International Labour Organization

▶ GB.354/INS/9/3

Governing Body

354th Session, Geneva, 14 June 2025

Institutional Section **INS**

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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 Costa Rica of Conventions Nos 87, 98 and 135

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▶ I. Introduction

1. In a communication dated 28 April 2016, the Confederation of Workers Rerum Novarum (CTRN), the Trade Union Organization Movement of Costa Rican Workers (CMTC), the Unitary Confederation of Workers (CUT), and the Juanito Mora Porras Social Confederation (CSJM) made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by Costa Rica of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

2. At its 328th Session (October–November 2016), the Governing Body declared that the representation was receivable and sent it to the Committee on Freedom of Association for examination in accordance with articles 24 and 25 of the ILO Constitution (Case No. 3241).

3. Costa Rica ratified Convention No. 87, Convention No. 98 and Convention No. 135.

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

> Article 24
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> *Representations of non-observance of Conventions*
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> 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.
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> Article 25
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> *Publication of representation*
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> 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.

5. In accordance with the decision of the Governing Body, 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, the Committee established a tripartite subcommittee to examine the representation composed of Ms Anousheh Karvar (Government member, France), Mr Fernando Yllanes (Employer member, Mexico) and Mr Gerardo Martínez (Worker member, Argentina).

6. Through a communication dated 18 April 2019, the decision of the Governing Body, adopted at its 334th Session (October–November 2018) was communicated to the complainant organizations and the Government, through which the Committee on Freedom of Association was instructed to review the representations presented in accordance with article 24 of the Constitution through an ad hoc tripartite committee, as well as the possibility of allowing an optional voluntary conciliation procedure or other measures at the national level, subject to the agreement of both parties. In communications of July 2019, the Government demonstrated its interest in tackling the questions raised in the representation through a process of conciliation at the national level; however, the complainant organizations rejected that approach, alleging the persistence, and even the worsening, of violations of the cited international standards.

7. The CTRN, the CMTC and the General Confederation of Workers (CGT) sent additional information relating to the representation in communications dated 18 February 2020 and 1 September 2023.

8. The Government sent its observations in communications dated 11 November 2016, 7 August and 1 November 2017, 22 January 2021, 29 September 2022 and 29 August 2023.

9. The Committee held its meeting on 5 June 2025.

▶ II. Draft decision

10. **In the light of the conclusions and recommendations set out in the report of the Committee contained in document GB.354/INS/9/3, the Governing Body:**

(a) **approved the report of the Committee;**

(b) **requested the Government of Costa Rica to, in the framework of the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), take into account the observations set out in paragraphs 43, 45, 53, 59, 60 and 63;**

(c) **requested the Government to provide information in this respect for review by the Committee of Experts on the Application of Conventions and Recommendations;**

(d) **decided to make the report publicly available and to close the representation procedure.**

▶ III. Examination of the representation

A. The complainant organizations' allegations

11. The complainant organizations allege that, in the past two decades, the Government has not only not promoted the negotiation of collective bargaining agreements in the public sector, but that it has also adopted policies aimed at restricting them, limiting their content and facilitating their gradual elimination.

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12. The complainant organizations allege that, in 2001, Executive Decree No. 29576-MTSS was promulgated, establishing the Regulations for the negotiation of collective agreements in the public sector, the provisions of which violate the principles of free and voluntary collective bargaining enshrined in Convention No. 98. The organizations allege that, since the promulgation of the Decree – through which the Commission on Policies for Negotiating Collective Bargaining Agreements in the Public Sector was created, which comprises exclusively representatives of the executive authorities – the full exercise of collective bargaining has been hindered by preventing the parties involved from negotiating independently and within their institutional and budgetary realities. The complainant

organizations allege that collective bargaining in the public sector has become subject to the control and prior authorization of the above-mentioned Commission, which unilaterally determines the subjects that can or cannot be the subject of negotiation and does not grant any hearing or participation to workers' representatives.

Judicial removal of clauses from collective bargaining agreements through legal claims of unconstitutionality

13. The claimant organizations allege that, through judgments issued between the start of the 1990s and the middle of 2023, the Constitutional Chamber of the Supreme Court of Justice (hereafter, the Constitutional Chamber) has accepted numerous unconstitutional actions against clauses of collective bargaining agreements in the public sector, which has, as a result, led to the progressive elimination of rights previously acquired by workers. The organizations refer to claims of unconstitutionality by various state entities such as the Legislative Assembly, the Office of the Comptroller General of the Republic, the Office of the Attorney General of the Republic, or a political party and indicate that this has led to the elimination of a significant number of clauses of collective bargaining agreements in the public sector (the majority in municipalities). The claimant organizations cite various articles in the press that indicate that claims of unconstitutionality are directed against abusive clauses of collective bargaining agreements, with the aim of guaranteeing the rational use of public resources. The claimant organizations affirm that those actions, having resulted in the elimination of multiple clauses, have essentially rendered collective bargaining agreements in the public sector meaningless.

14. The claimant organizations refer to multiple judgments issued by the Constitutional Chamber relating to collective bargaining agreements signed by municipalities, banks and public universities. To illustrate their point, they cite: (i) the judgment of 26 October 2016, which declared a clause of the collective bargaining agreement of the Costa Rican Oil Refinery (RECOPE) to be unconstitutional because it contradicted the principles of reasonableness and proportionality, as it grants benefits without objective justification linked to a better provision of service; (ii) the judgment of 10 May 2023, which partially upheld an unconstitutional action and annulled various provisions of the collective bargaining agreement with the Municipality of Talamanca and the trade union, including article 27 on the "holiday bonus"; and (iii) the judgment of 24 May 2023, which also partially upheld an action and annulled provisions of the collective bargaining agreement with the Municipality of Escazú, such as article 38 relating to a performance-related economic benefit. In addition, they mention examples in which the Chamber declared to be unconstitutional clauses relating to financing for end-of-year celebrations, marriage leave, wage increases on the basis of merit and experience, paid leave for trade union activities, and cuts to the plan that issues grants to children of employees.

Denunciation of collective agreements

15. The claimant organizations indicate that the denunciation of a collective bargaining agreement, which indicates the desire of one of the two parties to renegotiate all or part of the collective bargaining agreement, thereby preventing its automatic renewal, is provided for in paragraph (e) of article 58 of the Labour Code. This article establishes that collective bargaining agreements should be valid for a period of between one and three years and that, if it is not denunciated at least one month prior to the date of its expiry, it will be renewed automatically for the same duration. The claimant organizations indicate that the policy of the Government of denunciating collective bargaining agreements did not generate significant concern in the trade union movement, provided that it was carried out in accordance with the article cited.

