

Committee on the Application of Standards

Date: 30 May 2023

Governments appearing on the list of individual cases have the opportunity, if they so wish, to supply written information to the Committee.

► Information on the application of ratified Conventions supplied by governments on the list of individual cases

Peru (ratification: 1960)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Written information sent by the Government on 22 May 2023

Legislative developments. The Committee requests information to be provided on the impact of the application of Presidential Decree No. 014-2022-TR. In this regard, the Ministry of Labour and Employment Promotion (Ministry of Labour) attaches statistical tables with definitive figures on labour disputes (strikes and/or stoppages in the private sector) presented and recorded in February 2023, as well as during January and February 2023 in comparison with January and February 2022, drawn up by the General Office for Statistics and Technologies at the Ministry of Labour.

These tables show, among other data, that both the number of strikes (2022: three; 2023: one), the number of workers covered by the measure (2022: 245; 2023: 23) and the hours of work lost (2022: 234,320; 2023: 4,416) all show figures much higher than those reported for the same months in 2023, when Presidential Decree No. 014-2022-TR was not yet in force. This illustrates the fact that the level of disputes has decreased as a result of the aforementioned legislation coming into force.

Moreover, during 2022, after the decision of the employers' unions to suspend their participation in the National Labour and Employment Promotion Council (CNTPE) and its dialogue forums, communicated in July 2022, the Ministry of Labour made efforts to resume the dialogue, inviting them to attend various bilateral meetings with the Ministerial Office but without receiving any response. However, in the context of the current period of government, bilateral meetings were held between the Ministerial Office and employers' organizations such as the National Confederation of Private Business Institutions (CONFIEP), the National Society of Industry (SNI), the Chamber of Commerce of Lima (CCL) and the Exporters' Association, between December 2022 and May 2023, at which the employers' unions expressed their concerns regarding Presidential Decree No. 014-2022-TR.

Furthermore, between December 2022 and May 2023, bilateral meetings were held between the Ministerial Office and the trade union confederations (the General Confederation of Workers of Peru (CGTP), the Single Confederation of Workers of Peru (CUT-Peru), the Confederation of Workers of Peru (CTP), and the Autonomous Workers' Confederation of Peru (CATP)), which in turn expressed their support for Presidential Decree No. 014-2022-TR.

It is hoped to follow up on the readiness to engage in dialogue expressed by the employers' organizations during these recent meetings and to achieve a rapprochement with the workers' confederations with a view to re-establishing trust so that it is possible to achieve a quorum in a future plenary meeting of the CNTPE and accordingly proceed with the processes and procedures of tripartite consultation.

Article 2 of the Convention. Recognition of the right to organize of managerial personnel and employees in positions of trust in the public administration. The Ministry of Labour indicates that Presidential Decree No. 014-2022-TR, amending the Regulations implementing the Collective Labour Relations Act, which is applicable in a subsidiary capacity to the public sector, provides as follows:

Managerial personnel and employees in positions of trust shall not be represented by the trade union or included in the total number of workers for the purposes of determining whether the requirement of the absolute majority referred to in the previous section has been achieved, unless the rules of the organization specifically permit their membership.

Accordingly, the right to freedom of association of managerial personnel and employees in positions of trust is recognized in terms of their being able to be members of a trade union provided that the rules of the union explicitly allow their membership.

It should also be recalled that section 4 of the Regulations provides that the State shall recognize and guarantee for workers, without distinction or previous authorization, the right to establish and join organizations of their own choosing, and to engage in trade union activities to defend and further their economic and social interests.

Moreover, Ministerial Decision No. 92-2022-TR provided for the pre-publication of the preliminary draft of the Labour Code, which contains a proposal for the specific regulation of vocational training schemes, defining the service provider as a worker and indicating that training schemes constitute labour contracts.

The Ministry of Labour proposed to initiate a process of tripartite dialogue in the CNTPE on the preliminary draft text, on the basis of which at ordinary session No. 127 on 13 May 2022, the plenary of the CNTPE decided that the process of dialogue on the preliminary draft text of the Labour Code would be evaluated by the social partners once the pre-publication period had elapsed.

