

Committee on the Application of Standards

Date: 16 May 2024

Governments appearing on the list of individual cases have the opportunity, if they so wish, to supply written information to the Committee.

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

Tunisia (ratification: 1957)

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

The Government has provided the following written information.

Further to the observations of the Committee of Experts concerning the violation of the right to organize, it should be noted that Tunisia has never failed in its ILO-related obligations concerning the effective application of the International Labour Conventions. It has always strived to ensure the proper application of ratified Conventions, which currently total 64, including Convention No. 87, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Workers' Representatives Convention, 1971 (No. 135).

We also refer, in this regard, to our country's accession to the fundamental principles and rights at work, and to their application in the field, and observance of the national legislation on the right to organize contained in the Tunisian Constitution, the Labour Code, sectoral and framework collective agreements, and powers and capacities granted to trade union members.

It is also important to note that the Ministry of Social Affairs applies equal treatment for all social partners, including occupational organizations and unions, respecting neutrality, transparency and the preservation of social peace, as part of strengthening the right to organize and upholding the law in a work environment that is free from violence, pressure and threats of any kinds, all in the national interest.

I. Arrest of the Secretary General of the Tunisian motorway trade union, Anis El Kaabi

The Secretary General of the Tunisian motorway trade union, Anis El Kaabi, was arrested on 31 January 2023 and detained as part of an open investigation into the exploitation of a public servant aimed at undermining the administration or agreeing to prevent the exercise of public service through collective resignation. In accordance with sections 96 and 107 of the Criminal Code, Anis El Kaabi was released on Thursday 18 April 2024. The indictment chamber

of the Tunisian Court of Appeals therefore decided to release him under the current conditions – free but with a travel ban – and on 5 March 2024 the Court of Cassation rendered null and void the decision of the indictment chamber to refer him to the criminal chamber.

II. List of essential services

Section 381*ter* of the Labour Code has reproduced the definition of the notion of “essential services” adopted by the Committee on Freedom of Association, that is, “to determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population’s interests”. Section 381*ter* therefore stipulates that “a service is considered essential where the interruption of the work would endanger the life, safety or health of the whole or part of the population”. This definition has in practice not given rise to any problem or difficulty, mainly owing to the deeply rooted tradition consisting of the resolution of collective labour disputes and all related issues, by means of social dialogue and consensus. This consensual approach, taken by the social partners (employers, workers’ unions, public authorities) has continuously resulted in the signing of agreements between employers and workers on the achievement of minimal work in the essential services, particularly in the public services (hospitals, water and electricity providers, and so forth). This practice has allowed us to avoid using the compulsory arbitration provided for in section 381*ter* of the Labour Code, nor the requisition mentioned in section 389 of the Code.

III. Amendment of the Labour Code

Our country is currently undergoing a legislative overhaul in the area of labour and industrial relations, aimed at progressively amending the labour legislation, strengthening conditions of work and workers’ fundamental rights, eradicating all forms of precarious labour and reinforcing job security, which are all currently part of our overarching priorities. In this framework, and in accordance with the instructions of the President of the Republic of Tunisia, Mr Kais Saied (February 2024), and with the objective of providing decent working conditions to workers in the public and private sectors, and eradicating precarious jobs while ensuring institutional continuity and sustainability, the Ministry of Social Affairs has undertaken an updated and urgent inventory of outsourcing agencies, and has stepped up campaigns on precarious work by monitoring compliance with the decent work principles, aimed at setting out visions for legal mechanisms and reforms to address this type of employment. To this end, two committees have been appointed at the level of the Cabinet and the Ministry of Social Affairs, responsible for preparing a Bill on the amendment to the Labour Code to put an end to all forms of precarious work.

