



Governing Body

353rd Session, Geneva, 10–20 March 2025

Institutional Section

INS

Date: 13 February 2025

Original: Spanish

Fifteenth item on the agenda

Report of the Director-General

Third Supplementary Report: Report of the tripartite Committee set up to examine the representation alleging non-observance by the Dominican Republic of Conventions Nos 95, 102, 111 and 118

► Contents

	Page
I. Introduction	3
II. Draft decision	4
III. Examination of the representation	4
A. The complainant's allegations	4
B. The Government's reply	5
IV. The Committee's conclusions	6
Convention No. 111	6
Convention No. 95	7
Convention No. 102	8
V. The Committee's recommendations	8

► I. Introduction

1. By a communication dated 10 October 2023, the Union for Career Diplomats of the Dominican Republic (UDICARD) made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by the Dominican Republic of the Protection of Wages Convention, 1949 (No. 95), the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equality of Treatment (Social Security) Convention, 1962 (No. 118). By communications received on 8 January, 4 and 5 March and 3 May 2024, the complainant submitted additional information. The Dominican Republic has ratified Conventions Nos 95, 102 and 111, and has not ratified Convention No. 118.

2. The following provisions of the ILO Constitution relate to the representation:

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.

3. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, the Director-General acknowledged receipt of the representation, informed the Government of the Dominican Republic thereof, and brought the representation before the Officers of the Governing Body.
4. At its 351st Session (June 2024), the Governing Body declared that the representation was receivable with regard to Conventions Nos 95, 102 and 111, and decided to set up a tripartite committee to examine it. The committee is composed of Mr Carlos Mata Prates (Government member, Uruguay), Ms Laura Giménez (Employer member, Argentina) and Mr Antonio de Lisboa Amancio Vale (Worker member, Brazil). In addition, the Governing Body decided that the representation was not receivable with regard to Convention No. 118, as it had not been ratified by the Dominican Republic.
5. The Government of the Dominican Republic sent its observations in communications received on 7 March, 30 April and 15 August 2024.
6. The Committee was informed that the parties would begin a voluntary conciliation procedure at the national level regarding the allegations made, which began in September 2024. In a communication received on 15 December 2024, the complainant organization expressed its intention to suspend the conciliation talks with the Government.

7. The Committee met on 30 January and 13 February 2025 to examine the representation and adopt the report.

► II. Draft decision

8. **In the light of the conclusions and recommendations set out in the report of the Committee contained in document GB.353/INS/15/3, the Governing Body:**
 - (a) **approved the report of the Committee and, in particular, the conclusions formulated in paragraphs 24, 27 and 31;**
 - (b) **decided to make the report publicly available and to close the representation procedure.**

► III. Examination of the representation

A. The complainant's allegations

9. UDICARD alleges non-observance by the Government of the Dominican Republic of the Protection of Wages Convention, 1949 (No. 95), the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
10. The complainant organization states that, from 16 August 2020, the Government of the Dominican Republic issued a series of decrees for unlawful collective redundancies (mass dismissals)¹ based on the grounds of political opinion, which led to the unilateral termination of the employment relationship of a large number of career diplomats attached to the Ministry of Foreign Relations. UDICARD considers that these mass dismissals are unlawful and void, as declared by the country's courts. In this respect, the complainant organization attachés several legal decisions handed down by the Supreme Court of Justice which state that the dismissal of certain officials was contrary to the protection accorded to civil service positions.
11. In particular, the complainant organization alleges that the mass dismissals reported do not comply with the provisions of Article 1 of Convention No. 111, as the Government appears to have assumed that the affected workers opposed its political position and decided to dismiss them on the grounds of political opinion. They add that consideration had not been given to the job security and employment stability that are characteristic of public servant positions in the civil service.
12. The complainant organization alleges that the Government is violating Article 2 of Convention No. 95 as, since the mass dismissals that occurred as a result of the above-mentioned decrees issued as from 16 August 2020, the payment of the wages of the civil servants attached to the Ministry of Foreign Affairs covered by these decrees has been suspended.

¹ In a communication of 8 January 2024, the complainant organization provided the Committee with copies of some of the decrees mentioned (Decrees Nos 362-2020, 556-20, 589-20, 535-20, and 140-22), by way of which the appointments of a number of officials at the above-mentioned Ministry were repealed.

