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Fifth sitting, 1 June 2022, 12.40 p.m.

Cinquième séance, 1^{er} juin 2022, 12 h 40

Quinta sesión, 1.º de junio de 2022, 12.40 horas

Chairperson: Mr Topet

Président: M. Topet

Presidente: Sr. Topet

Discussion of individual cases (*cont.*)

Discussion des cas individuels (*suite*)

Discusión de los casos individuales (*cont.*)

Azerbaijan (ratification: 2000)

Convention (nº 105) sur l'abolition du travail forcé, 1957

Abolition of Forced Labour Convention, 1957 (No. 105)

Convenio sobre la abolición del trabajo forzoso, 1957 (núm. 105)

El Presidente – Vamos a examinar el caso de Azerbaiyán, Convenio sobre la abolición del trabajo forzoso, 1957 (núm. 105).

Government representative (Mr KARIMOV) – Since the Government has already submitted written information in the form of a report, in my presentation today, I would kindly avoid repeating the submission. Instead, I would concentrate on the issues of particular importance that may require kind attention of the esteemed Committee members and meeting participants. In addition, I would also clarify some aspects of the provided information because the report submitted had to be limited in volume.

Since we received the direct request and the observation of the Committee of Experts earlier this year, the Ministry took the matter very seriously. The Ministry is a major State agency, responsible for cooperation with the ILO and here I should emphasize that the ILO is very important to Azerbaijan. The ILO cooperation has a track record of 30 years of productive cooperation and Azerbaijan has one of the highest ILO Convention ratification rates in the region. Until now, 58 Conventions, including all eight fundamental Conventions and 45 technical ones were ratified and are already integrated in the national legislation. Currently there are plans to ratify a new Convention, which is the Occupational Safety and Health Convention, 1981 (No. 155).

The ILO is a reliable social partner that supported the Government in preparation of numerous strategic development documents. For instance, with its support the National Employment Strategy up to 2030 was developed and adopted. It enabled better management of the labour force and employment in Azerbaijan.

Azerbaijan was also one of the first countries to engage with the UN SDG mainstreaming, acceleration and points of support platform, which focuses, among other roles, on inclusive labour market.

Promoting decent work opportunities, quality jobs, improving working conditions, and enhancing social dialogue mechanisms have been identified as country priorities. These

priorities were reflected in the ILO's decent work country programme for 2016–20 and currently in a new programme for 2022–26 which is under discussion.

There are several priorities under this new programme, which are aligned with the SDGs and the UN Sustainable Development Framework and include international labour standards, mainstreamed in policy and practice through social dialogue, inclusive growth that reduces vulnerability and builds resilience and stronger institutions for better public and social services' delivery.

Therefore, upon receipt of the observation and the direct request of the Committee of Experts, the Labour Ministry carefully studied these documents. The Ministry swiftly mobilized all relevant bodies and a national task force was set up, consisting of ten state bodies and public institutions. Since the comments were related to the use of the Criminal Code, the Ministry convened with the relevant ministries, such as Ministry of Justice, Ministry of Internal Affairs, Supreme Court and Attorney-General's Office. Also, due to importance of the matter there are instances of representatives from the presidential administration joining the working group.

Not only the state bodies but also the national confederation of employers' organizations, representing employers, and trade union confederations, representing employees, are represented in this national task force. The participation of employers' organizations and trade union confederations was necessary since social dialogue on labour relations is conducted through a tripartite commission on social economic issue. This tripartite commission operates as a permanent body with its secretariat since 2016 and was established as a kind initiative of the ILO as a new institutional framework for social partners.

The three parties involved in the dialogue are the Labour Ministry, the National Confederation of Entrepreneurs and the Confederation of Trade Unions and it is a major

platform for discussions and coordination of joint actions of important labour related matters including, for example, amendments to the Labour Code, issues related to unemployment, minimum wages and other issues.

Now, with your permission, I would like to touch upon the application of Article 1(a) of the Convention in Azerbaijan. The Convention guarantees that compulsory labour is not used as a means of punishment for the expression of views. Meanwhile, the Convention does not prohibit punishment by penalties involving compulsory labour, including public works or correctional work of persons who use violence or incite to violence. In this regard, I would like to inform the esteemed Committee members of labour inclusive penalties currently available under the Criminal Code.

These two types of penalties are also common in the legislation and practice of other ILO Member countries. The Criminal Code, in article 42, provides, among other penalties, two types of labour inclusive penalties, which are correctional work and public works. In this respect, I have to mention an important aspect: in the Criminal Code, penalties fall into a main category and an additional category. Correctional work and public works are considered as main penalties.

Why is it important? Because they cannot apply, in addition to other penalties, such as imprisonment, limitation of freedom and others. The person cannot be imprisoned or placed in a prison and at the same time to be subject to labour inclusive penalties. The convicted person in Azerbaijan is either imprisoned or sentenced to correctional work or public works, it is either of the two. Therefore, correctional work is classified as a separate category of penalties which is clearly set out in the terms of application. It is regulated in detail under another law separate from the Criminal Code which is the code on penalties execution. The same applies to public works, which is another type of the labour inclusive penalty. This is a common type of

penalty since it is carried out in the free time of the convicted person when the person is not working or studying. These two types of punishments do not fall under the definition of forced labour under the ILO Conventions since correctional work and public works are carried out based on a court decision and under the supervision of the public authorities. This also explains that this is a normal practice for many countries, including for example, Ukraine, Kazakhstan, Georgia, Uzbekistan and others where both types of punishments are used and it does not come in contradiction with ILO norms and their requirements.

Now I would like to clarify the regulation of correctional work and how it is applied, because it was particularly mentioned in the observation presented by the Committee of Experts. Under the Azerbaijan Criminal Law, correctional work is carried out at the place of work, not in a prison – I would like to repeat “at the place of work” not “prison”. It is executed as a deduction of 5–20 per cent of the convicted person’s earnings in favour of the State so this form of penalty does not bring a person to face forced labour but it is a transfer of money from earnings in favour of the State while the convicted person participates in socially useful work at his workplace, not the prison. There is no isolation for the person subject to this type of penalty. Fines often are relatively high and not paid by convicts within the time period established by law. Therefore, under the Criminal Code, in case of wilful evasion from the fine payment, the punishment is replaced with penalties such as public works, correctional work, restriction of freedom or imprisonment. Correctional work is applied in some articles of the Criminal Code as an alternative to the sanctions without isolation from society. Therefore, it may be argued that public work is often even a lighter punishment than a fine or an imprisonment plus, in some cases, we have to take into consideration the UN standard minimum rules for non-custodial measures, which is also called the Tokyo Rules, which also promote the use of non-custodial measures as alternatives to imprisonment.

