

**Committee on the Application of Standards
Comisión de Aplicación de Normas**

CAN/Kazakhstan/C.87

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109^e session, Genève, 2021109.^a reunión, Ginebra, 2021**Kazakhstan (ratification: 2000)****Freedom of Association and Protection of the Right to Organise Convention, 1948
(No. 87)****Convention (nº 87) sur la liberté syndicale et la protection du droit syndical, 1948
Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948
(número 87)****Written information provided by the Government****Concerning Mr E. Baltabay's and Ms L. Kharkova's criminal cases**

The criminal cases against Mr Baltabay and Ms Kharkova are not caused by "participation in lawful trade union activities", but initiated due to common crimes.

Currently, Mr Baltabay and Ms Kharkova enjoy freedom.

Mr Baltabay, Local Trade Union, Decent Work of Petrochemical Industry Employees, NGO Chairman, misappropriated 10,800,000 Kazakhstani tenge (KZT) entrusted to him through abuse of his official position.

On 17 July 2019, Mr Baltabay was found guilty by the verdict of the Enbekshi District Court of Shymkent, under paragraph 2, Part 4, of Article 189 of Kazakhstan's Criminal Code (hereinafter the CC) (misappropriation or embezzlement of entrusted property) and sentenced to seven years imprisonment and deprived of the right to hold senior positions in public associations and other non-profit organizations for seven years. The sentence shall be served in a medium security penal system institution.

The verdict has not been appealed within the established deadlines.

On 2 August 2019, Mr Baltabay admitted guilt and filed a petition for a pardon to Mr K. K. Tokayev, the President of Kazakhstan.

Mr Baltabay was pardoned on 9 August 2019, by Presidential Decree, and the unserved part of the sentence was replaced by a fine.

According to the decision of the Al-Farabi District Court of Shymkent, adopted on the same day, the unserved 2,528 days of imprisonment were recalculated as a fine amounting to KZT1,595,800, which Mr Baltabay is obliged to pay within a month of the decision date.

At the same time, Mr Baltabay was released from the Shymkent IS-167/11 Department of Criminal Justice Institution of the Ministry of Internal Affairs.

On 11 September 2019, enforcement proceedings were initiated against Mr Baltabay to recover the KZT1,595,800 fine owed to the State, which he had failed to pay.

On 1 October 2019, a submission was made to the Al-Farabi District Court of Shymkent to replace the fine imposed on Mr Baltabay by the court verdict with another punishment, due to the failure to pay the fine.

For reference: under paragraph 3 part 6 of Article 41 of the CC, the sentence (verdict) shall be enforced subject to the failure to pay the fine within the prescribed period, the pending amount of the fine shall be replaced by a term of imprisonment, calculated as one imprisonment day equal to four MCIs to be paid by the person convicted of a grievous crime.

The above sanction was replaced by five months and eight days of imprisonment by decision of the Al-Farabi District Court of Shymkent (court decision of 16 October 2019). The court sentenced Mr Baltabay to be taken back into custody in the courtroom.

Mr Baltabay was released from IS167/3 on 20 March 2020, upon the expiry of the sentence and filed a petition to the court requesting the restoration of the appeal deadlines, two months after the date of the entry into legal force of the verdict (7 October 2019).

The Enbekshi District Court of Shymkent denied the request to restore the missed deadline in its decision dated 31 October 2019.

On 24 September 2020, Mr Baltabay, with Mr Abishev representing him, appealed once again to the court against the court verdict of 17 July 2019.

The Enbekshi District Court of Shymkent dismissed the appeal due to the missed deadline to appeal the verdict in a decision dated 28 September 2020.

The additional sanction depriving him of the right to hold senior positions in public associations and non-profit organizations was not appealed by Mr Baltabay.

Moreover, until today, no petition challenging the lawfulness and validity of the trial court verdict has been filed with the Supreme Court by him or his defence.

Ms Kharkova, former leader of the Confederation of Independent Trade Unions of Kazakhstan (CITUK).

On 25 July 2017, she was sentenced to four years of restriction of liberty, confiscation of property and five-years deprivation of the right to hold senior positions in public associations and non-profit organizations due to abuse of office (Part 1 of CC Article 250), resulting in damage exceeding KZT12,000,000.

According to the CITUK Chapter, the organization was non-profit, it did not pursue profit. Despite this, Ms Kharkova, abusing her powers, concluded contracts with third-party organizations in order to extract benefits.

The funds were illegally accrued to herself and her closest employees as "bonuses", causing the union KZT2,500,000 damage.

Moreover, she placed KZT5,000,000 in her bank deposit at 13.2 per cent per annum, having withdrawn the amount from the union's account.

During the accounting audit, she failed to present documents to support the KZT8,000,000 transfer.

Investigation and forensic inquiry findings proved Ms Kharkova's guilt (accounting examinations confirming the transfer of funds, bank documents, witness statements, constituent documents of the trade union movement limiting the convict's authority to disburse funds).

On 29 September 2017, the South Kazakhstan Regional Court Appeal Panel found the verdict lawful and justified, and left it unchanged. The Appeal Panel concluded that the trial court's assessment of each piece of evidence and of the case materials was correct and reliable. The court observed the general principles of sentencing and considered mitigating circumstances for guilt and punishment.

The appeal decision indicates the court's verdict, reflecting the court's conclusions on the alleged reports on the work done in 2009–15, as submitted by the defence to the court, which were not signed or approved, nor were the minutes of their discussions submitted to the court, so the reports could not be regarded as evidence. In addition, the court noted that, during the investigation, Ms Kharkova always rejected the repeated questions on the availability of the documents pertaining to the activities of the organizations she led, and provided no reports or documents for audit and expert checks.

On 9 November 2017, Ms Kharkova was registered with probation service No. 1 of the Enbekshi District of the Department of Criminal Justice of Shymkent.

For reference: restriction of liberty consists of probation control over the convict for six months to seven years and performance by the convict of 100 hours of compulsory labour annually during the term of the sentence. The restriction on freedom shall be served at the convict's place of residence without isolation from the community.

Probation control shall be performed by the competent authority and, if the court so decides, include the convict's duties: avoidance of changing the place of permanent residence, work or study, without notification to the competent authority; monitoring of the convict's behaviour; avoidance of visiting certain places; treatment for mental and behavioural disorders (diseases) associated with abuse of psychoactive substances, and sexually transmitted diseases; provision of financial support to the family; other duties contributing to the convict's correction and preventing the convict from committing new criminal offences.

The convict petitioned for a review of the judicial acts in cassation.

The cassation petition was subject to preliminary examination by a Supreme Court judge, who requested and studied the criminal case files and rejected the referral of the convict's petition for reconsideration to the court of cassation due to the lack of grounds for review of the judicial decisions.

Ms Kharkova's petition to the Supreme Court Chairman for the submission of the verdict for a cassation review was rejected due to the absence of grounds for such submission.

It has been possible to file a conditional early release petition since 9 November 2018. Subject to Ms Kharkova's application, the restriction of freedom could be replaced by a fine (approx. KZT800,000). To allow the above, complete compensation for the damage (approx. KZT5,000,000) is required, but this right has not been exercised.

The deadline to file the conditional early release petition expired on 9 February 2019, and according to the Prosecutor General's Office, no application was submitted.

The term of Ms Kharkova's restriction of freedom expires on 9 November 2021.

With regard to the criminal case of Mr Dmitry Senyavsky, who suffered injuries, criminal intelligence measures were taken to investigate the offence.

On 15 February 2019, the criminal case was suspended due to the failure to identify the person who committed the crime.

Efforts to investigate the crime continue.

Regarding the registration of the Congress of Free Trade Unions of the Republic of Kazakhstan (CFTU)

As reported earlier, the judicial authorities refused to register the national association of trade unions “CFTU” on four occasions.

