

Governing Body

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Report of the Director-General

Fifth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by France of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

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► I. Introduction

1. By a communication dated 8 March 2021, the Union of Performers and Teachers of Music, Dance, Drama and Other Performing Arts-related Occupations (SAMUP) made a representation to the Office under article 24 of the ILO Constitution alleging non-observance by the Government of France of the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). At its 342nd Session (June 2021), the Governing Body decided that the representation was receivable and referred the allegations to the Committee on Freedom of Association for examination under articles 24 and 25 of the Constitution. Pursuant to the Governing Body's decision, adopted at its 334th Session (October–November 2018), instructing the Committee on Freedom of Association to examine representations referred to it according to the procedures for the examination of article 24 representations (GB.334/INS/5 and GB.332/INS/5(Rev.)), the Committee on Freedom of Association set up a tripartite committee composed of Ms Petra Herzfeld Olsson (Government member, Sweden), Ms Renate Hornung-Draus (Employer member, Germany) and Ms Amanda Brown (Worker member, United Kingdom of Great Britain and Northern Ireland) to examine the representation.
2. France ratified Convention No. 87 on 28 June 1951 and the Convention remains in force in that country.
3. The provisions of the ILO Constitution concerning the submission of representations are as follows:

Article 24

Representations of non-observance of Conventions

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

Article 25

Publication of representation

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

4. The Government of France sent its observations in a communication dated 30 September 2021
5. The tripartite Committee met formally on 31 May 2024 to examine the representation and adopt its report.

► II. Examination of the representation

A. The complainant's allegation

6. In a communication of 8 March 2021, the complainant organization claims that a ruling of the Labour Chamber of the Court of Cassation of 21 October 2020 (No. 20-18.669) concerning an amendment to the statutes of SAMUP aimed at giving this union inter-occupational coverage is contrary to Articles 2 and 11 of Convention No. 87.
7. The complainant organization states in this regard that: (i) in February 2020, SAMUP, a first-level trade union in the music, performing arts and live entertainment sector, amended its statutes in order to broaden its scope of activity and to be able to stand as an inter-occupational trade union in the elections organized to assess the voting strength of trade unions in enterprises with fewer than 11 employees; (ii) the ruling of the Court of Cassation upheld a decision by the Judicial Court of Paris of 31 July 2020 which had invalidated the candidacy of SAMUP for these elections, considering first that, under the Labour Code, only federations or confederations could claim to have inter-occupational coverage and second that, further to the amendment of its statutes, SAMUP could no longer be classified as an occupational trade union (a status that, according to the Court of Cassation, is reserved only for trade unions whose members work in the same occupation or related occupations).
8. On the basis of the above, SAMUP first alleges that the ruling of the Court of Cassation, which is based on sections L. 2131-2 and L. 2133-1 of the Labour Code, violates Article 2 of Convention No. 87 in that it recognizes only federations and confederations (as opposed to primary or first-level trade unions) as being able to have inter-occupational scope. The complainant organization claims, in particular, that the aforementioned ruling violates the freedom of association guaranteed by Convention No. 87 by obliging an employee engaged in several unrelated activities to join an inter-occupational union of trade unions, and not a primary trade union.
9. Second, the complainant organization denounces the disproportionate effect of the aforementioned court decisions which, instead of simply ordering the trade union to regularize its statutes, established that SAMUP could no longer be classified as an occupational trade union, thereby violating Article 11 of Convention No. 87, which calls on States to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize. SAMUP claims in this respect that, in view of the implications of this case for respect for freedom of association, the Court of Cassation conducted a light review of the first instance decision, which was itself handed down by a single-judge court within a period of ten days.

