International Labour Organization

▶ GB.348/INS/4

Governing Body

348th Session, Geneva, 17 June 2023

Institutional Section **INS**

Fourth item on the agenda

Report of the Committee on Freedom of Association

403rd Report of the Committee on Freedom of Association

▶ Contents

▶ Introduction

1. The Committee on Freedom of Association (CFA), set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva from 1 to 2 June 2023 and 8 June 2023, under the chairmanship of Professor Evance Kalula.

2. The following members participated in the meeting: Mr Gerardo Corres (Argentina), Ms Gloria Gaviria (Colombia), Ms Petra Herzfeld Olsson (Sweden), Mr Akira Isawa (Japan), Ms Anousheh Karvar (France) and Ms Vicki Erenstein Ya Toivo (Namibia); Employers' group Vice-Chairperson, Mr Thomas Mackall and members, Ms Renate Hornung-Draus, Mr Hiroyuki Matsui, Mr Kaizer Moyane and Mr Fernando Yllanes; Workers' group Vice-Chairperson, Ms Amanda Brown and members, Mr Zahoor Awan, Mr Gerardo Martínez, Mr Magnus Norddahl, Mr Jeffrey Vogt and Mr Ayuba Wabba. The members of Argentinean and Colombian nationality were not present during the examination of the cases relating to Argentina (Case No. 3141) and Colombia (Case No. 3397).

3. The Committee was stunned and saddened to learn of the sudden passing of its Employers' group spokesperson, Mr Alberto Echevarria. Mr Echavarría devoted the last decade of his career to the Committee's work promoting respect for freedom of association around the globe. The Committee is grateful for the important contribution he has made. He will be sorely missed by all its members. The Committee conveys its deepest condolences to his family and friends.

* * *

4. Currently, there are **104** cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined **19** cases on the merits, reaching conclusions in **4** definitive reports, **8** reports in which the Committee requests to be kept informed of developments and interim conclusions in **7** cases; the remaining cases were adjourned for the reasons set out in the following paragraphs. The Committee recalls that it issues "definitive reports" when it determines that the matters do not call for further examination by the Committee beyond its recommendations (which may include follow-up by the government at national level) and the case is effectively closed for the Committee, "interim reports" where it requires further information from the parties to the complaint and "reports in which it requests to be kept informed of developments" in order to examine later the follow-up given to its recommendations.

Examination of cases

5. The Committee appreciates the efforts made by governments to provide their observations on time for their examination at the Committee's meeting. Effective cooperation with the Committee's procedures supports the efficiency of the Committee's work and enables it to carry out its examination in the fullest knowledge of the circumstances in question. The Committee therefore urges governments to send information relating to cases in **paragraph 8**, and any additional observations in relation to cases in **paragraph 10**, as soon as possible to enable their treatment in the most effective manner. Communications received after **12 September 2023** will not be taken into account when the Committee examines the case at its next session absent compelling circumstances in the judgment of the Committee.

Serious and urgent cases which the Committee draws to the special attention of the Governing Body

6. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos. 2508 (Islamic Republic of Iran), 2923 (El Salvador) and 3269 (Afghanistan) because of the seriousness and urgency of the matters dealt with therein. The Committee recalls in this regard that, in accordance with paragraph 54 of its Procedures, it considers as serious and urgent cases those involving human life or personal freedom, or new or changing conditions affecting the freedom of action of a trade union movement as a whole, cases arising out of a continuing state of emergency and cases involving the dissolution of an organization.

Cases examined by the Committee in the absence of a government reply

7. The Committee deeply regrets that it was obliged to examine the following cases without a response from the Government: 3067 (Democratic Republic of the Congo), 3269 (Afghanistan) and 3275 (Madagascar).

Urgent appeals: Delays in replies

8. As regards Cases Nos 3249 (Haiti) and 3403 (Guinea), the Committee observes that despite the time that has elapsed since the submission of the complaints or the issuance of its recommendations on at least two occasions, it has not received the observations of the Governments. The Committee draws the attention of the Governments to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases at its next meeting if the observations or information have not been received in due time. The Committee accordingly requests the Governments to transmit or complete their observations or information as a matter of urgency.

Observations requested from governments

9. The Committee is still awaiting observations or information from the Governments concerned in the following cases: 2318 (Cambodia), 2761 and 3074 (Colombia), 3184 (China), 3185 (Philippines), 3203 and 3263 (Bangladesh), 3406 (China, Hong Kong Special Administrative Region), 3424 (Cambodia), 3431 (Angola), 3436 and 3439 (Republic of Korea), 3440 (Peru), 3441 (Bolivarian Republic of Venezuela) and 3442 (Pakistan). If these observations are not received by its next meeting, the Committee will be obliged to issue an urgent appeal in these cases.

Partial information received from governments

10. In Cases Nos. 2265 and 3023 (Switzerland), 3161 (El Salvador), 3192 and 3232 (Argentina), 3242 (Paraguay), 3282 (Colombia), 3300 (Paraguay), 3325 (Argentina), 3368 (Honduras), 3370 (Pakistan), 3383 (Honduras), 3417 (Colombia), 3419 (Argentina), 3427 (Togo) and 3429 (Ecuador), the Governments have sent partial information on the allegations made. The Committee requests all these Governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

11. As regards Cases Nos 2177 and 2183 (Japan), 2254 (Bolivarian Republic of Venezuela), 2609 (Guatemala), 3027 (Colombia), 3042 and 3062 (Guatemala), 3148 (Ecuador), 3157 (Colombia), 3178 (Bolivarian Republic of Venezuela), 3179 (Guatemala), 3199 (Peru), 3208 (Colombia), 3213 and 3218 (Colombia), 3228 (Peru), 3233 (Argentina), 3234 (Colombia), 3239 (Peru), 3258 (El Salvador), 3271 (Cuba), 3277 (Bolivarian Republic of Venezuela), 3280 (Colombia), 3307 (Paraguay), 3308, 3311 and 3315 (Argentina), 3321 (El Salvador), 3324 (Argentina), 3335 (Dominican Republic), 3336 (Colombia), 3349 (El Salvador), 3352 (Costa Rica), 3358 (Argentina), 3359 and 3373 (Peru), 3380 (El Salvador), 3384 (Honduras), 3392 (Peru), 3395 (El Salvador), 3402 (Peru), 3413 (Plurinational State of Bolivia), 3421 (Colombia), 3422 (South Africa), 3432 (United Kingdom of Great Britain and Northern Ireland), 3433 (Republic of Korea), 3434 (Algeria), 3435 (Peru), 3437 (Ecuador) and 3438 (Peru), the Committee has received the Governments' observations and intends to examine the substance of these cases as swiftly as possible.

New cases

12. The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: Cases Nos. 3443 (Portugal), 3444 (Pakistan), 3445 (El Salvador), 3446 (United States of America) and 3447 (Spain) since it is awaiting information and observations from the Governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Voluntary conciliation

13. In its March 2021 report (GB.341/INS/12/1), the Committee decided to adopt a similar approach of optional voluntary conciliation for complaints as has been adopted with respect to representations under article 24 of the ILO Constitution. In its June 2022 report, the Committee took due note that the parties in Case No. 3425, the Trade Union Congress of Swaziland (TUCOSWA) and the Government of Eswatini, had agreed to refer the dispute to voluntary conciliation at the national level. This suspended the consideration by the Committee of the complaint for a period of up to six months and the parties agreed to an extension. In October 2022, the Committee also took note that the parties in Case No. 3423, the Single Confederation of Workers of Colombia (CUT) and the Colombian Association of Professional Soccer Players (ACOLFUTPRO) as well as the Government, agreed to refer the dispute to voluntary conciliation at the national level. The parties have been actively engaged since then, and the Committee has suspended the consideration of the complaint for a period of up to six months. The Committee recalls that the ILO fully supports the resolution of disputes at national level and is available to assist the parties in this regard.

Article 24 representations

14. The Committee has received certain information from the following Governments with respect to the article 24 representations that were referred to them: Costa Rica (Case No. 3241), Poland, France and Uruguay and intends to examine them as swiftly as possible. The Committee has taken note of the more recent referral of the article 24 representations concerning Argentina and Brazil and is awaiting the Governments' full replies.

Article 26 complaint

15. The Committee is awaiting the observations of the Government of Belarus in respect of its recommendations relating to the measures taken to implement the recommendations of the Commission of Inquiry.

Transmission of cases to the Committee of Experts

16. The Committee draws the legislative aspects of Cases Nos 3245 (Peru) and 3390 (Ukraine), as a result of the ratification of 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), to the attention of the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

▶ Cases in follow-up

17. The Committee examined **8** cases in paragraphs **18** to **49** concerning the follow-up given to its recommendations and concluded its examination with respect to and therefore closed **7** cases: 2086 (Paraguay), 2679 (Mexico), 2746 (Costa Rica) 2883 (Peru), 3017 (Chile), 3055 (Panama) and 3393 (Bahamas).

Case No. 3393 (Bahamas)

18. The Committee last examined this case, in which the complainant organizations alleged that the Ministry of Health had not complied with its collective agreement nor engaged with the Bahamas Nurses Union (BNU) to resolve the matter, at its March 2022 meeting [see 397th Report, paras 55–78]. On that occasion, the Committee took due note of the ongoing negotiations for the conclusion of a new collective agreement between the parties and encouraged them to use this opportunity to resolve the dispute and reach a mutually satisfactory solution.

19. In its communication dated 16 May 2023, the Government indicates that on 13 January 2023, the BNU and the Ministry of Health and Wellness concluded an industrial agreement covering the period 30 December 2020 to 29 December 2025, which settles the substantive issues that are the subject of the present case. *The Committee notes with satisfaction that an agreement was reached between the parties. In the light of this information, the Committee considers this case closed and will not pursue its examination.*

Case No. 3017 (Chile)

20. The Committee examined this case, in which the complainant organization alleges restrictions to its president's access to workplaces, unilateral reductions and discrimination in relation to union leave, non-compliance with collective agreements, anti-union dismissals, exclusion and questioning of trade union work, the use of a bonus to promote early, unregulated collective bargaining and impediments to the exercise of the right to strike by the Chilean Chemical and Mining Enterprise (hereinafter "the enterprise") and its subsidiaries, at its March 2016 session [see 377th Report, paras 245–270]. On that occasion, the Committee made the following recommendations:

> (a) The Committee requests the complainant organization to provide additional information to the Government concerning the allegation that its president has been denied access to the mining sites of the enterprise, so as to enable the Government to investigate should this concern persist. The Committee also invites the Government to obtain information in this respect from the enterprise through the employers' organization concerned, and requests the Government to keep it informed in that regard.

(b) While acknowledging the efforts made by the competent authorities to resolve the issues relating to trade union leave, the Committee urges the Government to provide detailed information regarding the handling of the allegations of anti-union dismissals through indiscriminate reliance on the provisions of article 161 of the Labour Code, including any relevant administrative or court decisions, expecting that, if acts of anti-union discrimination have been committed, adequate compensatory measures and sufficiently dissuasive sanctions are imposed. The Committee invites the complainant organization to provide any additional information that it may have in connection with these proceedings, in particular any legal action taken in that regard.

(c) The Committee invites the Government to take the necessary initiatives to enhance dialogue between the enterprise and the complainant organization, with a view to preventing similar disputes in the future and promoting the exercise of freedom of association, and to keep it informed in that regard.

21. In a communication dated 18 October 2017, the Government submitted its observations in respect of the Committee's recommendations. The Government states that: (i) it requested a detailed report from the Regional Labour Directorate of the Antofagasta Region and summoned the complainant organization to verify whether the enterprise had brought its procedures into line with the law and had refrained from violating the rights of its workers and hindering the work of its officials; (ii) a labour reform undertaken in 2017 represents significant progress in relation to the exercise of the right to bargain collectively and to protection against dismissals and anti-union discrimination; (iii) this reform could make it possible to improve the quality of dialogue between the enterprise and its workers; and (iv) the next negotiations to be carried out at the enterprise will have to be conducted under the terms of the aforementioned labour reform.

