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11th sitting, 4 June 2022, 11.25 a.m.**Onzième séance, 4 juin 2022, 11 h 25****Undécima sesión, 4 de junio de 2022, 11.25 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.*)****Kazakhstan (ratification: 2000)****Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)****Convention (n° 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 (núm. 87)**

El Presidente – En el día de hoy trataremos los siguientes casos individuales: Kazajstán (Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)); Nigeria (Convenio sobre los métodos para la fijación de salarios mínimos, 1928 (núm. 26) y Convenio sobre la protección del salario, 1949 (núm. 95)) en forma conjunta, y

El Salvador (Convenio sobre la consulta tripartita (normas internacionales del trabajo), 1976 (núm. 144)).

Antes de comenzar nuestras labores de la mañana, recuerdo a todos los delegados que el lunes 6 de junio a las 13 horas se abrirá la votación nominal sobre las enmiendas al Código del Convenio sobre el trabajo marítimo, 2006, en su versión enmendada (MLC, 2006). Alentamos a todos los participantes a participar de forma activa en dicho proceso para que, esperemos, pueda lograrse la aprobación de estas enmiendas negociadas y acordadas por los actores del sector marítimo para responder a los desafíos planteados por la pandemia.

Interpretation from Russian: **Government member, Kazakhstan (Mr SARBASSOV)** – We have been a Member of the ILO for many years and are fulfilling our obligations and have ratified 25 Conventions. In April 2022, we ratified Convention No. 175 on conditions for non-full-time work. We also established a road map for the application of Convention No. 87 and as a part of that work, in 2020, a number of substantial changes were made to the legislation relating to trade unions, including the Labour and Criminal Codes of our country. At the Conference last year, I informed the Committee about these changes and the work that has been done in Kazakhstan. The 109th Session of the Conference made a number of recommendations; I wanted to update you on those. This work was also carried out taking into account the report of the direct contacts mission, which visited our Republic from 4 to 12 May.

I would like to say thank you to the team of the mission, headed by Niklas Bruun and which visited our Republic and issued a number of recommendations. With regard to the recommendations for our country bringing into line legislation with this Convention, we have carried out work to improve our legislation in this area, improving the registration of trade unions and giving trade unions and workers a full right to freedom of association.

We have modernized the area of rights protection and the President of Kazakhstan has issued a decree on further measures in the area of human rights in the country, defining additional areas of work for the Government in the area of human rights and particularly with regard to securing the supremacy of law guaranteeing the protection of human rights through the application of law and existing instruments. One of the key areas of work reflected in the decree of the President is the right to freedom of association.

The Government, on 28 April this year, confirmed measures on human rights and the supremacy of law. The Ministry of Labour worked with the social partners to develop amendments to a number of laws. The term for developing these amendments has been defined as the end of this year and we hope then they will be put before the Parliament. Allow me to talk in more detail about the changes that we have put together with the social partners.

First, is the application of the registration measures. It is worth noting here that issues were raised on the registration of individual trade unions including as legal persons. So, the system with regard to the registration of trade union requires informing the Ministry of Justice by submitting electronic notification, and what that means is that the registering body will not be in a position, or have a right, to refuse the registration as is provided for by the legislation currently in force. We hope that individual trade unions will now be able to go ahead with registration.

Second, there is a system of practice in place relating to the claims or demands of workers and strikes. A number of rules have been proposed to improve this system when there are collective labour disagreements. For example, amendments to the Labour Code, reducing the

number of workers necessary and a conference for the recognition of such issues, and changing the majority required from two thirds to a half. We hope that this will enable improved resolution of collective labour disputes.

Third, the criminalization of issues that have been criminalized in the past, including matters relating to strikes. We have looked at this issue in the cross-sectoral working group with the Public Prosecutor in May this year. The article criminalizing such activities has been removed and as we move towards improving legislation, we are looking at the question of transposing certain provisions into the format of administrative issues.

Fourth, with regard to the notification of strikes, the introduction of these rules would allow workers to express their seriously held concerns legitimately. So, we hope that it will be possible to carry out such things without negative consequences for both sides.

Fifth, another provision to be brought in is not to be able to replace striking workers with other workers.

Sixth, creating the necessary conditions for unions to be able to organize and meet.

With regard to the recommendations to ensure a better basis for the investigation of accusations against trade union members, the Government is looking at this along with the Public Prosecutor. Individual cases do exist and are under consideration by the Internal Affairs Ministry. The relevant information is being considered and obviously all relevant bodies will be kept abreast of developments. With regard to the practice of the prosecution of trade union leaders, and three or four cases were mentioned in the report, all criminal procedures are not linked to legitimate trade union activities but rather actual criminal activities. In 2021–22, there were no criminal cases against trade union leaders.

With regard to recommendations 5 and 6, relating to the registration of trade unions directly, I can say that as things stand today, we have in force a joint working group involving the Ministry of Justice, and all potential problems which might arise when associations are registered including trade unions who can be considered that the working group contains representatives of the judicial bodies and representatives of trade unions, so any complaints relating to registration can be looked at in this working group, based on the principle of cooperation. The adoption of amendments to legislation is ongoing, as I have said. A number of sectoral trade unions and grassroots trade unions have been registered, and the continuing work to register trade unions as legal persons will continue along with the changes to the law, which I have already informed you about.

I would like to say that in the individual cases the rejection of registration as legal persons is something that is being looked at on the basis for such decisions, and, as I have said, the law is being reviewed in this area.

With regard to favouritism, we have confederations covering around 3 million workers, around half of the workers in the Republic. We have 56 trade unions, 35 regional ones and around 400 local grassroots trade unions. In the general agreement between the Government and the associations of workers and employers, we agreed to not allow interference in the affairs of these associations. The trade unions are participating actively in the various forums for discussion. We have clearly established the obligation to not allow legal interference of the Government in civil society associations and organizations.

With regard to the changes on employers' organizations, the National Chamber of Entrepreneurs is also being affected by the amendments that we have made, which I have already talked about.

I would like to inform you that in our tripartite work, we have agreed that individual bills will be prepared on trade union organizations. We have given our workers' organizations the mandate to pursue effective social dialogue with employers' organizations and the Government, and this is work that will continue this year.

