



This project is co-financed by the European Union and the Republic of Turkey

IMPROVING SOCIAL DIALOGUE IN WORKING LIFE

# Analysis of the Comments and Decisions of the ILO Supervisory Bodies on the Observance by Turkey of Social Dialogue Related Conventions

2018

ANKARA



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## ABBREVIATIONS

<b>CAS</b>	Committee on the Application of Standards
<b>CEACR</b>	Committee of Experts on the Application of Conventions and Recommendations
<b>CFA</b>	Committee on Freedom of Association
<b>DISK</b>	Confederation of Progressive Trade Unions of Turkey
<b>EC</b>	European Commission
<b>EU</b>	European Union
<b>HAK-IS</b>	Trade Union Confederation
<b>EI</b>	Education International
<b>ILO</b>	International Labour Organisation
<b>KESK</b>	Confederation of Public Employees Trade Unions
<b>TURK-IS</b>	Confederation of Turkish Trade Unions
<b>TISK</b>	Turkish Confederation of Employer Associations

## FOREWORD

Social dialogue is a core value and an ultimate goal of the International Labour Organization (ILO). The Ministry of Family, Labour and Social Services is well aware of the value and significance of social dialogue across the country in policy-making and implementation. Social dialogue is a proven record of generating sustainable solutions including in times of crises and recovery. Recognizing the value of social dialogue, the International Labour Organization for Turkey provided technical support to the Ministry of Family, Labour and Social Services to implement a project entitled 'Improving Social Dialogue in Working Life' within the framework of EU Instrument of Pre-accession Funds. The overall objective of this project is to improve social dialogue at all levels.

This work is a part of the research studies conducted under the Project. The objective of the study is to contribute to improving social dialogue through analysing the comments made by the CEACR on the observance by Turkey of Conventions Nos 87, 98, 135, 144 and 151, and on the relevant conclusions and decisions of the Committee on the Application of Standards (CAS) and the Committee on Freedom of Association (CFA), made since 1995. It further analyses the Progress Reports of the European Commission with respect to the application of these instruments in Turkey.

This report was prepared by **Oksana Wolfson**, Freedom of Association Branch of the International Labour Standards Department (LIBSYND/NORMES), ILO Geneva with inputs from Vida Amirmokri (LIBSYND/NORMES) and France Brosseau.

We thank them all for their valuable efforts on this study and hope that this analysis will contribute to the development of social dialogue in Turkey.

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## **INTRODUCTION**

This report (Activity 1.2.8) is part of a project entitled “Technical Assistance for Improving Social Dialogue in Working Life”, which was developed by the ILO Office for Turkey, with funding from the European Union. After briefly describing the ILO Supervisory Bodies, the report will provide for an overview of Conventions Nos 87, 98, 135, 144, 151 and 154. It will then outline the main issues raised since 1995 by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the observance by Turkey of Conventions Nos 87, 98, 135, 144 and 151, and the relevant conclusions and decisions of the Conference Committee on the Application of Standards (CAS) and the Committee on Freedom of Association (CFA). It also includes an analysis of the Progress Reports of the European Commission under Chapter 19 of the acquis (Social policy and employment), which evaluates progress achieved in the area of trade union rights and social dialogue.

### **I. ILO supervisory bodies**

Two ILO supervisory bodies - the CEACR and the CAS - have responsibility for regular supervision of the observance by member States of the ratified Conventions. The CFA examines complaints of infringement of freedom of association and collective bargaining rights, whether or not the country concerned has ratified the relevant Conventions. If there are any problems in the application of standards, the ILO seeks to assist countries through dialogue and technical assistance.

#### **Committee of Experts on the Application of Conventions and Recommendations (CEACR)**

Once a country has ratified an ILO Convention, it is obliged, under article 22 of the ILO Constitution, to report regularly on measures taken to give effect to its provisions. Every three years, governments must submit reports detailing the steps they have taken in law and practice to apply any of the eight fundamental Conventions<sup>1</sup> and four governance Conventions<sup>2</sup> they may have ratified; for all other Conventions, reports must be submitted every five years.<sup>3</sup> The CEACR may request a government to submit its report at shorter intervals. Governments are required to submit copies of their reports to employers’ and workers’ organizations. These organizations may comment on the governments’ reports; they may also send observations on the application of Conventions directly to the ILO.

Established in 1926, the CEACR is composed of 20 jurists appointed by the Governing Body for renewable periods of three years. The experts come from different geographic regions, legal systems and cultures. When examining the application of international labour standards, the CEACR makes two kinds of comments: observations and direct requests. Observations contain comments on fundamental questions raised by the application of a particular Convention by a State. These observations are published in the CEACR’s annual report. Direct requests relate to more technical questions or contain requests for further information. While not included in the report, they are published on the ILO website and communicated directly to the governments concerned.

The CEACR uses specific language to note positive developments or the lack thereof. In this respect, while it has adopted precise criteria to decide when to express “satisfaction” or “interest”<sup>4</sup>, the expression of regret or concern can be gradated to deep regret and deep concern. In cases of most serious violations of the Conventions, the CEACR can use the term “deplores”.

1 Including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Turkey in 1993 and 1952, respectively.

2 Including the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified by Turkey in 1993.

3 Except for Conventions that have been shelved (no longer supervised on a regular basis).

4 See Annex 1.



## Conference Committee on the Application of Standards (CAS)

The annual report of the CEACR, adopted in December of each year, is submitted to the International Labour Conference the following June, where it is examined by the CAS. A standing Committee of the Conference, the CAS is made up of government, employer and worker delegates. It examines the CEACR report in a tripartite setting. The Officers of the CAS prepare a list of observations contained in the CEACR report in respect of which they consider it desirable to invite governments to supply information to the CAS. The governments referred to in these comments are invited to respond before the CAS and to provide information on the situation in question. Following the discussion, the CAS draws up conclusions calling upon the government in question to take specific steps to remedy a problem. Alternatively, the CAS can also welcome the measures taken by a government to remedy the previously existed gaps in the application of a Convention, praise the government in question for taking the necessary action and consider that a particular case is an example of good practice. The CAS can also request the government to accept an ILO mission<sup>5</sup> to assess the situation on the ground or to invite it to avail itself of ILO technical assistance. The discussions and conclusions of the situations examined by the CAS are published in its report. Situations of special concern are highlighted in special paragraphs of its General Report.

## Committee on Freedom of Association (CFA)

Established in 1951, the CFA is a tripartite committee of the Governing Body chaired by an independent person.<sup>6</sup> It examines complaints of violations of freedom of association, whether or not the country concerned has ratified the relevant Conventions. Its mandate stems directly from the fundamental aims and purposes set out in the ILO Constitution.

Complaints against a member State can be brought by organizations of employers' or workers' or governments. Allegations are receivable only if they are submitted by a national organization directly interested in the matter, by international organizations of employers or workers having consultative status with the ILO, or other international organizations of employers or workers where the allegations relate to matters directly affecting their affiliated organizations.<sup>7</sup> The CFA also deals with article 24 representations if they concern freedom of association or collective bargaining.<sup>8</sup>

On the basis of the allegations and the government's reply thereon, the CFA may:

- issue a *definitive report* where it decides that the case calls for no further examination (this normally occurs where it finds no violation of freedom of association, or, when by the time of the examination, the issues raised have been resolved) or when the case can be brought to a final conclusion;
- issue an *interim report* where the government concerned is asked to provide additional information or to take action to assist the CFA in examining the case further; or
- make conclusions asking that it be *kept informed of developments*. This may occur where the CFA does not need additional information for the examination of the case and reaching conclusions, but where it wants to leave the matter open in order to follow developments before closing the case.

<sup>5</sup> Which can be technical ILO missions, direct contacts, high level, bipartite or tripartite missions.

<sup>6</sup> i.e. not a member of the Government Body.

<sup>7</sup> See Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association, art. 31.

<sup>8</sup> The representation procedure is governed by articles 24 and 25 of the ILO Constitution. It grants an industrial association of employers or of workers the right to present to the ILO Governing Body a representation against any member state which, in its view, "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party". Representations concerning the application of freedom of association Conventions are usually referred for examination to the CFA. For that reason, this study will not deal with this supervisory mechanism.

When the CFA finds that there has been a violation of freedom of association principles, it makes recommendations on how the situation could be remedied. Governments are subsequently requested to report on the implementation of these recommendations (follow-up cases). In cases where the country has ratified the relevant instruments, legislative aspects of the case may be referred to the CEACR. The CFA report is then transmitted to the Governing Body for adoption.

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All ILO supervisory procedures serve a common purpose: the effective observance of international labour standards. They are therefore complementary. Indeed, the effective functioning of the supervisory system as a whole is based on the links and interactions between the different bodies described above.

Technical assistance is an important component of effective supervision of compliance with international labour standards. In supporting the supervisory bodies, the ILO is mandated to provide technical assistance to its members to address problems in legislation and practice in order to bring them into conformity with ratified instruments. Different types of assistance are available. These range from facilitation of social dialogue or dispute resolution processes, legal advisory services – including the analysis of, and advice on, legal drafts and the provision of an informal opinion on certain legal matters – to direct contacts, tripartite missions or ILO advisory visits. Whether the Office provides such assistance depends, largely, on the political will in a country to resolve the issues.

## II. Brief information on Conventions Nos 87, 98, 135, 144, 151 and 154

An enabling legal and institutional framework together with respect for freedom of association and collective bargaining rights are among the key prerequisites for effective social dialogue at national level. In this respect, compliance with the following ILO Conventions is thus essential:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Workers' Representatives Convention, 1971 (No.135)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
- Labour Relations (Public Service) Convention, 1978 (No. 151)
- Collective Bargaining Convention, 1981 (No. 154)

Turkey, member of the ILO since 1932, has ratified all of the above Conventions, with the exception of Convention No. 154.

### Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

This fundamental Convention sets forth the right for workers and employers to establish and join organizations of their own choosing without previous authorization. Workers' and employers' organizations shall organize freely and not be liable to be dissolved or suspended by administrative authority, and they shall have the right to establish and join

federations and confederations, which may in turn affiliate with international organizations of workers and employers.<sup>9</sup> The Convention guarantees the free functioning of workers and employers' organizations by recognizing to them the following basic rights:

- to draw up their constitutions and rules,
- to elect their representatives in full freedom,
- to organize their administration and activities and to formulate their programmes without interference by public authorities.

In recognizing the above rights, organizations shall respect the law of the land which itself should not be such as to impair the guarantees of the Convention. It should also be noted that in the absence of an express reference to the right to strike in this Convention, it was mainly on the basis of Article 3, which sets out the right of workers' organizations to organize their activities and to formulate their programmes, and Article 10, under which the objective of these organizations is to further and defend the interests of workers, that a number of principles relating to the right to strike were progressively developed by the CFA (as of 1952), and by the CEACR (as of 1959, essentially taking into consideration the principles established by the CFA).<sup>10</sup>

### **Right to Organize and Collective Bargaining Convention, 1949 (No. 98)**

This fundamental Convention provides that workers shall enjoy adequate protection against acts of anti-union discrimination. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other, in particular the establishment of workers' organizations under the domination of employers or their organizations, or the support of workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or their organizations. The Convention also enshrines the right to collective bargaining.<sup>11</sup>

### **Workers' Representatives Convention, 1971 (No. 135)**

This Convention supplements the provisions of Convention No. 98 and provides that workers' representatives in an undertaking "shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements". For the purpose of Convention No. 135, these representatives may, in accordance with national law or practice, be representatives designated or elected by a trade union, or representatives who are freely elected by the workers of the enterprise (although in the latter case, their functions must not include activities which are recognized as the exclusive prerogative of trade unions). The "existence of elected representatives" must not be "used to undermine the position of the trade unions concerned or their representatives". Facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently. The granting of such facilities must not impair the efficient operation of the enterprise concerned.

9 Rules of the game: A brief introduction to international labour standards / International Labour Office. - Geneva: ILO, Third Revised Edition 2014; p. 28.

10 This position of the supervisory bodies in favour of the recognition and protection of the right to strike has, however, been subject to a number of criticisms from the Employers' group in the CAS (see General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, para. 117).

11 See Rules of the game, Supra; p. 28.

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)**

This governance Convention sets forth the meaning of “representative organizations” of employers and workers and requires ratifying States to operate procedures that ensure effective consultations between representatives of the government, of employers and of workers on matters regarding items on the agenda of the International Labour Conference, submissions to competent national authorities of newly adopted ILO standards, re-examination of unratified Conventions and Recommendations, reports on ratified Conventions, and proposals for denunciations of ratified Conventions. Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken, and consultations shall take place at least once every year.<sup>12</sup>

### **Labour Relations (Public Service) Convention, 1978 (No. 151)**

Convention No. 151 applies to all persons employed by public authorities. However, it is for national laws or regulations to determine the extent to which guarantees provided for in the Convention shall apply to: (1) high-level employees whose functions are normally considered as policy making or managerial; (2) employees whose duties are of a highly confidential nature; and (3) the armed forces and the police. Pursuant to the Convention, public employees shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, and their organizations shall enjoy complete independence from public authorities as well as adequate protection against any acts of interference by a public authority in their establishment, functioning or administration.

### **Collective Bargaining Convention, 1981 (No. 154)**

Convention No. 154 encourages collective bargaining in both the private and the public services (with the exception of the armed forces and the police), with the only reservation that national laws, regulations and practice may fix “special modalities of application” as regards the public service.

## **III. Issues raised by the ILO supervisory bodies**

Turkey ratified Convention No. 98 in 1952. For the years to come it remained the sole freedom of association Convention ratified by the country.<sup>13</sup> The Constitution of Turkey and a number of laws regulating trade unions rights were adopted in the aftermath of the 1980 military coup. Enacted in 1983, the Trade Union Law (No. 2821) regulated the internal organization, competences and restrictions on the exercise of trade unions rights. Enacted the same year, the Law on Collective Labour Agreement, Strike and Lock-Out (No. 2822) regulated the right to strike, lock-out and collective labour agreements. Since their entry into force, the CEACR and CAS have commented on both laws in the framework of application of Convention No. 98 and pointed to numerous legislative changes that needed to be made to bring both Acts into full conformity with its provisions and offered technical assistance of the Office to the Government.

Convention Nos 87, 135, 144 and 151 were ratified in 1993. In this respect, in 1994, the CAS “was pleased to note” the ratification of Conventions Nos 87, 135 and 151, which, it hoped “should lead to a better application” of Convention No. 98. The application of Convention No. 144 was examined by the CEACR for the first time in 1995, and of Conventions Nos 87, 135 and 151 in 1996.

Since then, the CEACR and CAS have regularly examined the observance by Turkey of the above instruments and pointed out areas where these Conventions could be better applied. In addition, between 1995 and 2018, 18 complaints of alleged violations of freedom of association and collective bargaining rights were submitted to the CFA and gave

<sup>12</sup> See Rules of the game, *Supra*; p. 45.