The first registration of CFTU was rejected due to the similarity to the already registered legal entity the “Confederation of Free Trade Unions of Kazakhstan”. Moreover, the Charter provisions indicated its succession to the forcibly liquidated republican association of trade unions “CITUK”.

According to Article 38 of Kazakhstan’s Civil Code, “The title of a legal entity may not fully or substantially duplicate the title of legal entities registered in the Republic of Kazakhstan”.

The deficiencies specified in the initial rejection were not remedied in the subsequent applications for registration (on 17 August 2018, 18 September 2018 and 14 November 2019). At the same time, all the irregularities are of a remediable nature.

However, to date, the violations identified have not been eliminated and the reapplication for state registration has not been submitted to the judicial authorities.

On the suspension of the activities of the Sectoral trade union of fuel and energy complex employees (STUFECE).

In accordance with the decision of the specialized inter-district economic court of Shymkent on 5 February 2021, the activities of STUFECE were suspended for six months due to the trade union’s failure to confirm its status.

For reference: according to paragraph 2 of Article 13 of the Law on Trade Unions (hereinafter the Law), a sectoral trade union shall have structural units and (or) affiliated organizations in the territory covering more than one half of the total number of regions, cities of national status and the capital.

Under Article 10, paragraph 2, of the Law, sectoral trade unions must submit their registration authority with the copies of the documents certifying their compliance with the requirements of Article 13, paragraph 2, of the Law before the end of the year following registration.

Under Article 10, paragraph 3, of the Law, failure to certify a sectoral trade union's status within one year of its registration results in the suspension of its activities by judicial procedure upon application by the local executive authorities.

In March 2021, the Ministry of Labour and Social Protection of the Population of Kazakhstan (MLSP) and the representatives of the Ministry of Justice, the national trade union associations, the Federation of Trade Unions, the Kazakhstan Confederation of Labour, and the Commonwealth of Trade Unions “Amanat”, organized a meeting with the head of STUFECE, Mr Kosshygulov, and its representatives Ms Kharkova and T. Erdenov, to provide practical assistance on trade union registration procedures in a working group on problematic issues in trade union registration.

On 25 March 2021, STUFECE filed an appeal with the Shymkent Appeal Panel.

The session of the court of appeal was scheduled for 21 April 2021, and postponed until 29 April 2021.

The court session rescheduled for 29 April 2021 was also postponed due to the request from the representatives of the STUFECE for the recusal of the judge.

For information, on 13 January 2021, Mr Koshygulov was appointed STUFECE Chairman according to the application made to the state service for the registration of the constituent documents, amendments and additions of legal entities.

Moreover, a working group on trade union registration issues comprising the MLSP, the Ministry of Justice and representatives of national trade union associations has been active since 2019.

To date, problems relating to the registration of trade unions have not been reported or written or verbal complaints received.

Should complaints on trade union registration arrive, they will be duly addressed by the working group.

Concerning the activities of national associations of employers

The General Agreement for 2021–23 (hereinafter the General Agreement) was signed by the Government, national associations (associations or unions) of employers and national associations of trade unions on 12 March 2021.

The National Confederation of Employers (Entrepreneurs) of the Republic of Kazakhstan (hereinafter the Confederation) was among the signatories of the General Agreement.

The Confederation is making efforts to sign sectoral and regional social partnership agreements and its representatives are also members of national, sectoral and regional tripartite social partnership and social and labour regulation commissions.

As reported earlier, the National Chamber of Entrepreneurs “Atameken” lost its right to participate in the social partnership system as an Employer representative and did not participate in the development and adoption of the General Agreement.

Concerning Article 402 of the Criminal Code of Kazakhstan

Amendments to Article 402 of the Criminal Code were adopted in May 2020 to reduce the liability for encouraging participation in strikes declared unlawful by the courts.

The current provisions comply with Article 21 of the International Covenant on Civil and Political Rights, ratified by Kazakhstan in 2005, which provides that the exercise of the right of peaceful assembly shall not be subject to any restrictions other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or protection of the rights and freedoms of others.

In addition, MLSP Order No. 89 of 29 March 2021 establishes a working group for analysis of the enforcement of labour legislation (hereinafter the Working Group), which includes representatives of state bodies, trade union associations and employers' associations, and various experts and academics in the area of labour relations.

The Working Group shall discuss the improvement of the labour legislation, the Law on Trade Unions, and the revision of Article 402 of the Criminal Code.

Concerning the inclusion of international workers' and employers' organizations in the list of international and state organizations providing grants

As reported earlier, the MLSPP is prepared to consider the possibility of including the International Trade Union Confederation and the International Organisation of Employers on the list.

This issue will be considered subject to the relevant letters from these organizations, indicating the specific goals and areas covered by their grants.

Discussion by the Committee

Interpretation from Russian: Government representative (First Vice-Minister of Labour and Social Protection of Population) – In 2019, at the 108th Session of the Conference, we have informed this Committee about the implementation of a road map which was developed as the outcome of a visit by an ILO high-level mission to Kazakhstan. In the last two years, we have completed all activities provided for in that road map. That means that we have carried out an analysis of the way in which the trade union law is applied in Kazakhstan, in consultation with trade unions at all levels (including unions at the national, sectoral and territorial levels). We have also worked out recommendations to improve the procedures on the basis of which employers' and workers' organizations are able to operate and receive aid from international employers' and workers' organizations abroad.

Consultations have been held with trade unions at the national level and representatives of the Ministry of Justice regarding the issue of registration of trade unions. As a result of the work referred to above, the Law on amendments and additions to some legislative acts of the Republic of Kazakhstan on labour issues was adopted in May 2020. By virtue of this law and in order to implement the Convention, the Labour Code, the Criminal Code, the Law on Trade Unions, the Law on the National Chamber of Entrepreneurs (NCE) and the Law on Public Associations were amended. Regarding the Law on Trade Unions, the mandatory affiliation by lower level trade unions to the higher-level trade unions has been repealed (sections 12, 13 and 14 of the Law); this trade union can autonomously decide on their trade union affiliation and membership. Secondly, provisions regarding international cooperation with trade unions have been included in the law. As a result of that change, trade unions can affiliate to international trade union organizations and organize and conduct activities together with international trade union confederations. Thirdly, the procedure of confirmation of status at the branch, national and territorial levels, unions has been simplified. The requirement to have half the workers in a branch or in an enterprise to actually be registered as an operating trade union has been repealed. Fourthly, the rules for registration of trade unions have been simplified. Now, in order to fulfill the requirements for the minimum number of affiliated organizations in a certain territory, in addition to the affiliated organizations, structural subdivisions (branches, representative offices) of this trade union will be taken into account. At the same time, in 2020, new rules for the provision of public services in the field of state registration of legal entities and registration of branches and representative offices were approved, where the period of state registration was reduced from 10 to 5 working days. The time for unions to confirm their status has been extended from six months to a year following their registration. In case of non-compliance with the deadline set for the confirmation of their status, the procedure of a dissolution has been replaced by a suspension of trade union activity from three to six months.

We have made changes to the Labour Code and the Law on the NCE so as to repeal the role of the NCE as an employer representative in social dialogue. A separate provision of the Code provides for the rights of employers' organizations. In addition, the grounds for recognizing strikes as illegal set forth by the Labour Code were revised, and strikes at hazardous production facilities are now allowed, provided that the uninterrupted operation of the main equipment and mechanisms was ensured. In organizations providing service ensuring livelihood of the population, strikes are carried out if the volume of relevant necessary services for the population is preserved, that is, without causing harm to the entire population of the relevant area.