With regard to international cooperation, I can inform you that changes that we have made to the Law on Trade Unions and the Labour Code will be contributed to by cooperation with international organizations. We received support of the 109th Session of the Conference and the direct contacts mission this year in May and we will continue to work on implementing these recommendations. The Government of Kazakhstan will make every effort to further develop social dialogue in the interests of effective labour relations. We will continue with this work and bring our national legislation into line with the provisions of Convention No. 87.

Membres travailleurs – Le Kazakhstan semble ne pas parvenir à régler ses problèmes de non-conformité avec la convention n° 87, malgré les nombreuses recommandations qui lui ont été adressées et les nombreuses initiatives prises pour tenter d'apporter une solution à la situation, notamment la mission de contacts directs décidée l'année dernière et qui s'est tenue récemment en mai de cette année.

Nous devons encore constater avec une profonde préoccupation que, dans la pratique, de nombreuses violations des droits et libertés consacrés par la convention persistent, malgré certaines modifications législatives intervenues ces dernières années et les projets de modification annoncés par le gouvernement.

Le temps des déclarations d'intention est passé. Il convient désormais que le gouvernement du Kazakhstan prenne des actions concrètes et décisives en vue de résoudre durablement les nombreux problèmes mis en avant, et ces problèmes ne sont pas des moindres.

Les problèmes de conformité avec la convention ne peuvent être abordés sans les replacer dans le contexte politique du pays. Ce contexte se caractérise par un déficit démocratique qui ne permet pas le plein exercice des libertés civiles, en ce compris la liberté syndicale. Nous avons en effet vu, au début de l'année, une répression massive et très violente par les forces de l'ordre de manifestations pacifiques déclenchées pour dénoncer la pauvreté, les inégalités sociales extrêmes et l'augmentation des prix au Kazakhstan.

Il est évident que le respect scrupuleux de la liberté syndicale et l'engagement de véritables dynamiques de dialogue social offriront les garanties nécessaires pour résoudre les grandes inégalités dans le pays.

Au Kazakhstan, la violence à l'égard des syndicalistes reste monnaie courante. Le président du Syndicat des travailleurs du complexe pétrolier et énergétique de Chakhtinsk, M. Senyavsky, en a été victime en novembre 2018. À cette violence vient s'ajouter un laxisme des autorités dans la diligence des enquêtes, dans l'engagement de poursuites et dans la condamnation des auteurs de ces violences. En effet, aucun progrès significatif n'a été engrangé dans cette affaire depuis 2018.

Le même constat s'applique pour les événements tragiques de Zhanaozen en 2011 qui avaient entraîné la mort de 17 grévistes, et où plus de 100 grévistes avaient été blessés suite à une répression extrêmement violente de ce mouvement de grève.

Le maintien d'un climat d'impunité à l'égard des auteurs de telles violences est extrêmement préjudiciable et constitue un obstacle majeur au libre exercice de la liberté syndicale dans le pays.

Par ailleurs, le Code pénal permet d'infliger une interdiction d'exercer une fonction publique, en ce compris des fonctions syndicales, ce qui est en contravention à la convention. M^{me} Kharkova, présidente de l'organisation KNPRK, et M. Baltabay, leader du Syndicat industriel des employés du secteur des combustibles et de l'énergie, qui a déjà témoigné devant notre commission il y a quelques années, sont frappés d'une telle sanction. Cela constitue une entrave à leur liberté syndicale.

Ces deux exemples illustrent les pratiques de harcèlement judiciaire à l'encontre de leaders syndicaux toujours à l'œuvre dans le pays.

Le recours aux arrestations administratives pour entraver les actions syndicales légitimes fait également partie de ces pratiques de harcèlement judiciaire. Nous l'avons par exemple vu en octobre 2021 avec la détention administrative de Jenis Orynaliev, quelques mois après son élection à la présidence de son syndicat et le jour même où une action du syndicat était prévue, ainsi qu'en décembre 2021 avec la détention administrative pour dix jours de Saule Seidakhmetova, leader du syndicat Ymit, pour sa participation à une action légitime déclarée illégale par une cour administrative.

D'autres syndicalistes font également l'objet d'une interdiction d'exercer toute fonction dans une organisation publique ou non gouvernementale par mesure de représailles pour leurs activités syndicales, notamment MM. Eleusinov et Kushakbaev, leaders syndicaux au sein du Syndicat des travailleurs des combustibles et de l'énergie.

La commission d'experts a également relevé que le Code pénal kazakhstani sanctionne l'incitation à poursuivre une grève déclarée illégale par le tribunal d'une peine d'emprisonnement. Le gouvernement annonce qu'une révision profonde de l'article 402 du Code pénal figure dans un plan de mesures urgentes à adopter dans le domaine des droits de l'homme, notamment la liberté syndicale.

Infliger des peines ou des sanctions pour le simple fait d'appeler à une grève pacifique, même déclarée illégale par les tribunaux, est contraire à la convention.

Le rapport de la commission d'experts pointe encore une fois la problématique récurrente au Kazakhstan des procédures d'enregistrement ou de réenregistrement des organisations syndicales. De nombreuses organisations syndicales sont confrontées à de graves difficultés alors qu'il ne devrait s'agir que d'une simple formalité.

Nous devons être au regret de constater que ces procédures d'enregistrement sont encore et toujours utilisées pour entraver le processus de création ou le bon fonctionnement des organisations syndicales libres et indépendantes, en totale contravention à la convention.

Le KNPRK, désormais le Congrès des syndicats libres, s'est vu dès 2017 retirer son enregistrement en représailles à la discussion du cas devant notre commission. Depuis cinq ans maintenant, et malgré les engagements répétés du gouvernement, même devant notre commission, le syndicat n'a toujours pas été enregistré.

Le Syndicat industriel des employés du secteur des combustibles et de l'énergie a quant à lui fait l'objet d'une décision de justice suspendant ses activités et qui a entraîné un processus de dissolution du syndicat. La venue de la mission de contacts directs n'a pas permis de débloquer la situation, ce que la mission n'a pas manqué de regretter dans son rapport.