16. The organizations indicate that the concern arose as a result of ruling DAJ AE 237 15, issued in 2015 by the Directorate of Legal Affairs (DAJ) of the Ministry of Labour and Social Security (MTSS) in response to a consultation on the validity of a collective bargaining agreement signed in 1998 between a municipality and its trade union. According to that ruling: (i) the collective bargaining agreement had been denunciated in 2004 and then a process of renegotiation was begun that had not been finished; (ii) more than ten years had passed since the denunciated had occurred and the DAJ indicated that the period for negotiating the next collective bargaining agreement could not be unlimited, not only because of the legal insecurity that it would generate, but also because some rules change for public entities, especially those relating to expenditure; (iii) the DAJ indicated that in cases where negotiations had stopped (as in this case), the extension clause cannot remain unchanged indefinitely; and (iv) paragraph (d) of article 56 of the Labour Code provides that if 30 days have passed without an agreement being reached in the negotiation process, either of the parties has the right to refer the matter to the labour courts in order to resolve the disputed elements. In that ruling, the DAJ indicated, additionally, that the rights derived from normative clauses contained in collective bargaining agreements do not constitute acquired rights that can be incorporated into individual labour contracts. In this regard, the DAJ indicated that: (i) since 2005, the Second Chamber of the Supreme Court of Justice had substantially modified its traditional position relating to the theory of incorporation of those clauses and (ii) in accordance with this new jurisprudential criterion, the loss of validity of a collective bargaining agreement implies the disappearance of its normative clauses, such that all the rights originating from a collective bargaining agreement cease when it expires, and any related dispute should be resolved by the courts.

17. The claimant organizations indicate that: (i) in the light of that ruling, it expects that collective bargaining agreements will be denunciated, given that, with their denunciation, they cease to exist, which means that the rights that had been negotiated disappear and are not incorporated into individual contracts; (ii) the cited ruling grants only one month to negotiate, which is not sufficient; (iii) that period will be left to elapse without beginning negotiations, with the aim that it will be the labour judge who determines which elements on the original list of demands will be maintained and which will be eliminated; (iv) with the aim of destroying collective bargaining agreements, the Government requested the DAJ to expand the scope of ruling DAJ-AE-237-15 and, since then, the denunciation of public sector collective bargaining agreements has become the main strategy for their elimination; (v) they requested the Ministry of Labour to annul the ruling, but the Ministry refused to do so; and (vi) the ruling has been used to threaten trade unions with the fact that the denunciation of a collective bargaining agreement implies that it will no longer be valid, and that there is no obligation to apply the benefits of the previous collective bargaining agreement nor to negotiate those benefits in the new collective bargaining agreement because they are not acquired rights.

Act No. 9635 on strengthening public finances

18. The claimant organizations indicate that transitional article XXXVI of Act No. 9635 on strengthening public finances (Ley de Fortalecimiento de las Finanzas Públicas; hereafter, Act No. 9635), adopted on 3 December 2018, obliged the heads of public entities to denunciate collective bargaining agreements when they expired and indicated that, if it was decided to renegotiate them, they should be fully adjusted to the content of that Act and the regulations set out by the Executive Branch. They highlight that, in an optional legislative consultation on the legislative file that led to Act No. 9635, the Constitutional Chamber, in Vote No. 19511 of 2018, indicated that a provision imposing the mandatory denunciation of collective bargaining agreements and limiting the possibility of improving working conditions without any flexibility would be unconstitutional. The claimant organizations allege that, while the Chamber clarified

that the heads of public entities have the power but not the obligation to denunciate a collective bargaining agreement, the Government is not applying the criterion of the Constitutional Chamber, which is a violation of the principle of free and voluntary negotiation established in Convention No. 98.

Approval of collective bargaining agreements

19. The claimant organizations allege that the MTSS has acted as a detractor of collective bargaining agreements by preventing their approval if they contain clauses that contravene the limits established in Act No. 9635. The claimant organizations indicate that in 2019, the DAJ of the MTSS issued ruling DAJ-AER-OFP-76 which provides that: (i) before approving a collective bargaining agreement, the Department of Labour Relations should review it to ensure that the clauses comply with the caps and limits contained in Act No. 9635, which regulates salaries and benefits of civil servants and (ii) no agreement negotiated in a collective bargaining agreement can contravene a public order law, and therefore these aspects must be verified in order to approve the collective bargaining agreement. In addition, the claimant organizations indicate that in 2019, the MTSS issued circular MTSS-DMT-CIR-8 that instructed civil servants responsible for approving collective bargaining agreements in the public sector to verify that they complied with the Labour Code and with judicial resolutions on public employment and the appropriate use of public funds

Framework Act No. 10159 on public employment

20. The claimant organizations allege that both Act No. 9635 and Framework Act No. 10159 on public employment (Ley Marco de Empleo Público; hereafter, Act No. 10159), adopted on 8 March 2022, are aimed at making collective bargaining agreements virtually meaningless, given that they impede salary negotiations or any other agreement that seeks to improve the economic conditions of workers in the public sector. They state that article 49 of Act No. 10159 prohibits collective bargaining in the public sector from modifying the general wage scale, creating new incentives or establishing additional compensations. The organizations allege that these restrictions weaken the role of trade unions as legitimate representatives of workers in the public sector and make collective bargaining virtually meaningless, limiting their capacity to defend economic and social rights and interests. They express their concern in that regard and highlight that, as a consequence of this Act and the wage freeze imposed by Act No. 9635, the Bargaining Committee for Public Sector Wages was eliminated, which was the only space for collective bargaining on wages.

Specific cases mentioned by the claimant organizations that date from 2011 to 2015

21. Together with the representation presented in 2016, the organizations present a series of cases that they consider to be emblematic:

- The first concerns the Public Services Regulating Authority (ARESEP) and alleges that: (i) various public enterprises operate under a system of approval of tariffs charged to the final consumer that are fixed by ARESEP; (ii) some of these public enterprises have signed collective bargaining agreements in which economic benefits were agreed that are financed from tariffs; and (iii) as a result of a tariff adjustment requested by certain enterprises, in 2015, the ARESEP issued resolutions determining that some expenditure relating to collective bargaining agreements contravened the principle of service at cost and was not directly related to the provision of the service, and that as a result, they could not be financed from the tariffs. The claimant organizations allege that the intervention of the ARESEP constitutes an act of interference that violates the right to collective bargaining, as it prevents enterprises from complying with what was agreed upon in collective bargaining agreements.