<sup>13</sup> Turkey ratified the Right of Association (Agriculture) Convention, 1921 (No. 11) in 1961.

rise to 40 examinations (22 times as active cases and 18 times as follow-up cases).<sup>14</sup> Four complaints<sup>15</sup> raised legislative issues, seven complaints<sup>16</sup> alleged violations of freedom of association principles in practice and seven complaints<sup>17</sup> combined allegations of violation in law and in practice.

**Table 1: Comments of the ILO supervisory bodies and ILO missions**

YEAR	CEACR	CAS	CFA	ILO missions
1995	C87, C98, C144	C98		
1996	C87, C98, C135, C151	C98	Cases Nos 1810 and 1830	
1997	C98, C135, C151	C87		
1998	C87, C98, C144, C151	C98		
1999	C98, C144, C151		Case No. 1981	
2000	C87, C98	C98		
2001	C87, C98, C144, C151			
2002	C87, C98, C135, C144, C151		Cases Nos 2126 and 2147	
2003	C87, C98		Cases Nos 2126 and 2200	
2004	C87, C98, C135, C144, C151		Cases Nos 2126 2147, 2200, 2303	
2005	C87, C98, C151	C87	Case Nos 2200, 2303, 2329, 2366	
2006	C87, C98, C151		Case Nos 2126, 2303, 2329, 2351, 2366	
2007	C87, C144	C87	Case Nos 2351, 2537	
2008	C87, C98		Case No 2537	High Level mission requested by the CAS in June 2007
2009	C87	C87	Case No. 2537	
2010	C87, C98, C144, C151	C87		High Level bipartite mission requested by the CAS in June 2009
2011	C87, C98, C144	C87		
2012	C87, C98		Cases <b>2789</b> <sup>12</sup> and 2892	
2013	C87, C98	C98	Cases <b>2892</b> and <b>2976</b>	
2014	C87, C151		Cases <b>2892</b> , <b>3011</b> and <b>3021</b>	
2015	C87, C98, C144, C151		Cases Nos <b>3084</b> , <b>2892</b> , <b>3011</b> and <b>3098</b>	
2016	C135		Cases Nos 3084, <b>2976</b> and <b>3098</b>	
2017	C98, C135, C144	C135	Cases Nos <b>3021</b> and <b>3098</b>	

14 Currently 6 cases against Turkey are open before CFA, all at the follow-up stage.

15 Cases Nos. 1810, 2537, 2892 and 3021.

16 Cases Nos. 2147, 2366, 2351, 2789, 2976, 3011 and 3908.

17 Cases Nos. 1830, 1981, 2126, 2200, 2303, 2329 and 3084.

18 Pending cases appear in bold.

The following sections examine the main issues raised by the ILO supervisory bodies in the period under review and the Government's response and actions taken thereon.

### i. Civil liberties

Considering that respect for civil liberties is an essential prerequisite to freedom of association, the CEACR and the CAS had commented, on numerous occasions, upon the situation of civil liberties in Turkey when reviewing the observance of Convention No. 87. Indeed, since 1995, every observation submitted to the CEACR or the CAS by workers' organizations contained allegations of serious violations of civil liberties in Turkey. Most notably, in 2007, the CAS deeply regretted that the Government had still not provided any information in reply to the serious allegations made to the CEACR relating to police violence and arrests of trade unionists and the Government's interference in trade union activities.<sup>19</sup> The CEACR requested the Government to take all necessary measures to ensure a climate free from violence, pressure or threats of any kind so that workers and employers could fully and freely exercise their rights under Convention No. 87.

In 2009, the CAS noted the observations presented by both national and international workers' organizations on the application Convention No. 87, particularly with respect to the violent repression of demonstrations, use of disproportionate force by the police and arrests of trade unionists, as well as Government's interference in trade union activities. The CAS noted the information provided by the Government<sup>20</sup> in reply to the serious allegations made to the CEACR<sup>21</sup>, and in particular, its statement to the effect that while it was determined to take all necessary disciplinary and judicial measures against the members of the security forces who used disproportionate and excessive force, it was important that those demonstrating respected the relevant provisions of national legislation. The CAS nevertheless noted with concern new information provided with respect to mass arrests of trade unionists, as well as the allegations of a generalized anti-union climate. It observed with deep regret the alleged restrictions placed upon the freedom of assembly and of expression of trade unionists. It urged the Government to review all cases of detained trade unionists with a view to their release and to reply in detail to all pending allegations and to report back to the CEACR on all the steps taken to that effect.

In 2010, the CAS noted the Government's indications that the 2010 May Day celebrations took place in a fully peaceful environment and that the Government had taken measures to prevent the excessive use of force by the police and had begun a training programme in this regard. While taking due note of this information, the CAS continued to observe with regret the allegations of important restrictions placed on freedom of speech and of assembly of trade unionists, particularly in the health and education sectors.

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19 The allegations in question (made by the ICFTU (now ITUC), KESK and Türkiye Kamu-Sen concerned the following issues: (i) the violent repression by Istanbul police of two peaceful demonstrations on 8 March 2005 to mark International Women's Day; (ii) the violent suppression by the police of a peaceful demonstration organized by Egitim Sen (affiliate of the KESK) on 26 November 2005 to demand a re-evaluation of overtime and better sanitary inspections, leading to the injury of 17 demonstrators and, as indicated in the communication by the KESK dated 31 August 2007, the conviction of 11 of its trade union executive members to prison sentences of 15 months; according to the KESK, its President Ismail Haki Tombul and the former President of YAPIYOL-SEN, Fehmi Kutan, risk imprisonment as they cannot have their sentences suspended because they were previously convicted; the issue depends on the outcome of their appeal, which is currently pending; (iii) violent police dispersion of a demonstration by the KESK on 30 May 2006, in protest of the social security reform under discussion in Parliament; (iv) the ban of union-related posters, advertisements and calendars in some public institutions. (CEACR, 2007 Observation, Convention No. 87).

20 The Government representative highlighted the steps taken in 2008 to declare May Day as a public holiday.

21 In its 2008 observation on the application of Convention No. 87, the CEACR requested the Government to take additional measures with a view to ensuring that police intervention in demonstrations was limited to cases where there is a genuine threat to public order and avoiding the danger of excessive violence trying to control demonstrations and to carry out investigations into the allegations concerning the use of violence during police or other security force interventions.

The following year, the CAS noted with concern new allegations of restrictions placed on freedom of association and assembly of trade unionists. It once again urged the Government to continue to take all necessary measures to ensure a climate free from violence, pressure or threats of any kind so that workers and employers could fully and freely exercise their rights under Convention No. 87. It further once again urged the Government to review, in full consultation with the social partners, any legislation that might be applied in a manner contrary to this fundamental principle and to consider any necessary amendments or abrogation. Since then, the CEACR has been observing with concern new allegations of restrictions placed on freedom of speech and assembly of trade unionists, including numerous cases of violence against trade unionists, as well as investigations and arrests.<sup>22</sup>

In 2015, the CFA also examined a complaint concerning violations of civil liberties. In **Case No. 3098**, the complainant organizations (All Transport Workers'/Employees' Trade Union (TUMTIS), the International Transport Workers' Federation (ITF) and the ITUC) alleged illegal arrests, detentions and prosecution of several trade union leaders for engaging in trade union activities and abusive use of criminal law to suppress independent trade union movement. The CFA noted that by a decision of 20 November 2012 of the 11th High Criminal Court, 14 trade unionists were sentenced to prison terms varying from six months to two years.<sup>23</sup> With regard to the allegations relating to preventive detention of seven trade union leaders, the CFA noted the 2011 judgment of the ECtHR concerning this matter in the case of Erkan Aydogan v. Turkey wherein the Court observed that, "given the nature of the offence the applicants were charged with, the length of time they spent in detention was not unreasonable in relation to the pre-trial detention of seven trade union leaders". The CFA further noted however, that the Court held, "that there has been a violation of Article 5 §§ 4 and 5 of the (European) Convention (on Human Rights)" and that in this respect, the State was ordered to pay the applicants a compensation. The CFA has therefore considered that this aspect of the case did not call for further examination. While ultimately, the CFA was not in a position to determine whether the complainants' freedom of association rights were violated, due to insufficient information available to it, it nevertheless expressed its concern over the fact that the main thrust of the prison sentences appears to concern the violation of job and employment freedoms without a direct link to acts of violence or damaging property, as advanced by the Government. The CFA also noted that in 2013, a case was opened by the National Prosecutor against TÜMTIS National and Ankara Branch Presidents for criticizing the country's new labour law and allegedly holding an illegal demonstration. When it last examined the Case in 2017, the CFA took due note of the Government's indication that in January 2015, both union officials were acquitted.

## ii. Right to establish and join organizations

### Private sector

In 1995, the right to establish and join organizations in Turkey was governed by article 51 of the Constitution and Act No. 2821. With regard to the latter, the CEACR noted, when it first examined the application of Convention No. 87 in 1996, as well as in its subsequent comments, that several categories of workers were denied the right to organize either because they were not covered by the Act or because they were specifically excluded from this right by legislation governing their status. Such categories of workers included homeworkers, private security personnel, contract personnel, apprentices and foreign workers. The CEACR recalled that Article 2 of the Convention provided the right

<sup>22</sup> In 2012, the CEACR noted allegations concerning several cases of violence against trade unionists, the sentencing and imprisonment of 25 teachers and one leather worker, as well as the prosecution faced by 111 workers for participating in a demonstration, the arrest and imprisonment of members of the KESK, the police raid of KESK offices and of KESK affiliate trade unions members' houses, as well as police violence. In 2015, the CEACR noted again with concern the recent allegations of important restrictions placed on freedom of assembly of trade unionists, including violent police intervention with respect to a sit-in protest in support of 56 members of the KESK in January 2014, the arrest of 91 workers in April 2014 and the detention of over 140 demonstrators celebrating May Day, accompanied by violent police intervention.

<sup>23</sup> The CFA examined this case on two occasions: Interim Report – Report No 375, June 2015 (532-559) and Report in which the committee request to be kept informed of development – Report No. 378, June 2016 (809-820). This case is currently pending in relation the trade union registration issue.

to organize for all workers, without distinction whatsoever and requested the Government to ensure that the above-mentioned workers also benefited from this right. In addition, the CEACR noted that the Act (and article 51(4) of the Constitution) prohibited workers from belonging to more than one trade union and requested the Government to amend its legislation so as to enable workers who were employed in more than one occupational activity to belong to the corresponding unions if they so wished. It further noted a number of formalities, and in particular that the intervention of a notary public, were required to become a member of a trade union or to resign from it. Finally, the CEACR noted that according to the Act, trade unions could not be constituted on an occupational or workplace basis. The CEACR recalled that Article 2 of the Convention provided that workers shall have the right to join and form the organization of their own choosing and requested the Government to repeal the legislative provision in question so as to enable workers to organize at the occupational and workplace level if they so wished. In relation to this, the CEACR also noted that in accordance with section 3 of Act No. 2821, trade unions shall be constituted on branch activity basis and that, in accordance with section 4 of Act No. 2821, "the branch of activity covering a worksite shall be determined by the Ministry of Labour and Social Security".

The latter issue was also examined by the CFA in the framework of *Case No. 2126*.<sup>24</sup> In that case, a change of branch activity classification of shipyards from "shipbuilding" to "national defence" resulted in the loss of trade union membership and representation rights for a significant number of workers. With reference to the conclusions of the CFA, the CEACR considered that the setting up of broad bands of classification relating to branches of activity for the purpose of clarifying the nature and scope of industrial level unions was not in itself incompatible with the Convention. On the other hand, the CEACR<sup>25</sup> considered that this classification, and its modification, should be determined according to specific, objective and pre-established criteria relating in particular to the nature of the functions carried out by the workers at the worksite concerned so as to avoid any arbitrary determination and thus to guarantee fully the right of workers to form and join organizations of their own choosing. The CFA last examined this case at its June 2006 meeting when it noted the Government's affirmation that it had no intention to abolish or change the branch of activity called "National Defence". The CFA reiterated that the radical impact of the reclassification constituted indeed a violation of representation rights both the organizational and the representational of the workers affiliated to the union in question, in contravention of Convention No. 87 and requested the Government to take the necessary measures so as to restore to these workers their right to establish and join the organization of their own choosing.

In 2010, the CEACR noted with interest that, pursuant to Law No. 5982 amending the Constitution, article 51(4) prohibiting membership in more than one trade union was repealed and in its 2014 observation, it noted with interest the entry into force on 7 November 2012 of Act No. 6356 on trade unions and collective labour agreements, which repealed Act No. 2821<sup>26</sup> upon which the CEACR had been commending for several years.<sup>27</sup>

### Civil servants

Civil servants were not included within the scope of article 51 of the Constitution concerning the right to organize nor were they covered by Act No. 2821. While noting with interest, in its 1996, 1997 and 1998 direct requests regarding the application of Convention No. 151, that article 53 of the Constitution had been amended by Act No. 4121 of 23 July 1995 so as to enable trade unions of public servants to engage in collective bargaining with the Administration, the

<sup>24</sup> First examined in March 2002.

<sup>25</sup> 2002 Direct Request, Convention No. 87.

<sup>26</sup> As well as Act No. 2822.

<sup>27</sup> In its earlier comments, the CEACR examined the draft version of the law and noted among other improvements, that: the procedure for establishment of a trade union appeared to be simplified; the notary requirement for becoming a trade union member was lifted; the establishment of workplace and occupation unions was allowed; the citizenship requirement, as well as the requirement of being actively employed in the relevant branch of activity previously imposed on trade union founders, was abolished.



CEACR commented upon the absence of legislation concerning the right to organize of civil servants. During this time and up to 2001, the Government was working on a Bill regulating the trade union rights of civil servants, which was adopted as Public Employees' Trade Unions Act No. 4688 in June 2001. Pending the adoption of this legislation, the CEACR noted the steps taken by the Government towards ensuring the right to organize of civil servants.<sup>28</sup>

The new legislation was examined in the framework of the application of Convention No. 87. The CEACR identified several discrepancies with the Convention. It noted, in particular that several categories of public servants were denied the right to organize either because they were not covered by the Act (those who were not permanently employed and have finished their trial periods)<sup>29</sup> or because they were specifically excluded from this right by the Act and prohibited from joining trade unions (judges, lawyers, high-ranking officials, civilian civil servants at the Ministry of National Defence and the Turkish Armed Forces, employees at penal institutions, etc.).<sup>30</sup>

In addition, the Act required two years of employment to be a founder of a union, prohibited public servants to join more than one trade union; prohibited public servants to establish organizations on an occupational and workplace basis<sup>31</sup>; provided that copies of public officials' application for membership of trade union should be sent to the Ministry of Labour and Social Security<sup>32</sup>; and restricted the right of public servants to affiliate with the confederation of their own choosing, including in the private sector (a confederation must be constituted at least of five unions from different sectors).

The CEACR had therefore requested the Government to amend legislative provisions in question. In 2004, the CEACR noted that while Act No. 5198 amended several sections of Act No. 4688 (e.g. unions were no longer required to send to the Ministry of Labour and Social Security a copy of public employees' applications to join a particular union) other restrictions remained.