Il conviendra que le Kazakhstan poursuive son travail en concertation avec les partenaires sociaux pour garantir l'efficacité, l'impartialité et l'indépendance de ces procédures d'enregistrement.

À cet égard, nous invitons le Kazakhstan à revoir la composition du groupe de travail permanent chargé d'examiner les problématiques liées à l'enregistrement des syndicats pour y intégrer également les syndicats indépendants.

Enfin, la législation kazakhe interdit en principe l'aide financière fournie par des organisations internationales de travailleurs. Cette législation prévoit que des exceptions peuvent être accordées, mais à des conditions beaucoup trop strictes et qui entravent fortement la liberté syndicale, en contravention à l'article 5 de la convention.

Nous le savons et nous le répétons depuis de nombreuses années: les libertés et droits fondamentaux du travail sont méconnus de longue date au Kazakhstan.

Nous l'avons aussi vu avec les événements au début de cette année: un environnement dans lequel les libertés civiles, en ce compris les libertés syndicales, ne peuvent être librement exercées ne peut que donner lieu à des injustices.

Il est dès lors de la responsabilité du gouvernement du Kazakhstan de veiller à rétablir un environnement propice à l'exercice de ces libertés civiles et à engager un réel processus de dialogue avec les partenaires sociaux qui sera de nature à garantir une paix sociale durable et ouvrir la voie à davantage de justice sociale pour la population du Kazakhstan.

Employer members – We thank the Government for its report here this morning in the Committee on the Application of Standards, and for the detailed information provided. We also thank the Government for its submission dated 28 May and have carefully considered all of this information.

We note with particular interest the Government representative's submissions about the changes affecting the National Chamber of Commerce and its stated commitment to social dialogue.

Our discussion of the case of Kazakhstan in respect of the Convention this year is timely, in order to be able to assess what achievements have been made in the implementation of the Committee on the Application of Standards conclusions from last June as well as taking into account the ILO direct contacts mission that took place in early May 2022.

It will be remembered, among other things, that the Committee on the Application of Standards last year had requested the Government to accept an ILO direct contacts mission before this year's session of the International Labour Conference. The Employer members are pleased that this ILO direct contacts mission to Kazakhstan was accepted and took place at the beginning of May.

We note that the ILO mission was able to meet with all state bodies and persons that it identified as important to meet with. The mission welcomed the Government's readiness and interest to continue engaging and cooperating with the ILO.

While the ILO mission also noted progress towards conformity in legislation and practice with the Convention, it was nevertheless not entirely convinced that all steps have been taken in this regard. This coincides with the Employer members' assessment of the information contained in the Committee of Experts report and provided by the Kazakhstani Government. Therefore I would like to address the outstanding issues from our perspective.

First, a major issue regarding the employers' freedom of association under the Convention in Kazakhstan relates to the creation by law of the National Chamber of Entrepreneurs (NCE). It may be recalled that the NCE has compulsory membership and all-encompassing competencies to represent employers which has had the effect of marginalizing free and independent employers' organizations.

A positive step taken by the Government was that it repeals section 148(5) of the Labour Code, which provided for the NCE's authority to represent employers in social dialogue at the national, sectoral and regional levels. So, according to the law, the NCE is not supposed to participate on behalf of the employers in social dialogue and collective bargaining.

However, the ILO direct contacts mission found evidence that the Government is still engaging the NCE in social dialogue and that the NCE is still involved in collective bargaining. In other words, legal change has been implemented but this change has not been implemented in practice.

We also note that the issue of accreditation of employers' organizations in the NCE has not been satisfactorily addressed. That is not, as the Government seems to suggest, just an internal matter of the NCE, which is a semi-state organization.

Employers' organizations, through accreditation, become financially dependent on the NCE and are therefore no longer free in the representation of their members' interests. In our view, the accreditation system should be discontinued. In any case, employers' organizations accredited with the NCE must be considered as part of the NCE's structure and therefore cannot be considered eligible for participation in social dialogue and collective bargaining.

To summarize on this issue, the Employers' group calls upon the Government to ensure that the NCE, in line with the law, completely withdraws from social dialogue and collective bargaining and leaves this area of competence to free and independent employers' organizations. The system of accreditation of employers' organizations in the NCE should be discontinued. In addition, to further reinforce the recognition of the freedom of association of employers and their organizations, it may be opportune to adopt regulation that sets out the independence and autonomy of employers' organizations and determines conditions for their eligibility for participation in social dialogue and collective bargaining.

There are also issues of compliance with freedom of association regarding workers' issues where we have failed to see visible progress. In particular, we note the issue of rights of organizations to receive financial assistance from international organizations of workers and employers which is protected under Article 5 of the Convention. To this effect, we note the intention of the Government to consider inclusion of a number of international organizations on the list of organizations that can provide grants in Ordinance No. 177 of 9 April 2018, and to review the procedure for drawing up this list. We call upon the Government to amend this list and keep us informed of the outcomes of the review of the procedure for drawing up the list.

We note that with respect to the issue of registration of the KNPRK trade union, things do not seem to have progressed. The Government has indicated that none of the comments made in the order of 25 July 2018 have been addressed in any of the subsequent registration applications by KNPRK and that, to date, no state registration documents have been received. Concerning the refusal of the registration of the Industrial Union of Employees of the Fuel and Energy Sector, according to the Government on 30 December 2021 an application was filed for registration of an affiliate which was denied. A second application was recently received on 18 May 2022. We also noted the intention expressed by the Minister of Labour and Social Protection to the ILO direct contacts mission to simplify the present registration procedure by either replacing it with a notification procedure or by allowing trade unions to function without registration. This draft law, we understand, should be developed by the end of 2022.

The Employers welcome this plan and trust that there will be a full consultation with the social partners with respect to this new law, which will hopefully be adopted in short order.

In the meantime, we request the Government to continue to find a solution to the issue of the unresolved status of the registration of the KNPRK and the Industrial Union of Employees of the Fuel and Energy Sector.