- The second case concerns the Atlántica Banana Company Ltd (COBAL) and alleges that, in 2014, this company delayed the negotiation of a collective bargaining agreement and pressured workers to cancel their membership of the trade union until the trade union ceased to have the minimum number of members to be able to negotiate a collective bargaining agreement. They state that the enterprise wished to get rid of the trade union and not negotiate a collective bargaining agreement and that the MTSS was aware of this and did not act diligently.
- The third case concerns the dismissal in 2011 from the Municipality of Esparza of five workers, three members of the Board and two members of the Trade Union of Workers from the Municipality of Esparza (SITRAMES), in retaliation for having presented a proposed collective bargaining agreement. They maintain that the dismissals sought to destroy the trade union and prevent the negotiation, and they state that, although the courts recognized the unlawful practices, they did not order the reinstatement of the affected workers, rather, they ordered the Mayor to pay fines. However, the Mayor appealed, and the Senior Judge quashed the sentence, ordering the process to be restarted.
- The fourth case concerns reprisals from 2013 by the heads of a public institution against the General Secretary of the Trade Union for Aqueduct and Sewer Professionals (SIPAA) for having publicly denunciated irregularities in the Human Resources Department of the Costa Rican Institute of Aqueducts and Sewers. They allege that the General Secretary was transferred to a remote office, which they considered to be a form of retaliation in order to intimidate trade union leaders and to dissuade future denunciations against civil servants.
- The fifth case concerns the dismissal in 2014 of various workers form the National Institute of Housing and Urban Development (INVU), including the secretary responsible for records and correspondence of the Trade Union of INVU Employees (UNEINVU) through a process of restructuring. They indicate that, although an agreement was signed in 2015 between INVU and UNEINVU, in which the institution committed to evaluating the possibility of reinstatement, to date the trade union leader has not been reinstated.

B. The Government’s observations

22. In its communications dated 11 November 2016, 7 August and 1 November 2017, 22 January 2021, 29 September 2022 and 29 August 2023, the Government indicated that the fundamental rights to freedom of association and the effective recognition of the right to collective bargaining are widely supported and protected by legislation and by the administrative bodies and the courts of the Republic. The Government states that there is no climate in the country which seeks to delegitimize the trade union movement and that it promotes dialogue in solving social conflicts. The Government believes that the country has achieved significant progress through social dialogue with all social partners and the technical assistance of the ILO, thus guaranteeing the effective and unrestricted compliance with the right to collective bargaining in the public sector. The Government affirms that there is no barrier to collective bargaining in the public sector.

23. The Government indicates that both the Constitutional Chamber and the Second Chamber of the Supreme Court of Justice, as well as the Office of the Attorney General of the Republic, have ratified the right of public service workers to negotiate collective bargaining agreements within the framework of current legislation. The Government cites extracts from Vote No. 19511 of

2018 of the Constitutional Chamber, as well as decisions of the Second Chamber of the Supreme Court of Justice, which contain elements in favour of the recognition of the right to collective bargaining in the public sector. The Government states that the institution of collective bargaining is not in danger and that what the State has established in more detail in recent years is the scope of collective bargaining in that sector.

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24. With respect to Executive Decree No. 29576 of 2001, the Government indicates that: (i) that Decree was repealed by Executive Decree No. 41553 of 2018 which regulates the creation, composition and regulation of the Commission on Policies for Negotiating Collective Bargaining Agreements in the Public Sector and (ii) a claim of unconstitutionality is pending before the Constitutional Chamber against paragraphs (b) and c) of article 3 of the Regulation for the functioning of the Commission provided for in this latter Executive Decree. The Government adds that the Office of the Attorney General of the Republic issued a report in which it states that both the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association (338th Report, November 2005, Case No. 2385, of Costa Rica) have referred to the Commission on Policies for Negotiating Collective Bargaining Agreements in the Public Sector provided for in Executive Decree No. 29576 and concluded that the intervention of this government body through its "instructions" to negotiators on the employers' side is not objectionable in as much as it seeks to ensure respect for budgetary standards and respect for the principle of legality, and in as much as collective bargaining can be subject to special modalities in public administration.

Judicial removal of clauses from collective bargaining agreements through legal claims of unconstitutionality

25. The Government indicates that the primary task of the Constitutional Chamber is to ensure the integrity of the Constitution and to monitor the compatibility or alignment of the rest of the legal system with its standards, values or principles. The Government adds that: (i) a declaration of unconstitutionality entails the removal of the standard from the legal framework, declaring it to be void with *erga omnes* effect; that is to say that the standard is eliminated from the legal system for all intents and purposes, in the same way as if it had been repealed by a later law and (ii) while it has retroactive effect, because its effect is retroactive to the moment in which the standard was established, rights acquired in good faith are respected.

Denunciation of collective agreements

26. The Government indicated that in 2014 it began a policy of reviewing collective bargaining agreements in order to, through social dialogue, adjust them to the fiscal and political reality of austerity. The Government indicates that in 2015, Presidential Directive No. 034-P was issued, which seeks to raise awareness of the need to ensure the safeguarding and control of superfluous expenditure in the public sector and which urges heads of public institutions to promote dialogue with trade union organizations, in order to carry out a comprehensive review of collective bargaining agreements, when they are about to expire, in order to eliminate any abusive privileges, but respecting labour rights.

27. The Government indicates that: (i) ruling DAJ-AE-237-15 of 2015 sought to comply with the jurisprudence of the Constitutional Chamber and the Second Chamber of the Supreme Court of Justice and (ii) since 2005, the Second Chamber has considered that the traditional position of perpetuity of rights negotiated in a collective bargaining agreement has been superseded and understands that the validity of a collective bargaining agreement is temporary and therefore that the rights that result from it can cease to exist or be reduced. The Government indicates that ruling DAJ-AE-237-15 of 2015 merely complies with the repeated jurisprudence of the Second Chamber as the highest court for matters relating to labour, seeking to attain uniformity of criteria in both administrative and judicial proceedings.

28. Additionally, the Government indicates that in 2018 a series of directives was issued with a view to addressing the fiscal crisis, including Directive No. 009-H, which establishes that heads of public entities are personally responsible for preventing the automatic renewal of existing collective bargaining agreements and that they should denunciate all contractual clauses that are considered to be abusive and which are contrary to the proper management of public finances. The Government indicates that it urged heads of entities to promote dialogue with trade union organizations, in order to carry out a comprehensive revision of contractual clauses when they are due to expire in order to eliminate abusive privileges but respecting labour rights. The Government further indicates that the Office of the Attorney General of the Republic also has indicated that the Labour Code prevents parties from agreeing, within a collective bargaining agreement, to waive the legal right to denunciate it unilaterally, since such a waiver would have no other purpose than to establish, indirectly, a collective instrument without fixed duration or date, which is not valid.