Under the amended Criminal Code, calling for an illegal strike is now no longer a criminal offence. We have also lowered the amount of the fine which may be imposed for infringing the law. Deprivation of freedom and imprisonment, they were there before, those sentences have now been replaced by other forms of sanction.

Currently, there are three national trade union organizations in Kazakhstan, 53 branch level trade unions, 34 territorial trade unions and 357 local trade unions bringing together approximately 3 million workers. When these changes started to be brought into our legislation last year, we had new trade unions set up: 1 branch trade union, 25 local and six affiliates of branch level trade unions. So, you can see the law is operating, the unions are operating, and we do not feel that there are any problems with Kazakhstan's law or practice in respect to the Convention.

In addition, on 12 March 2021, we, and our social partners, signed a new General Agreement for 2021–23 between the Government of the Republic of Kazakhstan, the national trade union organizations and the national employers' organizations. The Agreement contains provisions obliging the parties not to interfere in each other's affairs and activities.

I would also like to say that Kazakhstan is the only country in Central Asia where all three national trade union centres are signatories of the General Agreement. This underlines that there is an active cooperation between the unions.

As to practical assistance in undergoing registration procedures, there is a working group in the Ministry of Labour which includes officials from the Justice Ministry, as well as representatives of trade unions, including the Federation of Trade Unions of Kazakhstan, the Kazakhstan Labour Confederation and "Amanat" Trade Union, to offer practical assistance with registration. I would like to assure you that the Government of Kazakhstan is planning to do further work in order to ensure that its labour legislation is fully in compliance with international labour standards and guarantees protection of the work of unions and employers' organizations in Kazakhstan, thus promoting social dialogue.

President, Mr Tokayev, on 9 June this year, signed a Decree on further measures to be taken by the Republic of Kazakhstan in the area of human rights. In accordance with that, the Government of our country will be developing a plan of human rights-related measures which will affect several key areas of the world of work.

They will touch upon, inter alia, freedom of association, the freedom of expression, the right to integrity of life, the rights of victims of trafficking in persons; human rights of citizens with disabilities; the rights of women, the eradication of discrimination and, at the same time, it is aimed at improving work between the Government and NGOs, making the legal system more effective and preventing torture. It will seek to improve Kazakhstan's cooperation with various international organizations, including the UN Council on Human Rights. As part of this plan, we will be working to improve our

legislation further, including the legislation which governs the operation of trade unions in Kazakhstan, simplifying the procedures for them to have members affiliate, to work to sort out labour disputes, and to operate in general. This will be part of Kazakhstan's approach to overhauling and modernizing its legal system, and the state apparatus in general.

In conclusion, I would like to request the International Labour Organization to note the measures we have taken, and to support us in our plans outlined above by providing further technical consultations.

Membres travailleurs – Le cas du Kazakhstan est un cas récurrent au sein de notre commission. Nous avons en effet abordé ce cas à quatre reprises dans le passé en devant à chaque fois regretter les graves violations de la convention dans le pays. Nous abordons une nouvelle fois ce cas en devant dresser le même constat que celui des examens précédents au sein de notre commission. Si les modifications légales intervenues pour répondre aux recommandations formulées dans le passé constituent un premier pas dans la bonne direction, le chemin vers une pleine conformité de la législation kazakhe à la convention est encore long. En effet, d'autres pans de la législation kazakhe n'ont pas été modifiés alors qu'ils ont également un impact sur l'exercice de la liberté syndicale.

Plus long encore que le chemin vers la conformité du cadre légal kazakhstani avec la convention, est le chemin que devra encore parcourir le Kazakhstan pour garantir l'application effective en pratique de la convention dans le pays. En effet, si des modifications sur le plan légal ont été introduites, on n'en aperçoit pas concrètement les effets en pratique puisque les difficultés restent les mêmes.

Comme le reflètent les observations de la commission d'experts, de nombreuses organisations syndicales éprouvent encore de nombreuses difficultés à obtenir leur enregistrement. En rappelant que cet enregistrement ne devrait être qu'une simple formalité, nous devons regretter que ces procédures d'enregistrement soient opportunément utilisées pour entraver le processus de création ou le bon fonctionnement des organisations syndicales libres et indépendantes, en contravention à la convention.

Après plusieurs tentatives, les membres du KNPRK ont même tenté d'enregistrer leur organisation sous le nom de «Congrès des syndicats libres», mais cela leur a encore une fois été refusé. Le Syndicat industriel des employés du secteur des combustibles et de l'énergie est quant à lui actuellement sous le coup d'une décision de suspension de six mois encore en cours prononcée le 5 février 2021 et connaît également un processus de dissolution. L'explication du gouvernement selon laquelle les organisations syndicales n'ont pas besoin d'enregistrement pour exister n'est pas satisfaisante dans la mesure où les obstacles auxquels elles sont confrontées en l'absence d'enregistrement les empêche en pratique de pouvoir fonctionner effectivement en tant qu'organisation syndicale.

Il conviendra que le Kazakhstan poursuive son travail en concertation avec les partenaires sociaux, en ce compris les partenaires sociaux indépendants, pour garantir l'impartialité et l'indépendance de ces procédures d'enregistrement qui sont encore aujourd'hui trop souvent utilisées politiquement pour décourager la poursuite ou la création d'organisations syndicales indépendantes.

Par ailleurs, les pratiques de harcèlement judiciaire à l'encontre de leaders syndicaux est toujours à l'œuvre dans le pays. Deux exemples édifiants sont repris dans l'observation de la commission d'experts. Il s'agit des cas de M. Baltabay et de

M^{me} Kharkova auxquels le groupe des travailleurs souhaite apporter tout son soutien. M. Baltabay et M^{me} Kharkova ont respectivement fait l'objet d'un emprisonnement et d'une restriction de liberté de mouvement.

M. Baltabay, leader du Syndicat industriel des employés du secteur des combustibles et de l'énergie actuellement en processus de dissolution, a entretemps été libéré mais est toujours à ce jour frappé d'une interdiction d'exercer toute activité publique, y compris des activités syndicales, et ce pendant les sept années à venir. Suite à cette condamnation, M. Baltabay a été contraint de démission de sa fonction. Nous exprimons le ferme espoir que la situation de M. Baltabay n'est pas la conséquence de son témoignage lors de l'examen du cas du Kazakhstan devant notre commission en 2017.

Quant à M^{me} Kharkova, qui était présidente du KNPRK, elle est encore aujourd'hui frappée d'une restriction de sa liberté de mouvement pendant quatre années et d'une interdiction d'exercer toute fonction dans une organisation publique ou non gouvernementale pendant cinq ans, prononcées en juillet 2017.

Nous rappelons également que d'autres syndicalistes font encore aujourd'hui l'objet d'une interdiction d'exercer toute fonction dans une organisation publique ou non gouvernementale par mesure de représailles pour leurs activités syndicales. Il s'agit de MM. Eleusinov et Kushakbaev, pour lesquels nous réitérons notre plein soutien.

Il s'agit clairement de tentatives manifestes d'empêcher toute possibilité pour eux de s'engager dans des activités syndicales à l'avenir et cela s'inscrit dans le cadre d'une volonté concertée de porter atteinte à l'existence de leur mouvement syndical. Ces pratiques de harcèlement judiciaire constituent de graves violations de la convention n° 87 et doivent immédiatement cesser et les peines prononcées à l'encontre de ces syndicalistes doivent être annulées.

À côté du harcèlement judiciaire, les représentants syndicaux sont encore trop souvent victimes de violences dans l'exercice de leurs activités syndicales. Le rapport renvoie à l'agression subie le 10 novembre 2018 par le président du syndicat des travailleurs du complexe pétrolier et énergétique de Chakhtinsk, M. Senyavsky. La violence à l'encontre de représentants syndicaux doit être condamnée avec la plus grande fermeté. Le Kazakhstan se doit de faire toute la lumière sur ces faits en recherchant activement les auteurs de ces faits, en les traduisant en justice et en leur appliquant des sanctions dissuasives.