The first complaint in relation to the Act came before the CFA in 2017<sup>33</sup> and concerned the allegation that by unilaterally amending the branches of activity according to which public employees' trade unions may be established, the Government violated Convention No. 87; as a consequence, the complainant automatically lost members and

28 In particular, in its 1998 direct request regarding the application of Convention No. 151, the CEACR noted the Government's indication that section 22 of Law No. 657 on civil servants was amended by Law N. 4275 of 12 June 1997 to enable civil servants to establish and join trade unions and higher-level organizations. In 1999 direct request regarding the same Convention, the CEACR noted that the Prime Minister's Office issued a Circular dated 5 August 1999 concerning public servants' union which issued the following instructions to all the central and local administrative units: not to prevent public servants from organizing unions and confederations; not to interfere with the legitimate union activities by using the power of law enforcement; not to subject union executives and members to disciplinary proceedings for their union-related activities; not to hinder the convening of unions' general congress; not to restrict or ban the publication of informative documents about their organizations and activities; to deduct membership dues from the public servants' salaries, upon the written application of the members concerned, and deposit the dues in the union's bank account indicated by the union headquarters; to provide office space, within the available means, to enable the unions to carry out their activities and a billboard for the union-related announcements to be posted; and to take account of their opinions and proposals by establishing dialogue where necessary and to seek ways for cooperation.

29 In 2005, the CEACR noted that according to ICFTU (now ITUC), over 400,000 public employees were excluded from the right to organize and that, according to KESK, public employees were increasingly employed under fixed-term contracts and thereby excluded from the scope of Act No. 4688. In 2007, Act No. 5620 of 4 April 2007 amended section 3(a) of Act No. 4688 so that public employees working under a fixed-term contract were now entitled to join public employees' union.

30 In 2007, KESK reported the limitation on the right to organize of several categories of public employees including prison guards, civilian personnel in military installations, senior public employees, magistrates, etc. excluded 500,000 public employees.

31 Also the Regulation on the Determination of Branch Activity of Organizations and Agencies.

32 Ministry of Labour and Social Security was changed to Ministry of Labour, Social Services and Family by the Presidential Decree on the Presidential Organization No. 1 dated 10/7/2018; it was then changed to Ministry of Family, Labour and Social Services by the Presidential Decree on Amendments to some Presidential Decrees No. 15 dated 4/8/2018.

33 Through representation made by Yapi-Yol Sen, an organization of public employees, under article 24 of the ILO Constitution alleging non-observance by the Government of Turkey of Convention No. 87. At its November 2006 session, the Governing Body declared this representation receivable and decided to refer it to the CFA (Case No. 2537) [see GB.297/20/3].

encountered consequent financial difficulties. The complainant explained that it was a public employees' organization established under Act No. 4688 and alleged that within the framework of this Act and the Regulation on the Determination of Branches of Activity of Organizations and Agencies, the classification of the branches of activity on the basis of which civil servants' trade unions may be organized were not based on objective criteria. Furthermore, the Ministry of Labour and Social Security could change unilaterally the branch of activity even if the activities performed within the workplace have not changed. Thus, both Act No. 4688 and the Regulation were contrary to the right of public employees to establish organizations of their own choosing, under Article 2 of Convention No. 87. The CFA agreed with the complainants and requested the Government to amend the legislation accordingly. It also reminded that technical assistance of the Office was available in this regard.

The same year, the CEACR, with reference to *Case No. 2537*, recalled once again that, while it considered that the setting up of broad bands of classification relating to branches of activity for the purpose of clarifying the nature and scope of industrial level unions was not in itself incompatible with the Convention, however, this classification and its modification should be determined according to specific objective and pre-established criteria relating in particular to the nature of the functions carried out by the workers at the worksite concerned so as to avoid any arbitrary determination and thus to guarantee fully the right of workers to form and join organizations of their own choosing.<sup>34</sup>

In 2012, the CEACR noted the adoption of Act No. 6289, with significant amendments to Act No. 4688. The CEACR welcomed the fact that this new Act addressed some of the issues raised in the past, including the right to form and join trade unions of public employees on probation. However, the CEACR noted that some of its provisions were still not in conformity with the Convention. The CEACR pointed, in particular to the provisions which prohibited several categories of workers, such as senior public employees, magistrates, civilian personnel in military institutions and prison guards, to establish and join a trade union; and required to provide the place of residence of the founders of an organization in its statutes that must be submitted to the office of the Governor of the province in order to be incorporated.

In March 2012, the CFA examined the allegation filed by the Union of Judges and Public Prosecutors (YARGI-SEN) that Act No. 4688 denied judges and public prosecutors the right to organize (**Case No. 2892**) and expected that, in consultation with the social partners, the Act would be amended, as repeatedly requested by the ILO supervisory bodies. At its third and fourth examinations of the case in March 2014 and October 2015, respectively, the CFA noted with regret that Act No. 4688, as amended by Act No. 6289 of April 2012, continued to exclude judges and prosecutors from being members of trade unions and to provide that trade unions based on profession or workplace could not be established. The CFA deeply regretted the lack of measures taken or envisaged by the Government to bring the legislation into conformity with the principles of freedom of association and Convention No. 87 and firmly expected

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<sup>34</sup> The following year, the CEACR noted that according to the Government, the branches of activity determined in Act No. 4688 are only 11 and therefore, they are not "narrow" and "leading to excessive fragmentation of trade unions in the public sector". In the Government's opinion, the CEACR criticism, based on the complaint of Yapi Yol Sen in Case No. 2537, stemmed from the closure of an administrative unit (General Directorate of Village Affairs) which belonged to the branch of "Public works, construction and village services" and transfer of its personnel to the local administration and therefore, the branch of "Local governments". Public servants exercised their right to organize according to the branch of service to which the public institution in which they work belonged and had the right to form or join organizations of their choice established in the relevant branch of service. Closure of an administrative unit within the framework of an administrative restructuring and transfer of its personnel to other units because of their status under public law rather than making them redundant, should not and cannot be considered as unilateral interference by the Government in trade union activities. Many trade unions had been established in the branches of services; for example 16 trade unions existed in the branch of education and the smallest number of trade unions in a branch is five. The CEACR regretted, however, the consequences of this transfer for the free exercise of the right to organize of the public servants in question who automatically lost their membership in Yapi Yol Sen, leading the union to face financial difficulties, as well as the fact that trade union officers automatically lost their office. It noted that the difficulties in this case arose from the fact that one branch in particular concerns an administrative authority, i.e. "Local governments", while the other branches are thematic e.g. "Public works, construction and village services", "Education", etc.). Thus, the trade union membership was automatically lost, although the members continued to perform the same tasks under a different administrative authority. The CEACR once again requested the Government to amend the relevant legislation.

that the Government would renew its efforts, in consultation with the social partners, to amend the legislation. It invited the Government to avail itself of the technical assistance of the Office in this respect.

In 2014, the CEACR noted with interest from the information provided by the Government and the TISK that, following a Constitutional Court judgment of April 2013, the phrase “civilian personnel in military institutions” had been repealed from Act No. 4688, as amended by Act No. 6289. The following year, the CEACR, while welcoming the information provided by the KESK that another Constitutional Court judgment of April 2014 abolished certain restrictions on the right of public servants to organize, requested the Government to review Act No. 4688, as amended by Act No. 6289, so as to ensure that senior public employees, magistrates and prison guards were afforded their basic rights to organize.

### **iii. Right of workers’ organizations to draw up their constitutions and rules, to elect their representatives and to organize their administration and activities and to formulate their programs**

Since its first examinations of the application of Convention No. 87 in Turkey, the CEACR had pointed out that the national legislation (Acts Nos. 2821, 2822 and 4688) unduly regulated in detail trade union internal matters, which could give rise to interference by public authorities in the functioning and the activities of trade unions.

#### **– Right to draw up constitutions and rules**

In 2004, KESK and EI brought a complaint to the CFA alleging that the Attorney-General of Ankara filed a lawsuit under Act No. 4688, requesting the courts to order the dissolution of the Trade Union of Public Servants in the Education Branch (Egitim Sen), because its statutes provided as one of the trade union’s purposes the defence of “the right of all citizens to education in their mother tongue and the development of their culture”, which was contrary, according to the Attorney-General, to constitutional and legislative provisions prohibiting the teaching of any language other than Turkish as mother tongue, and article 3 of the national Constitution which provided that the Turkish State, along with its nation and territory, constitutes an indivisible entity. The CFA examined this case (*Case No. 2366*) on two occasions: in November 2005 and June 2006. While it noted that the trade union in question had amended its statute by deleting the reference to the right of all citizens to “education in their mother tongue” and thus there were no longer any grounds for its dissolution, the CFA considered it necessary to emphasize that in accordance with Convention No. 87, trade unions should have the right to include in their statutes the peaceful objectives that they consider necessary for the defence of the rights and interests of their members. To fully guarantee the right of workers’ organizations to draw up their constitutions and rules in full freedom, national legislation should only lay down formal requirements as regards trade union constitutions, and the constitutions and rules should not be subject to prior approval by the public authorities. A provision to the effect that union rules shall comply with national statutory requirements is not in violation of the principle that workers’ organizations shall have the right to draw up their constitutions and rules in full freedom, provided that such statutory requirements in themselves do not infringe the principle of freedom of association and provided that approval of the rules by the competent authority is not within the discretionary powers of such authorities. While noting that limits may be placed on these abovementioned rights where the manner in which they were expressed may imminently jeopardize national security or the democratic order, the CFA had serious concerns that references in a union’s by-laws to the right to education in a mother tongue had given and could give rise to the call for dissolution of the trade union. The CFA also noted that the Egitim Sen applied to the European Court of Human Rights raising similar issues.

In its 2007 and 2008 observations on the application of Convention No. 87, the CEACR noted allegations of similar nature submitted to it by the KESK and ITUC.<sup>35</sup> The CEACR echoed the above CFA conclusions and emphasized that trade unions should have the right to include in their statutes the peaceful objectives that they consider necessary for the defence of the rights and interests of their members. It once again requested the Government to amend the detailed provisions of Acts Nos 4688, 2821 and 2822 so as to avoid interference with the internal functioning of unions and their activities.

In 2014, the CEACR noted with interest the entry into force, on 7 November 2012, of Act No. 6356.<sup>36</sup> Previously, when it examined the legislation in its draft version, the CEACR noted that in general, the provisions concerning internal functioning of unions and their activities appeared to be less detailed than corresponding provisions of Act No. 2821 which gave rise to repeated interference by the authorities. Among other improvements, the CEACR noted that a check-off facility was made available to all trade unions and the amount of trade union dues was to be determined by the organizations themselves; the possibility for the Governor to appoint an observer at the general congress of a trade union was removed; and that the law no longer provided for sanctions of imprisonment for violation of the legislation. It noted, however, that draft new legislation did not deal with all issues previously raised and drew the Government's attention to the need to ensure that procedures and principles related to the acquisition and termination of membership are regulated by trade unions' internal regulations or by-laws and not by the authorities.<sup>37</sup>

### – Right to elect their officers freely

Regarding the right to elect representatives, the CEACR noted two following restrictions imposed by Act No. 2821: (1) requirement of a minimum active employment prior to eligibility for trade union office, and (2) provision that union officers may not also be candidates for local administrative and general parliamentary elections, under penalty of imprisonment of up to two years. Act No. 4688 contained a similar provision and in addition, imposed the termination of trade union office by reason of the transfer of a trade union leader to another branch of activity, or his/her dismissal or simply the fact that a trade union leader left the work, and an obligation on union officers to take unpaid leave when elected, which could prevent some public employees from presenting their candidacy in the union executive bodies. Furthermore, pursuant to section 10 of Act No. 4688, upon application to a labour court by an official of the Ministry of Labour and Social Security, a union executive committee could be removed if it did not comply with the requirements set out in the law in respect of the timing of the general assembly meetings, the majority needed to summon an extraordinary general assembly or in respect of other meetings of the general assembly.

The CEACR recalled that it was the prerogative of workers' and employers' organizations to determine the conditions for electing their leaders, and the authorities should refrain from any undue interference in the exercise of the right of workers' and employers' organizations to elect their officers in full freedom, as established under Article 3 of the Convention. It had therefore requested the Government to repeal this restriction and to ensure that the conditions of eligibility for trade union office were determined by the organizations themselves.<sup>38</sup>

Regarding the requirement of a minimum active employment prior to eligibility for trade union office, in 2002, the CEACR noted with interest that the precondition concerning ten years of active employment had been repealed from

<sup>35</sup> The KESK referred, in particular, to the Government interference aimed at making its several affiliates to amend their statutes with regard to the use of terms such as "collective bargaining", "collective agreement", "job security", "collective dispute".

<sup>36</sup> Which repealed Acts Nos 2821 and 2822.

<sup>37</sup> See 2010 observation on the application of Convention No. 87.

<sup>38</sup> The provision in question was not amended by Act No. 4277 of 26 June 1997, the adoption of which was noted by the CEACR with interest (see 1998 observation on the application of Convention No. 87).

article 51 of the national Constitution and trusted that Act No. 2821 would be amended accordingly so that the right of workers' organizations to elect their representatives in full freedom will be effectively guaranteed. However, and despite the constitutional amendment, the Ministry of Labour filed a suit against the DISK and its affiliates on the grounds that its officers did not have ten years of service, as well as the required official document to demonstrate their literacy. According to DISK, the Ministry has sought from the courts its closure. In its 2004 observation, the CEACR requested the Government to submit specific comments in respect of the court proceedings reportedly instituted for the dissolution of DISK and if the grounds for the suit were those described by DISK, to withdraw the suit (as well as any similar suits that may have been brought against its affiliates), so that the right of workers' organizations to elect their representatives in full freedom is effectively guaranteed. In 2005, the CAS also expressed its concern at the legal action taken to dissolve DISK. The CAS urged the Government to take the steps necessary to withdraw the legal action taken against DISK and to take steps to avoid legal cases based on legislation that was in the process of being amended and which was not in conformity with Convention No. 87.

In 2007, the CEACR noted the adoption of Act No. 5672 of 26 May 2007 which amended Act No. 2821 by lifting the requirement of ten years' employment in order to enjoy eligibility for trade union office (restrictions remained with regard to election to the General Council of trade unions). It further noted from the statement of the Government's representative to the CAS that the lawsuit brought in 2001 against the DISK in respect of the election of its representatives was rejected in the final instance on 22 December 2004.

Act No. 6356 repealed Act No. 2821 and addressed remaining legislative issues raised by the CEACR regarding the right to elect representatives in full freedom.

As concerns public servants, in its 2005 comments, the CEACR noted that Act No. 5198 amended several sections of Act No. 4688, and in this respect, noted with interest that there was no longer an obligation for union officers to take unpaid leave from their institutions when elected. It noted, however, that the restriction excluding union officers from union office in the event that their candidacy in local or general elections had been maintained and once again requested the Government to amend it.