B. The Government's observations

10. In its communication of 30 September 2021, the Government first provides information to explain the context in which the Court of Cassation's ruling of 21 October 2020 was handed down. In this respect, the Government states that: (i) the court ruling contested by the complainant organization followed a decision, taken by the Directorate-General for Labour (DGT) in the context of assessing the voting strength of trade unions in very small enterprises (known in France as "TPEs"), in other words, enterprises with fewer than 11 employees, on the admissibility of the candidacy of this organization for the enterprises elections to this end; (ii) before these elections in very small enterprises, the DGT ensures that the trade unions standing as candidates meet the criteria set out in section L. 2122-10-6 of the Labour Code

("Trade unions of employees that meet the criteria relating to respect for the values of the Republic, independence and financial transparency, that have been lawfully established for at least two years and whose statutes entitle them to be present in the geographical area concerned, as well as trade unions affiliated to a representative trade union organization at the national and inter-occupational levels, submit their candidacy to the Ministry of Labour in accordance with the terms and conditions established by decree of the Council of State"); (iii) by a decision of 12 May 2020, the Director-General for Labour drew up the list of trade union organizations eligible to stand as candidates in the elections; (iv) several trade unions challenged this decision before the Judicial Court of Paris, insofar as it validated the candidacy of SAMUP at the inter-occupational level; (v) as an occupational trade union in the arts, music and entertainment sector, SAMUP broadened its scope on 28 February 2020 so that it could also defend the interests of "all employees without exception and all sectors without exception"; (vi) the complainant trade unions considered that this candidacy contravened the conditions established in the aforementioned section L. 2122-10-6, as SAMUP could not claim the status of a "primary" occupational trade union while also representing all employees in all sectors, regardless of their trade or occupation; (vii) in a decision of 31 July 2020, the Judicial Court found that SAMUP's candidacy for the elections was inadmissible, since it could be classified neither as an occupational trade union nor as a union of trade unions; (viii) the cassation appeal filed by SAMUP against this decision was rejected by the Court of Cassation, which upheld the reasoning of the lower courts.

11. With regard to the content of the Court of Cassation's ruling, the Government states that the Court considered, based on the combined application of sections L. 2131-2, L. 2133-1 and L. 2122-10-6 of the Labour Code, that only "primary" occupational trade unions "whose members exercise the same occupation or similar or related trades contributing to the production of specific products" and unions and confederations of trade unions that meet certain conditions may be candidates for elections in very small enterprises. It therefore found that, "[i]n this case, the Judicial Court has noted that, further to an amendment made to its statutes in February 2020, SAMUP had added to its acronym, its scope and its membership conditions the possibility of representing all employees without exception and all sectors of activity. It therefore correctly concluded that SAMUP could no longer be classified as an occupational trade union and that, as it was not a union of trade unions, it could not stand as a candidate in the elections organized to assess the voting strength of trade unions in enterprises with fewer than 11 employees."
12. The Government points out that, according to section L. 2131-2 of the Labour Code, "[t]rade unions or professional associations whose members exercise the same occupation or similar or related trades contributing to the production of specific products or the same liberal profession may be freely established" and that this concept of a primary trade union in France dates back to the so-called Waldeck-Rousseau Act, which was adopted on 21 March 1884 and has never since been amended.
13. As regards the alleged violation of Article 2 of Convention No. 87, the Government states that the sole purpose of this provision of the Convention is to guarantee, as a matter of principle, the freedom of all workers and employers to form and join trade unions. The words "without distinction whatsoever" used in this Article are in fact intended to prevent any legislation from prohibiting, for instance on discriminatory grounds, any workers or employers from setting up a trade union and joining it. The Government states that this does not imply, as SAMUP claims, that national legislation cannot organize the trade union movement by occupation, by requiring primary trade unions to defend the interests only of employees exercising the same occupation or similar or related trades.