En ce qui concerne la législation kazakhe, la commission d'experts relève que l'incitation à poursuivre une grève déclarée illégale par le tribunal est toujours passible d'une peine d'emprisonnement. Le gouvernement manifeste son intention de réduire ces peines. Il convient de rappeler qu'infliger des peines pour le simple fait d'appeler à une grève, même déclarée illégale par les tribunaux, ne devrait pas entraîner de peine ou de sanction. Prévoir de telles peines ou sanctions est contraire à la convention. Ces sanctions doivent être tout simplement abrogées.

Enfin, les organisations syndicales indépendantes au Kazakhstan ont toujours pu compter sur le soutien de la communauté syndicale internationale pour défendre l'exercice de leur liberté syndicale. Ce soutien est néanmoins fortement entravé par le gouvernement kazakhstani qui estime l'implication de ces acteurs internationaux comme une ingérence dans les affaires internes du pays. Si nous ne doutons pas des intentions louables de la proposition du gouvernement d'inclure la Confédération syndicale internationale (CSI) sur la liste des organisations internationales autorisées à soutenir les syndicats nationaux, nous sommes surtout d'avis qu'une telle autorisation

par les autorités ne devrait tout simplement pas être requise. Il s'agit en effet ici d'une énième entrave à l'exercice de la liberté syndicale consacrée par la convention.

Le Kazakhstan traîne derrière lui de très longues années de violations graves de la liberté syndicale et nous craignons que le rétablissement d'un environnement favorable à l'exercice effectif de cette liberté prendra encore de longues années. Malgré les modifications légales introduites au Kazakhstan, nous devons regretter de ne voir à ce jour aucun impact réel dans la pratique puisque le harcèlement judiciaire, les violences et les entraves à la constitution d'organisations syndicales par l'intermédiaire de la procédure d'enregistrement se poursuivent encore aujourd'hui.

Nous continuerons à suivre attentivement la situation au Kazakhstan et espérons que les intentions affichées par le gouvernement depuis de nombreuses années se traduiront un jour effectivement dans la pratique.

Employer members – The Government of Kazakhstan ratified Convention No. 87 in 2000 and as the Worker members have explained the Committee of Experts has issued 12 observations in this case and the Conference Committee has discussed this case four times, most recently in 2019.

From the outset, the Employer members would like to express our gratitude to the Government representative for the comprehensive oral and written information shared with the Committee. We take note of the Committee of Experts' observations concerning the imprisonment of trade unionists and the alleged assaults of the Chairperson of the Trade Union of Workers in the Fuel and Energy Complex of Shakhinsk. The Committee of Experts' observations requested the Government to provide information on the development of these cases.

The Employer members take note of the written information provided by the Government on 13 May regarding the criminal cases involving these trade unionists and the Employers request the Government continue to provide information on the status of these cases, as requested.

In respect of the conclusions of the Conference Committee made in 2019, the Employers' group would like to highlight five points raised by the Committee of Experts.

First is in respect of Article 2 of the Convention. The Employer members note that the Committee of Experts requested the Government to provide information on the current status of the Confederation of Independent Trade Unions of Kazakhstan (KNPRK) and to ensure that KNPRK and its affiliates enjoy full autonomy and the independence of a free, independent workers' organization without further delay. In addition, the Committee of Experts requested the Government to continue engaging with social partners on the issues concerning the registration process. We observe that the Government provided in its submission to the Committee on the Application of Standards on 13 May information on the registration of the KSPRK and the suspension of the Sectoral Trade Union of Fuel and Energy Complex Employees (STUFECE). In light of this, the Employer members must echo the Committee of Experts request to the Government to continue to provide information on the still unresolved status of the KSPRK and the STUFECE, and to engage with the social partners on issues concerning barriers to registration of trade unions.

Second, the Employer members note that the Committee of Experts previously requested the Government to amend specific sections on the Law of Trade Unions to ensure the right of workers to freely decide whether they wish to become members or associate with a higher-level association of trade unions. We are pleased to see that the

Committee of Experts noted with satisfaction that sections 11–14 of the Law on Trade Unions were amended accordingly, as requested.

Turning now to the Law on the National Chamber of Entrepreneurs. The Employer members note that the Committee of Experts previously urged the Government to amend the Law on the National Chamber of Entrepreneurs (NCE) and any other relevant legislation to ensure full autonomy and independence of free and independent employer organizations. The Government indicated in its written submissions to this Committee that the General Agreement for 2021–23 was signed by government national associations of employers and workers on 12 March 2021. The Employer members thank the Government for finally amending section 148(5) of the Labour Code and section 9 of the Law on the National Chamber of Entrepreneurs, thus ensuring that no longer the NCE, which has compulsory membership, but rather free and independent employers' organizations may represent employers in social dialogue at all levels. In this way, in line with Article 2 of the Convention, employers now have a choice to decide what organization should represent them in social dialogue efforts and related social and economic matters.

The Employer members also noted with satisfaction that NKRRK, which is the most important employers' organization at national level, has been the signatory of the new General Agreement for 2021–23, and NKRRK representatives have been involved in social dialogue institutions at sectoral and regional levels. The Employers consider these developments as steps in the right direction and trust the free and independent employer organizations will continue to be able to represent the needs and interests of their members in all matters of relevance within their sphere of competence. The Employer members, however, still have concerns as regards the potential impact that the procedure for accreditation with the NCE may have on the independence of employers' organizations and will keep this issue under close review. Therefore, the Employer members request the Government to continue to further promote and facilitate the activities of independent employers' organizations in the country and provide information in this respect in its regular reports on the application of the Convention.

However, concerning the right to strike issue in the Committee of Experts' observations, the Employer members would like to reiterate that the Convention does not contain rules regarding the right to strike to be regulated at national level. Therefore, in the Employer members view, as well as in the view of some governments, the request of the Committee of Experts to the Government to amend the law regarding strike issues has no basis or foundation or place in the Convention. Therefore, in our view, the Government is not obliged to consider this request.

Finally, in respect of the right of organizations to receive financial assistance from international organizations of workers and employers, the Employer members express appreciation at the amendment of section 6 of the Law on Trade Unions. We trust that the list in Ordinance No. 177 of 9 April 2018 will be extended to include international workers' and employers' organizations, such as the ITUC and IOE. The Employer members request the Government to continue to provide information on the measures taken in respect of all of these issues.

Interpretation from Russian: Worker member, Kazakhstan – We are the biggest workers' organization in Kazakhstan, and we include approximately 12 million trade union members from across the country. In addition to our federation in the country, we have two national unions. The federation has always spoken in favour of solidarity

among trade unions and has also supported solidarity campaigns among international trade union organizations.

We have appealed in favour of Larissa Kharkova, Amin Yeleusinov, Nurbek Kushakbayev, Dmitry Senyavsky, Yerlan Baltabay, to get their sentences lifted and to help deal with the issue of trade-union registration.

In the past, we have agreed with complaints sent by the ITUC to the International Labour Organization. We support the position of international trade union organizations, particularly in terms of requiring strict compliance with international labour Conventions by the Government of Kazakhstan, and is taking measures to bring its law and practice into line with Conventions.

At the union's initiative in Kazakhstan, proposals have been sent to the Labour Ministry concerning comments made by the Committee of Experts in the past. On 4 May last year, the President of Kazakhstan signed off a new law on changes and additions to some legal provisions relating to labour issues. The law now excludes the compulsory membership of unions in higher level union organizations, which means that the right of unions to operate freely is now guaranteed. Furthermore, conditions for confirming the status of unions as national, branch or regional, have been simplified. The requirements to have half the number of workers in a given branch to be recognized as a branch trade union has also been removed.