In June 2007, in *Case No. 2537*, the CFA also examined the application in practice of section 16 of Act No. 4688, which, as mentioned above, provided that trade union membership or office of those public employees who had been appointed to a post in a different branch shall be considered as terminated. It noted that the effect of the legislation would also mean that the duties of trade union officers would be terminated where changes occurred in branch classifications. The CFA considered that this constituted not only a violation of the right of public employees to join the trade union of their own choice, but also serious interference in trade union activities, including the right of trade unions to elect their own representatives and organize their administration, in violation of Articles 2 and 3 of Convention No. 87. It requested the Government to amend section 16 of Act No. 4688 so as to ensure that trade union office is not terminated by reason of the transfer of a trade union leader to another branch of activity, or his/her dismissal or simply the fact that a trade union leader leaves the work.

In 2013, the CEACR noted the adoption of Act No. 6289, with further significant amendments to Act No. 4688. The CEACR welcomed the fact that the new Act addressed some of the issues raised in the past. The CEACR considered, however, that its provision for the removal of union executive bodies in case of non-respect of requirements concerning meetings and decisions of general assemblies set out in the law upon application that could be made by the Ministry of Labour and Social Security was not in full conformity with Convention No. 87.<sup>39</sup> The CEACR considered that workers' organizations should be free to determine the processes for removal of trade union officers in their by-laws and requested

<sup>39</sup> Above-mentioned section 10 of Act No. 4688.

the Government to review this provision in consultation with the social partners with a view to its amendment and to provide information on its application in practice.

### - Right to organise their administration and activities and to formulate their programs

When the CEACR examined the Government's first report on the application of Convention No. 87 in 1996 it noted with interest that article 52 of the Constitution which prohibited all political activity undertaken by a trade union had been repealed by Act No. 4121 of 23 July 1995 amending the Constitution. While noting that several other articles of the Constitution had been amended to ensure fuller respect for trade union rights (for example, repeal of other articles banning political activity for trade unions (articles 69, 135 and 171), certain discrepancies as concerns Article 3 of the Convention remained in Act No. 2821. It noted, in particular, the continued prohibition of certain political activities (sections 37, 39, 58 and 59 of the Act); broad powers for state auditing of trade union accounts (section 59(5)); and control over the use and receipt of funds (sections 39 and 40). It further noted the prohibition of union television or radio stations (Act No. 3984 of 13 April 1994). The CEACR requested the Government to repeal or amend these provisions so as to enable trade unions to organize their administration and activities without interference by public authorities.

At its next examination of the application of the Convention, in 1998, the CEACR noted with interest the amendments made to Act No. 2821 by Act No. 4277 of 26 June 1997. It noted, in particular, that certain provisions on the prohibition of certain political activities of unionists, broad powers for state auditing of trade union accounts and the control over the use and receipt of funds had been repealed.

In 2007, the CEACR had also examined the Association Act No. 5253 of 2004, which applied<sup>40</sup> to trade unions, employers' organizations as well as federations and confederations if there were no specific provisions in special laws concerning these organizations. The CEACR observed that in as far as they were applicable to workers' and employers' organizations, the following provisions were not in line with Convention No. 87: section 19, enabled the Minister of Internal Affairs or the civil administration authority to examine the books and other documents of an organization, conduct an investigation and demand information at any time, with 24-hour notice; and section 26 established a requirement of permission by the civil administration authority in order for an organization to open student dormitories and boarding houses linked to education and teaching activities. It requested the Government to amend sections 19, 26 and 35 of Act No. 5253 so as to exclude workers' and employers organizations from the scope of application of these provisions or to ensure that: (i) verification of trade union accounts beyond the submission of periodic financial reports takes place only where there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should be in conformity with the Convention) or in order to investigate a complaint by a certain percentage of members; and (ii) activities of workers' and employers' organizations, such as the opening of training centres, is not subject to permission from the authorities.

In 2014, the CEACR duly noted the observations of the Government and the TİSK that the provisions of this Act no longer applied to trade unions as they were superseded by the provisions in Act No. 6356 (of 2012) which regulated the corresponding matters. The 2012 legislation addressed the issues raised by the CEACR as described above.

### iv. Right to strike

In 1995, the right to strike was governed by the Constitution and Act No. 2822. The Constitution, in its article 54, prohibited strikes for political purposes, general strikes and sympathy strikes, as well occupation of work premises,

<sup>40</sup> Pursuant to its section 35.

go-slow strikes, and other forms of obstruction; and provided for trade union liability for any material damage caused during a strike. In its comments on the application of Convention No. 87, the CEACR noted that several provisions of the Act No. 2822 restricted the right to strike and were not in conformity with the principles of freedom of association.<sup>41</sup> Such restrictions concerned, in particular, the prohibition of protest and sympathy strikes (section 54)<sup>42</sup>, severe limitation on picketing (section 48), and on the period for calling strikes (sections 27 and 35), restriction on the right to strike for public employees in state enterprises (Civil Servants Act of 1965), and the imposition of compulsory arbitration at the request of any party (section 32) in many services which cannot be considered to be essential in the strict sense of the term (sections 29 and 30). The CEACR further noted that heavy sanctions, including imprisonment, are provided in sections 72-79 of this Act for participating in “unlawful strikes” the prohibition of which, however, was contrary to the principles of freedom of association. The CEACR recalled that sanctions for strike action should be possible only where the prohibitions in question were in conformity with the principles of freedom of association and, furthermore, if measures of imprisonment were at all to be imposed they should be justified by the seriousness of the offenses committed. It requested the Government to amend the provisions of the Act so as to bring it into conformity with the principles of freedom of association.

In addition, in its 2000 observation, the CEACR referred to Act No. 3218 of 1985 which imposed compulsory arbitration for a ten-year period in Export Processing Zones for the settlement of collective labour disputes. The CEACR had noted the Government’s indication that the 10-year period laid down under the Act expired in the Mersin and Antalya zones in 1997 and would come to an end in the Aegean and Atatürk Airport zones in 2000. The Committee had nevertheless recalled that the imposition of compulsory arbitration posed a severe limitation on the right of workers’ organizations to organize their activities and formulate their programmes free from interference by the public authorities in accordance with Article 3 of the Convention. It therefore requested the Government to amend Act No. 3218 so that all workers in export processing zones have the possibility of taking industrial action in defence of their interests. The relevant provision of the Act was amended through the adoption of Act No. 4771. In 2004, the CEACR noted this development with satisfaction.

In 2001, the CEACR noted the adoption of Act No. 4688 and in respect of the right to strike of public servants noted that section 35 provided that in case of failure to reach an agreement one of the parties may call for a reconciliation committee, but made no mention of the circumstances in which strike action may be exercised. It also noted the comments made by the Government on the special status of public servants in respect of the right to strike. The CEACR recalled that restrictions on the right to strike in the public service should be limited to public servants who were exercising authority in the name of the State and that restrictions to the right to strike by the imposition of compulsory arbitration could only be justified in respect of this limited category of public servants and those working in essential services in the strict sense of the term. Further, where the right to strike may be prohibited or limited, compensatory guarantees should be afforded to public servants, such as mediation and conciliation procedures or, in the event of deadlock, arbitration with sufficient guarantees of impartiality and rapidity. The CEACR had therefore requested the Government to take the necessary measures to ensure that those public servants who were not exercising authority in the name of the State and who could not be deemed to be carrying out essential services in the strict sense of the

41 1996 Direct request. The CFA also examined numerous allegations concerning restrictions on the right to strike in Case No. 1810 (Representation made by the Confederation of Turkish Trade Unions (TURK-IS) under article 24 of the ILO Constitution alleging non-observance by Turkey of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) — Complaint against the Government of Turkey presented by the Confederation of Progressive Trade Unions of Turkey (DISK) (Vol. LXXIX, 1996, Series B, No. 1). On that occasion, the CFA, noting with interest the constitutional and legislative progress that had taken place, invited the Government, in consultation with the social partners, to continue amending its legislation by taking measures to simplify it and to afford greater autonomy to the trade organizations so as to bring this legislation fully into line with the requirements of Conventions Nos 87, 98 and 151 ratified by Turkey. It drew legislative aspects of this case to the CEACR.

42 In 2001, the CEACR noted the Government’s indication that no legislative reform in respect of the prohibition of protest and sympathy strikes could occur until the relevant Constitutional provisions were amended.

term had recourse to industrial action without penalty. The CEACR noted the Government's indication to the 2007 CAS that a constitutional amendment was required for the review of restrictions on the right to strike of public servants.<sup>43</sup>

Despite repeated requests made by the CEACR, no substantive legislative changes took place until 2010. In 2010, the CEACR noted that pursuant to Law No. 5982 of 2010 amending the Constitution, trade union liability for any material damage caused during a strike (Article 54(3)), and prohibition of "politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go-slows, and other forms of obstruction" (Article 54(7)) were repealed.

In 2012, the CEACR noted that Act No. 6289 on public servants' unions and collective agreement, with significant amendments to Act No. 4688, had been adopted on 4 April 2012. The CEACR noted, however, the Act provided for the procedures for settlement of disputes by the Public Employees' Arbitration Board, but made no mention of the circumstances in which strike action may be exercised in the public service. The Committee recalled the need to ensure that cases in which strikes may be restricted or even prohibited are limited to those involving public servants exercising authority in the name of the State. Further in this respect, in its 2015 direct request, the CEACR noted the observations of KESK alleging that the public service in the broad sense of the term as prohibited from taking industrial action, and that the Public Employees Act No. 657 and Act No. 6111 provided for disciplinary sanctions for such action. The CEACR once again requested the Government to review the legislation concerning public service workers with the relevant social partners with a view to its amendment, so as to ensure that the ban on industrial action was limited to public servants exercising authority in the name of the State and those working in essential services.

In 2014, the CEACR also noted the adoption of Act No. 6356 in 2012, which repealed Acts Nos. 2821 and 2822. It noted with satisfaction that section 62 of the Act had removed a number of services from the previous strike prohibition and that Act No. 6356 had further eliminated the previous restrictions on politically motivated strikes, solidarity strikes, occupation of work premises and go-slows to bring it into line with the 2010 constitutional amendments, while additionally a recent Constitutional Court judgment had removed the banking services and urban public transport services from the remaining list of essential services in the Act.<sup>44</sup> The CEACR observed, however, that section 58 of Act No. 6356 restricted lawful strike to disputes during collective bargaining negotiations and requested the Government to indicate the manner in which protest action, sympathy strikes and other means of legitimate industrial action were protected in line with the 2010 constitutional amendment.<sup>45</sup> The CEACR further noted that section 65 of the Act set out the conditions for the establishment of a minimum service at the workplace to be determined unilaterally by the employer and that this decision may be appealed to the courts for a final determination. The CEACR recalled that workers' organizations should be able to participate in the determination of a required minimum service at the workplace and failing agreement, the matter should be determined by an independent body with the confidence of the parties concerned and requested the Government to take steps to review the Act provision in consultation with the social partners with a view to its amendment.<sup>46</sup>

In its 2015 observation, the CEACR noted with interest the information provided by the Government on a Constitutional Court judgment rendered on 2 July 2015 which found that the Council of Ministers' Decree under section 63 of Act No. 6356, suspending a strike in a glass-making company for 60 days on the grounds that it was disruptive to public health and national security, was in breach of the trade union rights guaranteed by article 51 of the Constitution. Furthermore, with regard to its request to review section 65 of Act No. 6356 in order to ensure that workers' organizations were able

<sup>43</sup> 2007 observation.

<sup>44</sup> 2014 observation.

<sup>45</sup> 2014 direct request.

<sup>46</sup> 2014 direct request.



to participate in the determination of a required minimum service at the workplace, and that, failing agreement, the matter may be referred to an independent body that has the confidence of the parties, the CEACR noted, in its 2015 direct request, the Government's indication that there was no provision impeding consultation and prior agreement between the employer and the workers' representatives on the required minimum service before the employer's decision in this regard, and that the union has the right to challenge the employer's decision before the courts for a final determination. In this respect, the CEACR considered, however, that in order to promote the participation of the union in the determination of a minimum service in the event of industrial action, it would be important for the Government to clearly provide for such participation in the law, rather than granting this authority unilaterally to the employer. It therefore once again requested the Government to take steps to review this provision in consultation with the social partners with a view to its amendment.

The CFA also examined on several occasions allegations concerning violations of the right to strike in Turkey and made recommendations to the Government. In practice, postponement of strikes by the government and forced arbitration in non-essential services had impaired the right to strike, as illustrated in particular in the tire and glass sectors. Moreover, caveats such as "national security" and "public health" were also used disproportionately to ban strikes.

Lodged in 2003, *Case No. 2303* involved the allegation that the Government, through the Council of Ministers, had violated the right to strike by issuing Decree No. 2003/6479 to suspend a major strike in the glass industry on grounds of national security. The complainant pointed out the frequent occurrence of suspension of strikes for reasons of national security or public health in the glass and rubber sector, municipality services and state-run undertakings. The CFA observed from the Government's response that Decree was rendered unenforceable by a decision of the 10th Department of the Council of State and consequently, the union went on strike in January 2004. However, on 11 February 2004 the Council of Ministers issued a new Decree (No. 2004/6782) which suspended the strike again. Following this, an official mediator was designated and a consensus was reached between the employer and the union. Drawing the Government's attention to the principles of freedom of association in relation to the exercise of the right to strike, the CFA requested the Government to ensure that compulsory arbitration following a suspension of a strike may only be imposed in cases of essential services in the strict sense of the term, public servants exercising authority in the name of the State or an acute national crisis; and to amend section 33 of Act No. 2822 so that the authority to decide whether to suspend a strike rests with an independent body which has the confidence of all parties concerned.

*Case No. 2329* was lodged in 2004 and concerned suspension (for the third time in four years) of a strike in the tyre industry on the grounds that the strike would be a threat to national security. The CFA recalled its conclusions and recommendations in *Case No. 2303* and regretted the recurrent practice of suspending strikes. It noted the Government's comments on the conformity of section 33 of Act No. 2822 with certain international instruments, which allowed for certain rights to be restricted in the public interest, or on grounds of national security, public health or public morals. The CFA noted, however, that the Government had suspended the strike without indicating any specific security or health concerns involved. It thus reiterated its request to amend section 33.

In the above two cases, the CFA called for the amendment of section 33 of Act No. 2822. This Act was repealed and replaced by Act No. 6356 in 2012. The CFA noted, however, when it examined *Case No. 3084*<sup>47</sup>, that "the wording of section 63(1) of Act No. 6356 reproduces the wording of section 33(1) of Act No. 2822 and further provides in its subsection (3) for an arbitration, upon a request of either party to the dispute, if an agreement is not reached within 60 days". While the CFA considered that section 63 of Act No. 6356, which allows the Government to suspend a strike and impose compulsory arbitration on the grounds of national security or public health, is not in itself contrary to freedom

<sup>47</sup> Lodged by Kristal-Is (Trade Union of Glass, Cement and Soil Workers of Turkey) and supported by the IndustriALL Global Union in 2014 and examined by the CFA in March 2015.

of association principles as long as it is implemented in good faith and in accordance with the ordinary meaning of the terms “national security” and “public health”, it observed that the Government once again indicated no reason why a strike in the glass industry might be considered harmful to national security and public health. The CFA therefore noted with regret that a strike had once again been suspended and compulsory arbitration imposed in the glass industry and requested the Government to ensure that such restrictions may only be imposed in cases of essential services in the strict sense of the term, public servants exercising authority in the name of the State or an acute national crisis. It also requested the Government to amend section 63 of Act No. 6356 so as to ensure that the final decision whether to suspend a strike rests with an independent and impartial body. When the CFA examined this case for the second time, it noted with interest that the Constitutional Court had found that the suspension of the strike in the glass sector had violated trade union rights protected under article 51 of the national Constitution.