I would like to draw your kind attention to two very important aspects. If the acts under the certain articles of the Criminal Code, for example, article 169, which is particularly mentioned in the observation, do not result in such special harm to the public entities, they are not considered as a crime and lead to a penalty under the Code of Administrative Offences, as recommended by the ILO and the Committee of Experts.

I would like also to bring to your kind attention to some statistics indicating that the use of correctional labour is minimal and has been declining in recent years. In 2019, correctional work applied in 7 per cent of cases; public work only in 1.4 per cent of cases. In 2021, it came down to even less to 6 per cent and 3 per cent respectively. We have provided more information in the report, that is why I will not take too much of your time regarding these statistics but I would like also to mention that the observation of the Committee of Experts particularly mentions four sections of the Criminal Code; this is the article regarding Defamation; the article regarding Violation of Assembly Rules; the article regarding Violation of Public Order; and the article on incitement of national, racial, social or religious enmity. Moreover, these articles are not widely used in practice. Under three articles out of four for the last two years, there were no cases. For example, under article 147, there were only during the last two years, around 35 cases, so around 15 cases per year and penalties under these cases were applied only in five cases so that makes around 4 per cent of cases where some kind of penalties were applied.

So dear Committee, what should we expect? What should be our way forward? What does Azerbaijan plan to do? Of course, the Government understands that the comments and recommendations of the Committee of Experts are directed for more effective implementation of the ILO standards in the Member countries, including Azerbaijan. They also serve for us as an assessment of the current situation and for future reforms and improvement of national legislation and practice. Therefore, due to the importance of these recommendations and

comments, the Labour Minister convened with his high-level counterparts from different ministries and chaired the First Meeting of the National Task Force. The Azerbaijani Working Group has been engaging in intensive consultations and discussions with the ILO Diplomatic Mission in Geneva as well as the capital of Azerbaijan, Baku, and the Azerbaijani Diplomatic Mission in Geneva has held several meetings with ILO representatives. I personally had Zoom meetings with the ILO experts who were also requested to provide a technical note, that was a comprehensive detailed document that provided us with very sophisticated aspects of the recommendations and comments of the Committee of Experts and also the possible solutions which we found very valuable. The Working Group also prepared and presented a comprehensive report and an additional report was submitted. These reports were discussed with the National Coordinator here in Azerbaijan. Also, we discussed it with the ILO Regional Office.

Just a couple of weeks ago, on 19 May, a workshop on the application of the Convention was organized. Representatives of the Ministry, Employers' National Confederation, Trade Unions and , ILO Experts attended this important workshop and during the report preparation process and during the workshop, we identified that there are diverging opinions and approaches as to how the criminal laws in Azerbaijan should be amended so we believe that the ILO Experts are required to be engaged for the purpose of formulating and discussing the common ground and framework of further criminal law reforms in Azerbaijan. Also, we identified that the initial assessment of the needs showed us that not only should a reform be undertaken, but also statistics on cases and penalties should be presented to the ILO, which, of course, in the national language are quite large in volume so they should be translated into English which will require more time and additional resources.

In this regard, the Minister, already several weeks ago in May, despatched a formal request for ILO technical assistance to the ILO Regional Office in order to engage ILO expertise

and additional resources to address matters raised in the observation and the direct request. The technical assistance is planned to be discussed during the upcoming visit of the Director of the ILO Office for Eastern Europe and Central Asia to Azerbaijan which is expected to take place in mid-June. During her visit, we plan to organize a conference on the new decent work country programme for the next five years and also, we believe that this joint effort will strengthen and support the Government's activities to comply with the requirements of all ILO Conventions, as the Government undertakes from time to time reforms and measures to improve the legislation. For example, in October 2017, we had already amendments to the Criminal Code and approximately 300 amendments to the Criminal Code were introduced and a number of criminal offences were de-criminalized and some criminal offences were changed to administrative ones. In May of 2020, we had another package of amendments to the Criminal Code and the last amendments and the amnesty took place just several days ago on 28 May 2022 when we were celebrating the Independence Day and 213 persons were released from criminal punishment so we believe this is in line with the Social Reforms Programme which is currently being implemented in Azerbaijan gradually in stages and, already, this Reform covered approximately four million persons in Azerbaijan which makes 40 per cent of the population. The last package of reforms entered into force just this January of 2022 and the share of the expenses of the Reform is a budget that has reached 46 per cent which is a record number for the last three to four years.

Therefore, in the end, I would like particularly to reiterate that fulfilment of ILO norms and standards is of a particular importance as the Government will continue its best efforts in this direction with the ILO's productive collaboration, valuable support and constructive dialogue.

Worker members – The abolition of forced labour is a fundamental objective of the International Labour Organization. There can be no social justice where there is forced labour.

The adoption of the Convention in 1957 was a vital step towards meeting that objective, reinforcing as it did the normative framework created by the 1930's Forced Labour Convention, No. 29. Both, of course, rightly take their place amongst the ILO's fundamental Conventions.

Azerbaijan ratified the Convention in 2000. The country's implementation of this Convention has been the subject of recurrent direct requests from the Committee of Experts since 2004.

The issue we discuss today has been the subject of these observations since 2015, and yet – despite repeated opportunities, including its report for this year – the Government of Azerbaijan has never provided a complete response to these observations.

While we thank the Azerbaijan Government for the written information it provided to the Committee on 16 May, we regret that Azerbaijan waited until it had its back to the wall before responding to the observations of the Committee of Experts.

The persistent lack of response over an issue covered by the fundamental Convention has led directly to the Committee of Experts issuing a double footnote on Azerbaijan in their observations this year – which we can fully understand –, and the scrutiny of this Committee now reflects the gravity of the situation.

The observation of the Committee of Experts, repeated a number of times since 2015, relates to several provisions of the Azerbaijan Criminal Code that are drafted in such broad terms that they can be used to punish the expression of political opinions or the manifestation of ideological opposition to the established political, social or economic order.