29. The Government indicates that the administration cannot unilaterally amend collective bargaining agreements given that they have the force of law and that any amendments can only be introduced with the agreement of the parties, following an earlier denunciation (communication to the other party) indicating that a partial or full renegotiation of the collective instrument is requested. The Government mentions some examples that date from 2015, in which renegotiation was carried out which led to a reduction in the cost of conventional instruments on the basis of social dialogue and not on the basis of State imposition as the representation wrongly claims. In addition, the Government indicates that transitory article XXXVI of Act No. 9635 on strengthening public finances, which entered into force on 4 December 2018, provides that “from the moment that the Act comes into force, the heads of public entities are obliged to denunciate collective agreements upon their expiry. In cases in which it is decided to renegotiate the agreement, the agreement must be adapted in all respects to what has been established in this Act and in other regulations issued by the Executive Branch.”

30. The Government adds that, in a consultation on constitutionality formulated by the Legislative Assembly in relation to the draft act relating Act No. 9635, the Constitutional Chamber, through Vote No. 19511 of 2018 concluded that: “in relation to the obligatory nature of the denunciation of the collective agreement on its expiry (transitory paragraph L of Section V ‘Transitory provisions’), in applying the Constitution (articles 62 and 74), the Conventions of the International Labour Organization and the jurisprudence of this Court, it is interpreted that each head of the public entities has the power to denunciate or not to denunciate the respective collective agreement, in accordance with the current legal framework”.

Approval of collective bargaining agreements

31. The Government indicates that on 14 March 2019, in relation to the application of Act No. 9635, the DAJ issued ruling DAJ-AER-OFP-76, which indicates that: (i) the previous revision of the act of the approval by the Department of Labour Relations should be focused on minimum labour standards and on compliance with provisions in the Labour Code; and (ii) no collective bargaining agreement can contain provisions that contradict current labour legislation; while legal minimum rights can be improved, public order standards cannot be repealed. The Government indicates that that legal position has been reinforced by a recent criterion issued by the Office of the Attorney General which states that, in cases of conflict, the law takes precedence over the collective bargaining agreement.

32. The Government highlights that the position of the DAJ is consistent with the decisions made in that regard by the highest competent courts, as well as by the State's legal advisers. The Government indicates that, in accordance with the rulings of the Office of the Attorney General of the Republic and the rulings of the DAJ, the staff of the Department of Labour Relations review not only the provisions in the Labour Code relating to minimum labour standards, but also those relating to Act No. 9635. The staff of the Department of Labour Relations should indicate to the negotiating parties when the content of their negotiations could contradict the provisions of public order standards, such that they can take into account this consideration prior to presenting the contractual instrument for approval. This guide does not hamper the negotiation of the collective bargaining agreement because the criteria of the mediator are not binding, as it is the signatories that are responsible for the content of what is negotiated.

33. The Government considers that the procedure of approving collective bargaining agreements followed by the Directorate of Labour Affairs of the MTSS is compliant with the law, taking into account the provisions of constitutional jurisprudence, as well as the rulings of the Office of the Attorney General of the Republic and the criteria of the DAJ of the MTSS, without any evidence of a violation of the right to collective bargaining or of any other legal guarantee.

34. The Government indicates, in addition, that circular DMT-CIR-8 of June 2019 of the MTSS, to which the claimant organizations referred, has been repealed, and in its place circular DMT-CIR-10 was issued in November 2019 which provides that the Department of Labour Relations should verify that the collective bargaining agreements signed in the public sector comply with requirements relating to form, as well as substantive requirements relating to the content of the Labour Code and Act No. 9635 on strengthening public finances, in order to determine whether the collective bargaining agreement is compliant or not with existing standards.

35. The Government indicates that in 2020, the DAJ issued ruling DAJ-AE-OFP-208, which indicates that the approval granted by the MTSS certifies the legality of the negotiated clauses, which therefore ensures that minimum guarantees of labour legislation have been respected, including the limitations established by Act No. 9635. In accordance with existing criteria of the Office of the Attorney General of the Republic, the Department of Labour Relations of the MTSS should verify, as part of its review of the legality, that the collective bargaining agreements do not contravene Act No. 9635.

36. The Government adds that the Office of the Attorney General of the Republic considers that the entry into force of Act No. 9635 does not render collective bargaining in the public sector inoperative or meaningless, rather that it seeks to reorder and rationalize it in order to contain and reduce the expenditure of staff in public administration and thus restore financial balance. The Government indicates that the negotiation of collective bargaining agreements supposes a changing dynamic, and, in general, entails a process of denunciation, renegotiation and approval, according to the procedure established in national regulations, in accordance with provisions at the international level, without those processes leading to a worsening or deterioration of the institution of collective bargaining in Costa Rica. The Government indicates that the right to collective bargaining has not been restricted in recent years, and that the statistics corresponding to the period 2017–22 illustrate that recent normative reforms have not had a negative impact on the fundamental rights of collective bargaining and freedom of association (83 active collective bargaining agreements in the public sector in 2017, 80 in 2018, 77 in 2019, 84 in 2020, 86 in 2021 and 86 in 2022).

Framework Act No. 10159 on public employment

37. The Government indicates that, following a wide debate that began in 2019, in which the three Powers of the Republic and representatives of trade unions and the employer sector, academia and civil society participated, Framework Act No. 10159 on public employment was approved on 9 March 2022, which entered into force on 9 March 2023. The Government indicates that: (i) the primary purpose of the Act is to regulate statutory relationships, in public and mixed employment, between the public administration and public servants, in order to ensure efficiency and effectiveness in the provision of public goods and services, by establishing identical conditions relating to efficiency, position, working day and working conditions, equal salary and equal work done by public servants; (ii) the Act also established performance assessment as a mechanism for the continual improvement of public management and the performance and comprehensive development of public servants and a unified wage system for everyone in public service; and (iii) the Act reiterates the role of the right to freedom of association and to collective bargaining within the national legal framework, explicitly referring to international standards (article 4(f)) indicates that the right to collective bargaining applies to employers and workers or their respective organizations, in accordance with article 62 of the Constitution, Convention No. 98 and the Labour Code).

38. The Government indicates that, in the light of the constitutional principles of proportionality, reasonableness and equality, the Act provides that the conditions agreed in collective bargaining agreements should respect the principle of budgetary legality and therefore require their inclusion in budget law or corresponding regulations. The Government affirms that collective bargaining is not at risk in the country and that the recent reform of public employment responds to the need to provide uniformity in the public wage system in view of the significant differences between the various public servants across the institutions of the country, the notorious fiscal situation of the country and the urgent need to contain public spending, and the Act was elaborated, analysed and approved from a respectful perspective that guarantees human rights and it is aligned to applicable international labour law.

