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Report of the Director-General

Eighth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Argentina of Conventions Nos 87 and 98

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► I. Introduction

1. In a communication dated 11 September 2023, the Industrial Organization of Argentina (UIA) made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by Argentina of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). These Conventions were ratified by Argentina on 18 January 1960 and 24 September 1956, respectively, and remain in force in the country.
2. The following provisions of the ILO Constitution relate to the representation procedure:

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, as revised by the Governing Body at its 291st Session (November 2004),¹ the Director-General acknowledged receipt of the representation, informed the Government of Argentina thereof and brought the representation before the Officers of the Governing Body.
4. At its 349th Session (November 2023), the Governing Body decided that the representation was receivable and, since it relates to Conventions dealing with trade union rights, referred it to the Committee on Freedom of Association for examination in accordance with the procedure set out in the above-mentioned Standing Orders. The tripartite Committee set up to examine the representation is composed of Mr Sandro Lunard Nicoladeli (Government member, Brazil), Mr Juan Mailhos (Employer member, Uruguay) and Mr Jeffrey Vogt (Worker member, United States of America).
5. In its representation, the UIA expressed its interest in exploring the possibility of engaging in conciliation with the Government. In its communications of 7 June and 26 November 2024, the UIA reported that the Government had not contacted it regarding possible conciliation and stressed the urgency of resolving the issues raised in the representation.

¹ The Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization were further amended by the Governing Body at its 350th Session (March 2024) (GB.350/LILS/1).

6. The Government sent its observations in a communication dated 6 May 2025.
7. The Committee met on 5, 13 and 15 November 2025 to examine the representation and adopt this 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.355/INS/16/8, the Governing Body:**
 - (a) **approved the report of the Committee;**
 - (b) **requested the Government of Argentina to take into account, in the context of the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the observations made in paragraphs 24 and 27;**
 - (c) **requested the Government to provide information in that regard 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's allegations

9. The complainant organization alleges non-observance of Conventions Nos 87 and 98, on the grounds that the Ministry of Labour, Employment and Social Security (MTESS) issued decisions obligating two private enterprises in the aviation sector, Jet Smart Argentina S.A. and FB Líneas Aéreas S.A. (two low-cost airlines hereinafter "the two privately-owned air carriers") to be represented in a collective bargaining process by an employers' association of which they are not members. The complainant organization alleges that the Government acted as both judge and party, since the employers' association that negotiated the agreements on behalf of the sector counts among its members the state-owned aviation enterprise, Aerolíneas Argentinas S.A. (hereinafter "the state-owned air carrier"). According to the complainant organization, this employers' association concluded collective agreements against the will of the two privately-owned air carriers and had neither the mandate nor the legitimate representative status to negotiate on their behalf. The complainant organization alleges that the Government prevented the two privately-owned air carriers from exercising their right to freely choose their representatives for collective bargaining purposes and further alleges that it disregarded the will of the majority of workers with regard to their own representation.
10. The complainant organization refers specifically to two MTESS decisions that validated and approved two collective agreements concluded between the Chamber of Airlines of the Argentine Republic (CLARA) and two trade unions, the Association of Airline Pilots (APLA) and the Argentine Association of Airline Crew (AAA). It states that: (i) CLARA counts the state-owned air carrier among its members; (ii) almost all of the members of APLA and the AAA are part of the state-owned air carrier's workforce; and (iii) the two privately-owned air carriers are not members of CLARA and almost all of the workers of these enterprises belong to enterprise unions that have simply been registered. The complainant organization alleges that the MTESS

approved the collective agreements with a view to applying them to the entire sector, despite the express opposition of the two privately-owned air carriers, without taking into consideration the fact that the agreements were signed by organizations that do not represent these enterprises or their workers, and disregarding the fact that negotiations on working conditions have been taking place in these enterprises for many years.

11. The complainant organization states that, following the refusal of the two privately-owned air carriers to accept the request by APLA and the AAA to engage in collective bargaining, the trade unions decided to engage with CLARA with a view to concluding collective agreements applicable to the entire sector, against the will of the enterprises that had not chosen to be represented by CLARA. The complainant organization alleges the de facto inclusion in the bargaining process of an “employers’ association” that was not initially involved and that had neither the legitimate status nor the mandate to represent the two privately-owned air carriers, that assumed the role of bargaining agent and that sought binding commitments through the signature of two framework collective agreements, imposing economic obligations entailing unnecessary and unjustified expenditure for the benefit of a trade union organization to which the workers of the two privately-owned air carriers do not belong.
12. The complainant organization states that the decisions and approvals of the MTESS were challenged through administrative channels, and that, following the rejection of the appeals and objections in question, the matter has been referred to the labour courts, which have not yet issued a decision.

