

## **Report of the Direct Contacts Mission (DCM)**

### **Kazakhstan, 4 - 12 May 2022**

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#### **Conclusion and recommendations**

26. The DCM thanked the Government and the social partners for the hospitality and cooperation it received during its visit. The DCM was able to meet all the state bodies and persons it wanted to meet. It appreciated the openness and transparency demonstrated by the MLSPP in discussing the issues raised by the ILO supervisory bodies. It also appreciated the frank and open manner in which workers' and employers' organizations described and discussed the current situation. The DCM welcomed the statement made by the Government regarding its readiness and interest to continue engaging and cooperating at all levels with the ILO. The DCM further welcomed the information it received on the prospects of ratification of other ILO Conventions and noted the Government's request for the ILO technical assistance in this regard.

27. While observing progress, as already noted by the ILO supervisory bodies, the DCM was not fully convinced that all steps have been taken to bring the legislation and practice into full conformity with Convention No. 87. While there appeared to be a political will, concrete steps and actions still needed to be taken to address all pending comments of the CEACR on the application of the Convention, in particular as regards the issue of registration of trade unions, amendment of the relevant provisions of the Criminal Code dealing with "an additional punishment" that can be imposed by courts to restrict the right to hold a trade union office or participate in trade union activities, the exercise of the right to strike, as well as with regard to the place of employers' organization in the social dialogue system and processes.

28. With regard to trade union registration, the DCM recalled that the issue needed to be addressed both in the legislation and in practice. The DCM welcomed the Government's intention to replace the current registration system with a notification one and recalled that both the Law on Trade Unions and the Law on State Registration needed to be amended. Cognizant of the fact that amending the legislation will take time and informed of the fact that the registration of a trade union structure of the Union of Employees of the Fuel and Energy Sector in Almaty was pending with the local registering authority, the DCM indicated to the Government that the union's registration would be a significant and a concrete step which could be reported to the CAS in June 2022. By the time of writing of this report, the DCM learned that the registration was once again denied. It expresses regret in this regard.

29. The DCM further considered that with the recent decision to establish additional regions in the country, a requirement to have affiliated organizations and/or structures in over 50 per cent of

the regions/cities of regional importance/capital, as currently provided for the establishment of a sectoral trade union, appeared to be too high and needed to be reduced, in particular, when a sector or industry was present only in a few regions, such as oil sector, for example.

30. Regarding the possibility to impose, under the Criminal Code, an additional punishment in the form of a ban on public (including trade union) activities, or on holding public (including trade union) office, the DCM echoed the concerns expressed by the Human Rights Commissioner that this represented a restriction on freedom of association. The DCM recalled that any restrictions of this kind on ordinary trade union activities could only be imposed in exceptional circumstances. The DCM urged the MLSPP to initiate a legislative amendment, as per procedure indicated by the General Prosecutor's Office, with a view to exclude trade union activities from the scope of the relevant provisions of the Criminal Code.

31. The DCM further observed that all trade union representatives it had met with indicated that the organization of legal strikes was close to impossible in practice. In addition to further amending section 402 of the Criminal Code as requested by the CEACR, the DCM considered that the existing legal framework of collective labour dispute settlement needed to be reviewed with a view to making it more robust, efficient and speedy; it was also important to ensure that it was independent and enjoyed the confidence of the parties involved. It called on the Government to seek ILO technical assistance in this regard.

32. As concerns the right of employers' organizations to organize their administration and activities in full freedom, the DCM, like the CEACR in its latest observations, noted the legislative amendments, which explicitly excluded from the definition of the representative functions of the NCE the right to represent employers in the system of social partnership. The DCM heard from various interlocutors that in practice, however, the NCE appeared to participate, to some extent, in consultations on the labour and social issues, policies and legislation, and possibly even in collective bargaining. The DCM considered that steps needed to be taken to clarify the role of employers' organizations with a view to ensuring that participation in social dialogue and, in particular, in collective bargaining, is a prerogative of employers' organizations. Regarding the issue of accreditation, the DCM noted that the accreditation system was voluntary; that the Confederation of Employers was not accredited with the NCE and that the former did not consider that the accreditation or the lack thereof restricted its rights.

33. The DCM was encouraged by the MHSD understanding of the matters and its request for technical assistance of the Office. It trusted that the necessary assistance will be provided to the Government and its social partners.