22. *The Committee takes due note of the information provided by the Government. With regard to the allegation that the president of the complainant organization was denied access to the mining sites of the enterprise (recommendation (a)), the Committee notes that the complainant organization has not provided the additional information requested of it, either directly or through the Government, despite having been invited by the Government to do so. With regard to the handling of the allegations of anti-union dismissals (recommendation (b)), the Committee notes the Government's indication that the 2017 labour reform increased protection against anti-union dismissals. It notes, however, that neither the Government nor the complainant organization, which had been invited to provide additional information, provided new information concerning the allegations made in the context of the present case. In these circumstances and based on the above elements, the Committee considers that this case is closed and will not pursue its examination.*

Case No. 2746 (Costa Rica)

23. The Committee last examined this case, which concerns a series of alleged anti-union acts carried out by a public banking entity to undermine and destabilize the Banco Popular workers' trade union (SIBANPO, the complainant organization) and its leaders, at its meeting in June 2011 (see paragraphs 496 to 554). On that occasion, the Committee:

(a) suggested to the trade union and the Bank to consider the possibility of setting up a joint commission within the framework of the collective agreement for the periodic verification of the legality of the activities financed by the funds whose management the collective agreement entrusts to the trade union. The Committee requested the Government to keep it informed of any decision in this respect;

(b) suggested that cases of disputes concerning the trade union leave provided for in the collective agreement be submitted to the above-mentioned joint committee, possibly chaired by an independent person, in order to guarantee the right of the trade union to ensure that the trade union leave provided for in the collective agreement is applied in practice without prejudicing the effective functioning of the Bank. The Committee requested the Government to keep it informed of any decision in this respect;

(c) requested the Government to keep it informed of the outcome of the administrative proceedings against the dispute secretary of the complainant union; and

(d) expressed the hope that efforts would be made by the Bank and the union to improve the industrial relations climate and that the suggested dispute resolution mechanisms would be put in place in the very near future.

24. In a communication dated 30 August 2012, the complainant organization indicates that the Bank's General Management unilaterally decided on the salary adjustment without prior negotiation with SIBANPO. In this regard, in a communication dated 5 March 2013, the Government indicates that the obligation to negotiate salaries should only be complied with when the increase proposed by the Bank itself was lower than the Consumer Price Index, because what the clause in the agreement actually includes as a benefit for the workers is that the salary adjustments should be compensated according to the increase in the cost of living, reflected in that index. The Government also indicates that the trade union did not participate in an administrative conciliation process initiated by the Bank in November 2012 and points out that the Bank asked the labour administration for an interpretation of the above-mentioned clause and that it was awaiting that opinion.

25. By communications sent on 8 February 2012, 10 January and 22 August 2014, as well as 28 September and 27 October 2022, the Government provides the following information in respect of the above-mentioned recommendations:

- With regard to recommendation (a), the Government indicates that, although the parties reached an agreement and decided by collective agreement to delegate the management of certain funds to SIBANPO, in order to develop social, sporting and cultural activities (an agreement embodied in article 28 of the fifth collective agreement), upon resolving an action of unconstitutionality, this article was annulled by judgment of 27 October 2021 of the Constitutional Chamber. The Government indicates that it has informed the Bank of the recommendation made by the Committee on Freedom of Association so that the parties may assess the appropriateness and timeliness of the establishment of the joint committee.

- With regard to recommendation (b), the Government indicates that the trade union appealed the judgment of the court of first instance in favour of the Bank and that this judgment was confirmed at second instance in November 2014. The Government states that there is no denial of trade union leave except in duly justified cases and indicates that in 2010 and 2011 respectively 91.53 per cent and 98.3 per cent of the trade union leave requested was granted and in 2012 and 2013, 99.30 per cent and 100 per cent, respectively. The Government also details the amount of union leave granted to individuals in response to SIBANPO requests during the period 2020–21, in addition to the permanent leave with pay granted to three members of the SIBANPO Board of Directors.

- With regard to recommendation (c), the Government reports that, as a result of the administrative procedure followed against the SIBANPO conflict secretary, a sanction of three days' suspension was imposed, which was not appealed and was implemented as ordered. The Government recalls that the above-mentioned sanction was imposed, after due process, on the grounds that, while incapacitated, she attended activities that were not compatible with her medical incapacity, in violation of the applicable regulations issued by the Costa Rican Social Security Fund and those applicable to the Bank. The Government annexed a document sent by the Bank's Corporate General Manager to the Minister of

Labour in 2014 in relation to this case, which indicates that, although it was the Bank's Governing Body that recommended the suspension of the SIBANPO conflict secretary, that Body's recommendation was analysed by the Labour Relations Board provided for in the collective agreement, made up of two representatives of the Union and two representatives of the Bank.

26. In a communication dated 28 September 2022, the Government indicates that labour relations at the Bank are conducted within the framework of respect for freedom of association, collective bargaining and unionization, all in line and harmony with the Bank's institutional obligations and goals. It also indicates that the parties are currently negotiating a new collective agreement; that all legal proceedings related to this case have been resolved, all decisions being favourable to the Bank; and that there are no administrative proceedings related to this case pending before the National Inspection Directorate. The Government also emphasizes that a significant period of time has elapsed without any update from the complainant organization.

27. *The Committee takes due note of the information provided by the Government. The Committee recalls that the issues giving rise to the complaint occurred more than a decade ago and notes that, according to the Government's information, SIBANPO and the Bank have negotiated various collective agreements to date. The Committee also notes that, according to the documents annexed by the Government, the collective agreement between SIBANPO and the Bank in force in 2014 provided for a mechanism called the "Labour Relations Board", which is a permanent bipartite and joint body. The Committee further notes that, in the collective agreement signed in 2017 between SIBANPO and the Bank, available on the website of the Ministry of Labour and Social Security, it is stated that the "Labour Relations Board" is a permanent body with joint representation whose purpose is to resolve labour-management and legal disputes arising from the application of the law or the collective agreement, as well as complaints of union persecution brought by SIBANPO or any worker. On the basis of the foregoing, having received no recent information from the complainant organization and noting that, according to the Government, the parties are negotiating a new collective agreement, the Committee considers that the case is closed and will not pursue its examination.*

Case No. 2679 (Mexico)

28. The Committee last examined this case, concerning alleged anti-union dismissals of insurance agents who were members of the Union of General Insurance Sales Agents in the State of Jalisco (SAVSGEJ) and the cancellation of the union's registration, at its June 2017 meeting [see 382nd Report, paras 112–117]. On that occasion, the Committee noted with concern that the legal proceedings concerning the dismissals of Messrs Martín Ramírez Olmedo, María Cristina Vergara Parra and María del Socorro Guadalupe Acevez González were still pending despite the time that had elapsed. The Committee strongly hoped that these proceedings would be concluded without delay and requested the Government to inform it of their outcome as soon as they had been resolved.

29. In communications dated 6 June 2017, 16 January, 11 July 2018 and 29 October 2019, the SAVSGEJ emphasizes that the delay in processing the case concerning Ms Acevez González is not attributable to her and indicates that it caused the worker irreparable harm, as it did not have the necessary financial resources to provide the medical care that her sick sister required, who then died.

30. By communications dated 6 October 2017, 27 December 2018, 7 June 2019 and 20 January 2020, the Government informs about the results of the judicial proceedings. Regarding

Mr Ramirez Olmedo, the Government indicates that in a resolution dated 23 December 2015, the First Collegiate Court in Labour Matters of the Third Circuit dismissed the *amparo* No. 366/2015, promoted by Mr Ramirez Olmedo against the award of 7 January 2015 issued by the Fifth Special Board of the Local Conciliation and Arbitration of the State of Jalisco, which had ordered the case to be filed. Regarding Ms Vergara Parra, the Government informs that on 30 May 2017, an award was issued ordering the payment of vacation, vacation premium and Christmas bonus, as well as the retroactive enrolment of the worker to the Mexican Social Security Institute.

31. Regarding Ms Acevez González, the Government informs that: (i) through an award of 1 November 2017, the Local Conciliation and Arbitration Board of Jalisco ordered her reinstatement, the payment of her overdue wages and various benefits, the delivery of her client portfolio, as well as her retroactive registration with the Mexican Social Security Institute; (ii) following the filing of an *amparo* appeal (No. 102/2018) by the insurance company, the First Collegiate Court in Labour Matters of the Third Circuit ordered the issuance of a new resolution by the Local Conciliation and Arbitration Board of Jalisco; (iii) Ms Acevez González challenged such decision through an appeal for review, which was declared inadmissible by the Supreme Court of Justice of the Nation (SCJN) on 19 October 2018, and also filed an appeal of claim, which was declared unfounded by the SCJN on 27 March 2019; (iv) on 10 June 2019, the Local Conciliation and Arbitration Board of Jalisco issued a new resolution, against which Ms Acevez González filed an *amparo* appeal (No. 807/2019); and (v) on 5 September 2019, the First Collegiate Court on Labour Matters of the Third Circuit admitted said appeal, and on 22 October 2019, turned it over for the formulation of the corresponding draft decision. The Government affirms that the delay in the case is due to the various means of defence and actions promoted by Ms Acevez González, which in strict compliance with the applicable legal framework on the matter have been dealt with in due time.

32. *The Committee takes due note of the information provided by the Government. The Committee understands that the proceedings concerning Mr Ramírez Olmedo and Ms Vergara Parra have been finalized. With regard to the case of Ms Acevez González, the Committee notes that although the SAVSGEJ alleges that the delay in processing her case caused her irreparable harm, the Government reiterates, as it has done on previous occasions, that the failure to resolve the case is attributable to the plaintiff, who has not allowed the case to be concluded by filing various appeals. While recalling once again that cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective; an excessive delay in processing such cases constitutes a serious attack on the trade union rights of those concerned [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1139], the Committee understands from the latest information provided by the Government, that on 22 October 2019, the First Collegiate Tribunal on Labour Matters of the Third Circuit in amparo suit No. 807/2019, set a date for the formulation of the draft decision. Given the time elapsed and not having any information regarding such decision, neither from the complainant organization nor from the Government, the Committee expects that the Judiciary has ruled on the matter. Noting that this would have concluded the pending proceedings, the Committee considers this case closed and will not pursue its examination.*

Case No. 3055 (Panama)

33. The Committee last examined this case, which concerns allegations of dismissal of trade unionists, detention of trade unionists and fines for participation in a trade union protest, filing of a criminal complaint for trade union activities, and break-in at the headquarters of the Firefighters' Association of the Republic of Panama, at its meeting in October 2015 (see Report

No. 376, paras 805–824). On that occasion, the Committee welcomed the referral of the case to the Committee for the rapid handling of complaints relating to freedom of association and collective bargaining and suggested to the authorities that, as far as possible, recourse be had to dialogue mechanisms rather than penal action. The Committee also requested the complainant organization and the Government to keep it informed of any ruling handed down with regard to the alleged break-in at the headquarters of the Firefighters' Association and the deprivation of the use thereof to the detriment of the Association, and invited the Government to take steps, pending the judicial ruling, to provide the Association with premises to facilitate the exercise of its activities.

34. In its communication dated 21 June 2018, the Government indicates that on 10 May 2018, the Committee for the rapid handling of complaints relating to freedom of association and collective bargaining signed an agreement to close Case No. 3055 before the Committee on Freedom of Association on the grounds that it had been settled to the satisfaction of those concerned and in accordance with the terms provided for in national legislation, ILO Conventions and the observations of the ILO supervisory bodies. The Government annexed a copy of the above-mentioned Agreement, which indicates that, in view of the reinstatement and payment of back pay of Mr Cruz Gomez and Mr Raúl Marshall (who, as indicated in the complaint, had been the most belligerent in the trade union protest) of the Fire Brigade of the Republic of Panama, the case was closed, and the Ministry of Labour and Labour Development was requested to inform the Committee on Freedom of Association of the above.

35. *The Committee takes note of the information provided by the Government and welcomes the fact that the reinstatement of the above-mentioned workers and the agreement concerning the case were reached within the Committee for the rapid handling of complaints relating to freedom of association and collective bargaining, which demonstrates the fundamental role played by the said Committee. On the basis of the above and having received no further information in this respect, the Committee considers that the case is closed and will not pursue its examination.*

Case No. 2086 (Paraguay)

36. The Committee last examined this case at its October–November 2019 meeting and recalls that it is related to the trial and sentencing for the crime of "breach of trust" of the three presidents of the trade union confederations: the Paraguayan Confederation of Workers (CPT), the United Confederation of Workers (CUT) and the Trade Union Confederation of State Employees of Paraguay (CESITEP), Mr Gerónimo López (who died in hiding and as a fugitive from justice), Mr Alan Flores (who resides abroad as a fugitive from justice) and Mr Reinaldo Barreto Medina [see 391st Report, paras 24–27]. On that occasion, the Committee noted with concern that the judicial proceedings concerning Mr Barreto Medina, instituted two decades ago, had not yet been completed since the Public Prosecutor's Office had filed appeals against the decisions that had granted him conditional release and declared his sentence null and void. The Committee expressed the firm hope that the judicial proceedings concerning Mr Barreto Medina would be concluded soon and requested the Government to inform it of its outcome.