These provisions provide for penalties of correctional labour or imprisonment that include an obligation to work, which is strictly prohibited under the Convention for holding or expressing political views or views ideologically opposed to that established political, social or economic system.

Indeed, while the work imposed on an ordinary offender may have the objective of reintegrating the individual in compliance with the guarantees provided for in Convention No. 29, the same cannot be said for persons convicted merely for expressing their opinion. The latter must be given special protection. And this is set out in the Convention.

The provisions in question are articles 147, 169.1, 233 and 283.1 of the Penal Code, which respectively punish defamation, the organization of (or participation in) a prohibited public gathering, the organization of collective actions that undermine public order and incitement to national, racial or religious enmity.

The Azerbaijan Government, having responded at last to the concerns of the Committee of Experts, argues that these provisions do not amount to forced labour, as the penalty of corrective labour is simply the confiscation of 5–2 per cent of the remuneration of the work performed by the person concerned. Chair, we cannot agree. Forced labour is defined as any work imposed by the State or a private individual under threat, including the non-payment of wages, even if only a part of them. And, in practice, it seems that these criminal provisions have been applied in an attempt to silence dissenting voices.

We appreciate the statistics provided by the Azerbaijan Government on the number of cases in which labour sentences have been imposed.

As the report of the Committee of Experts points out, many European and UN bodies and institutions have observed an increasing tendency to use provisions of the Criminal Code to prosecute journalists, bloggers, human rights defenders, as well as the punishment of insults, vandalism, state treason or the abuse of power.

The information provided by the Azerbaijan Government states that reforms have decriminalised certain offences and made them administrative offences.

But the UN Human Rights Committee has noted that, at the same time, the administrative penalties that can be imposed for minor charges, and which are often mobilised against human rights activists, have been considerably increased from 15 days in prison to 90 days.

These criminal provisions and their application in Azerbaijan are contrary to Article 1(a) of the Convention and there is an urgent need for Azerbaijan to bring its legislation and practice into line with the Convention. It is clear that the preferred course of action should be the removal of all criminal sanctions for the expression of democratic political views.

In addition, the European Court of Human Rights has, on several occasions, dealt with cases involving the detention and conviction of political opponents. In all the cases mentioned in the report of the Committee of Experts, the European Court of Human Rights concluded that the European Convention on Human Rights had been violated.

In 2018, similar findings were made by the UN Working Group on Arbitrary Detention, which also concluded that ordinary criminal law provisions are being used to undermine journalists' freedom of expression. More recently, the report of the Committee of Experts refers to the July 2019 visit of the Council of Europe Commissioner for Human Rights, who came to the stark conclusion that the right to freedom of expression is still under threat in Azerbaijan.

These elements, taken together, point to an environment that is not conducive to the exercise of civil liberties.

Yet, it is clear that the free exercise of these public freedoms is an absolute prerequisite for the exercise of other fundamental labour freedoms which Azerbaijan must respect. These include the rights of association and assembly, through which citizens seek to make their views known and accepted, and which may be affected by political coercion of the kind we see in Azerbaijan today.

The large number of international institutions making similar findings cannot, and should not, leave the Azerbaijan Government unmoved. It is high time to remedy this situation and to restore an environment conducive to the exercise of civil liberties, which is a precondition for full compliance with international core labour standards, including, of course, the Convention.

In particular, and as a matter of urgency, Azerbaijan should ensure that criminal sanctions for the peaceful expression of dissenting political views, especially where they are accompanied by an obligation to work, are ended in order to bring its legislation and practice into line with the Convention.

Membres employeurs – La convention fait partie des conventions fondamentales de l'OIT et, à ce titre, elle doit faire l'objet d'une attention particulière et d'un contrôle prioritaire. Nous abordons pour commencer les questions procédurales.

C'est la première fois que notre commission analyse ce cas individuel, mais c'est déjà la troisième observation formulée par la commission d'experts depuis 2015.

À la lecture des observations de la commission d'experts, le défaut de réponses à ces observations depuis 2015 faisait conclure à l'absence de progrès substantiel pour éradiquer le travail forcé comme sanction accompagnant certaines condamnations criminelles en lien avec la liberté d'expression pacifique.

Le 28 février 2022, le gouvernement a dialogué avec le BIT et a notamment pris réception d'une note technique donnant des indications nécessaires afin de mettre sa législation et sa pratique pénales en conformité avec les normes de l'OIT. Nous soulignons positivement la décision de demander l'assistance technique du BIT qui a été annoncée par le gouvernement de l'Azerbaïdjan lors de cette visite et il y a quelques minutes.

Entre-temps, le BIT vient de recevoir des informations écrites, le 16 mai. Nous avons examiné ces informations et nous y reviendrons dans quelques instants.

Nous pouvons saluer le fait que le gouvernement ait enfin pris au sérieux les observations de la commission d'experts, car la convention est, comme je l'ai dit, une convention fondamentale de l'OIT, et la liberté d'expression pacifique un droit humain tout aussi fondamental.

Il serait à l'avenir incompréhensible que, malgré la ratification de cette convention depuis l'an 2000, l'Azerbaïdjan reste en défaut de transmettre à l'OIT en temps utile des rapports complets sur l'application de cette convention fondamentale.

Venons-en au fond du dossier. En droit, depuis leurs observations de 2015, la commission d'experts a constaté que plusieurs dispositions du Code pénal prévoient de lourdes sanctions, y compris des peines de travail obligatoire, en cas de diffusion de fausses informations, également via Internet, ou en cas d'organisation de manifestations publiques.

Selon le Comité des droits de l'homme des Nations-Unies, la peine de prison maximum pour des infractions mineures, telles que la résistance aux forces de l'ordre en cas de manifestation pacifique, a été portée de 15 à 90 jours.

Un nouveau délit a été introduit récemment dans le Code pénal pour incriminer la publication de calomnies ou d'insultes sur Internet en utilisant de faux noms d'utilisateur, profil ou compte. Cette infraction donne lieu à un emprisonnement jusqu'à un an. Enfin, récemment, un emprisonnement jusqu'à trois ans a été ajouté dans le Code pénal en cas d'utilisation des outils numériques en ligne par lesquels l'auteur se rendrait coupable de diffamation ou d'humiliation de l'honneur et de la dignité du Président.