The issue of suspension of strikes came for the last time before the CFA during the second examination of *Case No. 3021*. In that case, the CFA noted that pursuant to the Decree with power of law (KHK) No. 678, the Council of Ministers can postpone strikes in local transportation companies and banking institutions for 60 days. The CFA recalled that it had already examined the implications for freedom of association of the power of the Council of Ministers to postpone strikes in certain sectors and invited the Government to send detailed information on the application of the Decree to the CEACR.

In **Case No. 3011**, the complainant organizations, Turkish Civil Aviation Union (Hava-Is) and International Transport Workers' Federation (ITF) alleged the dismissal by Turkish Airlines of 316 workers for taking part in a protest strike in May 2012, measures impeding on the right to strike taken during the industrial action called in May 2013, as well as shortcomings in national legislation in the field of industrial action. A majority of these workers were later reinstated. At its latest examination of this case in October 2015, the CFA requested that section 58(2) of Act No. 6356 and article 54(1) of the Constitution be reviewed so as to ensure that lawful industrial action is no longer limited to strikes linked to a dispute during the collective bargaining process. It noted that such a restriction cannot but affect the exercise of the right to strike in a broader context. Recalling that the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement and that workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests, the CFA once again requested the Government to review, in consultation with the social partners, the provisions in question in order to bring them into conformity with the principles of freedom of association.<sup>48</sup>

## v. Collective bargaining

### Private sector

By 1995 the CEACR had already expressed on several occasions its concern regarding legislation on collective bargaining (Act No. 2822) and in particular on the fact that trade unions could negotiate collectively only if they represented at least 10 per cent of the membership of the branch and more than 50 per cent of an establishment, that public servants were denied the right to bargain collectively<sup>49</sup> and that arbitration was compulsory in collective disputes which were not a threat to essential services.<sup>50</sup> The CEACR considered that the numerical requirements should be reduced in order to allow the full development and utilization of machinery for voluntary collective bargaining, in accordance with Article

<sup>48</sup> Report No. 376, October 2015.

<sup>49</sup> Collective bargaining in the public sector is examined below.

<sup>50</sup> From 1997 onwards the CEACR pursued this matter in its examination of the application of Convention No.87. See comments above under the section right to strike.

4 of Convention No. 98. For a number of years the Government had been indicating that proposals for amendment of various legislative provisions were under review but failed due, among others, to the objections of some of the social partners. The CEACR kept reminding the Government that the assistance of the Office was at its disposal to facilitate the removal of the obstacles which are preventing Convention No. 98 from being fully applied.

The CFA also examined Act No. 2822 and, particular the issue of dual criteria for bargaining collectively (section 12) in the framework of *Case No. 1830* where it considered that the relevant legislation did not have the effect of promoting and stimulating unhindered collective bargaining at the level of the undertaking, and strongly urged the Government to amend its legislation so as to bring it in line with Article 4 of Convention No. 98.<sup>51</sup>

The issue was raised once again in *Case No. 2126*, lodged in 2001, when the Government replied that it was considering a legislative revision reducing the sectoral threshold to 10 per cent.<sup>52</sup> While noting this information with interest, the CFA also noted that the CEACR, in its 2002 observation concerning the application of Convention No. 98, has taken note of the Government's indication that the Bill to amend Act No. 2822 had not been finalized due to continuing consultations with social partners in order to reach a consensus on the question of dual criteria and that these amendments were specified in the National Programme as having medium-term priority. The CFA therefore expressed the firm hope that the necessary measures will be taken to amend this provision in the near future to bring it into conformity with Conventions Nos 87 and 98 and drew this aspect of the case to the attention of the CEACR.

In June 2013, the CFA regretted the de facto suspension, in 2012, of collective bargaining rights in the country. A complaint in this regard was lodged before the CFA by IndustriALL Global Union in August 2012, which explained that this was due to the fact since the beginning of 2012 no union had obtained a certificate of competence. In examining **Case No. 2976**<sup>53</sup>, the CFA noted the Government's indication that the complainant's allegations referred to the situation which existed before Act No. 6356 on Trade Unions and Collective Labour Agreements was adopted on 18 September 2012 and came into force on 7 November 2012 and that following the entry into force of this new legislation, all applications for the determination of competence will be examined, including those referred to by the complainant trade union. According to the Government, this would resolve the issues of collective bargaining. At its March 2016 meeting, the CFA welcomed the resumption of publication of statistics and issuance of certificates of competence by the Ministry of Labour that marked the end of the period of de facto suspension of collective bargaining rights in the country.

The CEACR examined Act No. 6356, which repealed and replaced Act No. 2822, in 2013 and noted several issues which could give rise to discrepancies with the Convention as regards collective bargaining rights in law and in practice and requested the Government further information on the impact of new legislative provisions. The CEACR noted, in particular, that section 34 provided that a collective work agreement may cover one or more than one workplace in the same branch of activity, which, it considered, appeared to limit the right of workers' and employers' organizations to freely determine how and at what level to carry out collective bargaining. It therefore requested the Government to review the impact of section 34 and to consider, in consultation with the social partners, its amendment in a manner so as to ensure that it does not restrict the possibility of the parties to engage in cross-sector regional or national agreements. In 2017, the CEACR noted the observation of the TISK indicating that during the drafting and adoption phases of Act No. 6356, the social partners reached a consensus on maintaining the existing system that has been in

51 Report No. 303 of the Committee on Freedom of Association, Cases Nos. 1810, 1830 — Representation made by the Confederation of Turkish Trade Unions (TURK-IS) under article 24 of the ILO Constitution alleging non-observance by Turkey of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) — Complaint against the Government of Turkey presented by the Confederation of Progressive Trade Unions of Turkey (DISK) (March 1996), para 57.

52 Report No. 327 (March 2002), para. 846.

53 This case is currently pending in respect of other allegations raised.

place for almost 30 years and that there was no limitation as to the legality of cross-sector agreements in the Turkish law, as is illustrated by the fact that for years the main provisions of the collective agreements concerning public enterprises had been determined by a framework protocol concluded at the cross-sector level. Taking due note of the information the CEACR requested the Government to indicate whether cross-sector bargaining through regional or national agreements is possible in the private sector under the current legal framework.

The CEACR further requested the Government to revise section 35(2) of Act No. 6356 which stated that the parties could not extend or reduce the validity of a collective agreement once signed as it considered that while a collective agreement should not be subject to unilateral termination or extension, parties should be able to decide, upon mutual agreement, to extend the duration of a collective agreement or even to terminate it and negotiate a new one. In 2015, however, the it took due note of the Government's indication that this provision did not restrict the right of the parties to a collective agreement to agree to make changes to its provisions, but rather restricted only the possibility of changing the agreement's duration with a view to recognizing rival trade unions' right to collective bargaining by imposing time limits to the duration of the agreement.

Furthermore, the CEACR requested the Government to provide information on any use of sections 46(2), 47(2), 49(1), 51(1), 60(1) and (4), 61(3) and 63(3) of Act No. 6356 that provided for a variety of situations in which the certificate of competence to bargain may be withdrawn by the authorities and to continue to review their application with the social partners concerned with a view to their eventual amendment, favouring collective bargaining where the parties so desired. In its 2017 observation the CEACR noted that according to the TISK, these provisions had no negative effect on the collective bargaining process in practice as unions were very careful about the procedural rules. For its part, the Government argued that these provisions were intended to guarantee, speed up and shorten the bargaining procedure. While taking due note of this information provided, the CEACR requested the Government to provide information on the dialogue concerning the application of these provisions with the social partners concerned and on any use of these provisions.

The CEACR also requested the Government to provide information on any use of section 50(1) of Act No. 6356 which permitted a unilateral determination of the mediator where the parties have not been able to agree. In 2017, it took due note of the Government's indication that the power of the competent authority to appoint a mediator in case the parties cannot agree on one was intended to prevent the parties from interrupting the collective bargaining process by obstructing the appointment of a mediator and that there is no request from social partners to change or repeal the mediation system.

Finally, the CEACR noted that section 41(1) of Act No. 6356 set out the following requirement for becoming a collective bargaining agent: the union should represent at least one per cent (progressively, 3 per cent) of the workers engaged in a given branch of activities and more than 50 per cent of workers employed in the workplace and 40 per cent of workers of the enterprise to be covered by the collective agreement. Reiterating its long-standing concerns related to the double threshold for collective bargaining which requires on the one hand representation at the branch level and on the other hand majority representation at the workplace, the CEACR expressed the firm hope that the thresholds would be revised and lowered in consultation with the social partners.

At its subsequent examination of the application of Convention in 2017, the CEACR noted that 3 per cent threshold was decreased to 1 per cent by Act No. 6552 of 10 September 2014 and that additional section 1 of Act No. 6356 stipulating that the 1 per cent membership threshold should be applied as 3 per cent with regard to trade unions that are not members of confederations participating in the Economic and Social Council, was repealed by the Constitutional Court. Therefore the 1 per cent branch threshold applied to all trade unions. The CEACR further welcomed the Government's indication that Act No. 6745 renewed the exceptions established by Act No. 6645 for three categories of previously

authorized trade unions, dispensing them from the branch threshold requirement, and that 10 trade unions benefitted from these changes until 6 September 2018. According to the statistics provided by the Government, the rate of unionization in the private sector was 11.96 per cent in January 2016, 11.50 per cent in July 2016, 12.18 per cent in January 2017 and 11.95 per cent in July 2017. Coverage of collective agreements fell from 10.81 per cent in 2014 to 9.21 per cent in 2015. Recalling the concerns that had been expressed by several workers' organizations in relation to the perpetuation of the double threshold and noting that the exemption granted to the previously authorized unions was provisional, the CEACR requested the Government to continue reviewing the impact of the perpetuation of the branch threshold requirement on the trade union movement and the national collective machinery as a whole in full consultation with the social partners, and should it be confirmed that the perpetuation of the 1 per cent threshold has a negative impact on the coverage of the national collective bargaining machinery, take the necessary measures to revise the law with a view to its removal.

The issue was also put before CFA in **Case No. 3021**, lodged in 2013. The complainant argued that this requirement was still not conducive to the promotion of collective bargaining and combined with modifications in the method of collecting statistics would make many organizations lose their capacity to engage in negotiations. The CFA requested the Government to ensure that no workers' organization loses its capacity to bargain collectively as a result of the application of the new law. It also considered that the branch of activity threshold required by Act No. 6356, in addition to the workplace or enterprise threshold to be able to conclude a collective labour agreement covering the workplace or enterprise in question, was not conducive to harmonious industrial relations and did not promote collective bargaining in line with Article 4 of Convention No. 98, as it may ultimately result in the decrease in the number of workers covered by collective agreements in the country. With respect to the enterprise threshold (40 per cent) or workplace threshold (50 per cent), the CFA recalled that, where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members. In view of the above, the CFA requested the Government to carry out without delay a full review of the impact of Act No. 6356 on the trade union movement and the national collective bargaining machinery as a whole, in full consultation with the social partners, and that, in light of the outcome of that review. It invited the Government to avail itself of ILO technical assistance.<sup>54</sup> In the second examination of the case, the Government reported on provisional exemptions of branch threshold granted in order to preserve the bargaining capacity of the organizations that were previously recognized as competent and indicated that Act No. 6356 was amended so as to reduce the three per cent threshold at branch level to one per cent. Like the CEACR, the CFA requested the Government to continue reviewing the impact of the perpetuation of the branch threshold requirement on the trade union movement and the national collective machinery in full consultation with the social partners, and should it be confirmed that the one per cent threshold has a negative impact on the national collective bargaining machinery, revise the law with a view to removing it.<sup>55</sup>

### Public sector

By 1995, the CEACR had already commented on the denial of collective bargaining rights to public servants and requested the Government to take the necessary measures so that public servants who were not engaged in the administration of the State had the right to bargain collectively.

In its 1996 observation on the application of Convention No. 98, the CEACR noted the statement by the Government representative at the 1996 CAS to the effect that efforts were being made to draft legislation to regulate the trade union rights of public servants in accordance with the new amendments in the Turkish Constitution and the corresponding

<sup>54</sup> Report No. 373 (October 2014), para. 530.

<sup>55</sup> Report No. 382 (June 2017) para. 145.

principles envisaged in Convention No. 151. The Government pointed out its understanding that this Convention was not applicable to state officials. In this regard, the CEACR recalled that the distinction must be drawn between, on the one hand, public servants who by their functions were directly employed in the administration of the State who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided by the Convention. Noting from the Government's first report under Convention No. 151 that a Bill regulating the trade union rights of civil servants generally had been prepared and submitted to the Turkish Grand National Assembly, the Committee hoped that this draft legislation would contain provisions which were in accordance with Convention No. 98.

In March 1999, the CFA examined *Case No. 1981*, brought by Bütün Belediye Memurları Birliği Sendikası (BEM-BIR-SEN). The complainant alleged restrictions on the right of organization of public servants to bargain collectively through the Government's decision to alter the contents of previously concluded collective agreements or "Social Balance Agreements" (SBAs), which were freely entered into, and already negotiated by the parties. The CFA regretted that the Government did not give priority to collective bargaining as a means of determining the employment conditions of the public servants employed in the municipalities in question and requested the Government to refrain from having recourse to measures of intervention in the collective bargaining process in the future. The CFA drew the CEACR attention to the legislative aspects of this case.

The same year, in its 1999 observation, the CEACR noted that the Government was not able to secure the passage of the draft Bill on public servants' trade unions that had already been discussed by the Parliament due to the requests of opposition parties for its revision. The draft Bill was thus resubmitted to the Parliament by the new Government.

In 2001, the CEACR noted the adoption of Act No. 4688 and in 2004, it noted that certain of its sections had been amended by Act No. 5198. Despite the amendments, certain issues remained. During the following years, the CEACR referred, in particular, to the need to guarantee, through further legislative amendments, that: negotiations cover not only financial questions but also other conditions of employment; the authorities, in particular the Council of Ministers, do not have the power to modify or reject collective agreements in the public sector; and the parties are able to hold full and meaningful negotiations over a period of time longer than that provided for (i.e. 15 days under section 34).