37. By a communication dated 17 March 2022, CESITEP indicates that in October 2021, the Fourth Criminal Chamber of Appeals reported that a new Court of Appeal had been set up with respect to the conditional release granted to Mr Barreto Medina. CESITEP further alleges that the Government prohibited the National Police from renewing Mr Barreto Medina's passport and that this would prevent him, among other things, from attending a congress abroad as President of CESITEP. CESITEP indicates that Mr Barreto Medina is an active and supportive member of society, is a rector and professor of a university, President of CESITEP and also holds other relevant positions, so any challenge to the parole, granted in 2012, makes no sense whatsoever since his reintegration into society is not in question. In a communication dated 16 August 2022, CESITEP recalls that the judicial proceedings concerning Mr Barreto Medina began 22 years ago and that this has meant a long ordeal for the leader and his family.

38. In communications dated 7 January 2020, 29 December, 2022, and 10 January and 15 March, 2023, the Government indicates that: (i) Mr Barreto Medina applied for a passport on 6 April, 2022, the passport was issued on 12 April and collected on 18 April with the corresponding legalisations; (ii) Mr Barreto Medina left the country with the passport in April 2022 and (iii) by means of Interlocutory Orders Nos 383 and 384 dated 27 October, 2022, the Court of Criminal Appeals of Asunción, Fourth Chamber, declared the study of the general appeals filed by the Public Prosecutor's Office against the Interlocutory Order that had granted conditional release to Mr Barreto Medina in 2012 and against the Interlocutory Order that had declared the sentence to be null and void in 2014 to be inoperative; (iii) by means of Interlocutory Orders Nos 383 and 384 dated 27 October, 2022, the Court of Criminal Appeals of Asunción, Fourth Chamber, declared that the study of the general appeals that the Public Prosecutor's Office had filed against the Interlocutory Order that had granted conditional release to Mr Barreto Medina in 2012 and against the Interlocutory Order that had declared the sentence to be null and void in 2014, served no purpose.

39. The Government attached a copy of Interlocutory Orders Nos 383 and 384 in which the Court of Appeals recalls that: (i) in 2001, Mr Barreto Medina was sentenced to a term of imprisonment of four years; (ii) by Interlocutory Order dated 20 July, 2012, parole was granted to the convicted person, and a period of probation of two years was set; (iii) since Mr Barreto Medina had complied with the rules of conduct that were imposed when he was granted parole, on 20 July 2014 the Judge decided that the sentence imposed on Mr Barreto Medina should be declared null and void; and (iv) without prejudice to the foregoing, the Court of Appeal of the Fourth Chamber never ruled on the general appeals filed by the Public Prosecutor's Office against the Interlocutory Orders dated 20 July 2012 and 20 July 2014. In Interlocutory Orders Nos 383 and 384 dated 27 October 2022, the Court of Appeals stated that: (i) Mr Barreto Medina had complied with the rules of conduct imposed on him and the study of the general appeal filed by the Public Prosecutor's Office against the ruling that had granted conditional release to Mr Barreto Medina in 2012, should be declared to serve no purpose; and (ii) in 2014, the enforcing judge found sufficient grounds to have declared the sentence null and void, for which reason he declared that the study of the general appeal filed by the Public Prosecutor's Office against the ruling, in which it was decided that the sentence in 2014 was null and void, served no purpose.

40. *The Committee takes due note of the information provided by the complainant organization and by the Government. The Committee understands that, from the information provided by the Government, it appears that the judicial proceedings concerning Mr Barreto Medina, which had been pending for more than two decades and which the Committee expected to be completed, were finally concluded in October 2022, it having been declared unnecessary to consider the appeals filed by the Public Prosecutor's Office against the rulings that had granted him conditional release and the sentence to be null and void. While regretting the delay in the application of justice, the Committee expresses its satisfaction that the judicial proceedings concerning Mr Barreto Medina had finally concluded. Based on the foregoing, and pending the necessary notifications in this regard being made to all relevant national authorities and the leader continuing to perform his functions as President of CESITEP without hindrance, the Committee considers that the present case is closed and will not pursue its examination.*

Case No. 2883 (Peru)

41. The Committee last examined this case concerning allegations of the promotion of trade union organizations in the construction sector that were composed of persons engaged in violent and criminal activities, at its meeting in October 2016 [see 380th Report, paras 68–71]. On that occasion, the Committee requested the Government to keep it informed of the outcome of the investigations and criminal proceedings in relation to the murder of Mr Jesús Aníbal Ruiz Díaz and the injuries suffered by Mr Jorge Sánchez Ramírez. It also requested the Government to report on the initiatives adopted in relation to the allegations of violence and threats made against trade union leaders and members in the construction sector.

42. By communications dated 25 May 2017 and 1 July and 20 November 2019, the Government sent information on the criminal proceedings instituted in connection with the murders of Mr Ruiz Díaz, a leader of the Federation of Civil Construction Workers of Peru (FTCCP), and Mr Sánchez Ramírez, a member of the FTCCP, who died of his injuries. The Government indicates that by a judgment dated 10 January 2019, the Collegiate Criminal Court of Barranca sentenced Mr Miguel Ángel Lastra Villegas to 23 years' imprisonment for the offence of aggravated homicide to the detriment of Mr Sánchez Ramirez and as a co-perpetrator of the offence of aggravated homicide to the detriment of Mr Ruiz Diaz. Mr Juan Neeslander Mendoza Santiago was sentenced to six years' imprisonment for the offence of illegal possession of a firearm and ammunition to the detriment of the State. The Government indicates that, following an appeal, this sentence was confirmed at second instance on 17 October 2019.

43. *The Committee takes due note of the information provided by the Government and understands that the above-mentioned judgments are final.*

44. *While noting that the Government has not provided information on initiatives taken with respect to the allegations of violence and threats against trade union leaders and members in the construction sector, the Committee notes that in the context of Case No. 2982, examined by the Committee hereafter, the Government of Peru has reported on measures taken to address the issue of violence in the civil construction sector. On the basis of the foregoing, and to the extent that Case No 2982 continues to be followed up, the Committee considers the present case closed and will not pursue its examination.*

Case No. 2982 (Peru)

45. The Committee last examined this case concerning allegations of killings and threats against union leaders and members in the construction sector at its October–November 2018 meeting [see 387th Report, paras 560–575]. On that occasion, the Committee urged the Government to take all possible steps to ensure that the Public Prosecutor's Office conducts a thorough investigation into the reasons for and the perpetrators of violence in the construction sector, with a view to eliciting data that could lead to the reopening of investigations into the murders of union leaders and members (recommendation in paragraph 575(a)). The Committee also requested the Government, within the framework of the Multisectoral Committee, as well as the National Council for Labour and Employment Promotion (CNTPE) and in collaboration with the social partners, to draw up a detailed plan of action with specific goals and deadlines to ensure that allegations of violence in the construction sector are duly investigated and that greater efforts are made to identify and punish those responsible for such violence. The Committee requested the Government to keep it informed in this regard and in relation to developments in the elaboration of an inter-sectoral protocol (paragraph 575(b)). The Committee drew the Governing Body's attention to the extremely serious and urgent nature of this case (paragraph 575(c)).

46. Regarding the first recommendation (subparagraph (a)), by means of a communication dated 28 January 2021, the Government indicated that: (i) the Crime Observatory Office carried out the corresponding follow-up with the purpose of systematizing the technical reports requested by the General Secretariat of the Attorney General's Office from the prosecutorial districts of Callao, Huaura, Lambayeque and La Libertad, in which they evaluate and issue legal opinion on the possibility of reopening a criminal investigation; (ii) based on the information gathered, a criminological investigation was launched on violence in the construction sector in the country, using quantitative and qualitative approaches, with the purpose of determining the characteristics of the victims, defendants, crimes and social control of these behaviours; and (iii) the aforementioned investigation had not yet produced final results. In a communication dated 28 February 2023, the Government provided information on the measures taken by the National Superintendency of Labour Inspection (SUNAFIL), for the benefit of civil construction workers, mainly in the area of occupational safety and health conditions. In a communication dated 15 May 2023, the Government transmitted the information gathered from two prosecutors' offices regarding the legal opinion on the possibility of reopening the investigations – concluding in both cases that the respective investigations could not be reopened – while indicating that the opinion of the other prosecutors' offices was still pending.

47. Regarding the second recommendation (subparagraph (b)), in its communication of 28 January 2021, the Government indicated that the Multisectoral Committee, as a body for dialogue, coordination and monitoring of actions to prevent and punish violence in civil construction activity, held several regular meetings throughout 2020 regarding the dissemination of the Inter-institutional Protocol for Joint Action to Prevent Violence in Civil Construction Works, which was approved by Supreme Decree No. 2019-IN published on 4 September 2019. The Protocol establishes procedures regarding preventive actions, investigative actions and inspection visits, which allow for strategic planning to execute interventions in civil construction works in order to : (i) prevent violence and counteract crimes in this sector; (ii) contribute to the improvement of civic security and public order; (iii) promote mechanisms that ensure the physical safety of employers and workers; and (iv) ensure the free exercise of individual and collective rights of workers. Regarding the action plan, the Government indicates that the members of the Multisectoral Committee agreed, as a first action, to request updated information on the status of the civil construction registers (unions, federations, confederations), their composition, content, distribution, and on the authorities responsible for them.

48. *The Committee takes due note of the information provided by the Government on the measures taken to address the issue of violence in the construction sector. While regretting the lack of updated information on the action plan, it welcomes the progress made in the procedures relating to the Inter-institutional Protocol for Joint Action to Prevent Violence in Civil Construction Works, within the framework of Legislative Decree No. 1187. The Committee trusts that this initiative will make it possible to improve the levels of coordination between the competent entities in the fight against organized crime in the civil construction sector, with a view to reducing the crime rate. The Committee requests the Government to provide an update on the implementation of the action plan.*

49. *With respect to recommendation in subparagraph (a), the Committee takes due note that a criminological investigation has been initiated on violence in the civil construction sector in the country, using quantitative and qualitative approaches, with the aim of ascertaining the characteristics of the victims, defendants, crimes and social control of these behaviours. The Committee notes that: (i) the aforementioned investigation did not produce final results regarding the possibility of reopening the investigations into the murders of union leaders and members; (ii) in its communication dated 15 May 2023, the Government transmitted the information gathered from* *two prosecutors' offices regarding the legal opinion on the possibility of reopening the investigations, concluding in both cases that the respective investigations could not be reopened; and (iii) the opinion of the other prosecutors' offices is still pending. In these circumstances, the Committee requests the Government to provide the final results of the aforementioned criminological investigation into the murders of union leaders and members, which, it recalls, cannot go unpunished.*

* * *

Status of cases in follow-up

50. Finally, the Committee requests the Governments and/or complainants concerned to keep it informed of any developments relating to the following 44 cases.

Case No.	Last examination on the merits	Last follow-up examination
2096 (Pakistan)	March 2004	October 2020
2603 (Argentina)	November 2008	November 2012
2715 (Democratic Republic of the Congo)	November 2011	June 2014
2749 (France)	March 2014	–
2756 (Mali)	March 2011	March 2023
2797 (Democratic Republic of the Congo)	March 2014	–
2807 (Islamic Republic of Iran)	March 2014	June 2019
2871 (El Salvador)	June 2014	June 2015
2889 (Pakistan)	March 2016	October 2020
2925 (Democratic Republic of the Congo)	March 2013	March 2014
3011 (Türkiye)	June 2014	November 2015
3046 (Argentina)	November 2015	–
3054 (El Salvador)	June 2015	–
3076 (Maldives)	November 2022	–
3078 (Argentina)	March 2018	–
3098 (Türkiye)	June 2016	November 2017
3100 (India)	March 2016	–
3167 (El Salvador)	November 2017	–
3180 (Thailand)	March 2017	March 2021
3182 (Romania)	November 2016	–
3202 (Liberia)	March 2018	–
3248 (Argentina)	October 2018	–

Case No.	Last examination on the merits	Last follow-up examination
3251 (Guatemala)	November 2022	–
3257 (Argentina)	October 2018	–
3285 (Plurinational State of Bolivia)	March 2019	–
3288 (Plurinational State of Bolivia)	March 2019	–
3289 (Pakistan)	June 2018	October 2020
3313 (Russian Federation)	November 2021	–
3314 (Zimbabwe)	October 2019	November 2022
3319 (Panama)	March 2022	–
3326 (Guatemala)	November 2022	–
3339 (Zimbabwe)	March 2022	–
3360 (Argentina)	March 2023	–
3364 (Dominican Republic)	March 2022	–
3369 (India)	November 2022	–
3375 (Panama)	June 2022	–
3385 (Bolivarian Republic of Venezuela)	March 2022	–
3399 (Hungary)	March 2022	–
3404 (Serbia)	November 2022	–
3408 (Luxembourg)	November 2022	–
3412 (Sri Lanka)	June 2022	–
3414 (Malaysia)	March 2023	–
3415 (Belgium)	November 2022	–
3426 (Hungary)	March 2023	–