En pratique: plusieurs institutions et organes européens et des Nations-Unies confirment que ces dispositions pénales sont interprétées de manière très large par les tribunaux. Ces organes et les experts ont ainsi pu constater que des poursuites judiciaires sont régulièrement

engagées contre des journalistes, blogueurs, défenseurs des droits de l'homme et autres, qui avaient exprimé leurs opinions de manière pourtant pacifique.

D'après le rapport de la Commissaire aux droits de l'homme du Conseil de l'Europe faisant suite à sa visite en Azerbaïdjan en juillet 2019, aucun progrès n'aurait été accompli en ce qui concerne la protection de la liberté d'expression en Azerbaïdjan.

Le Groupe de travail des Nations-Unies sur la détention arbitraire a conclu que la privation de liberté d'un journaliste qui avait été accusé de crimes liés à la drogue, soi-disant, et condamné à neuf ans de prison, découlait de l'exercice de son droit à la liberté d'expression.

Enfin, la Cour européenne des droits de l'homme a rendu plusieurs décisions depuis 2008 par lesquelles elle estime que les condamnations basées sur l'article 147 du Code pénal, comportant une obligation de travailler, constituent une violation de l'article 10 de la convention européenne des droits de l'homme qui protège la liberté d'expression. La même Cour a entre-temps continué à auditionner des cas concernant l'Azerbaïdjan portant sur des détentions et des condamnations d'opposants politiques.

Toutes ces sources officielles concordent pour constater que la liberté d'expression n'est pas encore garantie sur le territoire de l'Azerbaïdjan.

Dans ses informations écrites du 16 mai, le gouvernement explique cependant, par des arguments de droit et de fait, que la liberté d'expression serait garantie sur son territoire et qu'aucune personne ne serait à proprement parler forcée d'effectuer un quelconque travail obligatoire au profit de l'État, en exécution d'une condamnation pénale.

Dans son Étude d'ensemble de 2012, la commission d'experts constate que «les constitutions nationales et autres textes législatifs en vigueur dans presque tous les pays du monde contiennent des dispositions qui reconnaissent la liberté de pensée et d'expression, le droit de réunion pacifique, la liberté d'association, le droit de ne pas être arrêté pour un motif

arbitraire et le droit à un procès équitable». Cette étude poursuit en précisant: «à cet égard, la convention n'interdit pas d'appliquer des sanctions comportant du travail obligatoire aux personnes qui utilisent la violence, incitent à la violence ou préparent des actes de violence».

Tenant compte de tous les éléments recueillis récemment sur le territoire de l'Azerbaïdjan, les membres employeurs prient instamment les autorités de ce pays de garantir la liberté d'expression, en commençant par réviser son Code pénal: seuls les comportements qui utilisent la violence, incitent à la violence ou préparent des actes de violence en lien avec l'expression d'une opinion peuvent être passibles de sanctions pénales. Le droit pénal doit définir plus précisément les incriminations et empêcher toute interprétation extensive par les tribunaux. Il en va d'un principe démocratique fondamental.

Les membres employeurs prient le gouvernement de prendre des mesures immédiates et efficaces pour s'assurer que, tant en droit qu'en pratique, aucune personne qui, de manière pacifique, exprime des opinions politiques ou s'oppose au système politique, social ou économique établi ne puisse être condamnée à des sanctions impliquant un travail obligatoire ou l'emprisonnement.

Nous avons compris que le gouvernement de l'Azerbaïdjan a décidé de mettre en place un groupe de travail inter-agences, une *task force* nationale, composé d'organismes publics, d'institutions non étatiques et des partenaires sociaux pour étudier ces faits.

Nous comprenons également que, pour avoir plus d'éléments d'analyse, une première évaluation des besoins a permis d'identifier, d'une part, que les statistiques sur les cas et les sanctions sont nécessaires, mais aussi, d'autre part, que les informations sur les actes ayant donné lieu à des poursuites pénales, le résumé des délibérations des tribunaux et les décisions rendues dans le cadre de ces poursuites pénales doivent être présentés à l'OIT. Nous encourageons le gouvernement à faire un effort dans ce sens.

Finalement, nous nous réjouissons que le gouvernement de l'Azerbaïdjan ait décidé de recourir à l'assistance technique du BIT, afin d'avoir des indications pour mettre sa législation et sa pratique en conformité avec la convention. C'est une étape positive, que les membres employeurs encouragent fortement.

Il est enfin requis du gouvernement qu'il remplisse désormais toutes ses obligations de rapport et qu'il réponde, de manière complète et sans dépasser les délais requis, aux questions qui lui seront posées par les organes de l'OIT.

Worker member, Azerbaijan (Mr MAHBALIYEV) – I would like to give some information on the application of the Convention at the national level.

In early February of this year, the Azerbaijan Trade Union Confederation received information through the colleagues from ACTRAV that the Government had not provided a detailed report on the application of that Convention and the documents required by direct request from the Committee of Experts.

The ATUC (AHIK) took the information with a full comprehension of the case with Azerbaijan and hold the initial meetings with social partners and the ILO NC in Baku, Mr Yashar Hamzayev.

On 23 February 2022, the Ministry of Labour and Social Protection organized an online ad-hoc meeting with participation of the social partners and the relevant public authorities (Ministry of Justice, Ministry of Internal Affairs, Supreme Prosecutor's Office, Ministry of Economy). The participants of the ad-hoc meeting agreed to establish a task force working group to address the case with the Convention and collect feedback from the relevant agencies.

The AHIK has requested the ILO ACTRAV for technical support to conduct awareness-raising and develop professional skills and knowledge of its members. With the technical

support of ACTRAV, AHIK held a tripartite workshop on a role of trade unions in application of the Convention. It was held in Baku in May 2022. The workshop was attended by the Chair of the AHIK, managerial officials of the Ministry of Labour and Social Protection and the National Confederation of Entrepreneurs (Employers), as well as Mr Sergeyus Glovackas, Desk Office Europe and Central Asia, ILO ACTRAV, Mr Gocha Alexandria, Senior Specialist of the ILO Moscow Office for Eastern Europe and Central Asia, Ms Mélanie Jeanroy, ILO-ACTRAV Legal and Labor Law Officer, and ILO National Coordinator in Baku.

What I can say is that we are, as a trade union, strongly committed to improve the national legislation in line with the Convention taking account all comments raised by the Committee of Experts.

