



Governing Body

342nd Session, Geneva, June 2021

Institutional Section

INS

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Reports of the Officers of the Governing Body

Sixth report: Two representations alleging non-observance by Argentina 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), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154)

1. By a communication received on 5 February 2021, the Federation of Trade Unions of Municipal Workers of Santa Fe Province (FESTRAM) 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), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154). A summary of the representation is contained in Appendix I.
2. By a communication received on 10 May 2021, the Federation of Municipal Trade Unions of Santa Fe Province (FESIM), with the support of the Latin American Union of Municipal Workers, made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by Argentina of Conventions Nos 87, 98, 151 and 154. A summary of the representation is contained in Appendix II.
3. While the trade unions' appreciation of the facts differ, the representations concern the same matter.

4. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of these two representations and informed the Government of Argentina accordingly.
5. Pursuant to article 2(1) of the Standing Orders, the Director-General brought the two representations before the Officers of the Governing Body, who, according to paragraph 3 of the same article, shall report to the Governing Body on the receivability of representations. Article 2(2) lays down the conditions for the receivability of a representation. In the light of these conditions, the following observations can be made in the present case:
 - (a) both representations were communicated to the International Labour Office in writing;
 - (b) they emanate from an industrial association of workers;
 - (c) they make specific reference to article 24 of the ILO Constitution;
 - (d) they concern a Member of the Organization;
 - (e) they refer to Conventions to which the Member against which the representation is made is a party;¹
 - (f) they indicate in what respect it is alleged that the Member against which it is made has failed to secure the effective observance within its jurisdiction of the said Conventions.
6. Taking into account the above conditions, the Officers of the Governing Body consider that the two representations are receivable in terms of article 2(2) of the Standing Orders with regard to Conventions Nos 87, 98, 151 and 154. According to article 2(4) of the Standing Orders, the Governing Body, in reaching a decision on the receivability of the representations, on the basis of the report of its Officers, shall not enter into discussion of the substance of the representations. In accordance with article 3(1), if the Governing Body decides that the representation is admissible, it shall set up a tripartite committee to examine it, composed of members of the Governing Body chosen in equal numbers or, by virtue of article 3(2) of the Standing Orders, transmit the representation to the Committee on Freedom of Association for examination in accordance with the Standing Orders under article 24 of the ILO Constitution.

► Draft decision

7. **In the light of the information contained in document GB.342/INS/9/6, and taking into consideration the recommendation of its Officers, the Governing Body decided that the representations were receivable and, as they relate to Conventions dealing with trade union rights, to transmit the representations to the Committee on Freedom of Association for examination as per the procedures set out in the Standing Orders on articles 24 and 25 of the Constitution of the ILO.**

¹ Argentina ratified Conventions Nos 87, 98, 151 and 154 in 1960, 1956, 1987 and 1993 respectively.

► Appendix I

Summary of the FESTRAM representation

1. In its communication received on 5 February 2021, the Federation of Trade Unions of Municipal Workers of Santa Fe Province (FESTRAM) made a representation under article 24 of the ILO Constitution alleging non-observance by the Government of Argentina for non-compliance with Conventions Nos 87, 98, 151 and 154.
2. The organization indicates that, on 29 October 2020, the Supreme Court of Justice of Argentina (CSJN) issued a ruling in relation to *amparo* proceedings brought by the Association of Municipal Personnel of the Las Colonias Department of Santa Fe Province against FESTRAM. FESTRAM alleges that even though the *amparo* action concerned a solidarity quota in favour of FESTRAM, the CSJN examined the provincial legislation on collective bargaining and indicated that Law No. 9996 on collective bargaining (which was the system applied to date) was not in line with the Constitution. The CSJN "exhorted" the provincial authorities of Santa Fe to issue the necessary legislation that would be in line with the Constitution. FESTRAM alleges that the court's ruling hinders or limits the freedom of association of FESTRAM as public authorities intervened, limiting the right to collective bargaining in that the CSJN proposal implies that federations cannot bargain collectively, or that they can only intervene in the event that the first-level union is unable to negotiate. Following the CSJN ruling, the public authorities of Santa Fe have drafted a bill that, according to FESTRAM, was not the object of prior consultation with it as the most representative workers' organization, and which seeks to repeal the collective bargaining system of the municipal workers of Santa Fe province.

► Appendix II

Summary of the FESIM representation

1. In its communication received on 10 May 2021, the Federation of Municipal Trade Unions of Santa Fe Province (FESIM), with the support of the Latin American Union of Municipal Workers, made a representation under article 24 of the ILO Constitution alleging non-observance by the Government of Argentina for non-compliance with Conventions Nos 87, 98, 151 and 154.
2. FESIM alleges that, since the enactment of Law No. 9996 on collective bargaining in 1986, the freedom of association of the trade unions affiliated to FESIM has been systematically violated, as has, concomitantly, the right of FESIM to be able to carry out collective negotiations and its programme of action. FESIM indicates that Law No. 9996 of 1986 hinders any possibility of a trade union organization other than FESTRAM to participate in collective bargaining with employers of the municipal public administration. FESIM alleges that the privilege of exclusive representation enjoyed by FESTRAM, to the detriment of the rights of FESIM, obstructs the right to promote municipal collective bargaining in the territorial scope of action of Santa Fe province.
3. FESIM indicates that, in the light of *amparo* proceedings brought by the Association of Municipal Personnel of the Las Colonias Department of Santa Fe Province (which is affiliated to FESIM) against FESTRAM, the provincial authorities of Santa Fe were urged to dictate the necessary norms for the due fulfilment of the mandate that emerges from the Constitution, as Law No. 9996 “conspires against the possibility that the different municipalities negotiate collectively, as employers, with their workers”. FESIM alleges that the provincial authorities of Santa Fe have so far not implemented this judgment.