Finally, we note that the Committee of Experts have rendered a number of comments on section 402 of the Criminal Code, according to which an incitement to continue a strike, declared illegal by the Court, is punishable by up to 50 days' arrest and in certain cases for up to two years of imprisonment. We will not address the Worker members' comments in this regard and we will not comment on the Committee of Experts' observations in this regard or the Government's submissions today as, in our view, there is no basis for making any request to the Government in this regard. As is well known in the view of the Employers, and the Government group of the ILO Governing Body, the right to strike is to be regulated at national level. This Convention does not contain rules on this and this point can, therefore, neither be addressed in the conclusions of this case or in any substantive way in our discussion.

Interpretation from Russian: Worker member, Kazakhstan (Mr DAULETALIN) – Chairperson, participants of the Conference, the Federation of Trade Unions is the largest workers' organization of Kazakhstan, has 23 sectoral trade unions and local trade unions bringing together more than 2 million members. Alongside our Federation, there are two other republican associations, the Confederation of Labour of Kazakhstan and Amanat. Together, we are making efforts and one example of this is a general agreement from 2021–23; all three trade union confederations adopted the same position and submitted/shared a draft to the Committee. The Federation of Trade Unions has always been in favour of unitary action of trade unions and has already supported solidarity programmes for international trade union organizations. We have repeatedly spoken in favour of the position of our colleagues, Larisa Kharkova, Dimitri Senyavsky, Erlan Baltabay and others on the overturning of previous convictions and the registration of their respective trade unions. The Federation of Trade Unions is making every effort to apply the principles of the International Labour Organization including via new legislation.

The Government has drafted and introduced proposals relating to the application of ILO experts and the conclusions of the Committee on the Application of Standards, and these have been reflected in the law adopted in May. This provides for the members of the trade unions that have been mentioned and ensuring international cooperation and support and simplifying the conditions for confirming the status of trade unions when registering with the State.

At the moment, the Federation of Trade Unions is initiating further improvements to these rules, particularly the transition to the notified registration of trade unions and this is an initiative that is supported by the Government.

Individual national laws have led to improvements in the situation, particularly with regard to article 402 of the Criminal Code. The comments of the Committee of Experts on this issue have certainly been considered. But there is also the issue of the incidents that have led to justified detention. We are looking to further improve the legislation in the country by carrying out, for example, procedures relating to requirements for strikes and strengthening the arbitral committees' role and increasing the role of trade unions when discussing labour disputes.

The cross-ministerial committee of the Government is further looking into these issues and shortly the bill will be appearing before the Parliament in Kazakhstan. Furthermore, representatives of the Trade Union Federation have made a number of proposals to the bill on safe conditions of work and protection of workers' rights.

One amendment proposed by us relates to the index-linking on wages for short-term employment. We are also continuing our work in the area of technical cooperation with the ILO and the Standards Department.

In conclusion, I would like to reassure you that the Federation of Trade Unions has always been in favour of constructive dialogue between the social partners in the interest of workers. We are entering a new stage of development of our country and we hope that the ILO will support us with technical assistance with regard to the application of the Convention. Expectations in the country are extremely high and these expectations should not be disappointed.

Interpretation from Russian: **Employer member, Kazakhstan (Mr ABIKHANNOV)** – We are aware of recommendations that have been made last year and this year and we are seeing certain effects of their application in Kazakhstan. The ILO certainly played a huge role in the improvements that have taken place.

I represent the National Confederation of Employers. Our Confederation underwent fundamental change; strengthening the leadership team, identifying the areas of work, and reviewing short- and long-term objectives.

I would like to say that in these two months the number of members has increased three-fold and work in this area is ongoing. I would also like to thank the direct contacts mission headed by Mr Bruun. All of the issues relating to the legislative changes and other issues raised by the mission is being worked on. We are seeing an independent employers' organization and new laws going before the Parliament. The direct contacts mission identified a number of areas where there are inconsistencies and these need further work. However, as the Chairperson mentioned of our organization on the occasion of the visit, it is important to continue building a strong and independent employers' organization which can effectively defend the interests of employers.

Our Confederation is working actively together with international organizations and will continue cooperation to develop and strengthen social dialogue in Kazakhstan. Our objectives are very much in line with the overriding objectives of our country and we all see the need for effective reform in Kazakhstan.

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

L'UE et ses États membres sont attachés à la promotion, à la protection, au respect et à la réalisation des droits de l'homme, y compris les droits du travail, le droit d'organisation et la liberté d'association.

Nous encourageons activement la ratification et la mise en œuvre universelles des normes internationales fondamentales du travail, y compris la convention n° 87 sur la liberté d'association. 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 le Kazakhstan sont régies par l'accord de partenariat et de coopération, qui nous a permis de renforcer notre coopération bilatérale. Par cet accord, les parties réaffirment leurs engagements à mettre en œuvre de manière effective les conventions ratifiées de l'OIT et les conventions fondamentales de l'OIT.

Tout en reconnaissant les progrès réalisés par le gouvernement dans la modification de certaines parties de sa législation, nous sommes préoccupés par le fait que le Kazakhstan est devenu un cas récurrent à la Commission de l'application des normes. La conformité à la convention, tant en droit qu'en pratique, est maintenant discutée pour la cinquième fois au cours des six dernières années. Nous encourageons le gouvernement à traiter rapidement les questions en suspens afin de se conformer pleinement à la convention.

Nous exhortons une fois de plus le gouvernement à abroger l'article 402 du Code pénal, qui criminalise le fait «d'appeler les travailleurs à participer à une grève déclarée illégale par un tribunal». Cet article est incompatible avec la liberté d'association et la responsabilité du gouvernement de protéger le droit des travailleurs et des employeurs à organiser leurs activités, y compris le droit de grève.

Au-delà des amendements législatifs, nous demandons au gouvernement de veiller à ce que la liberté d'association ainsi que le droit de créer des organisations sans autorisation préalable et le droit d'organisation, tant en droit qu'en pratique, soient pleinement respectés. C'est un motif de préoccupation, compte tenu également du fait que les limitations des droits des travailleurs pourraient avoir été l'un des problèmes fondamentaux à l'origine des événements tragiques de janvier 2022 qui ont débuté dans la ville minière de Zhanaozen.