39. The Government indicates that the Legislative Assembly referred two constitutionality consultations on the draft act, file No. 21.336, through which the Framework Act on public employment was processed, and specifies that: (i) in the first consultation (June 2021), the Constitutional Chamber indicated various unconstitutional elements in the draft and these were amended by the Legislative Assembly and (ii) in a second consultation (December 2021), the Constitutional Chamber indicated by majority vote that there were no unconstitutional irregularities [1]. Once the outcomes of the consultations had been resolved, the Act was

[1] The Government highlights that the Chamber ruled that the draft act was compliant with international standards in the sense that transitory article XV, referring to the denunciation of collective agreements, is not unconstitutional as long as it is interpreted in the same way as was indicated in Vote No. 19511 of 2018, that is to say, in the application of the Constitution

approved. The Government indicates that once the Act entered into force, various trade unions submitted claims of unconstitutionality to the Constitutional Chamber, which remain pending: 23-003122-0007-CO, 23-004885-0007-CO, 23-009109-0007-CO and 23-014906-0007-CO.

Specific cases mentioned by the claimant organizations that date from 2011 to 2015

40. The Government provides its observations relating to the cases mentioned by the claimant organizations:

- The Government indicates that the allegations relating to ARESEP are being examined by the Committee on Freedom of Association as part of a complaint submitted by one of the claimant organizations, the CSJM (Case No. 3211).
- Regarding the allegations about COBAL, the Government indicates that: (i) after receiving denunciations of the alleged repression of trade unions and dismissals of workers who are members of a trade union, an administrative investigation was launched through the National Labour Inspection Directorate; (ii) inspections were carried out at the premises of the enterprise to verify the contractual situation of the workers that had been dismissed and to determine whether there were objective reasons for their dismissal unrelated to their trade union activity; (iii) several of the dismissals were the subject of legal proceedings begun by the workers, which were pending in the labour courts; (iv) reconciliation services were offered in order to facilitate the resolution of disputes; and (v) COBAL was notified of its obligation to respect rights relating to freedom of association.
- Concerning the alleged dismissals in 2011 in the Municipality of Esparza, the Government indicates that: (i) five workers, namely three members of the Board and two members of the SITRAMES trade union, were dismissed in that year; (ii) the affected workers filed court proceedings to appeal against the dismissals; (iii) the corresponding legal processes remain pending or have already issued initial judgments; and (iv) it is for the labour courts to determine the legality of the dismissals and to order any corresponding reparations.
- Relating to the case of the General Secretary of SIPAA, the Government indicates that: (i) the transfer of the trade union leader in 2013 following the public denunciation of irregularities in the Human Resources Department of the Costa Rican Institute of Aqueducts and Sewers was the subject of denunciations of alleged anti-union retaliation; (ii) the Ministry of Labour, through the Labour Inspectorate, launched an investigation which included visits and requests for information from the parties involved; (iii) the affected worker filed legal proceedings in the administrative labour courts in order to appeal the transfer; and (iv) reconciliation processes were promoted by the Ministry of Labour as an alternative way of solving the dispute.
- Regarding the dismissal of trade union leader Eduardo Santamaría of the UNEINVU, the Government indicates that: (i) between 2015 and 2017 dialogue sessions were conducted between the UNEINVU and the MTSS in order to seek a negotiated solution for the case of the two dismissed workers and (ii) in spite of the reconciliation efforts, it was not possible to reinstate the leader because he did not comply with the minimum requirements required to hold available vacant positions in the INVU.

(articles 62 and 74), international Conventions of the International Labour Organization and the jurisprudence of this court, should be interpreted to mean that every head of a public entity has the power to denunciate or not to denunciate a given collective agreement, in accordance with the existing legal framework.

▶ IV. The Committee's conclusions

41. *The Committee observes that in the representation, it is alleged that, in the previous two decades, the Government has not only not promoted collective bargaining in the public sector, but also that it is restricted it by means of various mechanisms, leading to the gradual elimination of collective bargaining agreements in this sector. The Committee takes note of the fact that the Government has responded to the various issues mentioned in the representation and affirms that the fundamental rights to freedom of association and the effective recognition of the right to collective bargaining in the public sector are widely supported and protected by legislation, administrative bodies and the courts of the Republic.*

Commission on Policies for Negotiating Collective Bargaining Agreements in the Public Sector

42. *The Committee takes note that the claimant organizations allege that the Commission on Policies for Negotiating Collective Bargaining Agreements in the Public Sector, created by Executive Decree in 2001, comprises only Government representatives, which gives the State absolute control over collective bargaining and does not grant any hearing or participation to workers' representatives. In that regard, the Government indicates that: (i) the 2001 Executive Decree was superseded in 2018 by Executive Decree No. 41553 and (ii) the resolution of a claim of unconstitutionality is pending against article 3, paragraphs (b) and c) of the Regulation for the functioning of that Commission, paragraphs that establish, among the powers of the Commission, that it has the power to issue guidelines for the negotiation of collective bargaining agreements in the public sector.*

43. *The Committee observes that, according to the website of the Costa Rican Legal Information System (Sistema Costarricense de Información Jurídica), by means of a resolution dated 17 March 2021, the Constitutional Chamber dismissed the claim of unconstitutionality provided that it is understood that the guidelines issued by the Commission on Policies for Negotiating Collective Bargaining Agreements in the Public Sector are not binding in nature. The Committee also observes that the CEACR and the Committee on Freedom of Association have examined allegations relating to the functioning of the Commission in question, including its excessive slowness, its role as de facto employer, and the control it exercises over the content of clauses with budgetary implications. In that regard, the Committee on Freedom of Association has indicated that, while the intervention of the Commission through its "instructions" to negotiators on the employers' side was not objectionable as it sought to guarantee compliance with budgetary standards and the principle of legality, it did identify delays in the issue of its guidelines for negotiation, and it therefore requested the Government to take measures to ensure that those guidelines were issued within a reasonable time frame.* [2] ***Taking due note of the resolution of the Constitutional Chamber of 2021, which establishes the non-binding nature of the guidelines issued by the Commission on Policies for Negotiating Collective Bargaining Agreements in the Public Sector, the Committee emphasizes the importance of ensuring that those guidelines or directives were issued within reasonable time frames.***

[2] CEACR, observations of 2012 and 2014 relating to the application by Costa Rica of Convention No. 98. See also the 338th Report, November 2005, Case No. 2385.