It was accordingly decided on a tripartite basis to include the definition of the characteristics of the process of dialogue in the agenda of ordinary session No. 128 of the CNTPE plenary, which was held on 18 July 2022. However, that session was suspended, following three hours of discussions on another subject, and the preliminary draft text was not discussed.

Subsequently, on 26 July 2022, the employers' representatives suspended their participation in the CNTPE, expressing disagreement with Presidential Decrees Nos 001-2022-TR (outsourcing) and 014-2022-TR (industrial relations).

An extraordinary session of the CNTPE plenary was then convened on 3 November 2022 to determine the process of dialogue on the preliminary draft text of the Labour Code, but it

was only possible to hold an information session due to the absence of a quorum as a result of the almost total absence of employers' representatives, although all the workers' representatives attended the session.

In the context of the action taken by the current Government, between December 2022 and May 2023, bilateral meetings were held between the Ministerial Office, on the one hand, and the employers' organizations and workers' confederations, on the other.

It is hoped to follow up on the readiness to engage in dialogue expressed by the employers' organizations during these recent meetings and to achieve a rapprochement with the workers' confederations with a view to re-establishing trust so that it is possible to achieve a quorum in a future plenary meeting of the CNTPE and accordingly proceed with the processes and procedures of tripartite consultation.

It should also be noted that in April 2023, members of the Congress of the Republic of Peru put forward Bill No. 4483/2022-CR issuing the Labour Code, which includes in full the content of the proposed text of the preliminary draft of the Labour Code published by the Ministry of Labour in April 2022.

The judiciary has also indicated that it is important to take into account that, while article 28 of the Political Constitution of Peru provides that "the State shall recognize the right to organize, collective bargaining and to strike. It shall ensure its democratic exercise: (i) it shall guarantee freedom of association ...". Article 153 adds that "judges and prosecutors shall be prohibited from participating in politics, joining unions and calling strikes".

These prohibitions were also envisaged in the 1979 Constitution in the chapter on the judicial authorities, which is taken up in the 1993 Constitution. The purpose is to ensure that the judicial authorities and the whole justice system are not connected with political circles, as nothing is more harmful for the justice system than the exercise of political activities by judges and/or prosecutors.

While it is clear that the Constitution provides that those officials may not be members of unions, such public officials may nevertheless establish and join associations, on condition that their purpose is "the defence of the professional interests of their members in all matters and activities intended to be of service to justice in general", as seen in section 35(12) of Act No. 29277 on judicial careers:

Judges shall have the right to:

...

freedom of association. Associations of judges shall be established and undertake their activities in accordance with the requirements set out in the Civil Code and shall be regulated by their internal rules.

It is clear that neither judges nor prosecutors are considered to be workers by labour law, under which they are not bound to their employer by an employment contract. Moreover, the employer to which they provide services is not another private person, but the State itself. It should also be noted that freedom of association is effective if it is surrounded by the usual accompanying procedures, which are its true pillars, namely collective bargaining and the right to strike.

Judges, magistrates and prosecutors have to maintain impartiality in relation to positions that could undermine the constitutional balance of powers.

Nevertheless, professional associations, as substitutes for unions, have up to now fulfilled their function of offering a channel for the appropriate expression of the concerns and claims of certain professionals who are as deserving of this right as any other group.

Article 3. Determining the unlawfulness of strikes. In accordance with the above, under the current governmental administration, between December 2022 and May 2023, bilateral meetings were held between the Ministerial Office and, initially, the employers' organizations and, subsequently, with the trade union confederations.

It is hoped that dialogue will be resumed in order to achieve a quorum at the next CNTPE plenary meeting and thus re-establish the processes and procedures of tripartite consultation.

► **Strikes initiated, settled and pending; workers involved and working hours lost in the private sector from 1 to 28 February 2023**

Economic activity/ business name	Date		Workers involved	Working hours lost	Reasons	Location	Time period
	Start	End					Art. 76 of single consolidated text of Presidential Decree No. 010- 2003-TR
Wholesale and retail trade ¹			23	4 416			
Salem Corporation (SAC)							
Single Union of the Salem Corporation	01.02	Ongoing	23	4 416	List of claims		Indefinite strike
TOTAL ¹			23	4 416			

¹ The indefinite strike by the Single Union of the Salem Corporation began on 13 January 2023. It is considered to have begun on 1 February 2023 because it was not recorded in the labour reports for January 2023.