13. Lastly, with regard to Convention No. 102, in the view of the complainant organization, the mass dismissals resulted in the suppression of acquired rights and the abolition of employment benefits such as: (a) medical care; (b) sickness benefits; (c) unemployment benefits; (d) old-age benefits; (e) employment injury benefits; (f) family benefits; and (g) survivors' benefits. According to the complainant organization, this all constitutes non-observance of Convention No. 102. Finally, in the additional information sent on 8 January 2024, the complainant organization alleges that the mass dismissals caused the death of three diplomats and that a further six are living with chronic health conditions for the same reason.

B. The Government's reply

14. The Government indicates that the workers mentioned by the complainant organization are not and have not been civil servants legally incorporated into the Special Diplomatic Service, but were working in the capacity of civil servants subject to free appointment and removal from office, with temporary diplomatic or consular status, and as such their dismissal or removal from office was lawful. The Government indicates that the Public Service Act, No. 41-08, promulgated on 16 January 2008, establishes in article 18 four categories of civil servants: (i) public officials or public servants subject to free appointment and removal from office; (ii) career public officials or public servants; (iii) public officials or public servants of simplified status; and (iv) temporary employees. The Government indicates that, with regard to officials in the first category, the authority that appoints them can order their removal at any time and that, in keeping with article 65 of Act No. 630-16, promulgated on 28 July 2016, they acquire diplomatic or consular status on a temporary and not permanent basis.
15. The Government also indicates that the Civil Service and Administrative Careers Act, No. 14-91, stipulates as a fundamental requirement for entry to any position in general administrative careers and special administrative careers (such as diplomatic careers) that the candidate must participate in an open competition. The Government states that all the workers mentioned by the complainant organization began their employment relationship with the Ministry of Foreign Affairs when Act No. 14-91 was in force. It also indicates that none of the workers in question took part in an open competition to fill a career position, none holds a certificate of incorporation into the Special Diplomatic Service of the Ministry of Public Administration (MAP) and, on the basis of regulations in force at the time, now repealed, none has been incorporated into the Special Diplomatic Service as a career public servant or career civil servant. The Government attaches two rulings from the Constitutional Court which indicate that the dismissal of the officials in question was the prerogative of the executive branch as the position was subject to free appointment. The Government also indicates that it has lodged appeals with the Constitutional Court in respect of the rulings mentioned by the complainant organization.
16. With regard to the alleged health problems suffered by some of the workers mentioned by the complainant organization, the Government indicates that there was no medical leave in place at the time of termination, nor indicated in the documentation provided with the complaint nor in the personnel files of the Human Resources Department of the Ministry of Foreign Affairs. Consequently, the Government continues, there can have been no violation of the legal, national or international protections related to maintaining the employment relationship of persons on sick leave, which have been duly notified to and processed by the employing entity.
17. Lastly, and with regard to the allegations concerning Convention No. 102, the Government indicates that none of the workers mentioned by the complainant organization was on medical leave at the time of the dismissals. Furthermore, the Government continues, when a member

of the contributory scheme of the Dominican Social Security System (SDSS) becomes unemployed, they are entitled to the benefits of the Subsidized Scheme, through the National Health Insurance (SENASA), which includes coverage by the National Medical Care Fund for Traffic Accidents, and old-age, disability and survivors' insurance. Regarding the pension system, the Government indicates that all the claimants are protected by their respective individual capital accumulation accounts (CCI), being required to comply with the requirements for access to a pension or the return of the accumulated funds together with the returns accredited by their pension fund administrators (AFP), as appropriate. Finally, and according to the Government, the Ministry of Foreign Affairs does not have on file any requests from the workers mentioned by the complainant organization relating to rights derived from the State's pay-as-you-go pension scheme, managed by the General Directorate of Retirement and Pensions of the Ministry of Finance.

► IV. The Committee's conclusions

18. The Committee's findings are based on its review of the allegations presented by the complainant organization and of the replies sent by the Government of the Dominican Republic.
19. The Committee observes that UDICARD alleges that the executive decrees issued as from 16 August 2020 resulted in the termination of the employment relationship of a group of civil servants attached to the Ministry of Foreign Affairs, and consequently the suspension of payment of their wages, with some of the workers suffering serious health issues. According to UDICARD, this does not comply with the provisions of Article 1 of Convention No. 111, Article 2 of Convention No. 95, or the provisions of Convention No. 102.

Convention No. 111

20. The Committee observes that the complainant organization alleges non-observance of Article 1 of Convention No. 111, which provides as follows:

Article 1

1. For the purpose of this Convention the term **discrimination** includes:
 - (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
 - (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies.
 2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
 3. For the purpose of this Convention the terms **employment** and **occupation** include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.
21. More specifically, the Committee observes that the complainant organization alleges that the mass dismissals reported violated the employment stability of the workers affected and constitute discrimination on the grounds of political opinion in violation of the Convention, as the Government appears to have assumed that the claimants opposed its political position".