Turning to article 402 of the Criminal Code, which was mentioned by the Committee of Experts, this provision has not been removed entirely, but the provision has been rendered less strict.

Our Federation is preparing a package of proposals on further improvement of union and labour legislation in Kazakhstan, including on bringing in guarantees for unions' activity and the simplification of procedures to handle issues such as strikes and labour disputes. We always supported constructive dialogue with social partners, with national union organizations, and with others, on defending the interests and rights of individual workers and unions, and in promoting social justice and the principles of decent work.

This year, a new General Agreement, as you have heard, has been signed between the Government and the social partners. For the first time, national unions have worked out a joint consolidated approach to ensuring the protection of the labour and economic rights of workers and guaranteeing levels of wages. Our initiatives have been supported, as have what the social partners have done to prepare a road map on implementing the decent work Convention, promoting social partnership, and creating more decent work.

We continue to work with technical assistance from the ILO and from ACTRAV to improve our cooperation with the Organization, further ratification of international labour standards, and to provide better decent work to all people.

Employer member, Kazakhstan –The National Confederation of Employers of the Republic of Kazakhstan expresses its deep recognition to the Committee for considering the application of Convention No. 87 by Kazakhstan.

As already noted in the speech of the government representative, in May 2020, the Law "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Labour Issues" was issued, in which independent employer organizations of various levels became a party to social partnership. In particular, this law removed the powers of the National Chamber of Entrepreneurs (NCE) to represent the interests of

employers' organizations on social partnership issues, and it was excluded from the list of signatories to the General Tripartite Agreement.

Kazakhstan's violation of Convention No. 87 occurred back in 2013 with the release of the Law "On the National Chamber of Entrepreneurs". Despite the objections voiced by the Confederation of Employers at the working groups of the Government and Parliament when creating the NCE, the law was adopted. The Ministry of Justice, the country's parliament ignored the articles of the Convention ratified by Kazakhstan in 1999.

This led to a monopolization of the management of entrepreneurial structures, practically eliminating employer organizations from working with them. Employers' organizations became elements (members) of the National Chamber, which subordinated them to themselves, by introducing a procedure for their accreditation on a legislative basis.

It took five years, starting in 2014, for the Committee of Experts in order to convince the Government of the country of the need to amend the Labour Code and other related laws in accordance with the Convention. We believe that the Government has not fully implemented this work – the first steps have been taken, but the second steps have not been taken yet. Not everything has yet been brought into line with the Convention, namely, employers' organizations (industry associations and unions) accredited in the National Chamber of Entrepreneurs remain part of the NCE system, therefore they cannot be independent representatives of employers' organizations (entrepreneurs) and enter into the membership of the National Confederation of Employers. This also applies to financing the activities of industry associations (unions), through the conclusion of agreements with them to perform the functions of the National Chamber of Entrepreneurs of the Republic of Kazakhstan "Atameken".

Therefore, we believe that the Government needs to make appropriate additional amendments to the law "On NCE" in line with the principles of freedom of association. An administrative approach on the part of the authorities led to the development and adoption of a law "On GMP" in violation of the Convention.

We think that the Committee will point out the still existing violations in the observance of the Convention and will accept the recommendations according to which the Government and the Parliament of the country should eliminate the existing violations.

Government member, Portugal – I have the honour to speak on behalf of the **European Union and its Member States**. The candidate countries the **Republic of North Macedonia, Montenegro and Albania**, the EFTA country, **Norway**, member of the European Economic Area, as well as the **Republic of Moldova**, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights and the right to organize and the freedom of association.

We actively promote the universal ratification and implementation of fundamental international labour standards, including Convention No. 87. We support the ILO in its indispensable role to develop, promote and supervise the application of international labour standards and of fundamental Conventions in particular.

The EU-Kazakhstan relationship is governed by the Enhanced Partnership and Cooperation Agreement, which has enabled us to strengthen our bilateral cooperation.

This Agreement includes commitments to effectively implement the fundamental ILO Conventions. While we acknowledge the progress made by the Government in amending parts of its legislation, we are concerned that Kazakhstan has become a recurrent case at the Committee on the Application of Standards. Conformity with the Convention, both in law and in practice, is now discussed for the fourth time in the last five years. We encourage the Government to address the outstanding issues to fully comply with Convention No. 87.

Following the ILO high-level tripartite mission of May 2018 and the resulting road map, the EU and its Member States note with satisfaction the amendments, in May 2020, of several legislative acts, including the Law on Trade Unions, the Law on the National Chamber of Entrepreneurs and the Labour Code.

We urge the Government to repeal article 402 of the Criminal Code which criminalizes “calling on workers to participate in a strike that has been found illegal by a court”. This article is incompatible with the freedom of association, the right to organize its activities, including the right to strike, without interference of public authorities.

Beyond legislative amendments, we call on the Government to ensure that freedom of association, as well as the right to establish organizations without prior authorization and the right to organize, both in law and in practice, are respected.

We note the information submitted by the Government regarding the denials to register for the Congress of Free Trade Unions and the Industrial Union of Employees of the Fuel and Energy Sector, as requested by the Committee. We regret that both trade unions remain unregistered. We also regret the suspension of the operations of the Industrial Union of Employees of the Fuel and Energy Sector. We stress the importance of ensuring that independent trade unions are able to register and carry out their activity without interference and strongly encourage the Government to continue engaging with the social partners in addressing the issues concerning the registration and suspension processes.

We note that the Committee on Freedom of Association continues examining the cases of Mr Baltabay and Ms Kharkova and take note of the submission by the Government of written information on their cases, as well as on the case of Mr Senyavsky. The EU and its Member States deplore any violation of fundamental rights and any act of harassment, intimidation, assault or imprisonment against trade unionists.

The EU and its Member States will continue to follow and analyse the situation and remain committed to our close cooperation and partnership with Kazakhstan.

Interpretation from Russian: **Government member, Russian Federation** – The Russian Federation fully supports the points made by the distinguished Minister of Labour of Kazakhstan on compliance by his country with Convention No. 87.

We believe that criticism against Kazakhstan, on the grounds that it allegedly violates the provisions of this Convention, that criticism from the ILO, international union organizations and human rights bodies is unfounded. In May 2018, an ILO high-level mission visited Kazakhstan. As a result, a road map was adopted on the implementation of recommendations made by the Conference Committee and the Committee of Experts concerning the Convention. On the basis of this document, the Kazakhstan authorities did a lot of work to amend their national legislation. In May 2020, President Tokayev signed a law on changes and additions to certain legal provisions relating to labour in Kazakhstan. This was to further improve the legal governance of social and labour

relations, including the activity of trade unions and the development of dialogue with trade unions at all levels of social partnership. Therefore, the national legislation has been brought fully into accordance with international labour standards and that, we hope, will be reflected in the report of this Committee on this case so that consideration of the case is brought to an end. I would like to take this opportunity once again to call upon the ILO and all Members of the Organization, when looking at such cases, to stick strictly to the principles of neutrality and objectivity in not bringing issues which go beyond their purview and have nothing to do with the implementation of ILO labour Conventions.

Interpretation from Russian: **Worker member, Russian Federation** – The delegation of Workers of the Russian Federation has not seen any real progress in this situation in respect to the application of the Convention, in Kazakhstan. The changes mentioned by the Government to their law, do not really change the situation in any substantive way. Leaders of independent trade unions have been found guilty of criminal offences, they may be in freedom at the moment thanks to the efforts of the ILO and the international community, but they are still considered criminals and they cannot engage in trade union activity. On the basis of the Trade Union Law, the KNPRK, , despite the fact that the reasons for refusal for registration are no longer in force, was dissolved legally and efforts to re-register the Confederation have been a failure. When the Confederation was dissolved, pressure was put on its activists and there are virtually no trade unions left now that were part of the Confederation.