The AHIK is standing ready to take very seriously any case related to forced labour in its member enterprises and entities. By the time being, not any complaint on forced labour received by the AHIK. All cases related to labour relations and violations of the national labour legislation and international labour standards are under permanent supervision of the AHIK.

In line with the Law on Trade Unions, the AHIK contributed to preparing national labour and social protection legislation and economic policy. The AHIK is also contributing to developing a Crime Code and the relevant national legislation under its competence and capacities. By the way I would like to inform you about outcomes of the seminar “The role of trade unions in meeting the requirements of ILO Conventions Nos 29 and No. 105” which was held in Baku this May.

The outcomes are the following. The scope of the legal definition of forced labour in Convention No. 29 is interpreted much broader than in the Labour Code of the Republic of Azerbaijan (paragraph 1 of article 17). Here, the very concept of forced labour is suitable only in the context of labour relations and labour functions, while in the ILO Convention itself it

applies to both labour and service (civil) contractual relations. A proposal was made to bring this norm of the Labour Code of the Republic of Azerbaijan in line with the ILO Convention.

It would be useful to study the experience of Member States with exemplary indicators in the field of the abolition of forced labour, the international experience of the mechanism (procedure) for limiting the scope of the dispositions of certain articles of the Criminal Code in accordance with Article 1 of ILO Convention No. 105. In order to prevent forced labor, it is important for the social partners to organize collective bargaining for all workers, regardless of the organizational and legal form of the workplace, and to promote the right to organize in trade unions.

Employer member, Azerbaijan (Mr HUMMATZADE) – Mr Deputy Minister and my colleagues from the trade unions gave brief information about our response to the International Labour Organization's request as well as about what we did in the last two months, in the working group. The general comments of all partners, like the International Confederation of Employers' Organization also gave its comments to this working group and our comments also were included in the Working Group which were reflected in the general document which the Government introduced to the Committee. Here we see that the ILO and the Committee of Experts assesses forced labour and provides recommendations on alignment with the Azerbaijan legislation. I also would like to give some information first about the penalties. In our opinion correctional work and public work cannot be constituted as forced labour. The Worker members said that correctional work can be considered as forced labour but it is actually a monetary sanction and it is lighter than the ordinary fine. That is why this correctional work used in the Azerbaijan legislation is in practice one of the lighter penalties in the Criminal Code, in comparison to imprisonment or sanctions restricting freedom of liberty. But in Azerbaijan, we can work on definitions and make our definitions of crimes more maybe narrow and we can more concretely analyse the act. But, generally as the Deputy Minister indicated in Azerbaijan, in the last four or five years, we had some

legal reforms according to which many acts got decriminalized. Maybe there are some aspects that we should accept but just concluding that our general legislation is not in line with the ILO Conventions or some other general human rights Conventions is not a fair approach.

El Presidente – Antes de terminar las labores de la mañana, quiero informar a la Comisión de que los proyectos de PV (*verbatim*) relativos a la discusión del Estudio General, del PV relativo al final de la discusión general sobre el Informe General y del PV (*verbatim*) relativo al examen de los casos de incumplimiento grave de envío de memorias están disponibles en la página web de la Comisión.

Los miembros de la Comisión pueden presentar enmiendas a sus propias intervenciones ante la secretaría de la Comisión hasta el jueves 2 de junio de 2022 a las 13 horas.

Se ruega a los delegados que envíen sus enmiendas a la secretaría por vía electrónica con control de cambios (*track changes*) a la siguiente dirección: CAN2022@ilo.org.

Con el fin de poder hacer enmiendas con control de cambios se invita a los delegados a solicitar la versión Word del proyecto de acta literal (*verbatim*) enviando un correo electrónico a esta misma dirección. También les invito a leer el anexo 3 del documento D.1 sobre procedimiento de enmienda a los proyectos de actas literales (*verbatim*).

Dicho esto, la sesión se interrumpe y nos reencontramos a las 15 h para continuar con el tratamiento del caso núm. 3, Azerbaiyán, Convenio núm. 105.

La séance est levée à 13 h 30.

Se levantó la sesión a las 13.30 horas.

The sitting closed at 1.30 p.m.

Sixth sitting, 1 June 2022, 3.10 p.m.
Sixième séance, 1^{er} juin 2022, 15 h 10
Sexta sesión, 1.º de junio de 2022, 15.10 horas

Chairperson: Mr Topet
Président: M. Topet
Presidente: Sr. Topet

El Presidente - Vamos a dar comienzo a la sexta sesión de la Comisión de Aplicación de Normas.

Tengo el gusto de anunciar que está en la sala la Ministra de la República Centroafricana, Sra. Annie Michelle Mouanga, y que también nos acompaña el Presidente de la 110.^a reunión de la Conferencia Internacional del Trabajo, el Ministro de la República Argentina, Sr. Claudio Omar Moroni.

Miembro gubernamental, Argentina (Sr. MORONE) - Les agradezco la oportunidad de participar en esta Comisión. Tenía especial interés en venir a escuchar los debates que están aquí porque creo que la redacción de las normas es muy importante, pero la verdad es que lo más relevante es cuando las normas se convierten en conductas, cuando las normas efectivamente se aplican y tienen vigencia. Soy de aquellos abogados que creen que el derecho solo existe cuando hay una conducta que lo cumple y esta Comisión es la herramienta para que aquellos convenios, aquellas normas que con tanto trabajo y tanta discusión han sido expuestos en el papel se conviertan en conductas efectivas.

Discussion of individual cases (*cont.*)

Discussion des cas individuels (*suite*)

Discusión de los casos individuales (*cont.*)

Azerbaijan (ratification: 2000)

Convention (n° 105) sur l'abolition du travail forcé, 1957 (*suite*)

Abolition of Forced Labour Convention, 1957 (No. 105) (*cont.*)

Convenio sobre la abolición del trabajo forzoso, 1957 (núm. 105) (*cont.*)

El Presidente - Continuamos con las tareas que habíamos pausado con la discusión del caso núm. 3 (Convenio núm. 105) de la República de Azerbaiyán.

Membre gouvernementale, France (M^{me} SALOMON-VALLENS) – Je m'exprime au nom de l'Union européenne (UE) et de ses États membres. Le Monténégro et l'Albanie, pays candidats, l'Islande et la Norvège, pays de l'Association européenne de libre-échange (AELE), membres de l'espace économique européen (EEE), s'alignent sur cette déclaration.