51. The Committee hopes that these Governments will quickly provide the information requested.

52. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 1865 (Republic of Korea), 2341 (Guatemala), 2362 and 2434 (Colombia), 2528 (Philippines), 2533 (Peru), 2540 (Guatemala), 2566 (Islamic Republic of Iran), 2583 and 2595 (Colombia), 2637 (Malaysia), 2652 (Philippines), 2656 (Brazil), 2684 (Ecuador), 2694 (Mexico), 2699 (Uruguay), 2706 (Panama), 2716 (Philippines), 2719 (Colombia), 2723 (Fiji), 2745 (Philippines), 2751 (Panama), 2753 (Djibouti), 2755 (Ecuador), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2852 (Colombia), 2882 (Bahrain), 2896 (El Salvador), 2902 (Pakistan), 2924 and 2946 (Colombia), 2948 (Guatemala), 2949 (Eswatini), 2952 (Lebanon), 2954 (Colombia), 2976 (Türkiye), 2979 (Argentina), 2980 (El Salvador), 2985 (El Salvador), 2987 (Argentina), 2995 (Colombia), 2998 (Peru), 3006 (Bolivarian Republic of Venezuela), 3010 (Paraguay), 3016 (Bolivarian Republic of Venezuela), 3019 (Paraguay), 3020 (Colombia), 3022 (Thailand), 3024 (Morocco), 3030 (Mali), 3032 (Honduras), 3033 (Peru), 3036 (Bolivarian Republic of Venezuela), 3040 (Guatemala), 3043 (Peru), 3056 (Peru), 3059 (Bolivarian Republic of Venezuela), 3061 (Colombia), 3069 (Peru), 3075 (Argentina), 3095 (Tunisia), 3097 (Colombia), 3102 (Chile), 3103 (Colombia), 3104 (Algeria), 3119 (Philippines), 3131 and 3137 (Colombia), 3139 (Guatemala), 3146 (Paraguay), 3150 (Colombia), 3164 (Thailand), 3170 (Peru), 3171 (Myanmar), 3172 (Bolivarian Republic of Venezuela), 3183 (Burundi), 3188 (Guatemala), 3191 (Chile), 3194 (El Salvador), 3220 (Argentina), 3236 (Philippines), 3240 (Tunisia), 3267 (Peru), 3272 (Argentina), 3278 (Australia), 3279 (Ecuador), 3283 (Kazakhstan), 3286 (Guatemala), 3287 (Honduras), 3310 (Peru), 3316 (Colombia), 3317 (Panama), 3323 (Romania), 3333 (Colombia), 3341 (Ukraine), 3343 (Myanmar), 3347 (Ecuador), 3374 (Bolivarian Republic of Venezuela), 3378 (Ecuador), 3386 (Kyrgyzstan), 3401 (Malaysia), 3407 (Uruguay) and 3410 (Türkiye) which it will examine as swiftly as possible.

Closure of follow-up cases

53. In its November 2018 report (GB.334/INS/10), the Committee informed the Governing Body that, from that moment onwards, any cases in which it was examining the follow-up given to its recommendations, for which no information has been received either from the government or from the complainant for 18 months since the last examination of the case would be considered closed. At its current session, the Committee applied this rule to the following case: 3331 (Argentina).

* * *

Case No. 3269

Interim report

Complaint against the Government of Afghanistan presented by
– the National Union of Afghanistan Workers and Employees (NUAWE) supported by
– the International Trade Union Confederation (ITUC)

Allegations: The complainant organization denounces violations of trade union rights by the Government, in particular the issuance of a unilateral decision on confiscation of trade union premises and property without a court order

54. The Committee last examined this case (submitted in March 2017) at its June 2022 meeting, when it presented an interim report to the Governing Body [see 399th Report, paras 43–59, approved by the Governing Body at its 345th Session (June 2022)]. [1]

[1] Link to previous examination.

55. At its meeting in March 2023 [see 401st Report, para. 6], the Committee made an urgent appeal to the de facto authorities indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body (1971), it could present a report on the substance of the case, even if the requested information or observations had not been received in due time. To date, the de facto authorities have not sent any information.

56. Afghanistan has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

57. At its June 2022 meeting, the Committee made the following recommendations [see 399th Report, para. 59]:

(a) The Committee firmly urges the Government to ensure that the matters first giving rise to this complaint, in particular as regards the confiscation of the complainant's properties, are addressed without delay. It expects a rapid decision of the Courts concerning the legal claim of the National Union of Afghanistan Workers and Employees (NUAWE) in this regard and requests the Government to provide detailed information on the status of the court proceedings and indicate any steps taken to comply with the final decision once it is made.

(b) The Committee urges the Government to carry out an investigation into the allegations contained in the International Trade Union Confederation (ITUC) communication of April 2018 with respect to the attempts by the police and the armed forces to take over and occupy the NUAWE offices so as to determine the facts and identify those responsible to ensure that any such acts do not recur. It also urges the Government to provide detailed observations on the allegations concerning the freezing of the union's bank accounts without judicial authorization, the failure to renew the union's licence rendering its operations illegal, as well as the serious allegations contained in the ITUC's communication of May 2022 on threat against trade unionists forcing their exile and the confiscation, in March 2022, of the NUAWE's properties and documents, including in the provinces.

(c) The Committee urges the Government to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the Government to amend the 2016 decree to ensure that this is not possible.

(d) In light of the current circumstances in the country, the Committee requests the Government to indicate the measures taken to ensure that all workers' and employers' organizations may carry out their legitimate trade union activities in a climate that is free from violence, pressure and threats of any kind.

(e) In further consideration of the current circumstances in the country, the Committee recalls that the technical assistance of the Office is available in order to pursue recommendations (a) to (d).

(f) The Committee draws the Governing Body's attention to the serious and urgent nature of this case.

B. The Committee's conclusions

58. *The Committee regrets that the de facto authorities have still not provided a response to its recommendations, even though they have been requested several times to do so, including through an urgent appeal.*

59. *Under these circumstances and in accordance with the applicable procedural rule [see 127th Report, approved by the Governing Body at its 184th Session (1971), para. 17], the Committee is obliged to present a new report on the substance of the case without being able to take account of the information that it hoped to receive.*

60. *The Committee reminds the de facto authorities that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure respect for trade union rights in law and in practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, 1952, para. 31]. The Committee urges the de facto authorities to be more cooperative in the future.*

61. *The Committee recalls that this case concerns allegations of confiscation by the authorities of legitimately acquired trade union premises and property without a court order, including attempts at violent takeover and occupation of the NUAWE offices by the police and the armed forces, as well as the freezing of the union's bank accounts, failure to renew its licence and the hindering of freedom of expression and press.*

62. *The Committee recalls that it previously noted with concern the absence of any final ruling by the Courts concerning the legal action presented by the union to claim certain properties. The Committee also expected the report on the holding of the congress of the union in accordance with the ruling of March 2019 of the Appellate Court of Kabul in relation to its leadership. In this context, the Committee also noted that a number of representatives of the NUAWE, including the signatory of the complaint, Mr Qaderi, have since fled the country and are in exile. The Committee expects the de facto authorities to commit to ensuring that the exiled NUAWE leadership, including Mr Qaderi, can return to the country to carry out trade union activities in an environment free of violence, pressure or threats.*

63. *While it is mindful of the complexity of the national situation, the Committee recalls that the development of free and independent organizations and negotiation with all those involved in social dialogue is indispensable to enable a government to confront its social and economic problems and resolve them in the best interests of the workers and the nation [see* ***Compilation of decisions of the Committee on Freedom of Association,*** *sixth edition, 2018, para. 62]. In this respect, the Committee emphasizes that female and male workers alike benefit from such development and negotiation. It is once again bound to call upon all responsible authorities to provide information on the steps taken to address its previous conclusions, the general nature of which it recalls below:*

64. *The Committee firmly urges the de facto authorities to ensure that the matters first giving rise to this complaint, in particular as regards the confiscation of the union's properties, are addressed without delay. In this regard, it expects a rapid decision of the Courts concerning the legal claim of the NUAWE and requests the de facto authorities to provide detailed information on the status of the court proceedings and indicate any steps taken to comply with the final decision once it is made.*

65. *The Committee further recalls that the International Trade Union Confederation (ITUC) which associated itself with the complaint in April 2018, denounced: (i) attempts at violent takeover and occupation of the NUAWE offices by the police and the armed forces; (ii) the freezing of the union's bank accounts without judicial authorization; (iii) the failure to renew the union's licence; and (iv) the failure to engage with the union and the hindering of freedom of expression and press. The Committee notes with concern the allegations of the ITUC contained in its communication dated 17 May 2022, that, since the new authorities took power in August 2021, trade union leaders are under direct threat and therefore forced into exile. Some NUAWE leaders, including Mr Qaderi, were relocated abroad, as others led the team in the country. The Committee notes the indication that* *despite an official request from the union, the authorities refused to re-open the union's office and to renew its registration. It notes with grave concern the allegation that the authorities have seized the trade union properties in the provinces, confiscating materials and documents and expelling its staff. In this regard, the Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. It also recalls that the confiscation of trade union property by the authorities, without a court order, constitutes an infringement of the right of trade unions to own property and undue interference in trade union activities. Lastly, the Committee recalls that the right of workers' and employers' organizations to express opinions through the press or otherwise is an essential aspect of trade union rights [see* ***Compilation****, paras 84, 288 and 239]. The Committee requests the de facto authorities to provide detailed observations on the allegations of the ITUC contained in its latest communication of May 2022 on threats against unionists forcing their exile, the refusal to renew the union's registration and the confiscation of the union's properties and documents, including in the provinces.*

66. *The Committee also recalls that its previous conclusions also concerned the text of the 2016 decree which, in addition to ordering the seizure of the complainant's premises and their transfer under state ownership, gave mandate to the Ministry of Justice to review, in light of the applicable laws, the continuation of the activities of the NUAWE and two other trade unions, and proceed accordingly. In this regard, the Committee emphasized that workers' organizations have the right to freely organize their administration and activities without interference from the authorities. It further recalled that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association [see* ***Compilation****, para. 986]. The Committee urges the de facto authorities to clarify whether the 2016 decree can indeed lead to administrative intervention in, or control over, trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the de facto authorities to amend the 2016 decree to ensure that this is not possible.*

67. *In light of the current circumstances in the country, the Committee requests the de facto authorities to take all necessary measures to ensure that all workers' and employers' organizations may carry out their legitimate trade union activities in a climate that is free from violence, pressure and threats of any kind.*

68. *The Committee once again recalls that the technical assistance of the Office is available in order to pursue its recommendations.*

C. The Committee's recommendations

69. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee firmly urges the de facto authorities to ensure that the matters first giving rise to this complaint, in particular as regards the confiscation of the complainant's properties, are addressed without delay. It expects a rapid decision of the Courts concerning the legal claim of the National Union of Afghanistan Workers and Employees (NUAWE) in this regard and requests the de facto authorities to provide detailed information on the status of the court proceedings and indicate any steps taken to comply with the final decision once it is made.

(b) The Committee urges the de facto authorities to provide detailed observations on the allegations concerning the freezing of the union's bank accounts without judicial

authorization, the failure to renew the union's licence rendering its operations illegal, as well as the serious allegations contained in the International Trade Union Confederation (ITUC) communication of May 2022 on threats against trade unionists forcing their exile and the confiscation, in March 2022, of the NUAWE's properties and documents, including in the provinces.

(c) The Committee urges the de facto authorities to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the de facto authorities to amend the 2016 decree to ensure that this is not possible.

(d) In light of the current circumstances in the country, the Committee requests the de facto authorities to take all necessary measures to ensure that all workers' and employers' organizations may carry out their legitimate trade union activities in a climate that is free from violence, pressure and threats of any kind.

(e) The Committee expects the de facto authorities to commit to ensuring that the exiled NUAWE leadership, including Mr Qaderi, can return to the country to carry out trade union activities in an environment free of violence, pressure or threats.

(f) The Committee recalls that the technical assistance of the Office is available in order to pursue recommendations (a) to (d).

(g) The Committee draws the Governing Body's attention to the serious and urgent nature of this case.

Case No. 3388

Interim report

Complaint against the Government of Albania presented by the Trade Union of United Mineworkers of Bulqiza (SMBB)

Allegations: The complainant alleges acts of anti-union interference and discrimination, including dismissals, and the violation of the right to collective bargaining by a company in the mining sector, as well as acts of intimidation and the detention of trade unionists and labour activists by the police during a strike

70. The complaint is contained in communications dated 25 July, 25 August and 15 November 2020 submitted by the Trade Union of United Mineworkers of Bulqiza (SMBB).

71. The Government of Albania transmitted its observations on the allegations in communications dated 14 August, 24 September and 23 November 2020.