In its 2010 observation on the application of Convention No. 98, the CEACR noted with satisfaction that the following provisions of the Constitution were amended the same year and appeared to address some of the issues it had previously raised in respect of Act No. 4688 and, in particular, with regard to section 28, which limited the scope of negotiations to financial questions, and section 34, which allowed the possibility of modification of collective agreements signed by the parties, by the authorities:

- article 53, so as to add the following paragraph: "public servants and other public employees have the right to conclude collective agreements. The parties may apply to Reconciliation Board if a dispute arises during the process of collective agreement. The decisions of the Reconciliation Board shall be final and have the force of a collective agreement. The scope of and the exceptions to the right of collective agreement, the persons to benefit from and the form, procedure and entry into force of collective agreement and the extension of the provisions of collective agreement, as well as the organization and operating procedures and principles of the Reconciliation Board and other matters shall be laid down in law";
- article 53, so as to repeal paragraph 3 which restricted autonomy of the parties in collective bargaining; and

- article 128(2) so as to provide that “the qualifications of public servants and other public employees, procedures governing their appointments, duties and powers, their rights and responsibilities, salaries and allowances, and other manners related to their status shall be regulated by law, without prejudice to provisions on collective agreement concerning financial and social rights”.

Regarding Act No. 4688, the CEACR noted the Government’s explanation provided to the June 2010 CAS that the constitutional amendment would be followed by the relevant legislative amendments and trusted that this Act would be soon amended so as to ensure that public servants enjoyed full collective bargaining rights and not just the right to hold “collective consultative talks” as was then established and that the amended legislation would further address the following points it had previously raised.

In 2013, the CEACR noted with satisfaction that Act No. 6289 of 2012 amending Act No. 4688 addressed some of the issues it had raised in the past, notably regarding the scope of collective bargaining which now extended not only to financial questions but to “social rights”, the need for the parties to be able to hold full and meaningful negotiations over a period of time longer than that previously provided for (extended from 15 days to one month), the removal of the possibility for the authorities to modify collective agreements signed by the parties and the change of scope of the law from collective “talks” to collective “agreements”.

It noted, however, in its subsequent observations on the application of Convention No. 98<sup>56</sup>, the following issues which required further legislative amendment: (i) the need to amend section 28 of Act No. 4688 which restricted the scope of collective agreements to “social and financial rights” only, thereby excluding issues such as working time, promotion and career as well as disciplinary sanctions; (ii) the need to ensure that Act No. 4688 and its application enable the most representative unions in each branch to make proposals for collective agreements including on issues that may concern more than one service branch, as regards public servants not engaged in the administration of the State.

## vi. Protection against anti-union discrimination

In 1996, 1997 and 1998 the CEACR noted the observations of the TURK-IS on insufficient protection against acts of anti-union discrimination under Act No. 2821. The Government disputed these allegations and indicated that with the ratification of the Termination of Employment Convention, 1982 (No. 158), work was on the way for adoption of a new legislation dealing with discrimination. The CEACR also took note of judicial decisions, which showed that compensation in cases of various acts of anti-union discrimination was granted quite frequently, and of the Government’s indication that section 31 of Act No. 2821 provided compensation of not less than the total amount of the worker’s annual salary and that this amount could further be increased by either a contract or collective agreement or by a court decision.<sup>57</sup>

Following the adoption in 2001 of Act No. 4688, dealing with trade union rights in public service, the CEACR noted that while its section 18 generally provided for a prohibition of acts of anti-union discrimination, this guarantee was not accompanied by sufficiently effective and dissuasive sanctions. Regarding the private sector, the CEACR continued to note the Government’s information on the developments in respect of a proposed draft law to amend Labour Act No. 1475 and Act No. 2821 which, according to the Government, would deal with anti-union discrimination.<sup>58</sup>

56 2015 and 2017.

57 1999 observation on the application of Convention No. 98.

58 2002 observation on the application of Convention No. 98.

In its 2004 direct request and subsequent comments on the application of Convention No. 98, the CEACR requested the Government to update the sanctions provided for under sections 59(2) (non-reinstatement of trade union officers) and 59(3) (anti-union discrimination at the time of recruitment) of Act No. 2821 and to ensure that the compensation afforded to a trade union officer who wished to return to his/her post and was not reinstated for anti-union reasons had a dissuasive effect. With the enactment, on 11 July 2012, of Act No. 6356, Act No. 2821 was repealed.

In 2006, 2008, 2011 and 2012, the CEACR noted with interest that Turkish Penal Code No. 5237, which came into effect in June 2005, introduced new provisions for protection against acts of anti-union discrimination.<sup>59</sup> It further observed that section 18(a) of the Labour Act No. 4857 provided protection against unfair dismissals for trade union membership or participation in trade union activities outside working hours or, with the consent of the employer, within working hours. It noted, however, allegations of widespread incidence of acts of anti-union discrimination in the public and private sectors submitted to it and to the CFA.<sup>60</sup> The CEACR requested the Government to provide statistical data showing progress made in addressing effectively allegations of acts of anti-union discrimination and interference both in the public and private sectors (number of cases brought to the competent bodies, average duration of proceedings and remedies imposed). In June 2013, CAS had also requested the Government to establish a system for collecting data on anti-union discrimination in the private sector and to provide information on the functioning of national complaints mechanisms and all statistical data related to anti-union discrimination in the private and public sectors.

In 2015, the CEACR took note with interest of a judgement handed down by the Constitutional Court on 22 October 2014 which raised the fine payable for unjustified dismissal and further granted to workers the right to initiate legal proceedings for reinstatement should they consider that they were dismissed on anti-union grounds. In the light of the continuing concerns raised regarding occurrences of anti-union discrimination, the CEACR once again requested the Government to establish a system for collecting data on anti-union discrimination (in both private and public sectors) and to provide information on the concrete steps taken in this respect. It reminded the Government that it may avail itself of the technical assistance of the Office in this regard.

Following up on this request, in its 2017 comments on the application of Convention No. 98, the CEACR noted with interest the Government's indication that within the framework of the "Improving social dialogue in working life" project that was being implemented with the technical support of the Office, it was planned to establish such a data system and to provide access to information with a view to ensuring protection against anti-union discrimination. The CEACR requested the Government to continue providing information on the progress made in the establishment of the system for collecting data on anti-union discrimination in private and public sectors.

At the same time, the CEACR noted massive dismissals in the public sector under the state of emergency decrees and noted with deep concern that the dismissals undertaken under emergency decrees took place without guaranteeing to the workers concerned the right to defend themselves, and that they amounted to a denial of the right to access public office for the trade union members and officials concerned. While duly noting the seriousness of the situation following the coup attempt, the CEACR considered that in view of the absence of minimal due process guarantees for the sanctioned persons and the ensuing denial of their right to access public office, the emergency decrees did not allow to guarantee that the dismissals of union members and officials had not been decided by reason of their

<sup>59</sup> Section 118 prohibited acts of anti-union discrimination and provides dissuasive sanctions: it stipulated that any person who used force or threats with the aim of compelling a person to join a trade union or not to join, or to participate in union activities or not to participate in them, to resign from a trade union or from his/her position in the union management, shall be punished with imprisonment from six months to two years. Furthermore, section 118 stated that a judgement of imprisonment for one year to three years shall be given in cases where a trade union's activities are obstructed by using force, threats or other unlawful acts. Section 135 stipulated that any person found guilty of recording personal data of a person unlawfully, including his/her trade union attachments, shall be punished with imprisonment from six months to three years.

<sup>60</sup> Case No. 2200.



trade union membership and that they did not constitute acts of anti-union discrimination under the Convention. The CEACR noted that the Government had since established an *ad hoc* Commission which was competent to review the dismissals directly based on the state of emergency decrees and would have to deal with all cases in two or even three years, a period of time during which the dismissed trade unionists would remain deprived of their employment and of their right to access public office. The Committee noted with concern this situation as well as the allegations that, taking advantage of the absence of procedural means to challenge the dismissals under the state of emergency decrees, certain administrators reported false charges against the trade unionists to provoke their dismissal and to favour other unions. The Committee emphasized that such practice, if proved, would constitute acts of interference in violation of Article 2 of the Convention and could not be justified by the invocation of state of emergency. The CEACR urged the Government to ensure that the *ad hoc* Commission established to review the dismissals was accessible to all the dismissed trade union members who desired its review, and that it was endowed with the adequate capacity, resources and time to conduct the review process promptly, impartially and expeditiously. It further requested the Government to ensure that the dismissed unionists did not bear alone the burden of proving that the dismissals were of an anti-union nature, by requiring the employers or the relevant authorities to prove that the decision to dismiss them was based on other serious grounds. In cases where it was established that the dismissal of trade unionists had been based on anti-union motives, the CEACR firmly expected that the workers concerned would be reinstated in their posts and compensated due to the deprivation of their wages, with maintenance of acquired rights. It further urged the Government to take the necessary measures to prevent and remedy any eventual abuse of the state of emergency to interfere in trade union activities and functioning and to provide information on the measures taken in this regard.<sup>61</sup>

Over the years, the CFA examined a number of cases involving allegations of anti-union discrimination in both private and public services.

In *Case No. 1830*, the complainant organization (DISK) referred to several examples of dismissals and prejudicial measures to which workers had been subjected for their trade union activities. The CFA profoundly regretted that the Government restricted itself to pointing out that the anti-union reprisal measures were a matter for the courts. It noted, however, with interest the intention to amend the Labour Act so as to allow reinstatement and strongly urged the Government to take the necessary measures to guarantee effective protection against acts of anti-union discrimination in conformity with the international undertakings it made in ratifying Convention No. 98 in June 1970.<sup>62</sup>

In *Case No. 2126*, submitted in April 2001 by the International Metalworkers' Federation (IMF) and Dok Gemi-Is, the CFA requested the Government to institute an independent investigation into the allegations of impending anti-union dismissals of 1,100 workers (virtually all of whom, according to the complainant, were Dok Gemi-Is members) at the Haliç and Camialti shipyards and, if any dismissals had occurred due to anti-union discrimination, to ensure that these individuals were reinstated in their jobs with compensation for loss of wages or that they were guaranteed adequate compensation for the damages suffered. It further requested the Government to institute independent investigations into the allegations of harassment and intimidation of Dok Gemi-Is members by management, including the dismissal of the maximum number of workers allowed by law (nine per month) and the dismissal of some 200 workers at the ship-scraping site at Aliaga the day after they had agreed to join the union and to take the necessary remedial steps if these allegations were proven to be true, including reinstatement in their jobs or adequate compensation

61 See also 2017 CAS discussions and 2017 CEACR observation on the application of Convention No. 135.

62 Report No. 303 of the Committee on Freedom of Association, Cases Nos. 1810, 1830 — Representation made by the Confederation of Turkish Trade Unions (TURK-IS) under article 24 of the ILO Constitution alleging non-observance by Turkey of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) — Complaint against the Government of Turkey presented by the Confederation of Progressive Trade Unions of Turkey (DISK) Paras 33, 65 and 69.

for damages suffered by those dismissed.<sup>63</sup> The CFA examined the effect given to its recommendations in this case on four occasions, last time in June 2006 when, in the absence of any information provided by the Government (which considered that as no judicial complaints were lodged, it could not investigate the allegations), it urged the Government to institute independent investigations into all the allegations of anti-union discrimination and to take the necessary remedial steps if these allegations were proven to be true.<sup>64</sup>

*Case No. 2147*, lodged in July 2001 by the Confederation of Public Servants Unions of Turkey (Türkiye Kamu-Sen), concerned the allegation of non-renewal of contract of the branch president of the Samsun section of the Turkish Teachers' Union for anti-union reasons. Considering that the non-renewal of a contract for anti-union reasons constituted a prejudicial act within the meaning of Article 1 of Convention No. 98, the CFA requested the Government to institute an inquiry into the motivations for the non-renewal of trade union leader's contract and to review this decision in the light of the above principle.<sup>65</sup> When it examined the effect given to its recommendation in June 2004, the CFA took note of the information submitted by the Government and in particular that actions were lodged in the courts and decisions were duly taken in accordance with the usual and appropriate judicial mechanisms.<sup>66</sup>

The allegations in *Case No. 2200*, lodged in May 2002 by KESK, the Independent Public Works and Construction Employees' Union (BAGIMSIZ YAPI-IMAR SEN) and the Independent Transport Union (Railways, Airports, Sea and Land Transport Services Public Employees) (BAGIMSIZ ULASIM-SEN), raised in essence a general issue of discrimination against the complainants, on the one hand, and their members and officers on the other hand. While taking due note of the circulars issued by the Ministry of Labour and Social Security and the Office of the Prime Minister to prevent acts of anti-union discrimination in the public sector and of the letters sent by the General Directorate of Labour to the relevant authorities to avoid favouritism towards particular unions, the CFA was of the view that the effective protection against acts of anti-union discrimination should first and foremost be guaranteed in the law. It therefore trusted that the Government would take the necessary legislative measures to ensure effective protection of public servants. Concerning the particular allegations made by the complainants, the CFA requested the Government to promptly institute independent inquiries in the individual cases in order to establish whether the workers concerned had been adversely affected in their employment by reason of their legitimate trade union activities and, if so, to take suitable measures to remedy without delay any effects of anti-union discrimination.<sup>67</sup> At its third and latest examination of this case, the CFA noted with regret that the Government failed to reply to serious allegations of anti-union discrimination and had ignored the specific recommendations made by the CFA in this respect. It therefore reiterated its previous recommendation.<sup>68</sup>

*Case No. 2303* was lodged by the Glass, Cement and Soil Industries Workers' Union (KRISTAL-IS) in October 2003. It contained two sets of allegations: (1) the employer dismissed in total 296 workers who had joined the union a few days prior to their dismissal and employed new workers in their place in order to prevent the union from reaching the 51 per cent representativeness requirement (established in section 12 of Act No. 2822) and (2) violation of the right to strike.<sup>69</sup> Recalling that it had already observed in a similar case concerning Turkey that the Government needed to amend

<sup>63</sup> Report No. 327, March 2002, para. 847 (b) and (c).

<sup>64</sup> Report No 342, June 2006, para 166. As no new information has been provided by the Government or the complainants, the status of this case is "Closed".

<sup>65</sup> Report No 327, March 2002, para. 867.

<sup>66</sup> Report No 334, June 2004, paras 75-78.

<sup>67</sup> Report No 330, March 2003.

<sup>68</sup> Report No. 338, November 2005. In light of the fact that no further information has been provided, the current status of this case is "Closed".