Judicial removal of clauses from collective bargaining agreements through legal claims of unconstitutionality

44. *The Committee notes that the claimant organizations allege that, between the start of the 1990s and the middle of 2023, various state bodies have filed almost 100 claims of unconstitutionality relating to collective bargaining agreements in the public sector, which has resulted in the elimination of a significant number of clauses with economic impact that had become acquired rights. The claimant organizations cite articles from the press including those that indicate that the claims of unconstitutionality filed against clauses of collective bargaining agreements are considered to be "abusive" and that that they seek to guarantee the rational use of public resources. In that regard, the Government indicates that: (i) the Constitutional Chamber of the Supreme Court of Justice is committed to monitoring compatibility between the Constitution and the rest of the legal framework and (ii) while the declaration of unconstitutionality of clauses of collective bargaining agreements leads to them being declared void with* erga omnes *effect and is retroactive in nature, rights acquired in good faith are respected.*

45. *The Committee observes that, on various occasions, the CEACR, on examining compliance with Article 4 of Convention No. 98, has expressed its concern regarding the frequent use of the recourse to unconstitutionality to question the validity of collective bargaining agreements in the public sector in Costa Rica.* [3] *In this regard, the Committee recalls that the CEACR has considered that if the authorities were questioning the benefits granted to public sector workers in an almost systematic manner on grounds of "rationality" or "proportionality" with a view to eliminating those clauses (by considering them to be, for example, too onerous), then they would be putting the very institution of collective bargaining at serious risk and would be diminishing its importance as a method of resolving collective disputes.* [4] ***Recalling the importance of taking measures to strengthen collective bargaining in the public sector, the Committee requests the Government to take the necessary measures to ensure that the authorities give priority, to the extent possible, to mechanisms of collective bargaining when evaluating matters of public interest in relation to the economic benefits of clauses of collective bargaining agreements in the public sector. The Committee requests the Government to keep the CEACR informed of any advances achieved and the actions taken in that regard.***

Denunciation of collective agreements

46. *The Committee notes that the claimant organizations allege that while the practice of the denunciation of collective bargaining agreements, provided for in the Labour Code as a mechanism for their renegotiation and to avoid their automatic renewal, did not generate concern among the trade union movement, that situation changed in 2015 when the Government, with the goal of destroying collective bargaining agreements in the public sector, requested the MTSS to expand the scope of its ruling DAJ-AE-237-15, which indicates that a collective bargaining agreement that is denunciated and not renegotiated within a month shall expire and that its benefits are not considered to be acquired rights.*

47. *In that regard, the Government indicates that: (i) in 2014, a process was begun to review collective bargaining agreements in the public sector in order to – through social dialogue – rationalize them, and adjust them to the fiscal reality of the country and the policy of austerity; (ii) since 2005, the Second Chamber of the Supreme Court of Justice has considered that the traditional position*

[3] CEACR, observation of 2017 relating to the application by Costa Rica of Convention No. 98.

[4] See General Survey of 2012 on the fundamental Conventions, *Giving Globalization a Human Face*, ILC.101/III/1B, 2012, para. 207

perpetuity of rights negotiated in a collective bargaining agreement has been superseded and understands that the validity of a collective bargaining agreement is temporary and therefore the rights that result from it can cease to exist or be reduced; and (iii) this position was reaffirmed in ruling DAJ-AE-237-15 of 2015.

48. *While emphasizing that the determination of the duration of collective agreements and its effects on the parties is covered by the principle of free and voluntary collective bargaining promoted by Convention No. 98 and that any exception to this standard should be reflected, to the extent possible, in a tripartite agreement, the Committee observes that: (i) ruling DAJ-AE-237-15 was issued in response to a consultation brought by the Department of Labour Relations to the DAJ, relating to the validity of a specific collective bargaining agreement in a municipality in which the parties had agreed that the rights would be maintained only while a new agreement was being negotiated and that, in that case, more than ten years had passed without the collective bargaining agreement being renegotiated; (ii) in the representation it is alleged that the Government requested the MTSS to expand the scope of that ruling without specifying the areas to which it was requested to be extended; and (iii) neither in the representation nor in the Government's response is it indicated that the ruling, or its grounds, have been applied to other cases or that they have a wider scope (no example or specific case is mentioned).*

49. *The Committee observes also that that ruling was issued in 2015, in a context in which, according to the Government, a policy of reviewing collective bargaining agreements has been launched with the goal of adjusting them to the fiscal and political reality of austerity. The Committee observes that, as stated by the Government, in 2015, Presidential Directive No. 034-P was issued that instructed heads of public entities to denunciate clauses of collective bargaining agreements that imposed the duty to use public resources for recreation or celebratory activities for public servants in state institutions. In addition, the Committee observes that, in line with the above, in 2018, Presidential Directive No. 009-H was issued that establishes that the heads have the responsibility for preventing the automatic renewal of existing collective bargaining agreements and that they should denunciate all contractual clauses that are considered abusive, and which infringe upon the proper management of public finances.*

50. *The Committee also observes that both Act No. 9635 on strengthening public finances (2018) and Framework Act No. 10159 on public employment (2023) contain provisions that indicate that "heads of public entities are obligated to denunciate collective agreements on their expiry and that, in cases in which it is decided to renegotiate the agreement, this will be adapted in all respects to what is established in those acts and other regulations that are issued by the Executive Power" (transitory article XXXVI Act No. 9635 on strengthening public finances and Framework Act No. 10159 on public employment).*

51. *The Committee notes that, according to the Government, as a result of an optional consultation on the legislative file that gave rise to Act No. 9635, in Vote No. 19511 of 2018, the Constitutional Chamber indicated, among other elements, that: (i) the parties should feel totally free to negotiate, renegotiate or denunciate a collective bargaining agreement; (ii) it is not possible to impose obligatory collective bargaining, or to impose its denunciation; (iii) a provision that obliges a collective bargaining agreement to be denunciated and on the other hand prevents it from improving conditions would be contrary to the Constitution; and (iv) it should be considered that heads of public entities have the power to denunciate or not to denunciate collective bargaining agreements when they are approaching their date of expiry. The Committee also observes that, according to the website of the Costa Rican Legal Information System, by means of Resolution No. 8201 of 17 March 2025, the complete text of which is not yet available, the Constitutional Chamber declared unconstitutional the first paragraph of transitory article XXXVI of Act No. 9635,* *which established the obligation of heads of public entities to denunciate collective agreements at the point of their expiry.*

52. *The Committee takes due note of the resolutions related to Act No. 9635 of 2018. The Committee observes that Act No. 10159 of 2023 also establishes the obligatory nature of denunciation and provides that any renegotiated collective bargaining agreement must be fully adjusted to align with the content of that Act. The Committee observes that, while in the second consultation on constitutionality of the legislative file relating to the Framework Act on public employment, the Constitutional Chamber, by majority, considered that there were no unconstitutional irregularities, various claims of unconstitutionality have been filed against Act No. 10159 which remain pending.*