L'UE et ses États membres s'engagent à promouvoir, protéger, respecter et réaliser les droits de l'homme, y compris les droits du travail.

Nous encourageons activement la ratification et la mise en œuvre universelles des normes internationales fondamentales du travail, y compris la convention, et nous soutenons l'OIT dans son rôle indispensable d'élaboration, de promotion et de contrôle de l'application des normes internationales du travail ratifiées et des conventions fondamentales en particulier.

Les relations entre l'UE et l'Azerbaïdjan sont fondées sur l'accord de partenariat et de coopération en vigueur depuis 1999, et sont également guidées par les priorités de partenariat communes en place depuis 2018, qui incluent parmi ses domaines d'intervention la coopération en matière de renforcement des institutions et de bonne gouvernance.

Nous remercions le Bureau et lui apportons notre plein soutien pour son engagement constant dans la promotion des droits du travail en Azerbaïdjan. Nous remercions la commission pour le rapport sur la mise en œuvre de la convention en Azerbaïdjan.

L'UE et ses États membres déplorent que les dispositions du Code pénal continuent d'être utilisées pour poursuivre et condamner des personnes qui expriment leurs opinions politiques ou des points de vue idéologiquement opposés au système politique, social ou économique établi, ce qui conduit à des peines de travail correctionnel ou d'emprisonnement, les deux impliquant des formes de travail forcé ou obligatoire que le gouvernement est explicitement censé supprimer et ne pas utiliser selon la convention.

Nous nous associons pleinement à l'appel de la commission d'experts et demandons instamment au gouvernement de prendre des mesures immédiates et efficaces pour garantir que, tant dans la loi que dans la pratique, aucune personne qui, de manière pacifique, exprime des opinions politiques ou s'oppose au système politique, social ou économique établi ne puisse être condamnée à des sanctions prévoyant le travail obligatoire.

Nous sommes également profondément préoccupés de constater que la commission d'experts n'a observé aucun progrès en ce qui concerne la protection de la liberté d'expression en Azerbaïdjan et que les journalistes, les militants des médias sociaux et les militants politiques de l'opposition qui expriment leur désaccord ou leurs critiques à l'égard des autorités sont condamnés et emprisonnés en vertu de diverses dispositions du Code pénal et risquent d'être soumis au travail forcé.

Nous nous félicitons des informations écrites fournies par le gouvernement de l'Azerbaïdjan, nous prenons note des premières mesures prises, y compris la création d'un groupe de travail interagences pour examiner les questions soulevées dans l'observation et la demande directe de la commission d'experts. Cependant, ces mesures initiales du

gouvernement devraient couvrir toutes les questions soulevées dans le rapport sans exception. Nous prenons également note des mesures envisagées qui reconnaissent le rôle fondamental de l'OIT dans la lutte contre les déficits de travail décent et la pertinence de son assistance technique. Nous souhaiterions disposer d'un calendrier précis pour l'abolition de l'utilisation du travail forcé et obligatoire en Azerbaïdjan, y compris comme forme de coercition politique.

L'UE et ses États membres sont prêts à aider l'Azerbaïdjan à respecter ses obligations et continueront à suivre de près la situation dans le pays.

Government member, Turkey (Mr ÖNAY) – We would like to thank the Azerbaijani Government for the detailed response they have provided in the morning session. We take note of Azerbaijan's efforts to work closely with the ILO and we believe the ILO can and should play a key role here to settle the issues by providing technical assistance in order to support the Government's efforts to improve the working life standards in the country. The Government of Azerbaijan shows willingness to benefit from technical assistance of ILO.

As a Member of the ILO, Azerbaijan has ratified 58 Conventions, including all fundamental and priority ones. We commend the positive and significant developments, such as the declining of the use of correctional labour, the introduction of about 300 amendments to the Criminal Code and the decriminalization of a number of criminal offences, reduction of fines or mitigation of imprisonment sentence for certain crimes.

We welcome the fact that the Azerbaijani Constitution and its national legislation enshrine and protect the exercise of freedom of assembly and the Government demonstrates its strong desire to continue engaging in social dialogue with the social partners. We also appreciate that Azerbaijan established an interagency working group to review the issues raised in the observation and direct request of the Committee of Experts.

Intensive consultations and discussions with social partners and several meetings with ILO representatives and working on ratification of Convention No. 155 are significant indications of the Government's strong readiness to strengthen and adapt its current legislative framework to bring it in line with the ILO standards. We encourage the Government of Azerbaijan to continue to undertake necessary steps in this regard.

We believe that Azerbaijan will continue to work with the ILO and social partners in the spirit of constructive cooperation regarding the ILO and the international labour standards and comply with reporting obligations and the ratified ILO Conventions.

Membres travailleurs, Belgique (M^{me} DOYEN) – Nous sommes préoccupés par les informations contenues dans le rapport de la commission d'experts, nous sommes également soucieux que le gouvernement n'ait pas respecté son obligation de répondre aux différentes préoccupations soulevées quant au non-respect de la convention. En particulier, le fait que des condamnations à des peines de travail obligatoire soient infligées à des personnes qui expriment leurs opinions politiques ou qui manifestent leurs oppositions à l'ordre politique, social ou économique établi, nous préoccupe.

Dans son rapport, la commission d'experts a noté que plusieurs dispositions du Code pénal prévoient des sanctions de travail correctionnel ou d'emprisonnement impliquant le travail obligatoire. Ces dispositions pénales sont formulées en termes larges et se prêtent à une interprétation permettant de sanctionner pénalement l'expression d'opinions opposées au système politique, social ou économique établi. Le rapport, d'ailleurs, fait état d'une tendance de plus en plus marquée à utiliser ces dispositions du Code pénal pour engager des poursuites judiciaires contre des journalistes, des blogueurs, des défenseurs des droits de l'homme qui expriment des opinions.

La criminalisation de la liberté d'expression crée une atmosphère de peur. Elle dissuade les défenseurs des droits de l'homme et les défenseurs des travailleurs. Elle entrave aussi gravement la liberté d'association. Nous soutenons fermement l'appel de la commission d'experts au gouvernement, afin qu'il prenne des mesures immédiates et efficaces pour garantir que, en droit comme en pratique, aucune personne, qui de manière pacifique exprime des opinions politiques ou s'oppose au système politique, social ou économique établi, ne puisse être condamnée à des sanctions dans le cadre desquelles le travail obligatoire est imposé.