<sup>69</sup> See above under the right to strike.

its legislation in order to ensure a more effective protection of workers against all acts of anti-union discrimination, the CFA requested the Government to ensure that the competent labour authorities conducted an investigation promptly into the reasons for which 246 trade union members were dismissed on 27 September 2003 and, if it was found that there had been anti-union discrimination, to take all necessary measures with a view to their reinstatement in their posts without loss of pay or, if the competent court were to decide that reinstatement was not possible, to ensure that the dismissed workers receive full compensation for the prejudice suffered. Concerning union members who were dismissed between 30 September and 10 October 2003 and had filed a lawsuit for unjustified dismissal at the 8th Istanbul Industrial Court, the CFA requested the Government to keep it informed on the progress of the proceedings.<sup>70</sup> At its subsequent examinations of this case, the CFA noted that the employer had been fined and that the dismissed workers lodged lawsuits before the competent courts. The CFA noted the court decisions transmitted by the Government in respect of three dismissed workers. The courts concluded that these workers lost their employment on account of their trade union membership and requested the enterprise in question to reinstate the dismissed workers or, if that was not possible, to pay compensation equivalent to one-year salary, as prescribed by the legislation. The CFA noted that in one of these decisions, the court considered that “the contract of employment of the defender, as well as of about 300 other workers, was terminated due to these workers’ trade union membership”. The CFA expected that the above decisions had been implemented and requested the Government to specify whether these workers had been reinstated or compensated. It further requested the Government to continue keeping it informed on the status of the remaining dismissed workers.<sup>71</sup>

The allegations in *Case No. 2351*, lodged in May 2004 by the United Metalworkers’ Union (BIRLESİK METAL-İS), concerned dismissal of members of the complainant organization, while other workers were hired in their place, and other members threatened with dismissal or forced to resign from the union, in order to prevent the complainant from obtaining recognition for collective bargaining process. Regarding the alleged dismissals, the CFA requested the Government to take all necessary measures to ensure that any effects that the acts of anti-union discrimination may have had on the membership of the complainant organization were fully rectified, including in the framework of the voluntary steps taken by the management to this effect.<sup>72</sup>

**Case No. 2789**, lodged by the International Textile, Garment and Leather Workers’ Federation (ITGLWF) in June 2010 concerned allegations of anti-union campaign by private enterprises (Menders Tekstil and Desa Der Sanayi ve Ticaret AS) involving acts of harassment, intimidation, and dismissals to deter workers from organizing. The CFA requested the Government to keep it informed of the outcome of appeals filed by the dismissed workers, of the investigations requested by the CFA into the allegations made and of the implementations of court judgements that had been handed down and ordered reinstatement of workers or compensation.<sup>73</sup>

**Case No. 2892** filed by the Union of Judges and Public Prosecutors (YARGI-SEN) in August 2011 involved allegations of anti-union discrimination against judges and public prosecutors in the form of transfers of their leaders.<sup>74</sup> At its fourth and the latest examination of this case, the CFA noted with concern that, despite its repeated recommendations to this effect, no information has been provided by the Government as to the conduct of an independent inquiry into alleged acts of anti-union discrimination through imposed transfer of three YARGI-SEN leaders. The Government merely

<sup>70</sup> Report No. 335, November 2004.

<sup>71</sup> Report No. 342, June 2006, paras 167-172. In light of the fact that no further information has been provided, the current status of this case is “Closed”.

<sup>72</sup> Report No. 340, March 2006. The status of the case is now “Closed” as no further information has been provided to the CFA following the second examination of the case in March 2007.

<sup>73</sup> Report No. 363, March 2012.

<sup>74</sup> Report No. 363, March 2012.

referred to section 18 of Act No. 4688 that prohibited the relocation of trade union representatives and managers “unless the fact is clearly and precisely indicated”. The Committee recalled that all protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker. Protection against acts of anti-union discrimination is particularly desirable in the case of trade union officials in order to allow them to perform their trade union duties in full independence and to ensure that the workers’ organizations effectively have the right to elect their representatives in full freedom. The importance of this protection requires that allegations of acts of anti-union discrimination against trade union officials and leaders be promptly and effectively investigated so that, if they are found to be grounded, effective remedial steps can be taken. In view of the foregoing, the CFA firmly expected the Government to institute an independent inquiry into the alleged anti-union acts without further delay, to indicate the current status of the union leaders and to keep it informed of the outcome of the inquiry and the follow-up measures taken. The CFA also invited the complainant organization to provide information on these matters.<sup>75</sup>

**Case No. 2976** was submitted by IndustriALL Global Union in August 2012 and concerned de-fact suspension of collective bargaining rights<sup>76</sup> and alleged dismissals of trade union members at two enterprises. With regard to the dismissal of 35 workers from the Togo Footwear Industry and Trade Inc., the CFA trusted that any information relating to the alleged anti-union nature of the dismissal would be considered by the courts and expected that the decision would be handed down in the very near future. It also expected that if anti-union discrimination was established, the workers concerned would be reinstated without loss of pay. If reinstatement was not possible for objective and compelling reasons, the CFA requested the Government to ensure that the workers concerned were paid an adequate compensation which would represent a sufficiently dissuasive sanction for anti-union discrimination. It requested the Government to provide the court judgment as soon as it was handed down, as well as a copy of the findings of the Human Rights Investigation Commission. With regard to the dismissal of 20 workers from the Ceha Office Furniture Limited Company, the CFA noted the Government’s indication that an inquiry had been conducted by the Provincial Directorate of Labour and Employment Agency in Kayseri, which determined that the contracts of 20 workers were terminated by means of paying their severance and notice pays and requested the Government to provide a copy of the inquiry’s report.<sup>77</sup> At its second and latest examination of the case, the CFA noted with concern that more than three years after the alleged anti-union dismissal of 35 workers from the Togo enterprise, the judicial proceedings on the determination of the nature of dismissals had not yet come to their conclusion. Recalling that justice delayed is justice denied and that cases concerning anti-union discrimination should be examined rapidly in order to ensure that the remedies provided are truly effective, the CFA urged the judicial authorities to pronounce on the dismissals without further delay so as to avoid a denial of justice. With regard to the dismissal of 20 workers from the Ceha Office Furniture Limited Company, the CFA noted with regret that the Government had not provided the copy of the inquiry report and reiterated its request to this effect.<sup>78</sup>

Finally in **Case No. 3011**, the CFA examined the allegation of dismissal by Turkish Airlines of 316 workers for taking part in a protest strike.<sup>79</sup>

<sup>75</sup> Report No. 376, October 2015, para. 145.

<sup>76</sup> See above under collective bargaining.

<sup>77</sup> Report No. 368, June 2013.

<sup>78</sup> Report No. 377, March 2016, paras 64-66.

<sup>79</sup> Report No. 376, October 2015. See under the right to strike.

## vii. Tripartite consultations

In 1995, when it examined the Government's first report, the CEACR noted the establishment of the Economic and Social Council for the purpose set out in Convention No. 144. It also noted the Government's opinion that the application of the Convention needed improving, particularly with regard to the matters that should be covered by tripartite consultations, as well as the establishment of procedures for effective consultations within the meaning of the Convention. It also noted that representative organizations considered that the number of their representatives on the Economic and Social Council should be increased. In 1998, with a view to achieving an application of the provisions of the Convention which satisfied all the parties concerned, the CEACR suggested that the Government undertook consultations with the social partners' representatives to determine the nature and form of the procedures to ensure effective consultations with respect to the matters concerning the activities of the ILO set out in Article 5, paragraph 1 of Convention No.144.

In 1999, the CEACR took note of the establishment of a tripartite advisory committee in 1998 which discussed the matters covered by the Convention. It also noted that the Government's positive attitude to giving full effect to the Convention was welcomed by the social partners.

In 2004, the CEACR noted that both the Government and the representative organizations of employers and workers reported on progress accomplished in the area of social dialogue, thanks to the establishment of a number of tripartite consultative bodies. It further noted with interest: (1) the Tripartite Protocol, drawn up in June 2001 between the Ministry of Labour and Social Security and TISK, TÜRK-İŞ, HAK-IS and DISK for the setting up of an "academic council" for the development of social legislation in conformity with international standards and (2) the setting up of the Tripartite Advisory Board pursuant to article 114 of the new Labour Act (No. 4857 of 2003). This Board was called upon to "ensure effective solidarity between government and employer, civil servants and confederations of workers' unions, for the purpose of developing labour peace and industrial relations". The rules and procedures for the operation of the Board, adopted in April 2004, seemed to comprise the consultation provided for in Convention No. 144. The first meeting of the Board, composed of representatives from the Government, trade union confederations, the main employers' union and the public employees' union was held in May 2004. In 2007, the CEACR noted with interest the decisions taken by the Tripartite Consultative Committee with respect to contributing to the development of national legislation giving effect to international labour standards.

The same year, the CEACR nevertheless observed the concern expressed by TISK whereby it found that there were no initiatives to include social partners in the negotiations with the European Union on matters related to working life, in particular on "Social Policy and Employment". TISK considered that social partners should be able to participate directly through a mechanism that would allow their views to contribute to, and be reflected in, the preparation of the strategies and the commitments in relation to this process. The CEACR thus invited the Government and the social partners to promote and reinforce tripartism and social dialogue, with a view to ensure that adequate consideration was given to the social concerns of all stakeholders.

In 2010, while noting that the Tripartite Consultative Committee established under the Labour Act to ensure effective tripartite consultations had met several times between 2004 and 2007, the CEACR noted the concern expressed by TÜRK-İŞ that this body had not been consulted on important labour law amendments. The CEACR also noted the activities carried out by a tripartite working group on social dialogue established by the Ministry of Labour and Social Security to evaluate mechanisms established in the country and to elaborate recommendations, taking into consideration the experience of the EU countries.

In 2015, while noting the Government's indication that the Economic and Social Council, the Labour Assembly and

the Tripartite Consultation Board were the most important social dialogue mechanisms in the framework of the Convention, the CEACR observed that TÜRK-İŞ and KESK were of the view that the Tripartite Consultation Board did not carry out any effective work on fundamental issues, adding that legislative bills were prepared without taking into account the views of the workers' organizations. KESK further indicated that the Government made no effort to consult the social partners on the application of ILO Conventions.

Finally, in 2017, the CEACR requested the Government to provide its comments on the observations made by the TÜRK-İŞ to the effect that the Tripartite Consultative Board did not meet regularly, despite the Tripartite Consultative Board Directive providing that the Board should meet at least three times per year and that the manner in which the representatives of workers' organizations were selected to the Board was not in compliance with Article 1 of the Convention, as those selected must be the "most representative organisations of employers and workers enjoying the right of freedom of association", whereas section 4 of the Regulations of the Board provided for the selection of the top three worker confederations with the most members. The CEACR also noted the Government's indication that social dialogue in Turkey included all types of negotiation, consultation and exchanges of information between representatives of government, employers and workers on issues of common interest relating to economic and social policy and the information on the functioning of the Economic and Social Council, the Labour Assembly and the Tripartite Consultative Board, the most important social dialogue mechanisms in Turkey for purposes of the Convention.

## V. European Commission's Annual Progress Reports on Turkey

Turkey has been linked to the European Union by an Association Agreement since 1964. Customs union was established in 1995. The European Council granted the status of candidate country to Turkey in December 1999 and accession negotiations were opened in October 2005.

ILO Conventions Nos 87 and 98 are part of the EU acquis and the implementation of these Conventions is one of the benchmarks for the opening of Chapter 19 on Social Policy and Employment. Every year the European Commission prepares a report for each candidate country, which evaluates the progress achieved by that State in its membership preparation. To prepare its reports, the European Commission refers to the information submitted by the Government, reports and decisions of the European Parliament, the evaluations of the European Council, the Organisation for Security and Co-operation in Europe, international organizations, and non-governmental organizations. It is therefore not surprising that over the years, the European Commission has pointed to the same issues as those raised by the ILO supervisory bodies. The first Regular Report for Turkey was published in 1998 followed by the reports prepared annually.

### i. Trade unions rights

In its 1998 Progress Report<sup>80</sup>, the European Commission noted that workers, except the police and military personnel, had the right to associate freely and form representative unions. It further noted that constitutional and subsequent legislative amendment removed restrictions preventing trade unions from pursuing political activities. The right to strike was, however, subject to various restrictions and complicated procedures. Public servants also obtained the right to establish trade unions but not the right to strike or to bargain collectively. The Commission highlighted the latter point as well as reports of widespread harassment of trade union activists by both employers and the authorities in its 1999 Report.<sup>81</sup>

<sup>80</sup> See Progress Report, p. 18, 1998. All progress reports are available: [https://www.ab.gov.tr/46224\\_en.html](https://www.ab.gov.tr/46224_en.html)

<sup>81</sup> See Progress Report, p. 38, 1999.

In its subsequent report, the European Commission followed legislative developments, noting, in particular, that the draft law affecting trade union rights in the public sector contained restrictive provisions which could entail significant constraints on the right to organize in the public sector, including on the right to strike and collective bargaining.<sup>82</sup> Once adopted in 2001, the Commission considered the law not to be in line with the Community *acquis* and the relevant ILO Conventions and referred specifically to restrictive provisions relating to the right to strike and collective bargaining. Outside the public sector, the Commission noted difficulties with regard to freedom of association and collective bargaining in law and practice, which included the 10 per cent threshold requirement to bargain collectively and alleged denial of trade union rights in shipbuilding industry and in export processing zones.<sup>83</sup> Regarding the latter, in 2002, the European Commission noted improvements as regards trade union rights in free trade zones adopted in the framework of the reforms adopted in August of the same year.

Accession negotiations with Turkey were opened on 3 October 2005. In its Report of the same year, the European Commission noted that full trade union rights still needed to be established<sup>84</sup> and organization of trade union meetings and demonstrations should be facilitated. The Commission further noted that the percentage of the labour force covered by collective agreements remained extremely low (15 per cent) and, as further noted in 2007, was still decreasing.

In 2010<sup>85</sup> the European Commission noted that “some progress” had been made, in particular as regards the public sector. It noted, specifically, the amendments made to the Constitution which granted the right to collective bargaining and collective agreements to civil servants and other public employees and made disciplinary decisions against civil servants subject to judicial review, lifted the ban on certain strikes, removed the ban on membership of more than one trade union, and repealed the restriction previously imposed on the number of collective agreements at the same workplace. The Commission also noted a circular, issued by the Prime Minister’s Office, to facilitate the exercise of trade union rights in the public sector. However, in the Commission’s view, the legal framework regulating trade union and collective bargaining rights remained restrictive and needed to be brought into line with EU standards and ILO Conventions. It noted, in particular, that the constitutional amendment package did not introduce the right to strike for civil servants. Furthermore while the Government had attempted to address some issues through a new draft law on trade union rights, it failed to receive the support of the social partners. An ILO high-level bipartite mission to Turkey consisting of the CAS employers’ and workers’ spokespersons was unable to note any measurable progress towards the adoption of relevant legislation.

The following year<sup>86</sup>, the Commission considered that only limited progress has been made: while the ban on the contractual personnel of state economic enterprises from establishing trade unions or engaging in trade union activities had been lifted, the ban on these personnel engaging in any kind of strike action remained in place. Previously noted constitutional amendments had not been put into effect as the necessary changes in the relevant trade union legislation had not been made. Social partners had failed to agree on key issues such as the right to organize at workplace level and thresholds for collective bargaining. The low coverage of collective bargaining had not improved. Thus, the Commission noted that the alignment with the *acquis* was still not very far advanced.

The new law on Trade Unions and Collective Agreements for the private sector entered into force in November 2012 and

82 See 2000 - 2004 Progress Reports.

83 2000 - 2004 Progress Reports.

84 As well as in 2006, 2007 and 2008 Progress Reports where it noted the absence of progress regarding legislative reform aimed at bringing the laws in line with the ILO and EU standards.