14. The Government goes on to point out that: (i) according to French law, primary trade unions may assemble freely within unions that “enjoy all the rights conferred on occupational trade unions by this provision” (section L. 2133-3 of the Labour Code); (ii) French law has a very liberal approach to the establishment of federations and confederations as it does not impose any such restriction on trade unions wishing to assemble; (iii) French law does not prohibit an employee wishing to be represented in respect of several unrelated occupations or trades from joining an occupational trade union in respect of each of those occupations or trades. The rule established in section L. 2131-2 does not therefore call into question the freedom granted to employees to join a trade union.
15. The Government adds that the Court of Cassation’s case law is relatively flexible regarding the definition of “occupation”. In a ruling of 13 January 2009 (No. 07-17.692), handed down specifically with reference to Article 2 of Convention No. 87, the Labour Chamber of the Court of Cassation ruled that any organization defending the interests of persons engaged in the same activity should have the status of a trade union, regardless of whether this activity is carried out by its members “exclusively or on a secondary or occasional basis” or whether “the income derived from such activity constitutes a main or secondary income”. An employee who occasionally engages in a second occupational activity and who derives a secondary income from it will therefore always be able to join a trade union that will defend him or her in the context of this activity.
16. As to the alleged violation of Article 11 of Convention No. 87 as a result of the supposedly disproportionate effects of the aforementioned court decisions, in that the Court neither ordered the trade union to regularize its statutes nor limited the scope of its decision to the dispute before it, the Government states that: (i) the jurisdiction of the Court of Cassation in this case was limited to examining whether the decision of the Judicial Court on the admissibility of SAMUP’s candidacy for the elections in very small enterprises complied with the legal provisions that were in force at that time; (ii) it is not within the powers of the Court of Cassation, at the stage of examining an appeal, and a fortiori when the appeal is dismissed, to issue injunctions against the parties; (iii) in any event, by virtue of Article 3 of Convention No. 87, workers’ and employers’ organizations have the right to draw up their constitutions and rules; (iv) the public authorities must therefore refrain from any interference in the drafting of these statutes, provided that these are not in breach of the law; their role is limited, as far as the wording is concerned, to drawing legal conclusions as regards the rights and powers of trade unions; and (v) pursuant to section 480 of the Code of Civil Procedure, the ruling has only relative authority: *“A judgment that decides in its operative part on all or part of the subject matter of the dispute, or that decides on a procedural plea, a plea of no contest or any other interlocutory application, will, as soon as it is delivered, have the authority of res judicata in relation to the dispute on which it decides.”*
17. Lastly, the Government states that the French legal system recognizes the complete freedom of SAMUP to form a union of trade unions by bringing together other primary trade unions and thus to take on an inter-occupational role while continuing to enjoy its rights. In the disputed ruling, the Court of Cassation recalled this right to form unions.

► III. The Committee’s conclusions

18. *The Committee notes that the present representation concerns the amendment of the statutes of a first-level trade union organization (“primary trade union”) in the music, performing arts and live entertainment sector aimed at giving this union inter-occupational coverage (which, under French*

law, means coverage of several sectors of activity) and enabling it to stand as such in occupational elections. The Committee notes that SAMUP's eligibility to stand as a candidate in these elections as an inter-occupational trade union was challenged in court by several inter-occupational trade union organizations and that both the Judicial Court of Paris and the Labour Chamber of the Court of Cassation invalidated SAMUP's candidacy on the grounds that: (i) as a primary trade union, SAMUP could not claim to have inter-occupational coverage, as that scope was reserved, according to labour law, only for federations and confederations; and (ii) further to the broadening of its statutes, SAMUP was not an occupational trade union either, as that status was reserved, according to labour law, for organizations of workers exercising the same occupation or similar or related trades contributing to the production of specific products.