1. Affiliation of children to trade unions

Concerning section 242(2) of the Labour Code which stipulates that minors over the age of 16 may join a trade union unless their father or guardian objects, it should be noted that the legal age of majority has been standardized in Tunisian legislation to 18 years. Likewise, the legislator adopted the age of 18 as the starting point for majority in a number of areas, such as marriage, which is 18 years for both sexes under section 5 of the Personal Status Code, or for obtaining a driving licence and identity card. Further, the ratified international labour standards have contributed to the progressive establishment of a system to protect against child labour and uphold the values of humanitarian law. The original framework of this system is in the 1966 Labour Code, the provisions of which, from certain perspectives, have been strengthened based on the 2022 Constitution, and have been further incorporated into other

provisions included in texts for general application. In addition, the ratified international labour standards have been seamlessly introduced into Tunisian law. The Labour Code, moreover, has enabled children to enter working life, with conditions for special protection and, in this context, it should be noted that trade union membership for children under 18 years is not a restriction, given that the legislation constitutes an indivisible whole and cannot contain conflicting provisions. Hence why the legislator insisted on the status of “worker” for membership of a trade union and section 242 of the Labour Code stipulates that trade unions or occupational associations or unions of persons exercising the same occupation, similar trade or related occupations leading to the production of specific products, or the same liberal profession, may be formed. This section does not include the requirements for the membership of workers in trade unions, in accordance with which they have to be at least 18 years old, but instead provides for the possibility for minors to join trade unions unless their father or guardian objects. In addition, in the case of persons who have not reached the legal age of majority, most of their obligations are considered null and void and inappropriate as they do not yet have legal capacity, all of which benefits minors who have not reached puberty and legal maturity. Likewise, the Labour Code classifies this category of children as young workers as it considers them, within the meaning of section 353 of the Labour Code, to be apprentices and not workers. They receive compensation and not a wage. Under section 353, any person found to have knowingly employed, as an apprentice, worker or employee, young people under the age of 18 who do not fulfil the terms of their apprenticeship contract, or who have not been duly released, shall be liable to pay compensation to the head of the abandoned establishment or workshop. In accordance with the foregoing, the national legislation is wholly consistent in this regard and is in line with the interests of minors and protection of children.

2. Access of foreigners to the functions of trade union leadership

Regarding the prior approval that must be granted to foreign nationals to exercise trade union functions, this does not limit foreign workers’ right to organize, as they can be trade union members and exercise the right to strike in the same capacity as Tunisians, even if they do not have the possibility of participating in trade union leadership. Likewise, Chapter II of the Labour Code establishes the conditions for the recruitment of foreign labour. Section 258 stipulates that “The provisions of this chapter establish the conditions for the recruitment of foreign labour in Tunisia, in accordance with the agreements concluded between the Tunisian Republic and foreign countries and with specific legal provisions.” In addition, section 278 of the Labour Code stipulates that the declaration of establishment shall necessarily include the nationality of the foreign workers employed, which requires verification of the residence permit numbers, the date of issue and the period of validity. These sections are designed to protect foreign workers against abuse and non-compliance with the principles of decent work, on the one hand, and to maintain general order and social peace, on the other. Likewise, the Government considers that the five-year period provided for in section 251(1) of the Labour Code is a reasonable period. The same period is required, for example, for European Union citizens to obtain the right of permanent residence in another European Union country after having resided there legally and continuously for five years.

3. Restrictions to the right to strike

In this respect, Tunisian legislation complies with international labour conventions, including the Convention, even though it does not explicitly provide for the right to strike. Thus, the provisions of Article 3(1) of the Convention are formulated in such a general manner that they are open to wide interpretation. These provisions do not specifically deal with the conditions for exercising the right to strike, but essentially deal with the rights of workers’ and