Nous notons avec inquiétude que, en dépit des conclusions claires des dernières discussions de la Commission de l'application des normes, la question de l'enregistrement du Congrès des syndicats libres (KNPRK) et du Syndicat industriel des employés du secteur des combustibles et de l'énergie, qui se pose depuis longtemps, n'a toujours pas été résolue, afin de leur permettre de jouir de la pleine autonomie et indépendance d'une organisation de travailleurs libre et indépendante, de remplir leur mandat et de représenter leurs mandants sans plus attendre. Nous demandons au gouvernement de résoudre cette question, notamment par un engagement plus étroit avec les partenaires sociaux, afin de remédier aux difficultés identifiées par les syndicats cherchant à se faire enregistrer, afin de garantir le droit des travailleurs à créer des organisations sans autorisation préalable.

Nous notons que le Comité de la liberté syndicale poursuit l'examen des cas de M. Baltabay et de M^{me} Kharkova, ainsi que du cas de M. Senyavsky. L'UE et ses États membres déplorent toute violation des droits fondamentaux des syndicalistes et tout acte de harcèlement, d'intimidation, d'agression ou d'emprisonnement à leur encontre. L'absence d'enquêtes et de jugements efficaces renforce le climat d'insécurité et d'impunité, qui nuit à la liberté d'association.

Nous réaffirmons également que les organisations de travailleurs et d'employeurs ne devraient pas être empêchées de recevoir une aide financière ou autre de la part des organisations internationales de travailleurs et d'employeurs, conformément aux conclusions adoptées l'année dernière.

Enfin, l'UE et ses États membres espèrent que les préoccupations soulevées dans cette déclaration seront prises en compte dans le cadre des processus de réforme globale en cours lancés par la nouvelle administration du Président Tokayev. Nous continuerons à suivre et à analyser la situation et restons attachés à notre étroite coopération et à notre partenariat avec le Kazakhstan.

*Interpretation from German: **Worker member, Germany (Ms HOFMANN)** – I speak on behalf of workers in Germany and in the Nordic countries.*

In last year's conclusions, this Committee formulated precisely what steps the Government must take to bring its legal situation and practice into line with Convention No. 87.

Unfortunately, we are not seeing the Government delivering on what it explicitly promised in its final statement given to this Committee. Of particular concern is the continued criminalization of the activities of trade unions and their members. This Convention guarantees that these activities can be carried out in an environment that respects fundamental civil rights and liberties for, to quote the Committee on Freedom of Association “the absence of these civil liberties removes all meaning from the concept of trade union rights”. How are trade unions supposed to support workers in dealing with the consequences of the *(a few words omitted here)* in any way and how are they supposed to defend their members if they fear being arrested.

In October 2021, the police arrested the President of the new Platform Workers’ Union on the very day that the new union was planning a strike. In December 2021, the President of the Crane Operators Union was sentenced to ten days in prison for taking part in an allegedly illegal rally. Trade union leaders and representatives sentenced to prison under dubious circumstances are not allowed to resume their activities even after their sentence has expired.

The President of Kazakhstan has signed a Decree on Further Measures of the Republic Of Kazakhstan in the Field of Human Rights, which also aims to protect freedom of association. The UN Committee on Economic, Social and Cultural Rights has stated that the Decree has no practical effect. This was in November.

The Government has stated in its written information to the Committee on the Application of Standards that an action plan should implement the ILO recommendations by the end of 2022 or the first quarter of 2023. This was back in May. This stalling tactic is unacceptable given the fact that for years we have been discussing the violations of the Convention. We therefore call on the Government to submit to this Committee specifically what steps it will take to finally and fully implement the obligations under Convention No. 87.

Government member, Turkey (Mr EKINCI) – We thank the Government of Kazakhstan for the information it provided and welcome its willingness to constructively engage and cooperate with the ILO. The Government of Kazakhstan has demonstrated efforts to strengthen and adapt its current legislative framework to bring it into line with the ILO standards. We encourage the Government of Kazakhstan to continue to undertake necessary steps in this regard.

We welcome that a direct contacts mission of the ILO visited Kazakhstan in May this year to discuss the implementation of the Convention by Kazakhstan, and progress in ensuring trade unions with the right to freedom of association was observed by the ILO mission.

We commend the positive steps taken by the Government of Kazakhstan in consultation with the social partners, including its taking into account the observations of the Committee of Experts to amend its internal laws. Recent amendments, such as the transfer of the state registration of trade unions to a notification procedure and simplification of the procedure for organizing a strike, made by the Government of Kazakhstan in order to bring their national legislation into accordance with the standards of the Convention should be acknowledged.

It should be emphasized that the Government is determined to work on the issues raised by the ILO and the social partners in a spirit of constructive dialogue and ready to enter into an open discussion on how to further improve the situation with trade unions.

In addition, we are pleased that significant political reforms aimed at further transformation and modernization of the country, including on the protection of human rights and the rule of law, was initiated by the presidency of Kazakhstan.

We believe that Kazakhstan, which fulfils its obligations of submission of reports related to the ratified ILO Conventions, will continue to work with the ILO and the social partners in close cooperation.

Worker member, United States of America (Mr GOTTWALD) – Unfortunately, since this body last discussed this case last year, the Government of Kazakhstan has continued to arbitrarily deny registration to independent trade unions. For example, the Government still has not addressed long-standing concerns regarding the registration of the Confederation of Independent Trade Unions of Kazakhstan. Starting in December 2021, the Industrial Trade Union of Fuel and Energy Workers of Almaty has had their registration papers rejected on four separate occasions based on alleged irregularities in the paperwork.

Meanwhile, the trade union workers of the fuel and energy complex of the Almaty region has been denied registration six times and each time for a new reason. While it is true the Government has established working groups to reform the Labour Code, independent trade unions have been totally excluded from this process. In addition, the Government has continued its campaign of legal harassment against independent trade union leaders; Larisa Kharkova, the former Chairperson of the KNPRK, remains under modified house arrest and is banned from serving as a trade union leader. Several other independent trade union leaders, including Mr Baltabay, remain subject to similar bans.