Kazakhstan's Trade Union Law and its new wording looks at obligatory registration as legal entity for trade union organizations and the procedure for that is very complicated. Trade unions cannot set up in ways which are not provided for by law. They are limited in receiving financial assistance, they cannot have members from certain categories of workers, and they still have to comply with other provisions.

When an amendment was made to article 402 of the Criminal Code, it still made the calling of a strike an offence. Punishment for doing that is provided even when, in the course of the strike, there have not been any serious violations of law and order. It seems therefore, that freedom of association continues to be violated in Kazakhstan. We urge the Committee to take real measures to ensure that proper substantive rather than cosmetic changes are made to law and practice in this respect in Kazakhstan.

Government member, India – India welcomes the delegation of the Government of Kazakhstan and thanks it for providing the latest update on the issue under consideration. The delegation of India has gone through the findings of the Committee of Experts and the responses thereto, furnished by the Government of Kazakhstan. India appreciates the commitment of the Government of Kazakhstan to fulfil its international labour obligations including those related to the Convention through progressive implementation of the relevant recommendations of the ILO and the willingness to constructively work with it.

India takes positive note of recent legislative amendments enacted by Kazakhstan to bring the national trade union legislation into conformity with the ILO standards. India also notes with appreciation the signing of the General Agreement for 2021–23 by the Government and the social partners. We believe that this Agreement pertaining to the activities of national associations will provide due protection to them in conduct of their internal affairs. We also look forward to continued engagement of the Government of Kazakhstan with social partners in this regard.

We request the ILO and its constituents to fully support the Government of Kazakhstan and provide all necessary technical assistance that it may seek in fulfilling its labour-related obligations. We take this opportunity to wish the Government of Kazakhstan all success in its future endeavours.

Worker member, Germany – I speak on behalf of DGB, FNV and Nordic trade unions. Over the last days some delegates said demanding respect for civil liberties falls outside the scope of the Convention. The ILO's supervisory bodies have however, on numerous occasions emphasized that the rights under the Convention can only be exercised within a system that respects fundamental rights.

In Kazakhstan, workers, independent unions and their members face repression and systematic state obstruction in exercising their civil liberties in general and the right to organize in particular. The right to strike forms part of the right to organize as the ILO's supervisory bodies have rightly pointed out over decades.

Trust, cooperation and solidarity are essential but being able to use industrial action as a means of last resort is a crucial prerequisite for the negotiating power of a united workforce.

The Kazakhstani Labour Code and the Criminal Code still provide broad gateways for the infringement of the right to strike and the freedom of assembly. In its written statement to the Committee, the Government indicates that the amended article 402 of the Criminal Code complies with Article 21 of the International Covenant on Civil and Political Rights and hence, the rights protected under Convention No. 87. According to the UN Human Rights Committee, any restrictions of Article 21 must be necessary and proportionate in a society based on democracy, the rule of law, political pluralism and human rights.

In 2016, the Committee has called on the Government to refrain from criminalizing public associations for their legitimate activities under criminal law provisions that are broadly defined and not compliant with the principle of legal certainty. An assessment of the amended article 402 of the Criminal Code shows that nothing has changed since. As is the case with article 174 of the Criminal Code under which the incitement of social discord can be punished with imprisonment for two to seven years.

We therefore call on the Government to immediately bring its law not only in line with the Convention, but also the international human rights Conventions Kazakhstan has ratified and hence pledged to respect, promote and fulfil.

Government member, Turkey – We thank the Government of Kazakhstan for the information it provided and welcome its willingness and commitment to constructively engage and cooperate with the ILO.

On 4 May 2020, legislative amendments were enacted to bring Kazakhstan's trade union legislation into conformity with ILO requirements and an inter-agency working group was established to ensure full and proper implementation of new legislation and address issues raised in the report of the Committee of Experts. We encourage the Government of Kazakhstan to continue to undertake necessary steps in this regard.

We commend the positive and significant steps, such as: the elimination of the principle of mandatory vertical association of trade unions; the introduction of the rules on the international cooperation for trade unions; the exclusion of the National Chamber of Entrepreneurs "Atameken" from the social partnership system; the mitigation of liability for calls to participate in illegal strikes; the clarification of the conditions for holding strikes at certain facilities (such as energy and heat supply, transportation,

communications, healthcare); and the facilitation of the procedure for registration of trade unions taken by the Government and recent amendments made by the Government with a view to the implementation of the road map as a result of the ILO mission in May 2018 and in order to bring their national legislation in accordance with standards of the Convention should be acknowledged.

We welcome the fact that the Government expressed its willingness to continue engaging in social dialogue with the social partners. The Kazakhstani Government is determined to work on issues raised by the ILO and social partners in the spirit of constructive dialogue. We believe that Kazakhstan will continue to work with the ILO and social partners in the spirit of constructive cooperation.

Worker member, United States of America – Unfortunately, since this body last discussed this case in 2019, the Government of Kazakhstan has continued its campaign to undermine independent trade-union activity. Since the Law on Trade Unions was adopted in 2014, local advocates estimate that at least 600 union bodies at different levels have lost their status in clear violation of their right to free association. This includes the KNPRK, which has made at least three attempts to re-register since it was dissolved in March of 2017, all of which were denied.

In May 2020, the Government passed amendments to the Law that appear to address some of the concerns raised by the Committee of Experts. However, in practice, the campaign of state repression of independent trade unions continues unabated. Since those amendments, global labour allies note only one successful registration of an independent union at the local level. Meanwhile, another branch trade union body was suspended as recently as February 2021.

Larissa Kharkova, the former Chair of the KNPRK, remains under modified house arrest, and Erlan Baltabay, Nurbek Kushakbayev and Amin Eleusinov, trade union leaders who were imprisoned for their work, are now banned from trade union activities.

The Government of Kazakhstan must fully implement the recommendations of the 2019 Committee, including ensuring that the KNPRK or its successor is registered, that registration procedures are not used to close out unions, and that charges and sentences against union leaders are dropped.

Government member, Azerbaijan – My delegation thanks the delegation of Kazakhstan for providing the latest update on the application of the Convention to the Committee. Azerbaijan appreciates the efforts and the progress made by the Government of Kazakhstan in fulfilling its obligations concerning this fundamental Convention, including the positive steps taken by the Government to implement the recommendations of the Committee of Experts.

We recognize that the Government of Kazakhstan has continued the important legislative and institutional reforms to ensure compliance with all its obligations under the Convention. Legislative amendments were introduced to bring Kazakhstan's trade union legislation in conformity with ILO requirements, as well as an inter-agency working group was established to address the issues raised in the report of the Committee of Experts. These actions by the Government of Kazakhstan demonstrate its commitment and willingness to address the concerns raised on the basis of tripartite consultative process and with active engagement of ILO. We encourage the Government of Kazakhstan to continue working closely with the ILO and increasing its efforts to implement ILO standards. At the same time, in fulfilling its labour-related obligations, we invite ILO to fully support the Government of Kazakhstan and provide any technical and consultative assistance that it may seek in this regard.

Government member, United States of America – This Committee has discussed the Government of Kazakhstan’s lack of progress to address serious issues of non-compliance with the Convention every year since 2015, except in 2018 when a high-level tripartite mission visited the country.

We welcome progress on recommendations to amend the Law on Trade Unions, the Labour Code, the Law on the NCE, the Criminal Code, the Code of Criminal Procedure, and the Law on Public Associations in May 2020. However, significant work remains. In February 2021, a court ordered the Independent Industrial Trade Union of Fuel and Energy Workers (ITUFEW) to suspend operations for six months for allegedly failing to maintain the minimum number of sectoral branches as currently required under the trade union law.