19. The Committee notes that the complainant organization alleges in this regard that: (i) denying first-level trade unions the possibility of having an inter-occupational scope of activity and reserving that scope only for federations and confederations is contrary to Article 2 of Convention No. 87; and (ii) the effects of the ruling of the Court of Cassation, which also denied SAMUP the status of occupational trade union, are disproportionate, as it would have been sufficient to order the trade union to amend its statutes. The Committee notes that, for its part, the Government states that: since the Waldeck-Rousseau Act was adopted in 1884, the French trade union movement has been composed of primary trade unions, through which workers can organize themselves at the enterprise, trade or sectoral levels, and of federations and confederations, which are the only unions entitled to have inter-occupational coverage, a structure that in no way infringes the freedom of workers to exercise their trade union rights and is in no way contrary to Convention No. 87; and (ii) it was not within the jurisdiction of the Court of Cassation, which was seized to decide on the validity of SAMUP's participation in the occupational elections, to order SAMUP to amend its statutes, and moreover the ruling in question has only a relative effect and is limited to the subject matter of the dispute in question.

Allegation concerning the rejection by the courts of the inter-occupational nature of SAMUP

20. With regard to the first allegation, concerning the rejection by the courts of the inter-occupational nature of SAMUP, the Committee takes note of the information and background details provided by the complainant organization and by the Government, as well as of the publicly available information concerning the present case. The Committee observes that:
 - (i) SAMUP, a long-established first-level trade union in the music, performing arts and live entertainment sector, amended its statutes on 28 February 2020 in order to broaden its scope of activity and to be able to stand as an inter-occupational trade union in the elections organized to assess the voting strength of trade unions in very small enterprises;
 - (ii) according to its new statutes, the union's aim was not only to represent all performers and teachers of music, dance and drama, but also to defend the interests of "all employees without exception and all sectors without exception";
 - (iii) on 12 May 2020, the Directorate-General for Labour decided that SAMUP was eligible as an inter-occupational organization to stand as a candidate in the occupational elections, thus enabling it to participate in the elections as a representative of more than just very small enterprises active in the music, performing arts and live entertainment sector;
 - (iv) numerous inter-occupational trade unions, including the five representative national trade union confederations, challenged the validity of SAMUP's candidacy at the inter-occupational level;

- (v) *both at the first instance and at the cassation level, the courts, on the basis of the combined application of sections L. 2131-2, ¹ L. 2133-1 ² and L. 2122-10-6 of the Labour Code, ³ found that only federations and confederations could have an inter-occupational scope of activity, whereas the aim of first-level unions was to bring together workers "exercising the same occupation, similar trades or related trades contributing to the production of specific products or the same liberal profession".*
- 21.** *The Committee takes note of the allegations of the complainant organization based on the freedom of workers to form and join organizations of their own choosing as enshrined in Article 2 of Convention No. 87. The Committee also takes note of the complainant organization's claim that prohibiting primary trade unions from having inter-occupational scope would restrict the possibility of workers with several jobs in different sectors to exercise their trade union rights. The Committee also takes note of the Government's detailed reply to the effect that: (i) the concept of the primary trade union as an organization whose members exercise the same occupation or similar or related trades contributing to the production of specific products dates back to the Waldeck-Rousseau Act of 1884; (ii) the case law of the Court of Cassation is relatively flexible regarding the definition of "occupation"; (iii) French law provides that primary trade unions may assemble freely within unions that enjoy all the rights conferred on occupational trade unions; (iv) French law has a very liberal approach to the establishment of federations and confederations as it does not impose any such restriction on trade unions wishing to assemble; and (v) French law does not prohibit an employee wishing to be represented in respect of several unrelated occupations or trades from joining an occupational trade union in respect of each of these occupations or trades.*
- 22.** *The Committee recalls that, as stated by the Committee of Experts on the Application of Conventions and Recommendations (CEACR): (i) the purpose of Convention No. 87 is to recognize the freedom of association of all employers and workers in the private and public sectors; ⁴ and (ii) the principal objective of the Convention is to protect the autonomy and independence of workers' and employers' organizations in relation to the public authorities, both in their establishment and in their functioning and dissolution. ⁵ The Committee points out that, at the same time, the CEACR has observed that the legislation in certain countries stipulates that members of a trade union must belong to the same or a similar profession, occupation or branch of activity, or imposes a general structure on the trade union movement. According to the CEACR, such restrictions may only eventually be applied to first-level organizations on condition that these organizations are free to establish inter-occupational organizations and to join federations and confederations in the form and manner deemed most appropriate by the workers or employers concerned. ⁶*
- 23.** *In the present case, the Committee observes that, while it follows from the legislation and the case law of the Court of Cassation that only federations and confederations may claim that the scope of*

¹ Trade unions or professional associations whose members exercise the same occupation or similar or related trades contributing to the production of specific products or the same liberal profession may be freely established.