employers' organizations 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. National legislation has enshrined freedom of association and has attempted to close this loophole. It even includes provisions that are broader than those contained in the Convention and in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Freedom of association in our country is thus a constitutional freedom, the Constitution guaranteeing the right to organize and the right to strike. Article 21 stipulates that "All citizens have equal rights and duties, and are equal before the law without discrimination. The State guarantees the individual and collective rights and freedoms of all citizens". In addition, article 40 of the Constitution requires that "the freedom to form political parties, trade unions and associations is guaranteed. Political parties, trade unions and associations undertake in their regulations and activities to respect constitutional provisions and the law, and financial transparency and non-violence". Both the right to organize and the right to strike are guaranteed by article 41, which stipulates that "The right to organize, including the right to strike, is guaranteed". It can therefore be said that the protection of the right to strike does not pose any problem in national legislation or in practice, and considering that Tunisia has acceded to the International Covenant on Economic, Social and Cultural Rights, in accordance with Act No. 30 of 29 November 1968, section 8 of which provides that the right to strike is guaranteed, provided that it is exercised in accordance with the legislation of the country concerned. Likewise, the Labour Code has codified this right through provisions that are fully in line with those contained in the Convention, in particular Article 3 of the Convention, which provides that "Workers' and employers' organisations shall have the right [...] to organise their administration and activities and to formulate their programmes", and Article 8, which provides that "The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention". Regarding the approval by workers' trade union federations of a strike or work ban, to date the Government has not received any comments or complaints from active occupational associations of employers or workers in Tunisia. Even the rules of procedure of employers' and workers' organizations include the requirement that their central authority approve strikes or work bans, in accordance with the Labour Code. Consequently, strike action in our country does not pose any problem and national legislation does not therefore violate the provisions of the Convention, which has not, as mentioned above, established the right to strike, thus opening the way to various interpretations. In order to address this vacuum and ambiguity, the Governing Body decided to raise the matter before the International Court of Justice to seek its advisory opinion. The Government therefore considers that sections 376 *bis*, 376 *ter*, 387 and 388 of the Labour Code are consistent with the interests of occupational associations of employers and workers in Tunisia.

IV. Representativeness criteria

The Government, (the Ministry of Social Affairs) is working with the social partners to develop a vision of a system of trade union representation that is compatible with the parties, and in line with the particularities of the economic and social situation and the system of industrial relations, with the support of the International Labour Office in Tunisia. In the context of setting standards for trade union representativeness, and in order to close the legal loophole in the legislation defining these standards and regulating trade union pluralism, and in accordance with the provisions of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and following the seminars organized with the ILO on potential representativeness standards, the Ministry, with a view to ensuring that the determination of representative organizations at the sectoral and enterprise level is based on

clear, pre-established, objective criteria adopted after consultation with all the concerned workers' and employers' organizations, invited in writing the occupational associations, namely, the Tunisian Union of Industry, Trade and Handicrafts (UTICA), the General Federation of Tunisian Workers (UGTT), the Tunisian Federation of Agriculture and Fisheries (UTAP), the Tunisian Labour Organization (OTT), the Tunisian Federation of Insurance Companies, the Tunisian Federation of Newspaper Directors, the Tunisian Professional Association of Banks and Financial Institutions, the occupational association of Tunisian enterprise owners, the Tunisian Farmers' Union (SYNAGRI), the Tunisian General Confederation of Workers (CGTT), the Tunisian Workers' Union (UTT), the Confederation of Citizen Enterprises of Tunisia (CONNECT), the Tunisian Hotel Trade Federation, the Tunisian Workers' Federation, the Tunis transport union and the National Union of Tunisian Journalists, in order to examine the proposed standards and express their opinion. Our departments received a number of related responses from the following occupational associations: CONNECT, UTAP, SYNAGRI, OTT, UTT, CGTT, the Tunis transport union and the occupational association of Tunisian enterprise owners. The others did not furnish any response. Likewise, the Ministry invited the most representative organizations to attend a working meeting for this purpose, but they did not attend. To address this situation, the Ministry is currently considering renewing the dialogue with all concerned parties, with the support of the ILO in Tunisia, and drawing on a wide range of comparative experiences planned as part of upcoming training programmes. We recently examined and shared documents and studies on the Algerian experience of legislation on trade union representativeness.