72. Albania has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

73. In its communications dated 25 July and 25 August 2020, the complainant alleges that the AlbChrome mining company (hereinafter "the enterprise") committed acts of anti-union interference and discrimination, including dismissals, against members and leaders of the SMBB. It further alleges that trade unionists and labour activists were detained and intimidated during a strike, and that the enterprise and state authorities denied the SMBB the right to collective bargaining and refused to allow its representatives to access the workplace of its members.

74. The complainant indicates that the SMBB, which was created as a response to decades of neglect and betrayal of workers' interests by national trade union centres, received legal recognition on 15 October 2019. It states that on 13 November 2019, the general manager and the local management of the enterprise summoned the chairperson of the SMBB, Mr Elton Debreshi, to ask him about the creation of the trade union after the latter opened a Facebook page and announced its formation.

75. The complainant alleges that on 19 November 2019, Mr Debreshi was summoned again, this time to the headquarters of the enterprise, where he was questioned about his absences from work several months earlier. It indicates that on 22 November 2019, the enterprise dismissed Mr Debreshi for ethics violations, invoking an incomplete eight-hour work shift. According to the complainant, the enterprise's practice had always been that the missing minutes in a shift could be accumulated for any given period and deducted from the worker's wage. It therefore argues that the missing minutes were an excuse to get rid of Mr Debreshi and intimidate the members of the SMBB.

76. The complainant states that, in response to the dismissal, the enterprise workers went on strike on 25 November 2019 further requesting higher wages and a review of the production targets. It affirms that during the strike: (i) another leader of the SMBB, Mr Beqir Durici, was dismissed for ethics violations on 2 December 2019; (ii) a disciplinary measure was imposed on Mr Behar Gjimi, member of the SMBB's council, whose work position was changed; (iii) trade unionists were temporarily detained, questioned and intimidated by the police; and (iv) labour activists were beaten up and imprisoned. The complainant indicates that the strike ended on 5 December 2019 after the State Labour and Social Services Inspectorate (hereinafter "the Inspectorate") promised to investigate the dismissals of Mr Debreshi and Mr Durici.

77. The complainant alleges that after the end of the strike, the enterprise: (i) summoned several trade unionists to its headquarters for being absent from work due to their participation in the strike; (ii) dismissed Mr Gjimi on 20 December 2019; and (iii) dismissed another leader of the SMBB, Mr Ali Gjeta, on 24 December 2019. The complainant informs that it presented another complaint to the Inspectorate in connection with these two dismissals.

78. The complainant states that in a decision of 21 December 2019, the Inspectorate concluded that the dismissals of Mr Debreshi and Mr Durici were not due to their trade union activity. It furthers indicates that, similarly, in a decision of 21 January 2020, the Inspectorate determined that the enterprise had not violated the Labour Code in dismissing Mr Gjimi and Mr Gjeta.

79. The complainant affirms that on 26 December 2019, the SMBB, which was the most representative trade union in the enterprise, submitted an official request to the enterprise and the Ministry of Finance and Economy to negotiate a new collective agreement, as the one in force, which had been negotiated by the Trade Union Federation of Industrial Workers of Albania (FSPISH), was due to expire on 31 January 2020. The complainant states that on 6 January 2020, the official request was sent again to the enterprise, and the latter responded that the collective agreement had been amended on 1 October 2019 and would therefore be in force for an indefinite period, which was eventually confirmed by the Ministry of Finance and Economy.

80. The complainant indicates that in February 2020, the SMBB submitted to the Ministry of Finance and Economy a complaint alleging that the Ministry had legitimized the unlawful amendment process of the collective agreement concluded between the enterprise and the FSPISH. The complainant states, however, that the Ministry responded that it was not competent to rule on issues of process. It also informs that in February and March 2020, it presented complaints to the Inspectorate, alleging multiple violations of the right to freedom of association and collective bargaining by the enterprise.

81. The complainant indicates that in March 2020, the SMBB obtained from the Inspectorate copies of the amended collective agreement and the notarial certificate of the most representative trade union which had been submitted by the FSPISH. It affirms that the certificate lacked key elements to be considered as valid (i.e., a bank statement proving the membership fees), and that the SMBB therefore wrote to the Inspectorate, the Ministry of Finance and Economy, as well as the Regional Employment Office of Dibra and its local office of Bulqiza, to denounce it. The complainant informs that in April 2020, the Inspectorate and the Ministry of Finance and Economy replied to the SMBB that it should take up the issue with the Ministry of Justice.

82. The complainant affirms that in June 2020, the enterprise and the FSPISH announced the conclusion of a new collective agreement, which was negotiated in secrecy and in violation of the legal requirements prior to collective bargaining. In the complainant's view, these secret negotiations, which are a strategy to prevent any possibility for workers to vote on the most representative trade union, pose a barrier to genuine collective bargaining.

83. Moreover, according to the complainant, the enterprise and the FSPISH, which lacks any legitimacy among workers, have joined forces to destroy the SMBB. It affirms that: (i) when workers started to organize to create the SMBB, the FSPISH provided the enterprise with a list of the people involved in these efforts, who were then given a warning for violation of work discipline; (ii) since the SMBB announced its formation, the enterprise has threatened workers with their jobs if they joined or continued to be members of that union; (iii) these threats have intensified when the SMBB became the majority union and requested to bargain on behalf of all workers, as the enterprise then mobilized its managers to pressure workers into resigning from the SMBB and becoming members of the FSPISH; and (iv) the enterprise denied the SMBB's requests to apply the check-off system to its members.

84. The complainant also alleges that the enterprise has consistently denied the SMBB's representatives the right to enter the workplace and meet its members. It indicates that the SMBB sent formal requests to the enterprise to ask for compliance with this legal right but has not received any response. The complainant also informs that the SMBB submitted complaints to the Inspectorate, which responded that only the representatives of the trade union which is signatory to a collective agreement had the right to meet workers at work premises.

85. In its communication dated 15 November 2020, the complainant affirms that, in addition to its complaints to the Inspectorate, the SMBB denounced the acts of anti-union discrimination committed by the enterprise to the Ministry of Finance and Economy, which found the enterprise not guilty. It also states that the SMBB presented a complaint in relation with the dismissals of its four leaders to the Commissioner for Protection against Discrimination (CPD), which concluded on 26 October 2020 that two of the leaders had been dismissed because of their trade union affiliation. The complainant informs that the SMBB will appeal the decision of the CPD until justice is established for the four leaders, and that it also challenged the four dismissals before ordinary courts.

B. The Government's reply

86. In its communications dated 14 August 2020, 24 September and 23 November 2020, the Government states that the Inspectorate received several complaints from the SMBB, conducted multiple inspections at the enterprise, and did not find any violations of trade union rights. It indicates that the Inspectorate responded to all the claims raised by the SMBB and advised the latter on how to legitimize its actions as a trade union organization.

87. Regarding the dismissal of Mr Debreshi, the Government specifies that, according to the inspection that was carried out: (i) he was dismissed due to repeated disciplinary violations (unjustified absences from work), which were unrelated to his involvement with the SMBB; (ii) the enterprise had not been officially informed of the establishment of the SMBB and of Mr Debreshi's position as its chairman; and (iii) during the same period, other workers who were not members of the SMBB were also dismissed due to disciplinary violations.

88. With respect to the right to collective bargaining, the Government indicates that on 10 May 2018, the enterprise and the FSPISH concluded a collective agreement which is currently in force. It specifies that the agreement has been submitted to the Ministry of Finance and Economy, and that the procedures stipulated in the Labour Code have been observed for its conclusion. The Government also states that the enterprise employs 657 workers, of which 515 are members of the FSPISH, and that all these members have regularly paid their membership fees.

89. The Government points out that, according to section 182 of the Labour Code, any trade union which has been recognized as a legal person may address the court for the protection of the interests of members. The Government states, however, that despite its suggestion to pursue the judicial route, the SMBB has preferred to present complaints before various other institutions.

C. The Committee's conclusions

90. *The Committee notes that the complainant alleges acts of anti-union interference and discrimination, including the dismissal of four leaders of the SMBB, by an enterprise in the mining sector. It further notes that the complainant affirms that trade unionists and labour activists were detained and intimidated by the police during a strike, and that, although the SMBB was the most representative trade union, the enterprise and state authorities refused to recognize it for collective bargaining purposes and prevented its leaders from accessing the workplace of its members. The Committee notes that the Government, for its part, provides information on the results of the labour inspections conducted by the Inspectorate and refutes the claim that the SMBB is the most representative trade union in the enterprise.*

91. *As regards the alleged acts of anti-union discrimination, the Committee notes that the complainant states that: (i) the SMBB received legal recognition on 15 October 2019 and less than two months later, the enterprise dismissed its chairman, Mr Elton Debreshi, for ethics violations; (ii) in the midst of a strike conducted by the SMBB from 25 November to 5 December 2019, the enterprise dismissed* *another of its leader, Mr Beqir Durici, and changed the position of a member of its council, Mr Behar Gjimi; (iii) after the strike, the enterprise dismissed Mr Gjimi, as well as another leader of the SMBB, Mr Ali Gjeta; (iv) the SMBB presented several complaints in relation with the dismissals before the Inspectorate and the Ministry of Finance and Economy, which both ruled in favour of the enterprise; (v) the SMBB submitted a complaint to the CPD, which, in a decision of 26 October 2020, ruled that two of the four leaders had been dismissed due to their trade union affiliation; (vi) the SMBB will appeal that decision with a view to seeking justice for the four leaders; and (vii) the SMBB also challenged the four dismissals before ordinary courts. The Committee also notes that the Government indicates that the Inspectorate conducted multiple inspections at the enterprise in relation with the complaints submitted by the SMBB and did not identify any violations of trade union rights. It notes, however, that the Government does not deny that the CPD determined that two of the four SMBB leaders had been dismissed for anti-union reasons. The Committee recalls that the dismissal of workers on grounds of membership of an organization or trade union activities violates the principles of freedom of association [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1104]. The Committee requests the Government to keep it informed of the outcome of the appeal presented by the SMBB against the decision of 26 October 2020 of the CPD and of any resulting measures of redress or sanctions. In light of the information provided by the complainant that it has also challenged these dismissals before the ordinary courts, the Committee requests the complainant to provide updated information on the status of these cases and copies of any judicial decisions rendered.*

92. *With respect to the strike that was organized by the SMBB, the Committee notes that, according to the complainant, trade unionists were temporarily detained, questioned and intimidated by the police, and labour activists were beaten up and imprisoned while participating in it. Noting with concern that the Government does not respond to these allegations, the Committee recalls that measures depriving trade unionists of their freedom on grounds related to their trade union activity, even where they are merely summoned or questioned for a short period, constitute an obstacle to the exercise of trade union rights [see* ***Compilation****, para. 122]. It also recalls that a free and independent trade union movement can only develop in a climate free of violence, threats and pressure, and it is for the Government to guarantee that trade union rights can develop normally [see* ***Compilation****, para. 87]. The Committee requests the Government to carry out an independent investigation into these allegations and provide detailed information on the outcome.*

93. *Regarding the alleged acts of anti-union interference, the Committee notes that the complainant affirms that: (i) the enterprise and the FSPISH have colluded to undermine the SMBB; (ii) workers were threatened with dismissal if they joined or continued to be members of the SMBB; (iii) when the SMBB became the majority union, its members were pressured by their managers to resign their membership and join the FSPISH; and (iv) the enterprise refused to apply the check-off system to the members of the SMBB. Noting with concern that the Government does not reply to these allegations, the Committee recalls the fundamental principle of workers being able to join organizations of their own choosing and of the enterprise not interfering in favour of a trade union [see* ***Compilation****, para. 1190]. It further recalls that direct threat and intimidation of members of a workers' organization and forcing them into committing themselves to sever their ties with the organization under the threat of termination constitutes a denial of these workers' freedom of association rights [see* ***Compilation****, para. 1100]. The Committee requests the Government to conduct without delay an independent inquiry into the allegations of anti-union interference by the enterprise and to ensure that corrective measures and sufficiently dissuasive sanctions are imposed against any act of interference identified. The Committee requests the Government to keep it informed of any developments in this respect.*