B. The Government’s reply

13. In its communication dated 6 May 2025, the Government states that Case No. 32364/22 is currently being examined by Chamber IX of the National Labour Court of Appeal and comprises various appellate proceedings under section 62(b) of Act No. 23.551 on trade union associations (“the LAS”) challenging Ministerial Decisions Nos 2180/2022 and 414/2023, which are the subject of this representation. The Government states that the legal proceedings are ongoing, adding that when an appeal is filed under section 62 any contested ministerial decision is suspended until the court issues its final decision on the matter.
14. The Government states that the Secretariat of Labour, Employment and Social Security is therefore awaiting the court’s decision and is unable to exercise its administrative power to settle the dispute or to act ex officio to promote dialogue between the parties, by virtue of the principle of separation of powers and judicial independence enshrined in the National Constitution (articles 1 and 109), according to which any interference could constitute an abuse of power and undermine the constitutional order. The Government states that the appropriate course of action to enable the administration to re-examine the above-mentioned matters would be for the party concerned to request the court to suspend its proceedings with a view to initiating a national dialogue process, and for the other party to agree to this.
15. Furthermore, the Government points out that, while the labour administration acted in strict compliance with the existing legal order, this does not prevent recourse to the institutional channels necessary to reach a solution that better reconciles national legislation with the provisions of international labour Conventions. In this regard, the Government emphasizes that the legal initiatives that are being promoted to this end, especially in the context of the reform of the LAS, require that consensus be achieved involving all the key players in the labour relations system.

► IV. The Committee's conclusions

16. The Committee observes that, in the present representation, the complainant organization alleges that two private enterprises in the commercial aviation sector were obligated to be included in a collective bargaining process in which they were represented by an employers' association that was not of their choosing.
17. The Committee notes that the complainant organization alleges, in particular, that: (i) the trade unions APLA and the AAA, almost all of whose members work for the state-owned air carrier, tried to negotiate with the two privately-owned air carriers and, when these refused, the trade unions engaged with CLARA, an employers' association that counts the state-owned air carrier among its members, to conclude collective agreements; and (ii) in 2022 and 2023, the MTESS issued decisions validating and approving these agreements, extending their scope to the entire sector, despite the express opposition of the two privately-owned air carriers, without taking into consideration the fact that the organizations signing the agreements do not represent these enterprises or their workers and disregarding the fact that negotiations on working conditions have been taking place in these enterprises for many years.
18. The Committee further notes that, for its part, the Government states that: (i) the decisions validating and approving the two collective agreements that are the subject of this case have been challenged in court and are suspended until Chamber IX of the National Labour Court of Appeal issues its decision; (ii) pending this decision, the Secretariat of Labour, Employment and Social Security is unable to exercise its administrative power to settle the dispute or to act ex officio to promote dialogue between the parties; (iii) the appropriate course of action to enable the administration to re-examine the above-mentioned matters would be for the party concerned to request the court to suspend its proceedings, and for the other party to agree to this; and (iv) although the labour administration acted in strict compliance with the existing legal order, this does not prevent recourse to the institutional channels necessary to reach a solution that better reconciles national legislation with the provisions of international labour Conventions. In this regard, the Government emphasizes that legal initiatives being promoted to this end, particularly in the context of the reform of Act No. 23.551, require that consensus be achieved involving all the key players in the labour relations system.
19. The Committee takes note of the text of the decisions approving the two collective agreements in question and observes that:
 - Decision No. [2180/2022](#) of the Secretariat of Labour, approving the collective agreement between APLA and CLARA, states that: (i) the agreement applies to all workers employed as pilots by enterprises providing scheduled and non-scheduled air transport services; (ii) the scope of the agreement is strictly limited to the relationship between employers represented by the signatory employer entity and the signatory trade union with trade union status; and (iii) the bargaining agents have proven their status and authority to bargain collectively.
 - Decision No. [414/2023](#) of the Secretariat of Labour, approving the collective agreement concluded between the AAA and CLARA, states that: (i) the agreement applies to all workers employed as cabin crew by enterprises providing scheduled air transport services; (ii) the scope of the agreement is strictly limited to the relationship between employers represented by the signatory employer entity and the signatory trade union with trade union status; and (iii) the bargaining agents have proven their status and authority to bargain collectively.
20. The Committee notes that both decisions refer to [Act No. 14.250](#) on collective agreements, which establishes, inter alia, that collective bargaining may be carried out in respect of

national, regional or territorial agreements; inter-sectoral or framework agreements; agreements for a particular activity, profession, trade or category; or agreements for a particular enterprise or group of enterprises. The Act further provides that collective agreements with broader scope may determine their own coverage and expressly indicate the matters to be negotiated in lower-level agreements. It also provides that collective agreements approved by the MTESS shall apply to all workers in the sector or category covered by the agreement, regardless of whether the worker or employer is a member of the representative workers' or employers' organization.