53. *Observing that the central question dealt with in claims of unconstitutionality and in the above-mentioned resolutions of the Constitutional Court does not relate to the mechanism itself of denunciation and renegotiation of collective bargaining agreements, but rather to the obligatory nature of that denunciation imposed on heads of public entities at the moment that the collective bargaining agreements expire,* ***the Committee requests the Government, in the framework of the application of Convention No. 98, to inform the CEACR of the impact and practical implementation of Resolution No. 8201 of the Constitutional Chamber, as well as of the result of the claims of unconstitutionality filed against Act No. 10159.***

Renegotiation of collective bargaining agreements following their denunciation: Impact of Acts Nos 9635 and 10159 in the scope and content of collective bargaining in the public sector

54. *The Committee notes that the claimant organizations allege that Acts Nos 9635 and 10159 render collective bargaining in the public sector virtually meaningless by preventing wage negotiations or improvements in the economic conditions of workers. They demonstrate their concern in that regard, and state that, as a consequence of the wage freeze imposed by Act No. 9635, the Bargaining Committee for Public Sector Wages was eliminated, which was the only space for collective bargaining on wages. In this regard, the Government states that: (i) Act No. 9635 does not render collective bargaining meaningless, rather it seeks to reorder and reduce public spending; (ii) the right to collective bargaining has not been limited in recent years: between 2017 and 2022 the number of collective bargaining agreements remained constant (83 in 2017, 80 in 2018, 77 in 2019, 84 in 2020, 86 in 2021 and 86 in 2022); and (iii) Act No. 10159 responded to the need to provide uniformity in the wage system for public sector workers and the urgent need to contain public spending and was drawn up in accordance with applicable international labour law. The Government affirms that collective bargaining in the public sector is not at risk and that, in recent years, its scope has been defined more clearly, with the goal being to re-establish financial balance in public administrations.*

55. *The Committee takes due note of the above and observes that Acts Nos 9635 and 10159 contain provisions that restrict or exclude the possibility of negotiating economic questions in the public sector:*

- *Article 55 of Act No. 9635 establishes that incentives, compensation or salary bonuses can only be created by law.*
- *Article 2 of Act No. 10159 establishes that this is applicable to public servants in the Powers of the Republic, their auxiliary and attached bodies and the Supreme Election Tribunal (TSE); the decentralized public sector which comprises autonomous institutions and their attached bodies, including state universities, the Costa Rican Social Security Fund (CCSS); semi-autonomous institutions and their attached bodies and state public enterprises; and the decentralized*

territorial public sector which comprises municipalities, municipality leagues, district municipal councils, and their companies.

- *Article 43 of Act No. 10159 establishes that collective bargaining in the public sector cannot be used to make modifications or variations to the general wage scale, or to create new incentives, compensations or wage bonuses. In addition, the article states that the conditions agreed in collective bargaining instruments will respect the constitutional principles of reasonableness, proportionality, legality, equality and budgetary legality.*

56. *The Committee observes that, according to the website of the Costa Rican Legal Information System, by means of Resolution No. 8201 of 17 March 2025, the Constitutional Chamber resolved four claims of unconstitutionality against Act No. 9635 and indicated, among other elements, that article 55 of the Act, which establishes that incentives, compensation and wage bonuses can only be created by law, could be considered constitutional "on the understanding that the restriction on negotiation does not apply to employees in the public sector for whom it is valid to enter into collective agreements in accordance with the Constitution and the law. All of the above is without prejudice to the controls of legality and constitutionality of the outcome of the negotiation, in accordance with the constitutional principles of reasonableness, proportionality and the proper use of public funds".* [5]

57. *While observing that the full text of the resolution of the Constitutional Chamber is yet to be published, the Committee takes note of the recognition that the restriction on bargaining established in Act No. 9635 would not be applicable to employees in the public sector who, in accordance with the Constitution and the law, are entitled to conclude collective bargaining agreements. The Committee recalls in this regard that, in virtue of Articles 4 and 6 of Convention No. 98, all workers in the public sector, that are not engaged in the administration of the State, should be able to enjoy the right to collective bargaining, including with regard to remuneration, and that, while the unique characteristics of public administration require a certain degree of flexibility, mechanisms exist that make it possible to reconcile the respect for budgetary availability and the principle of equality in public employment on the one hand, and the recognition of the right to collective bargaining on the other. In this regard, the Committee recalls that the CEACR considers that, with regard to the negotiation of wages of public servants who are not engaged in the administration of the State, the legislative provisions that permit the competent budgetary authority to set a salary "range" that serves as a basis for negotiations or establish a fixed general budgetary "allocation" within which the parties can negotiate financial or normative clauses, or even provisions that grant public authorities that have financial responsibilities the right to participate in collective bargaining with the direct employer, provided that they leave a significant margin for collective bargaining, are compatible with the Convention. However, it is fundamental that workers and their organizations are able to participate fully in the determination of this general bargaining framework, which implies, in particular, that they have access to all the financial, budgetary or other information in that regard.* [6]

58. *In the light of the above, the Committee shares the concern expressed by the CEACR in its latest comment on the application of Convention No. 98 concerning the impact of Act No. 9635 and Act No. 10159 on collective bargaining of an economic nature in the public sector. The Committee emphasizes that, in its latest comment, the CEACR requested the Government of Costa Rica, in consultation with the social partners, to take the necessary measures to review both acts, in order*

[5] This refers to claims filed by the Union of Employees of the National Bank (SEBANA), the National Association of Public and Private Employees (ANEP), the Association of Secondary School Teachers (APSE), the Union of Engineers of the Costa Rican Electricity Institute (SIICE) and the Trade Union Association of Industrial Employees in Communications and Energy (ASDEICE).

[6] General Survey 2012, para. 219.

that public sector workers who are not engaged in the administration of the State are able to exercise their right to bargain collectively on economic and wage-related matters in accordance with the Convention. [7]

59. ***Based on the aforementioned comments of the CEACR, the Committee requests the Government, in consultation with the relevant social partners, to review the existing normative framework, such that, taking due account of the specific characteristics of collective bargaining in the public sector, it guarantees a significant space for collective bargaining on working and employment conditions of public sector workers who are not engaged in the administration of the State, including with regard to remuneration. The Committee expects that, in its next examination of the application of Convention No. 98, the CEACR will be able to note tangible progress in that regard.***

60. ***Additionally, the Committee requests the Government to provide detailed information to the CEACR on the scope and the practical implementation of Resolution No. 8201 of the Constitutional Chamber, in the context of collective bargaining of an economic nature in the public sector, and on the resolution issued by the Constitutional Chamber concerning the claims of unconstitutionality filed against Act No. 10159.***