94. *As regards the alleged refusal of the enterprise and state authorities to recognize the SMBB for collective bargaining purposes, the Committee notes that the complainant states that: (i) in December 2019, the SMBB, which was the most representative trade union, presented a request to the enterprise and the Ministry of Finance and Economy to negotiate a new collective agreement since the one which had been concluded with the FSPISH was due to expire on 31 January 2020, but the enterprise and the Ministry responded that this agreement was amended in October 2019 and would be in force for an indefinite period; (ii) the notarial certificate of the most representative union submitted by the FSPISH is invalid, as it does not include essential elements such as a bank statement proving the membership fees; (iii) the SMBB denounced the situation to the Inspectorate, the Ministry of Finance and Economy, as well as the Regional Employment Office of Dibra and its local office of Bulqiza, but the Inspectorate and the Ministry responded that the issue should be taken up with the Ministry of Justice; (iv) in June 2020, a new collective agreement was concluded between the enterprise and the FSPISH; and (v) that agreement was negotiated secretly and in violation of the legal requirements prior to collective bargaining, which is part of a strategy to prevent workers from voting on the most representative union and hinder genuine collective bargaining. The Committee further notes that the Government, for its part, indicates that: (i) a collective agreement which was concluded in May 2018 between the enterprise and the FSPISH is still in force; (ii) 515 of the 657 workers employed by the enterprise are members of the FSPISH and they have regularly paid their members fees; and (iii) despite its suggestion that the SMBB pursue the judicial route to protect the interests of its members, the union has opted to address other institutions.*

95. *The Committee takes note of the contradictory information provided by the complainant and the Government concerning the collective agreement currently in force in the enterprise, as well as the representativity of the SMBB and the FSPISH. While noting that it does not have sufficient information to determine which trade union organization is the most representative at the moment, the Committee recalls that the competent authorities should, in all cases, have the power to proceed to an objective verification of any claim by a union that it represents the majority of the workers in an undertaking, provided that such a claim appears to be plausible, and if the union concerned is found to be the majority union, the authorities should take appropriate conciliatory measures to obtain the employer's recognition of that union for collective bargaining purposes [see* ***Compilation****, para. 1366]. Noting from the information provided by the parties that the judicial authorities appear to be the appropriate channel for challenging the most representative status of the FSPISH, the Committee requests the Government and the complainant to inform it of any judicial procedures undertaken in this regard and their outcome. The Committee expects that the question of the representativeness status of the SMBB and the FSPISH at the enterprise will be clarified without delay either through judicial procedures or other means and requests the Government to provide detailed information in this regard and to furnish precise and updated information on the representative nature of the two organizations.*

96. *With respect to the allegations that the enterprise refused to allow the SMBB's representatives to access its premises, the Committee notes that, according to the complainant, the situation was denounced to the Inspectorate, which informed the SMBB that only the representatives of trade unions which had signed a collective agreement could meet their members in the workplace. Noting that the Government does not address these allegations, the Committee recalls that, for the right to organize to be meaningful, the relevant workers' organizations should be able to further and defend the interests of their members, by enjoying such facilities as may be necessary for the proper exercise of their functions as workers' representatives, including access to the workplace of trade union members [see* ***Compilation****, para. 1594]. It further recalls that trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking and that the granting of such facilities should not impair the efficient operation of the undertaking concerned [see* ***Compilation****, para. 1593]. The Committee* *requests the Government to take the necessary measures to ensure that the representatives of the SMBB have access to the workplace of its members in the performance of their duties. The Committee requests the Government to keep it informed in this regard.*

The Committee's recommendations

97. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to keep it informed of the outcome of the appeal presented by the SMBB against the decision of 26 October 2020 of the CPD and of any resulting measures of redress or sanctions. In light of the information provided by the complainant that it has also challenged these dismissals before the ordinary courts, the Committee requests the complainant to provide updated information on the status of these cases and copies of any judicial decisions rendered.

(b) The Committee requests the Government to carry out an independent investigation into the allegations that trade unionists were temporarily detained, questioned and intimidated by the police and that labour activists were beaten up and imprisoned during a strike organized by the SMBB, and to provide detailed information on the outcome.

(c) The Committee requests the Government to conduct without delay an independent inquiry into the allegations of anti-union interference by the enterprise and to ensure that corrective measures and sufficiently dissuasive sanctions are imposed against any act of interference identified. The Committee requests the Government to keep it informed of any developments in this respect.

(d) Noting from the information provided by the parties that the judicial authorities appear to be the appropriate channel for challenging the most representative status of the FSPISH, the Committee requests the Government and the complainant to inform it of any judicial procedures undertaken in this regard and their outcome. The Committee expects that the question of the representativeness status of the SMBB and the FSPISH at the enterprise will be clarified without delay either through judicial procedures or other means and requests the Government to provide detailed information in this regard and to furnish precise and updated information on the representative nature of the two organizations.

(e) The Committee requests the Government to take the necessary measures to ensure that the representatives of the SMBB have access to the workplace of its members in the performance of their duties. The Committee requests the Government to keep it informed in this regard.

Case No. 3210

Interim report

Complaint against the Government of Algeria
presented by
the Autonomous National Union of Electricity and Gas Workers (SNATEG)
supported by

– Public Services International (PSI)
– the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)
– the IndustriALL Global Union (IndustriALL)
– the International Trade Union Confederation (ITUC)
– the Autonomous General Confederation of Workers in Algeria (CGATA) and
– the Confederation of Productive Workers (COSYFOP)

Allegations: The complainant organization alleges a campaign of harassment and intimidation of its officers and members by an enterprise in the energy sector, the refusal to implement court decisions in favour of reinstatement for unfairly dismissed workers, as well as the public authorities' refusal to put an end to these violations of trade union rights

98. The Committee last examined this case (submitted in 2016) at its October–November 2021 meeting, when it presented an interim report to the Governing Body [see 396th report, approved by the Governing Body at its 343rd Session (November 2021), paras 78–99]. [2]

99. The Autonomous National Union of Electricity and Gas Workers (SNATEG) submitted additional information in a communication dated 3 February 2022.

100. The Government provided its observations in communications dated 31 January 2022, 3 February 2023 and 26 April 2023.

101. Algeria has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

102. In its previous examination of the case in October–November 2021, the Committee made the following recommendations [see 396th report, para. 99]:

(a) Given the divergent information provided in this regard, at this stage, the Committee must limit itself to requesting the Government to provide additional information on the situation of Kouafi Abdelkader, Benarfa Wahid, Araf Imad, Djeha Makhfi, Benhadad Zakaria, Slimani Mohamed Amine Zakaria, Chertioua Tarek and Sarah Benmaiche, in view of the information on the court decisions ordering their reinstatement, which is not consistent with the information provided by the Government. The Committee requests the complainant organizations to inform it, as appropriate, of any recourse against the court decisions mentioned by the Government and their outcome.

(b) The Committee requests the Government to provide information on the situation of Mr Benzine Slimane, President of the National Federation of Security and Prevention

[2] Link to previous examination.

Workers, who, according to the complainant organization, has still not been reinstated despite a court decision in his favour.

(c) The Committee is bound to urge the Government once again to conduct an independent inquiry to determine the circumstances that led to the administrative decision to dissolve SNATEG. Furthermore, the Committee expects the Government to review the decision to dissolve SNATEG without delay and urges it to keep the Committee informed of any action taken in that regard.

(d) The Committee again firmly urges the Government to implement its recommendations without delay in order to ensure an environment at the enterprise in which trade union rights are respected and guaranteed for all trade union organizations, and workers are able to join the union of their choice, elect their representatives and exercise their trade union rights without fear of reprisals and intimidation.

(e) The Committee encourages the Government to continue to train law enforcement officers on respect for the right of citizens to demonstrate peacefully, in addition to their basic training, and to include in the training the respect for freedom of association.

(f) The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.

B. Additional information from the complainant

Interference by the public authorities in trade union activities

103. In its communication dated 3 February 2022, SNATEG provided details regarding the Committee's previous recommendations. With regard to the situation of trade unionists and trade union leaders dismissed by the enterprise SONELGAZ (hereafter, the enterprise) (recommendation (a)), the complainant indicates that the list previously provided remains current. They refer in particular to the cases of Mr Kouafi Abdelkader (the complainant provides a copy of the legally binding decision of the Larbaa (Blida) labour court dated 19 December 2019 ordering his reinstatement and indicates that the enterprise has only partially implemented the financial section and refused to reinstate him); Mr Araf Imad (the complainant provides a copy of the legally binding decision of the Biskra labour court dated 20 May 2019 ordering his reinstatement and indicates that the enterprise has only partially implemented the financial section and refused to reinstate him); Mr Guebli Samir (the complainant provides a copy of the legally binding decision of the Amechdalah labour court dated 16 July 2020 ordering his reinstatement and indicates that Mr Guebli has refused receipt of the compensation decided by the court and is appealing to the Supreme Court. He continues to await reinstatement and the decision of the Supreme Court); and Mr Meziani Moussa (according to the complainant, he has not been able to bring legal action against his dismissal for financial reasons. The enterprise brought proceedings against him for breach of trust and a fine was imposed on 1 April 2018).

104. Moreover, the complainant reports that, as a result of the pressure that had been put on them for years, Mr Wahid Benarfa, Mr Djeha Makhfi, Mr Benhadad Zakaria, Mr Slimani Mohammed Amine Zakaria and Mr Chertioua Tarek, who were previously included on the list of dismissed trade unionists, have decided to resign their membership of SNATEG. In February 2020, these members decided to establish a parallel branch of the Confederation of Productive Workers (COSYFOP) and indicated, through that branch, their wish that their case not be examined further by international bodies, including the Committee. They intend to resolve their case with the authorities directly. The complainant therefore does not intend to provide further information on their case and notes with regret that the length of time that has passed without resolution of the situations of the dismissed trade union members provides leeway for the Government to convince them that involving international organizations only makes their situations worse. The complainant requests the Committee to firmly urge the Government to reinstate the dismissed SNATEG union leaders without delay. In addition, recalling that the workers who have been reinstated by the enterprise have been forced to resign their memberships and join a different union within the enterprise, in violation of their freedom of association, the complainant requests the Committee to firmly urge the Government to guarantee to the reinstated members that the declarations that they signed will not be used against them if they rejoin SNATEG.

105. With regard to the situation of Mr Slimane Benzine, President of the National Federation of Security and Prevention Workers (recommendation (b)), the complainant specifies that he has not been able to take legal action against his dismissal, due to a lack of resources to pay the legal fees. He has been subjected to unbearable repression since 2017, having been sentenced to imprisonment without parole by four courts across the country simply for exercising his trade union mandate. The complainant indicates that Mr Benzine is in a very concerning social situation, as he remains without work and does not receive any social security. Lastly, with regard to the situation of Ms Sarah Benmaich, the complainant indicates that she has not been reinstated to her post and she remains terrified by threats of detention from the police if she were to make contact with SNATEG.

106. The complainant also denounces the situation of Mr Hichem Khayat, leader member of the SNATEG-COSYFOP trade union section of the Electricity and Gas Training Institute, and trade union representative for the *wilaya* (province) of Blida. According to the complainant, he was arrested by the police on 4 January 2022 and remained in detention until 10 January 2022, when he appeared before the examining magistrate, who ordered that he be placed under judicial supervision, accused of recruiting for a terrorist group on social media, forming a terrorist group on social media and criminal association through social media that could harm national unity. The complainant states that the subject of the judicial enquiry into Mr Hichem Khayat is solely based on his trade union activities.

107. With regard to the need to ensure an environment at the enterprise in which trade union rights are respected and guaranteed (recommendation (d)), the complainant denounces that the Government continues its campaign of repression towards independent trade unionists. In June 2021, the authorities adopted amendments to the Criminal Code broadening the definition of terrorism to include working towards or inciting change “to access power or to change the system of government by unconstitutional means”. According to the complainant, calls to strike, protests and peaceful calls for a change in government could be considered criminal as a result of this reform. As a result, this amendment of the Criminal Code is being used to gag the independent trade union movement. In this regard, the complainant makes reference to the concerns expressed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in her most recent correspondence with the Government, deploring the very broad definition of terrorism and the imprisonment of human rights activists in the framework of the so-called fight against terrorism.

108. The complainant recalls that, in this context of persistent legal harassment of SNATEG trade union leaders by the enterprise and by the Government, Mr Raouf Mellal, President of the trade union organization, and members of his family, have been subjected to intense repression. The complainant recalls that timeline of the anti-union discrimination measures (dismissal) and legal harassment (successive convictions for slander, unlawful possession of documents and identity theft) suffered by Mr Mellal since 2017 and states that he has been sentenced to six months’ imprisonment without parole by the Algiers tribunal following a complaint lodged by the Ministry of Labour accusing him of slander to the International Labour Office and for having made a complaint against his country to the supervisory bodies, which he likens to an act of treason. The complainant regrets that the Committees recommendations have not included more specifics on the protection to be provided to Mr Mellal since the complaint was presented in 2017. The relentlessness has forced Mr Mellal to no longer attend SNATEG headquarters and to remain in hiding, then in 2020 drove him into exile outside the country. Since then, Mr Mellal has been living in Switzerland. The complainant calls for all charges against Mr Mellal to be dropped and firmly urges the Government to begin a dialogue with SNATEG in order to enable its President to return to the country and exercise his mandate as a trade union leader, in accordance with the international agreements ratified by Algeria.