21. The Committee observes that, in view of the above, the decisions validating and approving the two collective agreements in question (after having established that the two agreements had a sectoral scope corresponding to the field of activity of the signatory organizations) extended the scope of the agreements to all workers in the sector or category covered by them.
22. While recalling that employers should be able to form and join organizations of their own choosing and freely choose their representatives for the purposes of collective bargaining, the Committee observes that the main issue raised in this representation is whether the extension, by means of the aforementioned decisions, of two collective agreements to enterprises that are not members of the employers' organization that signed them is contrary to Conventions Nos 87 and 98.
23. With regard to the extension of collective agreements, the Committee recalls that the Collective Agreements Recommendation, 1951 (No. 91), states that "[w]here appropriate, having regard to established collective bargaining practice, measures, to be determined by national laws or regulations and suited to the conditions of each country, should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement. National laws or regulations may make the extension of a collective agreement subject to the following, among other, conditions: (a) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative; (b) that, as a general rule, the request for extension of the agreement shall be made by one or more organisations of workers or employers who are parties to the agreement; (c) that, prior to the extension of the agreement, the employers and workers to whom the agreement would be made applicable by its extension should be given an opportunity to submit their observations." The Committee recalls that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) considered that the extension of collective agreements is not contrary to the principle of voluntary collective bargaining and is not in violation of Convention No. 98.²
24. The Committee observes that, based on the information provided, it does not appear that, in this case, the employers and workers to whom the collective agreements in question were to apply had the opportunity to comment on the matter. ***In the light of the foregoing, the Committee invites the competent authorities to give due consideration to the content of these conclusions and to take into account the guidance provided in Recommendation No. 91, as mentioned above, in the context of the present case.***
25. Furthermore, the Committee also notes that, according to the complainant organization, no consideration has been given to the fact that the two privately-owned air carriers have been negotiating working conditions at the enterprise level. The Committee observes that, as

² See General Survey on the fundamental Conventions: *Giving globalization a human face*, ILC.101/III/1B, 2012, para. 245.

established by the ministerial decisions in question, APLA and the AAA have trade union status, whereas, according to the complainant organization, the enterprise unions in question have simply been registered. The Committee recalls that the LAS ([Act No. 23.551](#)) differentiates between trade union organizations that are simply registered and those that hold trade union status, meaning that they are recognized by the State as being the most representative in their geographical area and that, under the provisions of section 31 of that Act, trade union organizations with trade union status are those that have the exclusive right to participate in collective bargaining.

26. The Committee recalls that, according to the principle of free and voluntary collective bargaining embodied in Article 4 of Convention No. 98, the determination of the bargaining level is essentially a matter to be left to the discretion of the parties and, consequently, the level of negotiation should not be imposed by law, by decision of the administrative authority or by the case-law of the administrative labour authority.³ The Committee also recalls that systems based on a sole bargaining agent (the most representative) and those which include all organizations or the most representative organizations in accordance with clear pre-established criteria for the determination of the organizations entitled to bargain are both compatible with Convention No. 98. The Committee furthermore highlights the need to guarantee that collective bargaining can be carried out at any level, and that, where collective bargaining takes place at several levels, the parties to negotiations should seek to ensure that there is coordination among these levels. While noting that such mechanisms for the coordination of collective agreements exist in the Argentine system,⁴ the Committee also recalls that, in the case of Argentina, the CEACR has observed that section 29 of the LAS impedes the possibility of an enterprise union acquiring trade union status, even if it has demonstrated that it is the most representative, if there is already a trade union with trade union status representing the activity in the field concerned. The CEACR and the Committee on Freedom of Association have drawn the attention of the Government of Argentina to the fact that, to the extent that this provision prevents the most representative trade union organizations in an enterprise from bargaining at the enterprise level, it is incompatible with the principles of freedom of association and collective bargaining, and therefore they have requested the Government take steps to amend this section of the LAS.⁵
27. ***While noting that it does not have detailed information on the most representative status of the two enterprise unions mentioned by the complainant organization, the Committee reiterates the need to amend section 29 of the LAS in the manner indicated.***

³ See ILO, *Compilation of decisions of the Committee on Freedom of Association*, Sixth edition, 2018, para. 1404.

⁴ [Act No. 14.250 on collective agreements](#), Chapters III and IV, “Ámbitos de negociación colectiva” and “Articulación de los convenios colectivos”.

⁵ Observations of the CEACR of 2003 and 2024, concerning the application by Argentina of Convention No. 87. Also see 307th Report of the Committee on Freedom of Association, Case No. 1872, para. 52, and 335th Report of the Committee on Freedom of Association, Case No. 2312, para. 265.

► V. The Committee's recommendations

- 28. In the light of the conclusions contained in this report, the Committee recommends that the Governing Body:**
- (a) approve the report;**
 - (b) request the Government of Argentina to take into account, in the context of the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the observations made in paragraphs 24 and 27;**
 - (c) request the Government to provide information in this regard for review by the Committee of Experts on the Application of Conventions and Recommendations;**
 - (d) make the report publicly available and close the representation procedure.**

Geneva, 15 November 2025

(signed) Mr Sandro Lunard Nicoladeli
(Government member)

Mr Juan Mailhos
(Employer member)

Mr Jeffrey Vogt
(Worker member)