Approval of collective bargaining agreements

61. *The Committee observes that, according to the information and documentation provided by the parties, prior to approving a collective bargaining agreement, the Labour Relations Department of the MTSS carries out an exhaustive review of the collective bargaining agreement with a view to ensuring its compliance with existing labour standards, as well as any other public order law. In particular, the claimant organizations and the Government mention the following opinions, circulars and rulings issued in that regard:*

- *In ruling C-232-2019 of 2019, the Office of the Attorney General of the Republic indicated that the approval of collective bargaining agreements concluded in the public sector requires the review of formal questions and the content of the agreement, in order to verify its compliance with the legal framework.*
- *Through criteria DAJ-AER-OFP-76 of 2019, the Directorate of Legal Affairs (DAJ) of the MTSS stated that, in compliance with the binding criteria of the Office of the Attorney General, the Department of Labour Relations should include as part of the approval process a review of the limitations or maximum limits established in Act No. 9635, given that a collective bargaining agreement may not contradict the restrictions imposed by a public order law.* [8]
- *The MTSS issued circular DMT-CIR-10 of 2019, which superseded circular DMT-CIR-8 and which provided that the Department of Labour Relations should verify that collective bargaining agreements concluded in the public sector meet not only requirements of form, but also substantive requirements relating to content as set out in the Labour Code and in Act No. 9635.*

[7] CEACR, observation of 2023 concerning Convention No. 98.

[8] In the final paragraph of the ruling, the civil servants at the DAJ indicate that: “the creation of public order laws, the effect of which is an increase in the exclusion of labour rights that cannot be improved in a contractual standard, could eventually be considered by the ILO as government actions that limit the right to collective bargaining and the independence of the parties in that bargaining, and therefore it is probable that we will be called to account by that international organization in this regard”.

- *In 2020, the Directorate of Legal Affairs of the MTSS issued ruling DAJ-AE-OFP-208, which indicates that the approval granted by the MTSS certifies the legality of the negotiated clauses, which ensures that the minimum guarantees enshrined in labour legislation have been respected, including the limitations established by Act No. 9635.*
- *In 2021, the Commission on Policies for Negotiating Collective Bargaining Agreements in the Public Sector issued general guidelines that indicate that, following the signature of a collective bargaining agreement, the collective bargaining agreement should be submitted to the Department of Labour Relations of the MTSS for its due approval, with respect to the minimum requirements established in the Labour Code and other legal measures.*
- *Article 44 of Act No. 10159 (2023) provides that, prior to approving a collective bargaining agreement in the public sector, the MTSS should verify its compliance with the requirements of form and content provided for in the Labour Code, as well as its respect of constitutional jurisdiction resolutions on public employment and the proper use of public funds. This review seeks to determine whether the collective bargaining agreement is aligned or not with the existing normative provisions set out in the state legal framework and whether it guarantees coherence with that framework.*

62. *The Committee observes that, given the standards, opinions, circulars and rulings mentioned above: (i) the control over collective bargaining agreements, for the purposes of approval, is exercised once the negotiation has been concluded and it has been signed and (ii) the control referred to covers the proper use of public funds as is set out in legislation and jurisprudence. In this regard, the Committee recalls, on the one hand, that the mutual respect of commitments made in collective agreements is an important element of the right to collective bargaining and should be safeguarded in order to establish labour relations on a solid and stable basis and that the discretionary power of the authorities to approve collective bargaining agreements is contrary to the principle of collective bargaining.* [9] *The Committee emphasizes once again, on the other hand, that the provisions that grant to public authorities with financial responsibilities the right to participate in collective bargaining in the public sector, together with the direct employer, are compatible with Convention No. 98 to the extent that they leave a significant space for collective bargaining.* [10]

63. ***The Committee requests the Government, in line with the above and in consultation with the social partners, to take the necessary measures, including those of a legislative nature, to: (i) guarantee that the procedures for verifying the economic viability of agreements negotiated in the public sector are carried out prior to the signature of the collective bargaining agreement and (ii) avoid any discretion in the process of approving collective bargaining agreements and ensure that the rejection of the approval of a collective bargaining agreement is limited exclusively to those cases in which there are irregularities in the form or in which it is not aligned to the minimum standards established in general labour legislation. The Committee requests the Government to inform the CEACR about the progress made in this regard, detailing the cases in which the Department of Labour Relations of the MTSS refused the approval of a collective bargaining agreement on the basis of its content. The Committee trusts that the adoption of these measures, as well as those mentioned earlier in its conclusions, will contribute to strengthening the system of collective bargaining in the public sector that both meets the requirements for financial sustainability and the principle***

[9] See also the General Survey of 2013, *Collective Bargaining in the Public Service: A Way Forward*, ILC.102/III/1B, para. 301. See also the *Compilation of Decisions of the Committee on Freedom of Association*, sixth edition, 2018, para. 1336.

[10] ILO, General Survey on the application of the Conventions on freedom of association and the right to organize and collective bargaining, 1994, para. 263.

of negotiation in good faith, in order to fully apply Article 4 of Convention No. 98. The Committee reminds the Government that it can count on the technical assistance of the ILO to that end.

Specific cases mentioned by the claimant organizations that date from 2011 to 2015

64. *The Committee notes that the claimant organizations have appended to the representation a document that contains allegations relating to five specific cases that occurred between 2011 and 2015. The Committee also notes the response provided by the Government, and observes that: (i) while the majority of the cases refer to questions relating to collective bargaining in the public sector, they also allege anti-union practices, such as dismissals, both in the public and the private sectors; (ii) concerning the case relating to the Public Services Regulating Authority (ARESEP) and the allegation that it had excluded from the tariff adjustment requested by three public enterprises the costs necessary to comply with the obligations resulting from collective bargaining agreements, the Committee observes that the Committee on Freedom of Association examined the intervention of the Public Services Regulating Authority as part of the examination of Case No. 3211 (392nd Report, October–November 2020); and (iii) with regard to the allegations made in the other cases, according to the Government, administrative or legal actions have been taken to address the allegations, and that the majority of legal proceedings remain pending when the response was submitted in 2017. Noting that it has not received additional information from the parties in this regard, the Government trusts that the respective proceedings have been concluded satisfactorily, guaranteeing the protection of the trade union rights in question, in accordance with the ILO Conventions that have been ratified by Costa Rica.*

▶ V. The Committee's recommendations

65. In light of the conclusions set out in paragraphs 41–64 above concerning the issues raised in the representation, the Committee recommends that the Governing Body:

(a) approve this report;

(b) request the Government, in the context of the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), to take into account the observations made in paragraphs 43, 45, 53, 59, 60 and 63;

(c) request the Government to provide information in this regard for examination by the Committee of Experts on the Application of Conventions and Recommendations (CEACR);

(d) publish the report and close the representation procedure.