² Occupational trade unions that have been lawfully established may liaise with each other to review and safeguard their material and moral interests.

³ Trade unions of employees that meet the criteria of respect for the values of the Republic, independence and financial transparency, that have been lawfully established for at least two years and whose statutes entitle them to be present in the geographical area concerned, as well as trade unions affiliated to a representative trade union organization at the national and inter-occupational levels, submit their candidacy to the Ministry of Labour in accordance with the terms and conditions established by decree of the Council of State.

⁴ CEACR General Survey, 2012, para. 53.

⁵ CEACR General Survey, 2012, para. 55.

⁶ CEACR General Survey, 2012, para. 91.

their representation is inter-occupational (in other words covering several sectors of activity), the French legal system, as pointed out by the Government: (i) recognizes the right of workers to freely establish primary trade unions at the enterprise, trade or sectoral levels (section L. 2131-2 of the Labour Code); (ii) primary trade unions may in turn freely organize themselves into federations and confederations (sections L. 2133-1 et seq. of the Labour Code); (iii) neither the establishment of primary trade unions nor the establishment of federations or confederations are subject to any particular conditions (for example, with regard to the number of members or the number of primary trade unions required to create a union of trade unions); and (iv) an individual worker who is engaged in different activities in several sectors may freely join several primary trade unions.

24. Lastly, the Committee observes that: (i) the trade union structure described above, enshrined in French law since 1884 and based on the distinction between primary trade unions and federations and confederations, has not had the effect of restricting the development of a pluralist trade union movement, which is present in all of the country's economic activities; and (ii) in the present case, SAMUP, a long-established primary trade union in the music, performing arts and live entertainment sector, had the possibility to participate in the creation of a union of trade unions in order to be able to take part in action to safeguard the interests of workers in other sectors of activity (at the inter-occupational level). **On this basis, the Committee considers that, in the context and under the conditions described above, the invalidation of the candidacy of SAMUP as an inter-occupational trade union did not violate the provisions of Convention No. 87.**

Allegation concerning the rejection by the courts of the inter-occupational nature of SAMUP

25. The Committee takes note of the complainant organization's second allegation that the Court of Cassation's ruling had disproportionate effects on freedom of association by invalidating not only the candidacy of SAMUP for the elections as an inter-occupational organization (understood as a trade union organization covering several sectors of activity) but also by denying it the status of an occupational trade union (understood as a trade union at the trade, enterprise or sectoral levels). The Committee notes in this respect that the complainant organization alleges that: (i) the Court of Cassation should have limited itself to ordering the trade union to regularize its statutes; and (ii) despite the importance of the issues at play, the Court of Cassation conducted a light review of the first instance decision, which itself had been handed down by a single-judge court within a period of ten days. The Committee also notes that, for its part, the Government considers that: (i) at the stage of examining an appeal in cassation, it is not within the Court of Cassation's jurisdiction to issue injunctions against the parties and, under Article 3 of Convention No. 87, the public authorities must refrain from any interference in the drafting of the statutes of workers' and employers' organizations, provided that these are not in breach of the law; and (ii) pursuant to section 480 of the Code of Civil Procedure, judicial decisions have only relative authority, and are limited to the subject matter of the dispute in question.
26. The Committee takes note of these different elements. The Committee notes that the ruling of the Court of Cassation that is the subject of the present representation upheld the decision of the court of first instance that, further to the addition to its statutes of a reference to "all employees in all sectors of activity", not only could SAMUP not be considered an inter-occupational organization (a scope of activity that is reserved for federations and confederations) but neither could it continue to be considered as an occupational trade union (insofar as, following the addition of this wording, its

new statutes went beyond the scope of activity accorded to primary trade unions) and that, for this reason, it could not participate at all in the occupational elections for very small enterprises.⁷