109. Moreover, the complainant specifies that the information provided to the Committee by the Government stating that the El-Harrouch Court has not handed down any ruling with the reference put forward by the complainant organization (Order dated 23 January 2017 – inquiry: 0110/16) can be explained by the fact that it is in fact a ruling from the El-Harrach Court (a division of the *wilaya* of Algiers, where the union headquarters are located). In this regard, the complainant indicates that the examining magistrate accepted in his ruling that Mr Mellal was indeed the legitimate President of SNATEG and therefore dismissed the complaint brought by complainant Mr Abdellah Boukhalfa for usurpation of office. The complainant organization adds that the enterprise's complaints against the President of SNATEG for usurpation of office of union leaders were also dismissed by the Guelma Court and the Tizi Ouzou Tribunal.

110. Lastly, with regard to the matter of its administrative dissolution (recommendation (c)), SNATEG maintains that there was never any voluntary dissolution, as the Government claims. The complainant recalls that it lodged an appeal to the administrative tribunal on 31 December 2017, calling for the cancellation of Ministry of Labour Administrative Decision No. 297 of 16 May 2017 regarding the dissolution of SNATEG. In this appeal, SNATEG reminded the tribunal of the statement made by the Government representative to the Conference Committee on the Application of Standards in June 2017 denying the existence of the Administrative Decision on dissolution. In a decision dated 19 July 2018 (No. 152992), the tribunal refused to cancel the Administrative Decision, arguing that the decision to dismiss Mr Mellal gave the Ministry of Labour the right to dissolve the trade union organization. SNATEG lodged another appeal on 11 December 2018 in the same jurisdiction, requesting a review of the decision. In that second appeal, SNATEG presented the rulings cancelling the decision to dismiss Mr Mellal on the one hand (this ruling had not yet been overturned by the Supreme Court), and on the other hand presented the argument that the dispute in question concerned the trade union organization as a legal entity, and not the person of Mr Mellal, and that its administrative dissolution contravenes ILO Convention No. 87, ratified by Algeria. Nevertheless, the tribunal issued a definitive ruling on 18 July 2019 in which it denied the request to cancel the Ministry of Labour Administrative Decision No. 297 for "non legal-institution". For the complainant, such a decision means that the administrative tribunal believes that the Ministry of Labour has the right to dissolve a trade union organization by administrative means. The complainant indicates that such a decision, which is an extremely serious violation of Convention No. 87, is nonetheless not subject to appeal at the regional or international level. This raises the question of the Government using the justice system to contravene the recommendations of international institutions, recalling that the decision of the tribunal was handed down in July 2019, although in June 2019 the Conference Committee on the Application of Standards had encouraged the Government to "review the decision to dissolve the SNATEG". In conclusion, the complainant organization, deploring that the court decisions have been heavily influenced by the Government, is bound to question the relevance of the Committee's recommendations, on the basis of the decisions of the judicial authorities in this case.

111. The complainant organization denounces the closure of the headquarters that also serves as the headquarters of COSYFOP on 21 February 2021, by administrative decision (the complainant provides a copy of the decision). After years of hindrances and incessant attacks, repression and abuse of power, the administrative and security authorities have managed to close and block access to the Algiers headquarters. The complainant organization emphasizes that the authorities have not even had recourse to the courts to justify their decision.

112. In conclusion, SNATEG once again firmly urges the Committee to compel the Government to conform with international standards on freedom of association, to implement without further delay the court decisions to reinstate its leaders, to drop all charges and review all penalties handed down against union leaders, to review the decision to dissolve the union as requested by the ILO supervisory bodies, and thus to recognize the right of workers to join the trade union organization of their choice and to allow the union to carry out its activities without hindrance or fear of reprisal. SNATEG states that it is ready to engage in constructive dialogue with the Government, without preconditions, in order to draft a road map to ensure the implementation of the recommendations and resolutions issued by the various ILO supervisory bodies.

C. The Government's reply

113. In its communications dated 31 January 2022, 3 February 2023 and 26 April 2023, the Government provides responses to the Committee's recommendations. With regard to the question of the reinstatement of SNATEG members (recommendation (a)), the Government indicates that it has, in coordination with the enterprise, identified the situation of the following people: (i) with regard to Mr Wahid Benarfa, the financial part of the Tébessa Court ruling has been implemented, and he was compensated by his employer, the Algerian Electricity and Gas Distribution Company (SADEG), in the amount of 1,075,301.75 Algerian dinars (equivalent to US$7,930) on 4 February 2019. Moreover, the enterprise reports that Mr Benarfa has lodged an appeal and that the Supreme Court has accepted the appeal and referred the case in a ruling dated 9 March 2023; (ii) with regard to Mr Chertioua Tarek, he was compensated by SADEG in the amount of 190,340 dinars (equivalent to US$1,405) on 16 February 2021. In addition, the employer reports that Mr Chertioua has lodged an appeal and that the case is still pending; (iii) Mr Slimani Mohamed Amine Zakaria was compensated in the amount of 189,996 dinars (equivalent to US$1,402) on 15 February 2021. The enterprise also reports that he returned to work on 14 March 2023; (iv) Mr Benhadad Zakaria was compensated by the enterprise in the amount of 189,996 dinars (equivalent to US$1,402) on 15 February 2021. In addition, the enterprise reports that he returned to work on 14 March 2023; (v) Mr Araf Imad was compensated by the enterprise in the amount of 121,420 dinars (equivalent to US$895) on 1 July 2019. Mr Araf lodged an appeal and the Supreme Court handed down a decision on 4 February 2021 by which it overturned the ruling and returned the case to the court otherwise composed. The Government provides a copy of the court decision; (vi) Mr Kouafi Abdelkader was absent from work without authorization, which constituted a unilateral break in the employment relationship. In accordance with the enterprise's internal regulations, he was given two warnings, to no effect. He was therefore deemed to have decided to abandon his post. Mr Kouafi is also being prosecuted by his employer "Shariket Amn el mounchaate el Takawiya" (SAT) and was convicted of slander by the Larbaa (Blida) Tribunal and sentenced to three months' imprisonment without parole and a fine of 50,000 dinars (equivalent to US$369) (27 February 2018). The Blida Court upheld the ruling of the Larbaa Tribunal (4 March 2019);

(vii) with regard to Ms Sarah Benmaiche, following the rulings of the Annaba Tribunal, she received two payments, in spite of all the attempts at reinstatement at establishments affiliated to the enterprise. On 4 July 2016, Ms Benmaiche received compensation in the amount of 100,000 dinars (equivalent to US$738) from her employer, SAT. On 2 October 2017, Ms Benmaiche received an on-call duty settlement payment for non-reinstatement in the amount of 90,000 dinars (equivalent to US$664); and (viii) Mr Djeha Mekhfi was dismissed by his employer "Maintenance delivery of vehicles – Constantine (MPV)" for refusal of work and not complying with instructions from the unit Director, making a false statement and false testimony during a disciplinary hearing, and refusing to recognize the authority of a supervisor. After exhausting all the procedures outlined in the internal regulations, the disciplinary committee decided to dismiss Mr Djeha, without payment or notice. No information has been received about any appeal against the dismissal decision.

114. With regard to the situation of Mr Slimane Benzine (recommendation (b)), the Government submits the information provided by the enterprise "Shariket Amn el mounchaate el Takawiya-Ouargla" (SAT), according to which Mr Slimane was dismissed for professional misconduct, in accordance with the provisions of article 222 of the Criminal Code. In that case, the Ouargla Tribunal convicted him of forgery and the use of forgeries and sentenced him to six months' imprisonment without parole and a 20,000 dinar (equivalent of US$147) fine (13 November 2018). In addition, another ruling of the Ouargla Tribunal sentenced Mr Slimane to six months' imprisonment without parole and a 100,000 dinar (equivalent of US$738) fine for slander, in accordance with the provisions of articles 296 and 298 of the Criminal Code (12 March 2020). The Government has not been informed by the enterprise about any appeal against the Ouargla Tribunal ruling.

115. With regard to the Committee's recommendations concerning the administrative decision to dissolve SNATEG (recommendation (c)), the Government reiterates that the voluntary dissolution of that union complies with the legal provisions in force and its statutes. According to the official record of the court bailiff dated 7 October 2017, the voluntary dissolution was raised unanimously by the members of the congress held in general assembly. The Government reiterates that its position is based on the principles of non-interference and recalls that no person may impede the freedom and will of the members of SNATEG to dissolve the union, in accordance with its statutes. Also, in accordance with these principles of non-interference with the internal functioning of trade union organizations, as laid down in ILO Conventions and in national law, the Government does not have the prerogative to review the free and voluntary decision of the members of this trade union organization.

116. In response to the recommendations on the need to establish a harmonious and stable climate of industrial relations in the enterprise in which trade union leaders can carry out their activities to defend the interests of their members without fear of criminal prosecution and imprisonment (recommendation (d)), the Government states that membership of a trade union is a free and voluntary choice for workers, guaranteed by Act No. 90-14. Membership of trade unions in places of work is governed by the rules outlined in the statutes of those organizations, without interference from existing trade unions in the enterprise or from the employer. In addition, union organization statutes establish the rules by which the trade union leaders and representatives are elected, as well as the democratic rules for their designation, in accordance with the principle outlined in Act No. 90-14 on the respect for the democratic method in elections. Lastly, labour inspection services ensure that labour law and collective agreements are implemented with regard to the exercise of freedom of association.

117. With regard to the need to ensure respect for freedom of association when the police intervenes during peaceful demonstrations (recommendation (e)), the Government acknowledges the Committee's encouragements to continue to train law enforcement officers. The Government recalls that the right to peaceful assembly and protest are guaranteed by the Constitution (article 52), these rights are exerted upon simple declaration, and the law establishes the conditions and methods for exercising them. Training law enforcement officers is an ongoing process to ensure that they benefit from new methods for the protection of citizens and of property in the context of the implementation of the provisions of Act No. 91-19 of 2 December 1991, amending and supplementing Act No. 89-28 of 31 December 1989, on public meetings and demonstrations. Training cycles are therefore organized for law enforcement officers in the context of their profession. Training programmes are particularly focused on the administrative police's mission of prevention, support for the freedom to protest, and maintaining ongoing dialogue with protesters. The interventions of law enforcement officers during protests are in response to the need to ensure adequate conditions and to ensure that different categories of citizens, including trade union organizations, can exercise their individual and collective freedoms, while also preventing any hindrance or violence in the exercise of their right and freedom, with regard to persons, institutions or property. The Government ensures respect for legislation and regulations governing the exercise of the right to protest, so long as the protest does not infringe on the right to life of citizens, on public order and on security.

118. In conclusion, the Government requests the Committee to close the present case, taking account of the principles of non-interference in the internal function of trade unions and respect for the sovereign decision of SNATEG members. Moreover, the Government considers that it has provided all the information on the implementation of court decisions concerning dismissed workers, including their compensation, in accordance with current legislation.