Despite the efforts of the Committee of Experts in this Committee, it is unfortunately clear the Government continues to play politics with the union registration process. We call on the Government of Kazakhstan to end its campaign to squash independent trade union activity and fully implement the recommendations contained in last year's 2021 Committee on the Application of Standards report without further delay.

Membre gouvernementale, Canada (M^{me} TOUS) – Le Canada considère le Kazakhstan comme un partenaire important dans de nombreux domaines de la coopération internationale.

Nous notons que c'est la cinquième fois en six ans que le gouvernement du Kazakhstan est appelé à comparaître devant cette commission pour parler de sa mise en œuvre de la convention n° 87.

Nous saluons les progrès réalisés par le gouvernement du Kazakhstan pour répondre à certaines des recommandations de cette commission.

Nous espérons également que les réformes politiques annoncées en mars 2022 renforceront l'universalité des droits de la personne et du travail et réduiront le nombre de rapports d'incidents de harcèlement de syndicalistes et de restrictions du droit à la liberté d'association et de réunion pacifique.

Nous demandons au gouvernement de protéger efficacement – tant dans la loi que dans la pratique – le droit de toutes les personnes, y compris les syndicalistes, de s'organiser et de participer à des manifestations pacifiques.

Le Canada demeure préoccupé par le fait que certains syndicats continuent de rencontrer des obstacles à leur établissement et à leur enregistrement, et que le problème de longue date concernant l'enregistrement de la Fédération des syndicats du Kazakhstan et du Syndicat industriel des employés du secteur des combustibles et de l'énergie n'est toujours pas résolu.

Nous demandons donc au gouvernement du Kazakhstan, en consultation avec les partenaires sociaux, de résoudre définitivement et sans délai les difficultés actuelles du processus d'enregistrement des syndicats.

Enfin, nous encourageons le gouvernement à se prévaloir de l'assistance technique de l'OIT et à continuer de s'engager avec l'OIT pour assurer le plein respect des principes de la convention.

Le gouvernement du Canada reste déterminé à travailler avec le Kazakhstan à ces fins et en tant que partenaire. Nous soutenons l'ambitieux programme de réforme politique du gouvernement kazakh et nous félicitons le gouvernement de poursuivre les enquêtes sur les événements de janvier.

Government member, United States of America (Ms MORENO) – This Conference 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.

The Decree on Further Human Rights Measures was recently amended to include freedom of association, including development of a work plan to address long-standing issues. We note plans to amend legislation, including possible decriminalization of article 402(1) of the Criminal Code, which penalizes calls for strike action declared illegal by the court.

However, significant work remains. We note the dissolution of the Industrial Union of Employees in the Fuel and Energy Sector (ITUFEW) following a court decision to suspend its activities in February 2021. We regret the Government's failure to work with the country's last remaining independent trade union to stay operational, as their subsequent attempts to re-register were rejected.

We call on the Government to uphold its commitment to respect and promote freedom of association under the Convention, in both law and practice. This requires: respect for the full autonomy and independence of free and independent trade unions and employers' organizations, including by immediately ceasing acts of violence, harassment and interference; elimination of practices and vacating existing orders that prohibit or impose restrictions on trade unionists and leaders engaging in legitimate trade union activities, including those against Larisa Kharkova and Erlan Baltabay; continued engagement with the social partners to address obstacles in the union registration process, including removal of geographic requirements for sectoral unions which, in practice, can limit independent oil sector unions concentrated in the western region; immediate registration of the ITUFEW and the Confederation of Independent Trade Unions of Kazakhstan (KNPRK); further review of section 402 of the Criminal Code to ensure penalties for calling strike action are not excessive; continued review of the Law on the National Chamber of Entrepreneurs (NCE) to ensure it does not hinder the rights of employers' organizations; and inclusion of the ITUC and the IOE in the list of organizations permitted to provide grants to individuals in the country under Ordinance No. 177. We urge immediate and effective action on these long-standing recommendations. We remain committed to engaging with the Government to advance workers' rights in Kazakhstan.

Observer, IndustriALL (Mr OZCAN) – I am speaking here on behalf of IndustriALL Global Union that represents more than 50 million workers in the oil, gas, mining, energy and manufacturing sectors throughout the world, including Kazakhstan.

For more than ten years, since the tragedy in Zhanaozen in 2011 where at least 17 people were killed and over 100 injured, without any justice so far, we still do not see any improvement in the situation of trade union rights in the country. And we believe that Kazakhstan continues to avoid fulfilling its obligations under the Convention. And I particularly want to refer to the

system of registration procedures which remains complex and serves to prevent the creation of free and independent trade unions.

The Trade Union of Fuel and Energy Industry Workers has reported that its regional branches failed to obtain registration by far-fetched unfounded reasons on numerous occasions. The registration of the union branch in Atyrau, as was already mentioned, was denied six times and each time with a new reason.

Over 60 large, spontaneous strikes, mainly in the energy and oil sector last year and massive protests in January of this year where at least 160 people were killed, clearly demonstrate that the dissolution and oppression of democratic institutions in the society of Kazakhstan leads to tragic consequences.

There is a lesson to be learned from these mass protests. It is the policies and practices, not the external forces, that have provoked the social and labour conflicts strongly suppressed by the police and the security forces. The main lesson is that dialogue with the relevant parties, a commitment to openness and democratic values, social dialogue and collective bargaining at the sector level with trade unions, especially in the sectors which bring Kazakhstan its wealth, are needed to build a sustainable society in the country.

The President of the country has announced the steps to strengthen democratic traditions in the country. The referendum on 5 June is considering a vast package of amendments to the Constitution. There is a light hope; however, all words must be followed by actions.

We once again urge the Government of Kazakhstan to take all the necessary actions to make sure that the country, the Government, complies with the obligations of Convention No. 87.

The union registration procedure must be simplified based on notification by trade unions. Any restriction on union activity must be lifted and all the charges against union leaders must be dropped, including removing the chargers from the records of trade union leaders.