► **Comparative table of strikes, workers involved and working hours lost in the private sector each year by economic activity from 1 to 28 February 2022 and 2023**

Economic activity	Strikes		Workers involved		Working hours lost	
	2022	2023	2022	2023	2022	2023
Mining and quarrying	1	-	165	-	46 520	-
Gas, electricity and water supplies	1	-	169	-	2 704	-
Wholesale and retail trade	-	1	-	23	-	4 416
Transport, storage and communications	1	-	76	-	1 216	-
Health and social services	-	-	-	-	230 400*	-
TOTAL	3	1	245	23	234 320	4 416

* Working hours lost due to strikes from the previous month.

► **Comparative table of strikes, workers involved and working hours lost in the private sector each year by the reason for the strike from 1 to 28 February 2022 and 2023**

Reason for the strike	Strikes		Workers covered		Work hours lost	
	2022	2023	2022	2023	2022	2023
Collective bargaining	1	1	169	23	13 584	4 416
Comprehensive solution for the list of claims	1	1	169	23	13 584	4 416
Non-compliance with legal standards or provisions of agreements	1	-	76	-	1 216	-
Non-compliance with occupational safety and health standards, other	1	-	76	-	1 216	-
Dismissal or threat of dismissal	1	-	165	-	35 640	-
Demand for the full reinstatement of the worker involved in the total suspension of work and not the collective work stoppage, that the protocol established in the golf camps and plant be respected as there are six people living in each room, and for a change of canteen due to the deplorable service for staff	1	-	165	-	35 640	-
Other reasons	-	-	-	-	230 400	-
Implementation of a medical technology management unit in EsSalud, for an end to discrimination and harassment, protection of social security, against the merging of EsSalud and the Ministry of Health	-	-	-	-	230 400 *	-
TOTAL	3	1	410	23	280 840	4 416

* Working hours lost due to strikes arising from the previous month and/or year.

► **Comparative table of strikes, workers involved and working hours lost in the private sector each year, by month in 2022 and 2023**

Month	Strikes		Workers involved		Working hours lost	
	2022	2023	2022	2023	2022	2023
January	3	-	2 441	-	285 544	10 728
February ¹	3	1	410	23	280 840	4 416
TOTAL	3	1	2 441	23	285 544	15 144

¹ Reference period for both years from 1 to 28 February (2022 and 2023).

Source: Ministry of Labour and Employment Promotion, Directorate for the Prevention and Resolution of Labour Disputes and Corporate Social Responsibility.

Additional written information sent by the Government on 30 May 2023

Article 2. The right of all workers, without distinction, to establish and join organizations. The National Civil Service Authority (SERVIR) indicates that Peru recognizes the Convention's guiding principle as the exercise of freedom of association and collective bargaining, which are fundamental rights aimed at ensuring workers' full and free participation in the labour market, thus embodying a guarantee of democracy and social progress. All possible improvements to labour law therefore take place within a framework of dialogue between representative

workers' organizations and the State. It must be highlighted at the outset, however, that although the Political Constitution guarantees the exercise of the right to freedom of association, that right, like any other, is not unrestricted, but is subject to certain limits established by rules with the force of law.

The guarantees that protect workers' rights are based on respect for international labour standards given that Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), both of which address the protection of the right to organize in general, as well as the Labour Relations (Public Service) Convention, 1978 (No. 151), which protects, inter alia, public officials' right to organize and which forms a basis for the right to strike. Moreover, article 42 of the Political Constitution states that "[p]ublic officials' rights to organize and to strike are recognized". Similarly, under article 28 of the Constitution, the State recognizes the rights to organize, to collective bargaining and to strike, ensuring that they are exercised democratically. As a consequence, therefore, of the recognition of these rights, civil servants' freedom of association ¹ and right to strike, among other things, are guaranteed.

The right to organize in the public sector in Peru is regulated by section 41 ² of the Civil Service Act (Act No. 30057), under which civil servants enjoy the right to organize for the purpose of defending their interests. Civil servants' organizations must contribute to the continuous improvement of services for citizens and refrain from hindering the efficient functioning of a body or the provision of a service, while the authorities must not promote acts that limit the formation of trade union bodies or the exercise of the right to organize.