The Committee notes the Government's indication that, under the requirements of Act No. 14-91, in force at the time the affected workers started their employment relationship with the Ministry, those workers were civil servants subject to free appointment and removal from office and that consequently their dismissal was lawful.

22. The Committee considers that the protection against discrimination on the basis of political opinion stipulated in the Convention covers the activities of expressing or demonstrating opposition to established political principles and opinions, since the protection of opinions which are neither expressed nor demonstrated would be pointless, as would discrimination based on political affiliation.
23. The Committee notes that the allegations presented make no reference to political affiliation or to activities for which political opposition would have been expressed or demonstrated by the civil servants affected by the dismissals. The Committee also observes that both the complainant organization and the Government attached to their communications rulings handed down by various judicial bodies in which no reference is made to allegations or situations involving discrimination based on political opinion, with the main focus instead being on whether the dismissals are permissible under the applicable contractual regime.
24. ***In these circumstances and in the light of the above, the Committee considers that the alleged events do not constitute a violation of the obligations under Convention No. 111 by the Dominican Republic.***

Convention No. 95

25. The Committee notes the complainant organization's allegation that the dismissal resulting from the above-mentioned executive decrees resulted in the payment of the wages of the public servants mentioned being suspended. According to the complainant organization, the non-payment of those wages owing to the termination of the employment relationship violates Article 2(1) of Convention No. 95. The Committee observes that the Government upholds the legality of the dismissals in question in its reply.
26. The Committee recalls that Article 1 of Convention No. 95 defines the term "wages" as "remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered"; the Committee also recalls that Article 2(1) of the Convention mentioned by the complainant organization provides that the same applies to all persons to whom wages are paid or payable.
27. In this respect, the Committee recalls that under Article 1 of the Convention, the term "wages" means the remuneration payable by an employer to an employed person in virtue of a contract of employment for work done or to be done or for services rendered or to be rendered. The Committee also observes that it is clear from the communications sent by the complainant organization that the suspension of the payment of the wages of the workers subject to the decrees in question is the result of the termination of the employment relationship between the workers in question and the Ministry of Foreign Affairs. Consequently, the Committee considers that at the time of the implementation of the dismissal decrees, the workers in question ceased providing the services inherent to the position they held. ***In the light of the above, the Committee considers that there is no violation of Article 2(1) of the Convention, given that the termination of the employment relationship, when it coincides with the cessation of the provision of the relevant services, puts an end to the obligation of the employer to pay wages.***

Convention No. 102

28. The Committee notes that the complainant alleges non-observance of Convention No. 102 and indicates in general terms that the mass dismissals resulted in the suppression of acquired rights and the abolition of employment benefits as well as in serious health issues in nine cases (including death in three of them).
29. The Committee notes the Government reports that:
 - (a) there was no medical leave in place at the time of termination;
 - (b) when a public or private employee affiliated to the contributory scheme becomes unemployed, they are protected by the Subsidized Scheme of the SDSS through the National Health Insurance, including the coverage provided by the old-age, disability and survivors' insurance;
 - (c) all the complainants are protected by their respective individual capital accumulation accounts and there are no requests relating to rights derived from the State's pay-as-you-go pension scheme.
30. The Committee notes that the complainant did not refer specifically to provisions of Convention No. 102 that were not complied with and did not provide specific information relating to a possible loss of acquired rights or a loss of employment benefits such as sickness benefits, old-age benefits or survivors' benefits. The Committee also notes that unemployed workers in the country benefit from the protection of the Subsidized Scheme of the SDSS through the National Health Insurance, including the coverage of the old-age, disability and survivors' insurance.
31. ***In these circumstances, and taking into account the information available to it, the Committee considers that the consequences arising from the dismissals reported do not constitute violations of Convention No. 102.***

► V. The Committee's recommendations

32. **In the light of the conclusions contained in paragraphs 18 to 31 above with regard to the matters raised in the representation, the Committee recommends that the Governing Body:**
 - (a) **approve the present report and, in particular, the conclusions formulated in paragraphs 24, 27 and 31;**
 - (b) **make the present report publicly available and close the procedure initiated by the representation.**

Geneva, 13 February 2025

(Signed) Mr Carlos Mata Prates
(Government member)

Ms Laura Giménez
(Employer member)

Mr Antonio de Lisboa Amancio Vale
(Worker member)