requirements were met. No legal appeals against the labour inspectors' actions over this period were recorded.

### Annual report concerning ILO Convention No. 81

The State Inspection Service for Labour, Migration and Employment sends quarterly and yearly reports on its activities to the Ministry of Labour. The Ministry in turn includes the annual SILME reports in its annual report to the ILO on its implementation of the ILO Conventions ratified by Tajikistan.

In the future, the SILME will send the ILO the annual reports on its labour inspection activities under Article 20 of Convention No.81, including information on all the subjects listed in Article 21.

### Statistics on violations detected and the measures taken by labour inspectors, including fines imposed, cases referred to courts, and other remedial measures taken

To remedy the 10,922 violations detected in 2020 and the first quarter of 2021, the inspectors issued 2,089 mandatory compliance orders. As a result of their inspections, 179 files relating to employers and to other company officials guilty of violating labour legislation and the rules and regulations on safety and OSH were sent to the prosecution agencies and internal affairs authorities for further action.

The review of these files by the law enforcement agencies led to the initiation of criminal proceedings against 54 employers and other company officials.

Labour inspectors imposed fines amounting to TJS 746,000 on employers and company officials for administrative offences relating to labour, migration and employment; this money was collected and transferred to the national budget. Nine employers were fined a total of TJS 13,100 for failure to comply with orders issued by SILME inspectors, and this sum too was collected in full and paid into the national budget.

*Note: The Government submitted an annex with legislation cited. Information was also provided in reply to the direct request of the CEACR, which was not included to comply with the applicable word limits.*