*Interpretation from Russian: **Observer, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) (Mr BUKETOV)*** – The issue of freedom of association in Kazakhstan is something that this Committee has returned to numerous times and the starting point for it was the repressed strike in 2011 in Zhanaozen. A peaceful strike for increased wages took place over a number of months and it could have finished around the negotiating table with the signing of an agreement or establishing a list of differences of opinion. That would have been the direct duty of the State – creating the conditions for negotiation as required by Conventions Nos 87 and 98. Instead of that, armed troops came into the strikers' village on 16 December 2011 and received the order to open fire. Since then, the Government has continued along this path, banning independent trade unions, criminalizing the strikes or any independent activities of workers and repressing trade union leaders. This deprives trade unions of their right to freedom of association and the right to organize.

Since our last consideration of this issue, the number of strikes has been increasing. They take place in a number of regions and in a number of industries and it is worth noting two particular characteristics. Firstly, they are all peaceful, they are well-organized and their participants participate with a high level of discipline and order, not allowing extremism within their ranks. They show that they are ready for civilized and dignified negotiation. In practically all these instances, these workers are demanding lifting restrictions on the establishment of trade unions as required by Conventions Nos 87 and 98.

There is an opportunity in the country today. We hope the Government will use this opportunity, lifting restrictions on trade union rights and particularly the establishment of the KNPRK. But the situation is still particularly worrying and deserves close and concerned attention from the International Labour Organization.

*Interpretation from Russian: **Observer, International Trade Union Confederation (ITUC) (Mr KOSSHYGULOV)*** – I represent the Trade Union of Workers in the Fuel and Energy Sector issue which has suffered from the dissolution of the KNPRK. Unfortunately, the Government is ignoring the recommendations of the ILO and dissolving independent trade unions, and the attempts to register trade unions are not met with success. We are continuing to receive refusals from the Ministry of Justice under false pretext.

All official registration of trade unions means that if they do not go through, it is not possible to participate in collective bargaining and this leads to social conflicts, including those we saw in January 2022. Protests and gatherings are declared to be illegal and the dissolution we see of these organizations leads to workers being dismissed if they place their demands; there is no mechanism to protect their rights, they are denied their rights, there are no collective agreements, and in a sector where profits are high, workers are finding it difficult to make ends meet, particularly in those areas that do produce such high-value, high-profit products. It is necessary to put an end to these attitudes and legalize trade unions, ensuring their protection and giving them rights in the face of their employers, giving my organization, the KNPRK, legal status. All of these are in line with the recommendations of the Committee of Experts and the mission, as well as the provisions of the Convention.

We call on you, members of the Committee, to take the necessary measures to ensure that this happens.

*Interpretation from Russian: **Government member, Kazakhstan (Mr SARBASSOV)*** – First of all, if you will allow me, I would like to thank all of those who have spoken on behalf of Governments and workers' and employers' associations. We welcome their comments with regard to the law and practice in our country.

I would like to say that in order to achieve social peace in our country, the President, in March, addressed a message to the people of Kazakhstan identifying the initiatives for reform with a view to modernizing our country. This reform would establish a basis for a new Kazakhstan. The key elements have already been mentioned but I think they are worth re-emphasizing. These are political reforms establishing policies through an increased democratization and strengthening human rights. In this regard, I would like to say that literally tomorrow a referendum will take place in our country on changes to the Constitution.

The essence of these changes direct towards the modernizing of the political system and a transition to a presidential Republic with a strong Parliament. This is a system that would strike an optimal balance between the relevant or relative institutions in the country and secure the effective governance of Kazakhstan.

In accordance with the instructions of the President, the Government has confirmed the programme for wage increases in the country and this is a programme that includes a number of systems within the reform, particularly in the social sphere. The Minister has been drafting a social code, including the implementation of a number of initiatives to remove inequality and secure the rights of our citizens. There will be a number of key areas for social protection and apply throughout the life cycle of citizens from birth to old age.

With regard to the questions relating to the criminal prosecution – once again, I would emphasize that all questions relating to the criminal prosecutions are under the authority of

the Public Prosecutor. Such criminal prosecutions are not related to trade union activities. Over the last two years, there have not been any criminal prosecutions with regard to trade union activists. With regard to the Criminal Code and additional penalties relating to specific activities, I would like to say that these additional sanctions are ruled upon by the courts. This is governed by the decree from April this year. At the moment, the format of the cross-departmental committees considering this issue and a number of rules are being proposed to improve the Criminal Administrative Code. This work is being carried out in our Ministry as well; we are making our contribution and are preparing to contribute to it more, contribute to the cross-departmental group on the possible changes to the Criminal Code with the participation of the Public Prosecutor.

With regard to the registration issue, as I have said, there are a number of changes under way which have allowed an improved capacity for trade unions to represent the interests of their work. There have been no complications that have arisen in these processes. There are individual complications in registering trade unions and these are looked at on a case-by-case basis, particularly in the working group which we have in the Ministry of Justice, so any complications arising can be looked at and we can broaden the working group to include representatives of workers and employers.

The changes which will be proposed this year will move towards improving existing legislation on the registration of legal persons, and we hope very much that individual difficulties, of a technical and legal nature, can be resolved and their status as legal persons can be confirmed. We consider the links between employers' and workers' organizations and the ILO. I think it is worth stating here that they are assigned tasks both in the Constitution and within their organizations. The rules that do exist are not obstacles to their participation in international organizations, whether we are talking about training or other activities. There is a list of organizations which carry out beneficial work and all of them are included on this list and it will be possible to extend this list in order to include further organizations which benefit the interest of workers and employers. The issue of financing from abroad and a ban on that for workers' and employers' organizations is not something that is under consideration.

Allow me once again, to emphasize that during the direct contacts mission, we informed our international partners that the National Chamber of Entrepreneurs does not represent the interests of the employers' organizations. We have been quite clear in this area. The representatives of NCE have been excluded. We are working exclusively with employers' organizations representing the interests of employers and will continue to raise awareness about the way that the representation of the employers' interest works, effectively representing the interests of business including small business. So, we have worked with our social partners to say that we will be working on a separate bill on employer associations and this is something that we will be beginning very soon so that we can clearly establish the role and tasks of our employers' organizations.