It is also important to note that Title V, Chapter I, of the General Regulations relating to the Civil Service Act, adopted through Presidential Decree No. 040-2014-PCM, regulates the exercise of the right to organize and contains provisions on, inter alia, freedom of association, ³ protection from anti-union discrimination, protection from acts of interference, the formation of trade unions, trade union registration and trade union leave.

Article 3. Rights of organizations to organize their activities and formulate their programmes. Voting to declare a strike. With respect to the right to strike, SERVIR indicates that this is

¹ Freedom of association is a human right that is at the core of ILO values. It is enshrined in the [ILO Constitution](#), the [ILO Declaration of Philadelphia](#) and the [ILO Declaration on Fundamental Principles and Rights at Work \(1998\)](#); and it is proclaimed in the [Universal Declaration of Human Rights](#) (see: https://www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_FOA_EN/lang-en/index.htm).

² With regard to the validity of this section, it should be clarified that although the sole repealing provision of the Act on collective bargaining in the state sector (Collective Bargaining Act – Act No. 31188) provided for the nullification of sections 40, 41, 42, 43, 44 and 45 of the Civil Service Act, the Collective Bargaining Act, according to its section 1, is intended solely to “regulate the exercise of the right to collective bargaining by trade union organizations of state workers, in accordance with article 28 of the Political Constitution and the provisions of ILO Conventions Nos 98 and 151”. Consequently, based on an interpretation that aligns with the Constitution and on the *pro homine* principle, the nullification of the above-mentioned sections of the Civil Service Act relating to collective rights should be understood to apply only to the exercise of collective bargaining in the public sector, to which, precisely, the provisions of the Collective Bargaining Act (on which the nullification with respect to such collective bargaining is based) are applicable. The above-mentioned sections therefore remain valid in relation to the exercise of the rights to organize and to strike in the public sector, in accordance with the conclusions of technical report No. 001762-2021-SERVIR-GPGSC.

³ Furthermore, section 51 of the General Regulations relating to the Civil Service Act, adopted through Presidential Decree No. 040-2014-PCM, establishes that freedom of association includes the right of civil servants to form, join and leave trade union organizations of their choosing. Moreover, trade union organizations have the right to elect their representatives, draw up their constitutions, form part of higher-level trade union organizations, dissolve, organize their administration and activities, and formulate their programmes. Freedom of association also grants civil servants the right to carry out their trade union activities freely in order to defend their interests.

regulated in sections 79 to 85 of the General Regulations of the Civil Service Act, which provide that one of the requirements for a strike is that the decision must be adopted in the manner expressly stated by the union rules and that it must represent the will of the majority of workers covered by its scope. Likewise, section 13.2(e) of Act No. 31188 on collective bargaining in the public sector states that public sector workers may declare a strike under the provisions of the single consolidated text of the Collective Labour Relations Act, approved by Presidential Decree No. 010-2003-TR, and its regulations. Lastly, the single consolidated text of the Collective Labour Relations Act and its regulations apply supplementarily to any aspects not regulated in the previous provisions.

Right of trade union organizations to hold meetings and have access to workplaces. The Ministry of Education states that according to section 66 of the General Education Act (Act No. 28044), the goal of educational institutions is to ensure the learning and comprehensive training of their students. Likewise, as a physical environment, they provide facilities for conducting extracurricular and community activities, upholding the educational goals and objectives, as well as the specific functions, of the institutional premises.

Under article 28 of our Constitution, the State guarantees freedom of association. Article 6 of the Labour Relations (Public Service) Convention, 1978 (No. 151), establishes that such facilities shall be afforded to the representatives of recognized public employees' organizations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work, without impairing the efficient operation of the administration.

In this context, having reviewed the only final complementary provision of Presidential Decree No. 017-2007-ED, referring to the fact that the director or deputy director of a public educational institution providing regular basic education must guarantee the functioning of his/her educational centre, and so "facilitating the use of school premises for union meetings" is a serious offence. We consider that this provision is in line with the Constitution and international agreements, as educational institutions are intended to provide an education service, which under Act No. 28988 constitutes an essential public service.