85 See pages 69-71.

86 2011 Report, pages 78-80.

in this regard, the European Commission had noted “some improvements”<sup>87</sup> These included, in particular, facilitation of the internal functioning of trade unions, easing of membership procedures and requirements, limits on the prohibition of strikes, and reduction of penal provisions. It noted, however, that significant obstacles remained: due to high and cumulative thresholds for entering into collective bargaining, a very low number of workers benefited from collective agreements and were able to engage in collective action, including strikes; union members in small workplaces were insufficiently protected from dismissal on the grounds of their trade union activities; many categories of civil servants encountered limitations on the right to organise, and the general prohibition to strike in the public sector remained. Overall, the Commission concluded that legal alignment was moderately advanced.

In 2014<sup>88</sup>, the Commission observed that while the use of the e-state portal for registration/withdrawal of union membership led to a 15.2 per cent increase in the number of union members (since July 2013), the coverage of collective agreements remained low. Restrictive double thresholds for collective bargaining, uncertain protection for union members against dismissals, and gaps in the right to organize, bargain and strike remained the most relevant issues. In a law adopted in September the threshold allowing trade unions to negotiate collective agreements (representing the ratio of their members to the workforce of the company’s branch of activity) was set permanently at 1 per cent. This continued to represent a significant obstacle for collective bargaining, according to European Commission’s observation.

The following year<sup>89</sup> the European Commission considered that Turkey should remove double threshold requirement for trade unions. It also noted rulings of the Constitutional Court which had the effect of protecting workers in small companies against anti-union dismissals and reducing from 3 per cent to 1 per cent the sector level threshold for independent trade unions to obtain authorisation to negotiate collective agreements. While it noted that trade union membership in the private sector increased from 9.5 per cent to 11.2 per cent in 2015, the proportion of workers covered by collective agreements remained significantly lower. This was mainly due to the continued existence of ‘double thresholds’ which limited trade unions’ ability to engage in collective agreements. The European Commission further observed that a large number of unregistered workers did not have access to trade unions and that unlawful dismissal of trade union members and long-lasting trials discouraged workers from joining trade unions. While the Constitutional Court lifted a ban on strikes in banking and urban transport, the postponement by the government of strikes in non-essential services and forced arbitration seriously impaired the right to strike. The Court also ruled that public employees should enjoy their right to strike as guaranteed by the Constitution and ILO conventions, but this ruling, which did not cover civil servants, had not been followed up in practice. The Commission concluded that Turkey needed to respect civil servants’ right to strike and to lift obstacles to collective bargaining, among other things by considering changes to the Constitution.

In 2016, the report highlighted that the percentage of unionised workers in the private sector, while having marginally increased to 11.5 per cent, was still very low. Collective agreements covered only 7.5 per cent of private sector employees, well below Member States’ figures. Legislative shortcomings such as double thresholds for collective bargaining and the lack of a right to strike for public servants were contrary to European standards and ILO Conventions. Informal workers, retired and unemployed persons and an overly wide range of categories of public servants remained excluded from the right to organise. Many union protests and demonstrations were prevented, disproportionately restricting trade union rights. Trade union confederations had reported serious allegations about dismissals, harassment, retaliatory action, arrests and police assaults against trade union officials for legitimate trade union activities. The report states that ‘In the aftermath of the 15 July coup attempt, two trade union confederations and their 19 member trade unions,

87 2012 and 2013 Reports, pages 40-41.

88 2014 Report, pages 40-41.

89 2015 Report, pages 51-52, pages 51-52.



totalling almost 50 000 affiliated workers, were closed by decree under the state of emergency over alleged links to the Gülen movement<sup>90</sup> In conclusion, the European Commission considered that there was some progress and that Turkey remained moderately prepared under chapter 19.<sup>90</sup>

In 2018, the Commission considered that Turkey had “some level” of preparation in the area of social policy and employment. It observed nonetheless that there had been backsliding in this area owing to a strong deterioration of labour rights under the state of emergency, with mass dismissals and suspensions. Double thresholds for collective bargaining at workplace and sector levels and the lack of a right to strike for public servants continued to be major obstacles to Turkey meeting this chapter’s main opening benchmark: compliance with European standards and ILO Conventions on trade union rights. The right of the Council of Ministers to de facto ban ongoing strikes had been expanded to include grounds of economic stability and continuation of service. In 2017, five strike actions were postponed, de facto banned. Trade unions continued to report dismissals, harassment, arrests and police assaults against their members for carrying out legitimate trade union activities. Several press announcements and meetings of trade unions had been cancelled by the authorities on the grounds of security risks. The number of private sector employees covered by collective agreements remained very low. Trade union density among private sector employees has slightly increased, to 12 % in 2017. Informal employees remained excluded from the right to join trade unions. In light of the very high level of informal employment in Turkey, actual union density is therefore lower. Trade union density among public servants was high at 69 %, despite a 2.5 % decrease in 2017, but the trade unions that had been more critical of government policies have suffered a loss of affiliation. A wide range of public servants were not allowed to belong to unions. In conclusion, the Commission considered that while Turkey had “some level” of preparation in the area of social policy and employment, there had been backsliding in this area owing to a strong deterioration of labour rights under the state of emergency, with mass dismissals and suspensions. Double thresholds for collective bargaining at workplace and sector levels and the lack of a right to strike for public servants continued to be major obstacles to Turkey meeting this chapter’s main opening benchmark: compliance with European standards and ILO conventions on trade union rights. In the coming year, the Commission concluded, Turkey should remove obstacles limiting the full enjoyment of trade union rights.<sup>91</sup>

## ii. Social dialogue

Adopted in April 2001, a law setting up the Economic and Social Council established a platform for dialogue between the social partners. NGOs could be invited to attend the meetings at the discretion of the Prime Minister. While the Council provided a useful forum for consulting a great variety of economic and social actors it did not, in the view of the European Commission, form an appropriate basis for an autonomous tripartite social dialogue, given the predominant place of the government. The Commission considered that the law had to be amended to provide for an effective consultation of the social partners on labour issues and that the country needed to strengthen its administrative capacity for social dialogue in terms of staff and resources, secretariat facilities for national tripartite and multipartite processes, and registration and analysis of collective agreements. The Commission further considered that the government should promote the social partners’ capacity to assume the role they would be called to play in the future in the social dialogue at EU level as well as in common European policies.<sup>92</sup> In this respect, it considered in 2013, that progress still needed to be made as a matter of priority to create the conditions for a free and genuine bipartite as well as tripartite social dialogue at all levels in line with the *acquis*. The Commission considered that social dialogue should be encouraged in private enterprises as no social dialogue existed in most private enterprises.<sup>93</sup>

<sup>90</sup> 2016 Report, p. 53.

<sup>91</sup> 2018 Report, p. 83.

<sup>92</sup> See 2001 and 2002 Reports.

<sup>93</sup> Similar comments were made in 2004.

While noting that the regulation setting out rules and procedures for the functioning of the 'Tripartite Advisory Board'<sup>94</sup> entered into force in April 2004 and that the Board, composed of representatives from the government, trade union confederations, the main employers' union and the public employees' union, met in May 2004 and 2015, social dialogue was weak, the Economic and Social Council was ineffective and needed to be improved.<sup>95</sup> Noting limited progress as regards social dialogue, the Commission concluded, in its 2008 report, that in this particular area, "Turkey [was] not yet sufficiently prepared."<sup>96</sup>

Following the September 2010 referendum, the Economic and Social Council became a constitutional body to be consulted by the Government for policy making in the economic and social fields. In practice, however, this social dialogue mechanism, together with the Tripartite Consultative Board, needed, in the Commission's opinion, further strengthening.<sup>97</sup>

The following reporting years, the European Commission repeatedly pointed out that the Economic and Social Council was inactive since 2009 and that social dialogue, both tripartite and bipartite, remained limited. It therefore considered that the capacity of the social partners needs to be improved.<sup>98</sup>

In conclusion, for the European Commission, the exercise of labour and trade union rights remain limited, in particular as regards the right to organize, bargain collectively and strike, in both the private and public sectors. Social dialogue in Turkey remained to be the area of concern to the European Commission.

## CONCLUSION

Over the years, through its comments on the application of ratified Conventions, the ILO supervisory bodies provided guidance and assistance to the Government on how these Conventions could be better applied in law and in practice to the benefit of the Turkish society. In dialogue with the ILO and its social partners, a number of legislative acts regulating trade union and collective bargaining rights were amended or repealed, notably Acts Nos. 2821 and 2822. While the individual case of Turkey was discussed by the CAS on numerous occasions in respect of application of Conventions Nos 87, 98 and 135, these discussions should be seen as an opportunity for a constructive exchange. In this respect, the contribution of the social partner through the submission of their views and observations on the application of relevant Conventions to the ILO supervisory bodies should be highlighted.

As outlined in this report, the main issues raised by the ILO supervisory bodies concerned the respect, in law and in practice, for civil liberties, as a prerequisite for the exercise of trade union rights, the right to establish and join organizations, the right of these organizations to draw up their constitutions and rules, to elect their representatives and to organize their administration and activities and to formulate their programs, the right to strike, the right to bargain collectively, protection against anti-union discrimination and tripartite consultations. The report follows the comments of the CEACR and the CAS as well as the measures taken by the Government to address their concerns. It thus provides an insight into the national dynamics and international dialogue between the Government, its social partners, the supervisory bodies and the Office.

<sup>94</sup> The Board had the tasks of advising on matters of working life, of fostering cooperation and compromise-seeking among the parties and of monitoring legislative developments in this area.

<sup>95</sup> See 2004, 2005, 2006 and 2007 Reports.

<sup>96</sup> See 2008 Report, p.61.

<sup>97</sup> See 2010 Report, pp. 69-71.

<sup>98</sup> See 2011-2018 Reports. It should be mentioned that in its 2011 report, the Commission recognized that a Prime Ministry circular allowed the participation servants' trade unions on the boards dealing with the social rights of public employees and disciplinary issues. In its 2018 report, the Commission noted that the "tripartite consultative committee only met once in 2017" (see page 84).

The cases examined by the CFA provide another and deeper facet in as far as they involved specific allegations of violation of freedom of association principles in practice. While the allegations referred, to various degrees, to violations of all of the above rights, anti-union discrimination was the subject of the majority of complaints against Turkey. This is the area where the cooperation with the Government has proven to be challenging. It is therefore hoped that a system for collecting data on anti-union discrimination (in both private and public sectors) will soon be established, as requested by the ILO supervisory bodies.

In its latest annual Progress Report, with reference to ILO Conventions Nos 87 and 98, the European Commission considered that Turkey had “some level” of preparation in the area of social policy and employment and it called on the Government to continue removing obstacles limiting the full enjoyment of trade union rights. A legislative framework which provides the necessary protections and guarantees, institutions to facilitate collective bargaining and address possible conflicts, an efficient labour administration, and strong and effective workers’ and employers’ organizations, are the main elements of a conducive and enabling environment for freedom of association and collective bargaining. The role of governments in providing for an enabling environment is of paramount importance.<sup>99</sup> As demonstrated by Turkish own experience, the continuing dialogue with the ILO and the strengthening of social dialogue at the national level can only lead to the development of a robust legislative framework and a more conducive environment to the free exercise of trade union rights.

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<sup>99</sup> *Freedom of association in practice: lessons learned. Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2008* / International Labour Office. - Geneva: ILO, p. ix.

## ANNEX 1

### Criteria developed by the Committee of Experts for the identification of cases of progress

*[Extracts from the General Report of the Committee of Experts (ILC.105/III(1A))]*

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49. At its 80th and 82nd Sessions (2009 and 2011), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

- (1) The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment **the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters** which, in its view, have not been addressed in a satisfactory manner.
- (2) The Committee wishes to emphasize that **an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.**
- (3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.
- (4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.
- (5) If the satisfaction relates to the adoption of legislation, the Committee may also consider appropriate follow-up measures for its practical application.
- (6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

50. Since first identifying cases of satisfaction in its report in 1964, the Committee has continued to follow the same general criteria. The Committee expresses *satisfaction* in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions.** In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

- to place on record the Committee's appreciation of the positive action taken by governments in response to its comments; and
- to provide an example to other governments and social partners which have to address similar issues.

...

53. Within cases of progress, the distinction between cases of satisfaction and cases of interest was formalized in 1979. In general, cases of *interest* cover **measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.** The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;
- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;
- judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction; or
- the Committee may also note as cases of interest the progress made by a State, province or territory in the framework of a federal system.

## ANNEX 2

### WORKERS' AND EMPLOYERS' ORGANIZATIONS WHO SENT COMMENTS TO THE CEACR SINCE 1995

#### TURKISH WORKERS' ORGANIZATIONS

- Confederation of Public Workers Unions (**KESK**)
- Confederation of Progressive Trade Unions (**DISK**)
- Confederation of Turkish Trade Unions (**TURK-IS**)
- Energy-Building and Road Construction-Union (**ENERJI-YAPI YOL SEN**)
- Trade Union of Civil Officers Employed in Military Offices (**ASIM-SEN**)
- Independent Public Sector Communication Employees' Union (**BAGIMSIZ HABER-SEN**)
- Turkish Union of Public Employees in the Education, Training and Science Services (**TÜRK EGITIM-SEN**)
- Confederation of Public Employees of Turkey (**TURKIYE-KAMU-SEN**)
- Confederation of Public Servants' Unions (**MEMUR-SEN**)

#### INTERNATIONAL WORKERS' ORGANIZATIONS

- Education International (**EI**)
- International Trade Union Confederation (**ITUC**)

#### TURKISH EMPLOYERS' ORGANIZATIONS

- The Turkish Confederation of Employers' Associations (**TISK**)

#### INTERNATIONAL EMPLOYERS' ORGANIZATIONS

- International Organisation of Employers (**IOE**)

## ANNEX 3

### LIST OF TURKISH LEGISLATION

<b>1983</b>		
	Trade union law	<b>Act No. 2821</b>
	Law on Collective Labour Agreement, Strike and Lock-Out	<b>Act No. 2822</b>
<b>1995</b>		
	Act No. 4121 of 23 July 1995 amending the preamble and certain articles of Act No. 2709 of 7 November 1982 concerning the Constitution of the Republic of Turkey	<b>Act No. 4121</b>
<b>1997</b>		
	Act No. 4275 of June 1997 amending Public Servants Act No. 657	<b>Act No. 4275</b>
<b>2001</b>		
	Act No. 4688 on public employees' trade unions	<b>Act. No. 4688</b>
<b>2003</b>		
	Labour Act	<b>Act No. 4857</b>
<b>2004</b>		
	Act No. 5198 amending the Public Servants' Trade Unions Act, the Social Insurance Act and the Social Security Institution	<b>Act No. 5198</b>
<b>2005</b>		
	Associations Act	<b>Act No. 5253</b>
	Penal Code	<b>Act No. 5237</b>
	Act No. 5332 of 12 April 2005 amending the Trade Union Act	<b>Act. No. 5332</b>
<b>2010</b>		
	Act No. 5892 amending the Constitution of Turkey	<b>Act No. 5892</b>
<b>2012</b>		
	Law on trade unions and collective agreements	<b>Act No. 6356</b>
	Law concerning collective bargaining in the public service	<b>Act No. 6289</b>