Once again, allow me to reaffirm my Government's commitment to observe international standards, and we are undertaking all possible efforts to ensure that our law and practice is in line with the provisions of the Convention.

Membres travailleurs – Nous avons pris note des informations écrites et orales du gouvernement du Kazakhstan et nous remercions les intervenants pour leurs contributions.

Nous craignons que les intentions affichées par le gouvernement ne se traduisent toujours pas concrètement dans la pratique.

Il convient d'engager un véritable dialogue social afin de lever les obstacles, tant légaux que pratiques, auxquels les organisations syndicales sont confrontées dans l'exercice de leur liberté syndicale.

En ce qui concerne les procédures d'enregistrement et de réenregistrement, nous invitons le gouvernement à revoir la composition du groupe de travail permanent chargé d'examiner les problématiques liées à l'enregistrement des syndicats afin d'y intégrer des syndicats indépendants.

Le gouvernement veillera dans ce cadre à garantir l'efficacité, l'impartialité et l'indépendance de ces procédures d'enregistrement et examinera, en concertation avec les partenaires sociaux, les actions à entreprendre afin de lever durablement les obstacles tant légaux que pratiques à l'enregistrement des syndicats.

Il veillera aussi tout particulièrement à lever les obstacles arbitraires dressés à l'enregistrement du Congrès des syndicats libres ainsi que du Syndicat industriel des employés du secteur des combustibles et de l'énergie.

La requalification de l'infraction pénale d'incitation à une grève déclarée illégale en infraction administrative ne permet pas de mettre la législation kazakhe en conformité avec la convention.

Le simple fait d'appeler à une grève pacifique ne devrait faire l'objet d'aucune sanction, qu'elle soit pénale ou administrative, et nous demandons à ce que toute sanction infligée à ce titre dans la législation soit abrogée.

Le gouvernement veillera également à abroger la sanction pénale qui permet de priver les syndicalistes du droit d'exercer toute fonction syndicale. Nous demandons par ailleurs à ce que cette sanction, infligée à M^{me} Karhkova ainsi qu'à M. Baltabay, soit levée dans les plus brefs délais.

Nous demandons au gouvernement de renforcer ses efforts pour mener des enquêtes sérieuses sur les faits de violence perpétrés à l'égard de syndicalistes et qu'il poursuive et condamne leurs auteurs au moyen de sanctions dissuasives, en particulier dans l'affaire de M. Senyavsky.

Pour finir, nous demandons au gouvernement de lever l'interdiction de bénéficier de l'assistance financière d'organisations internationales de travailleurs ou d'employeurs et de n'imposer aucune condition qui entrave le droit à cette assistance contenu dans l'article 5 de la convention.

Nous croyons comprendre que le pays est engagé dans un processus de réformes à la suite des événements tragiques de janvier de cette année. Le temps est venu de répondre aux causes profondes de ces tensions sociales dans le pays. Nous sommes d'avis que ces causes sont notamment à trouver dans les graves limitations de la liberté syndicale, l'absence de négociation collective sur les questions socio-économiques et plus généralement l'inexistence d'un véritable dialogue social.

Nous souhaitons dès lors que notre commission répète l'ensemble des recommandations formulées au cours des années précédentes et en appelons au gouvernement à mettre en œuvre dans les plus brefs délais l'ensemble de ces recommandations ainsi que celles que nous lui adressons cette année, et tout cela afin d'éviter que le Kazakhstan, en effet, ne reste un cas récurrent.

Nous invitons le gouvernement du Kazakhstan à établir un plan d'actions, assorti de délais déterminés, en vue d'assurer la réalisation de l'ensemble de ces recommandations. À cet effet,

nous invitons le gouvernement à se prévaloir de l'assistance technique de l'OIT en vue d'établir, de mettre en œuvre et d'évaluer ce plan d'actions en concertation avec l'ensemble des organisations syndicales.

En particulier, nous demandons au gouvernement de recourir systématiquement et continuellement à l'assistance technique de l'OIT dans le cadre des travaux du groupe de travail permanent chargé d'examiner les problématiques liées à l'enregistrement des syndicats.

Le gouvernement fera un rapport complet à la commission d'experts, avant sa prochaine session ainsi qu'avant sa session de mars 2023, sur les initiatives prises en vue de réaliser les recommandations qui lui seront adressées par notre commission.

Employer members –We have listened very carefully to the Government's submissions and all of the interventions that followed.

Taking all of the submissions into account, the Employer members urge the Government as follows: first, we urge the Government to take appropriate measures to resolve the registration of KNPRK and the Industrial Union of Employees of the Fuel and Energy Sector. We urge the Government to engage with the social partners on issues concerning the registration of trade unions and the challenges faced in this regard. We take special note of the Government's submissions on the issue of the NCE as well as its indication of the intention to create a draft bill regarding employer associations.

We call on the Government therefore to ensure that the NCE, in line with the law, completely withdraws from social dialogue and collective bargaining and leaves this area of competence to free and independent employers' organizations. This system of accreditation of employers' organizations in the NCE should also be discontinued.

In addition, taking into account the Government's submission on its intention to create a bill on employers' associations, we note that to further reinforce the recognition of the freedom of association of employers and their organizations, it would be most opportune to adopt a law or regulation that sets out the independence and autonomy of employers' organizations and sets out the conditions for their eligibility for participation in social dialogue and collective bargaining at the various levels.

Furthermore, the Employer members note that any such drafting of such legislation should be done in consultation with the most representative employers' and workers' organizations.

Furthermore, we urge 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 IOE.

Finally, we request the Government to provide its report on the developments in this regard and the measures taken to respond to the issues raised in our discussion today by 1 September 2022.

El Presidente – Damos por concluida la discusión de este caso. Agradecemos la participación del Sr. Viceministro muy especialmente y a todos quienes han intervenido haciendo uso de la palabra en la discusión.

Las conclusiones serán adoptadas por la Comisión en la tarde del jueves 9 de junio o en la mañana del viernes 10 de junio.

(...)