Nous comprenons que certaines mesures ont déjà été prises par le gouvernement comme cela a été rapporté à la Conférence, notamment l'amnistie qui a concerné des personnes condamnées au travail obligatoire. Nous comprenons aussi que le gouvernement a approché l'OIT et les partenaires sociaux au sujet de la révision de la législation en question.

Nous demandons instamment à l'OIT de fournir une assistance technique à ce processus afin que les libertés civiles soient garanties en droit et en pratique, et qu'il n'y ait plus de sanction de travail obligatoire à la suite d'une condamnation pour avoir exprimé des opinions idéologiquement opposées au système politique, social ou économique établi.

Government member, Belarus (Mr BELSKAYA) – I would like to thank the delegation of Azerbaijan for their complete report.

The report before us contains a number of comments reflecting answers to the questions relating to the application of law in the Criminal Code and the penalties applied resulting from the infringement of laws applying to individuals, the State and organizations. The application of correctional work is covered in a number of provisions of the Criminal Code of Azerbaijan and there are substantive statistics as well on this issue.

With regard to the complaints raised against the Government concerning the application of such penalties and of these provisions to those carrying out strikes, the interpretation of the Committee on Freedom of Association indicates regarding the right to carry out strikes that there can be no direct threat to public order, and they must be carried out in observance of national law), we consider that failure to respect such provisions gives the forces of law and order to impose respect for those laws, so there needs to be a proportionate response in Azerbaijan and in other countries as well.

We do not believe that Azerbaijan is departing from its national laws and is in full respect of the provisions of the ILO as well.

Government member, Canada (Ms TOUS) – We thank the Government of Azerbaijan for the recent information provided to address the observations of the ILO Committee of Experts and additional details provided by Deputy Minister Mr Karimov, before the break. Protecting the freedom of expression of journalists, social media activists, and political protesters is of utmost importance to Canada. Canada believes freedom of expression both online and offline is at the core of human individuality and is one of the essential foundations of a safe and prosperous society. We also strongly believe that media freedom remains an important part of democratic societies and it is essential to the protection of human rights and fundamental freedoms.

We are therefore deeply concerned by persistent reports of provisions of the Azerbaijan criminal code being used to prosecute and convict persons who express their political views or views ideologically opposed to the established political, social, or economic system leading to penalties of correctional work or imprisonment involving compulsory labour in violation of the Convention.

We therefore urge the Government of Azerbaijan to:

1. take immediate action to ensure that both in law and practice no one, who in a peaceful manner, expresses political views or opposes the established political social or economic system can be sentenced to sanctions under which compulsory labour is imposed;
2. review all relevant sections of the criminal code identified by the Committee of Experts and clearly restrict the scope of these provisions to situations connected with the use of violence or incitement to violence or by repealing sanctions involving compulsory labour;
3. avail itself of ILO technical assistance towards these goals. We welcome the Government's recent stated intention to cooperate with the ILO on this matter. We sincerely hope that Government in its next report to the Committee of Experts will highlight positive developments.

Membre gouvernemental, Suisse (M^{me} BRUGGER) – Le travail forcé constitue une violation des droits de l'homme. La Suisse s'inquiète dès lors du large champ d'application de plusieurs dispositions du Code pénal de l'Azerbaïdjan qui prévoit des sanctions de travail correctionnel. Elle est préoccupée par l'utilisation de telles dispositions pour sanctionner l'expression d'opinions.

La Suisse condamne fermement l'application de dispositions impliquant du travail obligatoire, que ce soit pour sanctionner des personnes qui, de manière pacifique, expriment des opinions politiques ou s'opposent au système politique, ou pour toute autre raison. Ces dispositions et cette pratique sont incompatibles avec la convention.

Tout en remerciant le gouvernement de l'Azerbaïdjan pour l'information fournie par écrit, la Suisse appelle le gouvernement de l'Azerbaïdjan à continuer à prendre toutes les mesures visant l'élimination de cette pratique et à fournir toutes les informations requises par la commission dans son rapport.

Government representative (Mr KARIMOV) – I would like to extend my sincere gratitude for inviting us to this honourable platform and for having the opportunity to present our case. I and my colleagues, we have attentively taken note of the valuable comments and recommendation expressed by the Committee of Experts and the delegates.

Today's meeting and exchange of views from diverse perspectives once again demonstrate the good spirit of cooperation and constructive dialogue, as well as a commitment of the Azerbaijan Government to adhere to and implement the ILO norms and principles. The comments and recommendations are well noted, they will be conveyed to the national task force and surely, they will also serve as a basis for technical assistance agreements as were planned to conclude with the ILO in order to tackle the matters raised in observations and direct requests by the Committee of Experts.

Surely, the ILO appreciates the understanding by the esteemed speakers today as they appreciate the efforts and action already undertaken from the last months, but of course the scope of the matters already raised indicates that significant efforts should continue to be exerted in the coming months. In the written information that was provided by the Azerbaijani side on 16 May, the Azerbaijani Government made its best effort to capture and address the crucial aspects under currently available circumstances and capacities. Therefore, in our written information, respective explanations of legislative wording and drafting were provided. In addition, the statistics on cases and penalties were provided. However, based on the feedback expressed today, we well understand that additional information and explanations should be provided and it will be provided. It seems that there are still certain aspects of legislation and practice in the field of criminal laws that require additional elaboration, explanation and clarification. Given that our probable future steps from the Azerbaijani side can be grouped into two directions.

Our first line of action is to collate and provide all available information on the current situation of legislation and practice from different line ministries engaged in the application of the Criminal Code, including the Ministry of Justice, Supreme Court, Ministry of Internal Affairs and General Prosecutor Office. Since the criminal law reforms as stated in my presentation have been undertaken during the last three or four years, 300 amendments were made to criminal processes, information about reforms is still fresh. This is new information, which we have to properly share and present for consideration and review by the Committee of Experts. I believe we may have also to shed more light on the Criminal Code Reform.