27. The Committee notes that, other than the Government's statement that judicial decisions have a relative effect limited to the subject matter of the dispute, it has not received any information from the parties on the specific impact that the rejection by the Court of Cassation of the status of SAMUP as an occupational trade union has had on the operation and activities of the union. The Committee observes, however, that it is apparent from publicly available information that: (i) as established in the ruling of the Court of Cassation, SAMUP was unable to take part, either at the inter-occupational level or in the music, performing arts and live entertainment sector, in the occupational elections in very small enterprises that took place from 22 March to 6 April 2021, even though, in November 2020, following the issuance of that ruling, it had removed from its statutes the reference to representing workers in all sectors of activity; and (ii) although it had until then been considered by the labour administration⁸ as representative in the music, performing arts and live entertainment sector, SAMUP had lost this status in 2021 following the occupational elections for very small enterprises in which it was unable to take part.⁹ Lastly, the Committee notes that, according to the information published on 18 March 2024 on the website of the Ministry of Labour, Health and Solidarity, SAMUP is registered on the electoral lists as an occupational organization in the arts and entertainment sector for the trade union elections to be held in very small enterprises in November and December 2024.
28. **Observing that the trade union nature of the complainant organization, which has long been active in the performing arts and live entertainment sector, was not challenged by the legal proceedings brought against it, the Committee regrets that SAMUP was denied under the aforementioned judicial decisions of 2020 the status of an occupational trade union and that, as a result, it was unable to participate in the 2021 occupational elections in very small enterprises in the sector of activity in which it has traditionally been active and for which it was at the time considered to be representative. Recalling the emphasis placed by Convention No. 87 on the protection of the right to organize (Article 11), the Committee stresses the importance of limiting the decisions of the various authorities, whether administrative or judicial, on the validity of the statutes of trade unions to the irregularities found so as not to hinder unduly the legitimate exercise of trade union activity and the possibility for such organizations to safeguard the interests of their members. The Committee invites the Government to take these observations into consideration in the application of Convention No. 87 and to inform the various competent authorities accordingly.**
29. **Observing, however, that the complainant organization, on the basis of its statutes as revised further to the ruling of the Court of Cassation, was registered in March 2024 as an occupational organization in the arts and entertainment sector on the lists for the elections in very small enterprises to be held in November and December 2024, the Committee understands that SAMUP is currently able to carry out its activities and to safeguard the**

⁷ Paragraph 8 of the Court of Cassation ruling states: "the Judicial Court has noted that, following an amendment made to its statutes in February 2020, SAMUP had added to its acronym, its scope and its membership conditions the possibility of representing all employees without exception and all sectors of activity. It therefore correctly concluded that SAMUP could no longer be classified as an occupational trade union and that, as it was not a union of trade unions, it could not stand as a candidate in the elections used to assess the voting strength of trade unions in enterprises with fewer than 11 employees".

⁸ Decision of 10 November 2017 establishing the list of trade union organizations recognized as being representative in the national collective agreement for live performance enterprises in the private sector (No. 3090).

⁹ Decision of 6 October 2021 establishing the list of trade union organizations recognized as being representative in the national collective agreement for live performance enterprises in the private sector (No. 3090).

interests of its members in accordance with Convention No. 87. On this basis, the Committee considers that the present representation is closed.

► IV. The Committee's recommendations

30. The Committee recommends that the Governing Body:

- (a) approve the present report;**
- (b) invite the Government to take into consideration the observations made in paragraph 28 of the Committee's conclusions in the context of the application of Convention No. 87 and to inform the different competent authorities accordingly;**
- (c) make this report publicly available and close the present representation procedure.**

Geneva, 31 May 2024

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