We are encouraged by the Government’s recent commitment to work with this union to remain operational, as this suspension would effectively dissolve the last remaining independent trade union in Kazakhstan. We call on the Government to make good on its commitment to respect and promote worker rights under this Convention. To that end, we strongly urge the Government to ensure freedom of association in both law and practice. This requires:

- respect for the full autonomy and independence of free and independent trade unions by immediately ceasing acts of violence, harassment and interference;
- vacating the suspension order against the ITUFEW;
- immediate and full implementation of the recent amendments, as well as further amendments to restrictive provisions under the Law on Trade Unions, including the minimum branch requirement for sectoral unions under section 13(2);
- continued engagement with the social partners on issues concerning the registration process, including to re-register the KNPRK;
- eliminating practices and vacating existing orders that prohibit or impose restrictions on trade unionists and leaders from engaging in legitimate trade union activities; and
- further review of section 402 of the Criminal Code, in consultation with the social partners and the ILO, to ensure penalties for calling strike action are not excessive.

We urge the Government to take all necessary measures to address these long-standing issues and recommendations. The United States remains committed to engaging with the Government to advance worker rights in Kazakhstan.

Government member, United Kingdom of Great Britain and Northern Ireland – I am speaking on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland and **Canada**.

The UK and Canada support the role of the ILO in developing, promoting and supervising the application of international labour standards and of fundamental Conventions in particular. We are committed to the promotion, protection and respect of human rights and labour rights, as safeguarded by the fundamental ILO Conventions and other human rights instruments and to the ratification, effectiveness and implementation and enforcement of the core labour standards.

The UK and Canada support Kazakhstan in its economic and social reform ambitions. Through our close partnership, we seek to ensure that adherence to rule-based international system, good governance, rule of law and universal human rights are promoted and enhanced.

We are pleased to hear about the May 2020 amendments to the 2014 Law on Trade Unions, as well as the recent amendments to the Labour Code and the Law on the National Chamber of Entrepreneurs, to address many of the concerns raised by this Committee since 2015.

However, we also note the various and important concerns raised by the Committee of Experts, and note with regret its remarks on the lack of meaningful progress with regard to the obstacles to the establishment and registration of trade unions, and the continued interference with the freedom of association of employers' organizations. We also note the concerning downward trend with regard to the human rights situation in the country, including incidents of intimidation and harassment against trade unionists and restrictions on the right to peaceful assembly. We therefore urge and encourage the Government of Kazakhstan to: first, protect the right of all persons, including trade unionists, to express their opinions and engage in peaceful protest, both in law and practice; second, effectively address the current difficulties in the trade union registration process and ensure an enabling environment for trade union registration; third, continue to work to ensure that workers' and employers' organizations can function independently and autonomously, in line with the views of the Committee of Experts; and finally, continue to engage closely, openly and transparently with the ILO in the future.

The UK and Canada will continue to support the Government of Kazakhstan in this endeavour.

Interpretation from Russian: **Observer, International Trade Union Confederation (ITUC)** – I represent workers who set up the Congress of Free Trade Unions in Kazakhstan. We were dissolved in 2017 for allegedly not meeting the requirements of the Trade Union Organization. Despite clear recommendations from the ILO, the law, which contradicts Convention No. 87, is still being used in practice and many trade unions have been unable to re-register. They have effectively been legally dissolved, and that includes us and our member organizations. Union leaders were brought to trial on fabricated charges and four of them were convicted. The Government says there is no connection between the cases against Mr Eleusinov, Mr Kushakbaev, Ms Kharkova and Mr Baltabay. In fact there is, their sentence, and the fact that they are members of our union. They may be in freedom but they cannot engage in trade union activity. We have made efforts under the new law to register a new organization, the Congress of Free Trade Unions in Kazakhstan, but the Ministry of Justice has refused registration and says it considers the reason for registration not being allowed last time remains valid; the activity of unions in the petrochemical industry, which I heard was stopped at the beginning of this year. Legal proceedings are in hand to dissolve our affiliates. The whole process has been ridiculous. I was not even informed about it. Employers have pulled out of collective agreements and they no longer recognize our representatives.

We urge the Government to firstly register the union; to withdraw the legal procedure for dissolving it; to pardon the activists and leaders who have been sentenced; and to investigate and to call to account those who have abused their legal position. We only want to protect and represent the interests of our members in accordance with the Constitution and the principles of freedom of association. We are grateful to the ILO, to the ITUC and to other organizations for their support.

Observer, IndustriALL Global Union – This is a joint statement made on behalf of global union federations, IndustriALL, IUF, BWI and PSI representing workers in different sectors of the economy worldwide, including Kazakhstan.

Kazakhstan continues to avoid to fulfil its obligations under Conventions Nos 87 and 98. The repressive Law on Trade Unions was adopted in 2014, after which the KNPRK was dissolved. In 2017, Erlan Baltabay, head of the local trade union “Decent Work” for petrochemical industry workers attended the International Labour Conference and spoke about the union rights violations in his country. He was later trialled, imprisoned and fined. Up to date, the Kazakhstani Government continues to use stalling tactics to discourage and avoid the registration of new trade unions. With this, the Government has paralysed activities of all the unions belonging to the Independent Confederation, which causes many workers totally unprotected over their free union choice.

As we speak, pressure and intimidation against the Industrial Trade Union of Employees of the Fuel and Energy Sector union, which is the last remaining and functioning affiliated trade union of the Independent Confederation. State authorities continue to deny registration of the said union, alleging that it twice failed to submit relevant papers for registration in 2020. In fact, some employers have already started to take advantage of this state behaviour, refusing to deliver their obligations under the collective agreement in vigour.

Along with this, the repressive Criminal Code is systematically used in a way to prosecute rank and file members and activists who are faced with imprisonment and/or sizeable fines, for no other reason than performing their union tasks. At the same time, members and activists of independent unions are physically attacked. For example, a trade union leader, Mr Dmitry Senyavsky, was brutally beaten in 2018 in the Karaganda Region by unidentified people.

Taking into consideration the total absence of improvement and the further deterioration of the workers’ rights, and refusal to register new unions, we urge the Government to take the necessary action to make sure that Kazakhstan respect its international obligations.

*Interpretation from Russian: **Government representative*** – I would like once again to express my thanks to everybody who has spoken in the course of the debate this afternoon, my government colleagues and the social partners for having made a contribution and spoken about what the Government of Kazakhstan has been doing. All the comments, all the recommendations, all the desiderata and all the good wishes expressed, will of course be taken into account when we plan our future work. I described that in my previous introductory statement.

I did mention that we have signed a new General Agreement, and that that included a commitment on the part of the Government and the social partners not to interfere in each other’s activities in any way but to continue to work together in order to promote any infringements or violations of the rights of either employers or workers and their organizations.

In May this year, as I mentioned, we did set up a special expert working group that is going to be tripartite and most of the work we are going to do to overhaul and review the things we need to do to make sure we are in full compliance with our commitments towards the ILO, and its Conventions will be done there.

The working group will also take into account that the Government instructions that a plan be developed to deal with wider human rights issues as I mentioned earlier. Now, some people in the course of the debate, have referred to certain procedural issues. In accordance with national law, all unions can be set up and organized without prior authorization which is precisely what I believe Convention No. 87 stipulates.

Receiving state registration and a registration number is something that can be done fairly straightforwardly and through the legal system. The status of a union is then recognized once those procedures have been completed. In this connection, I would like to say that, yes, the working group that we have between the Ministry of Labour and the justice ministry is operational. It includes unions and its responsibilities include dealing with problematic issues.

In March this year, we already looked at the issue of the union to which several speakers have referred and recommendations have been made that the registration process be simplified. We are keeping an eye on this situation, we are monitoring this situation through the working group, and the work will continue from here on out.