So, our second line of action will be to prepare and present more detailed information, not only on cases and statistics on penalties but also information on the acts and the facts that give rise to the criminal prosecution, probably more detailed information on the court deliberations and decisions for why those decisions were delivered under the articles of the Criminal Code. This information is currently not available in English but it is already publicly available so all local experts and interested parties may easily via that page of the Supreme Court and Azerbaijani judicial authorities get familiarized with these court decisions and court deliberations so court deliberations are already open for the public, and the process can easily be accessed. But the volume of this information is quite large and it needs to be properly translated into English which requires more time and additional resources.

Also, we will be able to identify within this process still some outstanding gaps that are already not covered by the current reforms, but still, they can serve as a framework for future reform, that is why we believe that the technical assistance from the ILO would assist to put a more concrete framework for those reforms, as that would address the matters raised by the esteemed Committee members today – because I would like to also share with you that based on the statements, comments and recommendations expressed today, we believe that, probably all of the Committee members may also agree, it is not just a matter of

straightforward changing all correctional work and public works and penalties into the fines of other forms of penalties. So, this approach should require a study and probably we will need some experts and we will also need to engage with Azerbaijani line ministries because they are the major drivers behind the criminal law reforms in order to explain and to bring that into the context and the platform of ILO cooperation.

Therefore, we will closely work with the ILO through the Geneva Office, through the regional office that is coming to Azerbaijan in mid-June and through technical assistance too.

Worker members – We thank the representative of the Azerbaijan Government for the information he was able to provide during the discussion. We also thank the speakers for their contributions.

There are, nevertheless, many consistent reports calling into question whether the free exercise of public freedoms is possible in Azerbaijan.

Those public freedoms are essential to the observance of international labour standards and the rights and freedoms they enshrine. For this reason, the Convention itself provides in Article 1(a) that the imposition of labour penalties for the expression of political opinions or the manifestation of ideological opposition to the established political, social or economic order is expressly prohibited.

Sadly, it is apparent that Azerbaijan legislation and practice have been in clear contradiction with this provision for many years.

We can, therefore, only call on the Azerbaijani Government to amend its legislation as soon as possible to abolish the criminal sanctions imposed on persons expressing peaceful, dissenting political opinions. And, in order to comply with Article 1(a) of the Convention, Azerbaijan must ensure that any criminal sanctions involving an obligation to work are abolished for such persons.

We also consider it essential that Azerbaijan cancels all the labour sentences currently being served, or still to be served, that were imposed for the expression of political opinions or the manifestation of ideological opposition to the established political, social or economic order. We acknowledge the positive signal sent by the amnesty law passed in November 2021 which cancelled the correctional labour sanctions for more than 17,000 people and hope that these sanctions will not be imposed in the future so that such an amnesty law will no longer be necessary.

Furthermore, we call on the Azerbaijan Government to restore an environment in which the free exercise of public freedoms is fully guaranteed, without which all fundamental labour rights and freedoms also cannot be fully guaranteed.

To fully restore this environment for the exercise of civil liberties, we call on the Azerbaijan Government to ensure that victims of labour sentences in contravention of the Convention have access to adequate remedies and redress for the harm suffered.

We welcome, however, the initiatives announced by the Azerbaijan Government to remedy the situation and hope that these initiatives will be implemented in practice, in consultation with the social partners.

We encourage the Government of Azerbaijan to continue the dialogue with the ILO on this issue and to provide it with all relevant information for a thorough analysis of the compliance of Azerbaijan's legislation and practice with the Convention.

Finally, in order to implement these recommendations, we call on the Government of Azerbaijan to honour its commitment to avail itself of ILO technical assistance.

Membres employeurs – Nous remercions les différents intervenants, et en particulier le gouvernement de l'Azerbaïdjan pour les informations écrites et orales qu'il vient de communiquer à notre commission concernant la mise en conformité du droit et de la pratique

nationale avec la convention. Sur le fond, nous insistons sur le fait que la convention est une convention fondamentale, et qu'à ce titre elle nécessite une attention particulière de l'OIT, des gouvernements, et des partenaires sociaux.

Notre position par rapport à l'Azerbaïdjan est claire: on ne transige pas avec la liberté d'expression pacifique ni avec les droits fondamentaux connexes. Ceci est un cas d'une extrême gravité.

En ce qui concerne le Code pénal et son application aux personnes qui expriment leur opinion, le groupe des employeurs prie le gouvernement de prendre des mesures immédiates et efficaces pour s'assurer que, tant en droit qu'en pratique, aucune personne, qui de manière pacifique exprime des opinions politiques ou s'oppose au système politique social ou économique établi, ne puisse être condamnée à des sanctions impliquant un travail obligatoire.

Nous espérons que la demande d'assistance technique pour mener les réformes législatives nécessaires, actuellement promises par le gouvernement, parviendra auprès du BIT dans les plus brefs délais. C'est une opportunité unique pour veiller à l'application conforme de la convention. Le groupe des employeurs prie le gouvernement de l'Azerbaïdjan d'y collaborer de manière constructive afin que la réforme du Code pénal et des pratiques actuelles soient menées à bien.

Enfin, et ceci d'une extrême importance, nous comptons sur le gouvernement pour qu'il dépose en temps utile les informations demandées, et qu'il se conforme au cycle de rapportage. Nous insistons sur la qualité et la pertinence de ces données afin de pouvoir évaluer les progrès effectifs en droit et en pratique.

Nous comptons donc sur l'attitude positive du gouvernement afin que ce cas national ne doive plus revenir une deuxième fois devant notre commission.

El Presidente – Damos por concluida la discusión de este caso y, como en los anteriores, las conclusiones serán adoptadas por la Comisión en la tarde del 9 de junio o en la mañana del viernes 10 de junio.

Antes de continuar con las tareas de la Comisión quiero informales que el proyecto de PV.1, relativo al examen del caso individual de Malawi, Convenio sobre la discriminación (empleo y ocupación), 1958 (núm. 111), está disponible en la página web de la Comisión. Los miembros de la Comisión pueden presentar enmiendas a sus propias intervenciones ante la secretaría de la Comisión hasta el jueves 2 de junio a las 15 horas. Les invito a leer el anexo 3 del documento D.1 sobre el procedimiento de enmienda a los proyectos de actas literales (*verbatim*).

La séance est levée à 15 h 40.

Se levantó la sesión a las 15.40 horas.

The sitting closed at 3.40 p.m.