Turning to the registration of the Congress of Free Trade Unions of Kazakhstan, we have repeatedly said that we are willing to proceed with registration of these unions, like other unions, but I think what has been said about the activity or actions of the legal system in Kazakhstan in this respect is rather beside the point and not particularly accurate either. Of course the labour ministry is the coordinating body for promoting social dialogue, we promoted it in the past and we shall continue to do so now and in the future and, as I said, we will also involve the expert working group to which I referred several times.

I would once again like to say that, as far as we are concerned, we will continue to work to improve our labour legislation. We will make it easier for unions to operate to promote collective bargaining and to engage in the settlement of labour disputes. This work, which will be done by the Government together with our social partners, will, we hope, allow us to reach agreements and make sure that what we do is in step with our obligations towards the ILO.

Employer members – We have listened carefully to this discussion today. We would like to begin by thanking the Government for the written information and the detailed oral presentation provided to the Committee. This has been very helpful for a deeper and up-to-date understanding of the situation in Kazakhstan. Based on the discussion, we invite the Government to continue to review developments in the cases of Mr Baltabay and Ms Kharkova.

The Employer members also invite the Government to take appropriate measures to resolve the registration of the KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector.

The Employer members also invite the Government to continue to engage with social partners on issues concerning the registration of trade unions and those existing barriers.

The Employer members also invite the Government to continue to facilitate and remove obstacles regarding the operation of free and independent employers' organizations in the country, and to do so without delay.

The Employers' group also invites the Government to consider extending the list in Ordinance No. 177 of 9 April 2018 to cover international workers' and employers' organizations such as the ITUC and the IOE.

The Employer members also request the Government to provide information on developments and the measures taken in its next regular report on the Convention under article 22 of the ILO Constitution.

Membres travailleurs – Nous remercions le représentant du gouvernement du Kazakhstan pour les informations qu'il a pu nous fournir au cours de la discussion et nous remercions également les intervenants pour leur contribution.

Nous l'avons dit, les modifications légales intervenues sont un premier pas dans la bonne direction. Mais ces modifications légales n'ont toutefois pas réglé tous les problèmes de conformité à la convention de la législation kazakhe puisque d'autres aspects légaux devraient être mis en conformité avec la convention pour pleinement garantir la liberté syndicale.

La législation kazakhe soumet notamment toujours la coopération des syndicats avec des organisations internationales à une autorisation préalable délivrée par l'ordonnance n° 177 du 9 avril 2018. Une telle pratique nous apparaît contraire à la convention et il conviendrait que le gouvernement prenne toutes les mesures, en droit comme en pratique, garantissant que les organisations nationales de travailleurs et d'employeurs ne sont pas empêchées de recevoir une aide financière ou autre de la part d'organisations internationales, notamment en levant la nécessité de l'autorisation préalable pour pouvoir coopérer avec des organisations internationales.

Il est fondamental que le gouvernement mène des enquêtes sérieuses sur les faits de violence perpétrés à l'égard de syndicalistes, en particulier de M. Senyavsky, et qu'il poursuive et condamne leurs auteurs au moyen de sanctions dissuasives.

Le gouvernement doit veiller à faire cesser les abus de la procédure d'enregistrement qui visent à perturber le fonctionnement des organisations syndicales libres et indépendantes, à entraver leur enregistrement et à appliquer un traitement préférentiel à certaines organisations syndicales au détriment d'autres.

Le gouvernement veillera à s'abstenir de remettre en cause l'enregistrement des organisations syndicales libres et indépendantes et veillera à mettre fin aux procédures judiciaires en cours qui visent à dissoudre le Syndicat industriel des employés du secteur des combustibles et de l'énergie.

Le gouvernement veillera également à revoir, en consultation avec les partenaires sociaux, la législation et la pratique existantes en matière d'enregistrement et de réenregistrement des syndicats afin de garantir que le processus d'enregistrement n'est qu'une formalité.

Plus particulièrement, il conviendra de prendre toutes les mesures nécessaires, en droit comme en pratique, pour que le KNPRK et le Syndicat industriel des employés du secteur des combustibles et de l'énergie jouissent sans plus tarder de la pleine autonomie et de la pleine indépendance d'une organisation de travailleurs libre et indépendante et jouissent de l'autonomie et de l'indépendance nécessaires pour remplir leur mandat et représenter leurs mandants.

Le gouvernement veillera enfin à cesser la pratique de harcèlement judiciaire systématique à l'encontre de certains syndicalistes afin de les empêcher de s'engager dans des activités syndicales ou de poursuivre celles-ci. Il conviendra également que les peines prononcées à l'encontre de ces syndicalistes soient annulées et nous pensons ici particulièrement à M^{me} Kharkova et à MM. Baltabay, Eleusinov et Kushakbaev.

Le gouvernement veillera également à mettre en œuvre l'ensemble des recommandations formulées par notre commission dans le passé, en ce compris la roadmap de 2018.

Afin de mettre en œuvre toutes ces recommandations, nous invitons le gouvernement à accepter la venue d'une mission de contact direct avant la prochaine

session de notre commission qui pourrait également prendre contact avec les organisations et individus concernés par les observations de la commission d'experts. Le gouvernement veillera également à fournir toutes les informations demandées par la commission d'experts pour sa prochaine session.

Conclusions

The Committee took note of the written and oral information presented by the Government representative and the discussion that followed.

The Committee noted the long-standing and persistent nature of the issues and the prior discussion of this case in the Committee, most recently in 2019.

The Committee welcomed that further steps towards implementing the 2018 road map were made, in particular amendments to the law, however regretted that not all previous recommendations have been fully addressed so far.

In this regard, the Committee took note of the continuing restrictions in practice on the right of workers to form organizations of their own choosing, in particular the unduly difficult re-registration and deregistration processes which undermine the exercise of freedom of association.

The Committee also noted with concern the numerous allegations of violations of the basic civil liberties of trade unionists, including violence, intimidation and harassment.

Having examined the matter and taking into account the Government's submissions and the discussion that followed, the Committee requests the Government of Kazakhstan to take all necessary measures to:

- **bring all national legislation into line with the Convention to guarantee full enjoyment of freedom of association to workers' and employers' organizations;**
- **ensure that the allegations of violence against trade union members are completely investigated, notably in the case of Mr Senyavsky;**
- **stop judicial harassment practices of trade union leaders and members conducting lawful trade union activities and drop all unjustified charges, including the ban for trade unionists to hold any position in a public or non-governmental organization;**
- **continue to review developments in the cases of Mr Baltabay and Ms Kharkova;**
- **resolve the registration of the KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector (STUFECE) so as to allow them to enjoy the full autonomy and independence of a free and independent workers' organization, to fulfil their mandate and to represent their constituents without further delay;**
- **review with the social partners the law and practice concerning the registration of trade unions with a view to overcoming existing obstacles;**
- **refrain from showing favouritism towards any given trade union and put an immediate stop to the interference in the establishment and functioning of trade union organizations;**
- **remove any existing obstacles in law and in practice to the operation of free and independent employers' organizations in the country, in particular repeal in the**

Law on the NCE the provisions on accreditation of employers' organizations with the NCE;

- **ensure that workers' and employers' organizations are not prevented from receiving financial or other assistance by international workers' and employers' organizations; and**
- **fully implement the previous recommendations of the Committee and the 2018 road map.**

The Committee requests the Government to accept a direct contacts mission of the International Labour Office before the next session of the International Labour Conference with full access to the organizations and individuals mentioned in the observations of the Committee of Experts.

The Committee requests that the Government provide to the Committee of Experts before its 2021 session full information on developments and measures taken in consultation with the social partners to comply with the Convention.