D. The Committee's conclusions

119. *The Committee recalls that the present case concerns allegations that the enterprise has refused to allow an officially registered trade union to carry out its activities, has undertaken a campaign of harassment against the union's officers and members, has dismissed the majority of the union's members, and that the public authorities have refused to put an end to the violations of trade union rights and enforce court rulings in the union's favour, and have registered the trade union's dissolution despite evidence to the contrary.*

120. *In its previous consideration of the case, the Committee referred to a list of union members (members of its National Board, national committees, national federations and trade union branches in the wilayas) who, according to the complainant, were wrongfully dismissed by the enterprise in 2017, but have not been reinstated, despite court or labour inspectorate decisions in their favour. The Committee notes the updates provided by the complainant organization and the Government on the situations of the following trade unionists:*

(a) the case of Mr Kouafi Abdelkader, Secretary-General of SNATEG. According to the complainant, Mr Kouafi has received a legally binding decision from the Larbaa (Blida) labour court dated 19 December 2019 which cancelled his dismissal as arbitrary, because it took place during certified sick leave and without informing the trade union. In addition, the court ordered the payment of 400,000 dinars in compensation (equivalent to US$2,951) as well as a payment of 100,000 dinars (equivalent to US$738) for material damages, while Mr Kouafi was claiming compensation equivalent to the 28 months that he has been unemployed since his dismissal in March 2017 (1,680,000 dinars, equivalent to US$12,397). But the enterprise has only partially implemented the financial section and refused to reinstate him. According to the Government, Mr Kouafi was absent from work without authorization, which constituted a unilateral break in the employment relationship. In accordance with the enterprise's internal regulations, he was

given two warnings, to no effect. He was therefore deemed to have decided to abandon his post. Mr Kouafi is also being prosecuted by his employer "Shariket Amn el mounchaate el Takawiya" (SAT) and was convicted of slander by the Larbaa (Blida) Tribunal and sentenced to three months' imprisonment without parole and a fine of 50,000 dinars (equivalent to US$369) (27 February 2018). The Blida Court upheld the ruling of the Larbaa Tribunal (4 March 2019);

(b) the case of Mr Araf Imad, Chairperson of the southern national committee. SNATEG indicates that he has received a legally binding decision of the Biskra labour court dated 20 May 2019 ordering his reinstatement, but the enterprise has only partially implemented the financial section and refused to reinstate him. According to the Government, Mr Araf was compensated by the enterprise in the amount of 121,420 dinars (equivalent to US$895) on 1 July 2019. Mr Araf lodged an appeal and the Supreme Court handed down a decision on 4 February 2021 by which it overturned the ruling and returned the case to the Biskra court otherwise composed ;

(c) the case of Mr Guebli Samir, Chairperson of the central national committee. According to SNATEG, he has received a legally binding decision from the Amechdalah labour court dated 16 July 2020 ordering his reinstatement. Mr Guebli has refused receipt of the compensation decided by the court and is appealing to the Supreme Court. He continues to await reinstatement and the decision of the Supreme Court. The Committee notes that the Government has not provided information and recalls that it had previously indicated that Mr Guebli was dismissed for abandoning his post and had not brought legal action against the dismissal decision;

(d) the case of Mr Meziani Moussa, President of the National Federation of Gas and Electricity Distribution Workers. According to SNATEG, he has not been able to bring legal action against his dismissal for financial reasons. The enterprise brought proceedings against him for breach of trust and a fine was imposed in April 2018. The Government has not provided more up-to-date information. It had previously indicated that Mr Meziani's dismissal for breach of trust had been upheld by the Bouira Tribunal in April 2018, and again on appeal;

(e) the case of Ms Sarah Benmaiche, member of the Women's Committee. According to SNATEG, she has not been reinstated to her post and remains traumatised by the harassment and the threats of detention from the police if she were to make contact with the trade union. According to the Government, she was dismissed for professional misconduct and has not brought legal action against the dismissal decision. However, the Government provides a report from Ms Benmaiche's employer, which indicates that she brought legal proceedings on 9 June 2016 requesting reinstatement. The Committee concludes from this that Ms Benmaiche won the case insofar as the employer states that it is not possible to reinstate her as a hostess at different sites or as part of the administrative staff because of her aggressive character, and states that Ms Benmaiche lodged an appeal to the tribunal on 26 September 2016 for non-implementation of the ruling. Following the rulings handed down by the Annaba Tribunal, Ms Benmaiche received two payments in the amount of 100,000 dinars (equivalent to US$738) in compensation from her employer and 90,000 dinars (equivalent to US$664) as an on-call duty settlement payment for non-reinstatement;

(f) the case of Mr Slimane Benzine, President of the National Federation of Security and Prevention Workers. SNATEG indicates that he has not been able to take legal action against his dismissal for financial reasons. In addition he has been subjected to serious judicial harassment since 2017, and has been sentenced to imprisonment without parole by four courts across the country, according to the complainant, simply for exercising his trade union mandate. The complainant adds that Mr Benzine is in a very concerning social situation, as he remains without work and does not receive any social security. The Government has submitted the

information provided by his employer (SAT), according to which Mr Slimane was dismissed for professional misconduct. In this case, the Ouargla Tribunal convicted him of forgery and the use of forgeries and sentenced him to six months' imprisonment without parole and a 20,000 dinar (equivalent of US$147) fine (13 November 2018). In addition, another ruling of the Ouargla Tribunal sentenced Mr Slimane to six months' imprisonment without parole and a 100,000 dinar (equivalent of US$738) fine for slander (12 March 2020).

121. *In addition, the Committee notes that the complainant organization denounces the situation of Mr Hichem Khayat, leader member of the SNATEG-COSYFOP trade union section of the Electricity and Gas Training Institute, and trade union representative for the wilaya of Blida, who was arrested by the police on 4 January 2022 and remained in detention until 10 January 2022, then appeared before the examining magistrate, who ordered that he be placed under judicial supervision, accused of recruiting for a terrorist group on social media, forming a terrorist group on social media and criminal association through social media that could harm national unity. Noting with concern that, according to the complainant, the subject of the judicial enquiry into Mr Hichem Khayat is solely based on his trade union activities, the Committee urges the Government to provide its observations on the situation of this trade union leader.*

122. *In addition, the Committee notes the indication by the complainant that Mr Wahid Benarfa, Mr Djeha Makhfi, Mr Benhadad Zakaria, Mr Slimani Mohammed Amine Zakaria and Mr Chertioua Tarek, who were included on the list of dismissed trade unionists, and about whom the Government has provided documented information, decided to resign their membership of SNATEG in 2020 and indicated their wish that their case not be examined further by the Committee. As a result, the Committee will not further examine their situation. It does however note that, according to the complainant, the length of time that has passed without resolution of the situations of the trade union members dismissed since 2017 provides leeway for the Government to convince them that involving international organizations only makes their situations worse.*

123. *The Committee recalls that the complaint originally referred to the numerous presumed anti-union dismissals of leaders and representatives of SNATEG since 2016–17. The Committee has recalled that respect for the principles of freedom of association requires that workers should not be dismissed or refused re-employment on account of their trade union activity, and has requested the Government to provide regular reports on measures concerning the dismissed workers in this case. In its previous comments, the Committee had requested additional information to establish with certainty the link between the reinstatement decisions to which the complainant organization referred and the decisions confirming dismissals to which the Government referred. The Committee welcomes the updated information provided by the Government and the complainant, following its previous recommendations. Although the Committee welcomes the fact that the majority of cases of dismissals of SNATEG members and leaders seem to have been resolved by reinstatement to their posts, as indicated in the Government's regular reports, including the most recent reports, it also regrets that, more than five years after the alleged anti-union dismissals, many SNATEG leaders and representatives are still awaiting reinstatement despite court decisions in their favour, and certain judicial proceedings have still not concluded. The Committee is particularly concerned by the fact that in several cases reported by both the Government and the complainant, despite court decisions ordering reinstatement, the enterprises concerned have refused to implement them with complete impunity, confining themselves to paying the financial portion of the sanctions. In addition, the Committee is surprised that it is possible for the enterprises concerned to not implement orders from the judicial authorities without incurring any sanction. The Committee recalls that no one should be subjected to anti-union discrimination because of legitimate trade union activities and the remedy of reinstatement should be available to those who are victims of anti-union discrimination.[see* ***Compilation of decisions of the Committee on Freedom of Association,*** *sixth edition, 2018, para.*

1163]. Moreover, the Committee notes with serious concern that this violation of freedom of association has, according to the complainant, had an extremely harmful effect on the SNATEG leaders, by leaving them without income. As a result, the Committee firmly urges the Government to immediately take all necessary steps to implement the court decisions on reinstatement that have not been contested in the present case. According to the information available, this means the decisions concerning Mr Kouafi Abdelkader and Ms Sarah Benmaiche. The Committee requests the Government to keep it informed of the measures taken in that regard without delay.

124. *Furthermore, the Committee expects the judicial appeals that are still pending to be concluded without delay in the courts concerned (cases of Mr Araf Imad and Mr Guebli Samir). The Committee requests the Government to keep it informed of the court decisions handed down in the aforementioned cases.*

125. *The Committee considers it useful to recall its position that if it appears that the dismissals occurred as a result of involvement by the workers concerned in the activities of a union, the Government must ensure that those workers are reinstated in their jobs without loss of pay. However, if the judicial authority determines that reinstatement of workers dismissed in violation of freedom of association is not possible, measures should be taken so that they are fully compensated. The compensation should be adequate, taking into account both the damage incurred and the need to prevent the repetition of such situations in the future [see **Compilation**, paras 1169, 1172 and 1173].*

126. *Bearing in mind the allegations by the complainant that the workers who have been reinstated by the enterprise have been forced to resign their memberships and join a different union within the enterprise, in violation of their freedom of association, the Committee recalls that declarations of loyalty or other similar commitment should not be imposed as a condition for reinstatement [see **Compilation**, para. 1182]. The Committee expects the Government to ensure that all workers should in practice be able to establish and join organizations of their own choosing in full freedom.*

127. *Lastly, the Committee is bound to express its concern with regard to the allegation that Mr Slimane Benzine and Mr Moussa Meziani have not been able to appeal their dismissals for lack of financial resources. In this regard, the Committee recalls that respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [see **Compilation**, para. 1142.]*

128. *The Committee has already deeply deplored that the situation of conflict between the enterprise and SNATEG, the disciplinary measures and mass dismissal of union members in 2017, the uncertainty associated with different means of recourse against the dismissal decisions, the difficulty for the trade unionists to implement the court decisions, but also the continued harassment, including judicial harassment, of SNATEG leaders have been detrimental to the conduct of union activities and also constitute intimidation that hinders the free exercise of freedom of association at the enterprise. In this regard, the Committee notes with concern the allegation that Mr Raouf Mellal, President of SNATEG, and members of his family, have been subjected to intense repression. According to the complainant organization, Mr Mellal has been subjected to continued anti-union discrimination measures (dismissal) and systematic legal harassment (successive convictions for slander, unlawful possession of documents and identity theft), in part for having made a complaint against his country to international bodies. The Committee notes with concern the complainant's indication that the relentlessness forced Mr Mellal into exile outside the country in 2020 and to move to Switzerland. Noting that SNATEG is calling for all charges against Mr Mellal be dropped and states that it is ready to engage in dialogue with the Government in order to enable Mr Mellal to return to the country and exercise his mandate as a trade union leader, the Committee expects the Government to commit to ensuring that Mr Mellal can return to the country to carry out his trade union activities in an* *environment free of violence, pressure or threats. The Committee recalls in this regard that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see* ***Compilation****, para. 82].*

129. *In its previous conclusions, the Committee has carried out an in-depth examination of the information provided by the complainant and the Government, who hold diverging opinions regarding the voluntary dissolution of SNATEG [see 392nd Report, paras 209–212]. The Committee had requested the Government to carry out an independent investigation to determine the circumstances that led to the administrative decision approving the dissolution of SNATEG despite evidence to the contrary presented to the authorities. In the interim, the Committee, referring to the recommendations made by the Committee on the Application of Standards in June 2019, had indicated that it expected the Government to review the decision to dissolve SNATEG without delay [see 392nd Report, para. 212].*

130. *The Committee notes with deep regret that the Government's response is again limited to reiterating that the voluntary dissolution of SNATEG conforms to the legal provisions in force and to the union's statutes. Furthermore, the Government reaffirms its position, which is based on the principle of non-interference and the impossibility of reviewing the administrative decision to dissolve SNATEG. In these circumstances, the Committee is bound to urgently reiterate its request and expects the Government to review the decision to dissolve SNATEG without delay. The Committee urges the Government to keep it informed of all action taken in this regard.*

131. *Furthermore, the Committee notes with concern the allegations that the SNATEG headquarters in Algiers were closed down on 21 February 2021 by means of a simple administrative decision. In this regard, the Committee recalls that the inviolability of trade union premises and property, including its mail, is a civil liberty which is essential to the exercise of trade union rights. The occupation or sealing of trade union premises should be subject to independent judicial review before being undertaken by the authorities in view of the significant risk that such measures may paralyse trade union activities [see* ***Compilation****, paras 276 and 287]. The Committee urges the Government to send its observations in this regard.*

132. *In general, the Committee wishes to express its deep concern about the present case, which is characterized by the cumulative difficulties encountered by SNATEG leaders in the exercise of their legitimate union rights. During its successive examinations of this case, the Committee observes that these difficulties include a campaign of repression against SNATEG leaders and members, mass dismissals and the enterprise's refusal to enforce reinstatement decisions, the slow administration of justice, difficulties in applying the law which led to the status of a trade union leader being called into question, interference in trade union activities, judicial harassment, and acts of police violence and intimidation during peaceful demonstrations. The Committee is particularly concerned by the length of time that has passed without the courts being able to conclude the appeals concerning the alleged anti-union dismissals of certain SNATEG leaders. These difficulties have harmed the conduct of activities of a union and also constitute intimidation hindering the free exercise of freedom of association at the enterprise. Consequently, the Committee once again urges the Government to implement its recommendations without delay in order to ensure an environment within the enterprise in which trade union rights are respected and guaranteed for all trade union organizations, and in which workers are able to join the union of their choice, elect their representatives and exercise their trade union rights without fear of reprisals and intimidation.*

133. *The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.*

The Committee's recommendations

134. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee firmly urges the Government to immediately take all necessary steps to implement the court decisions on reinstatement, in particular those concerning Mr Kouafi Abdelkader and Ms Sarah Benmaiche. The Committee requests the Government to keep it informed of the measures taken in that regard without delay.

(b) The Committee requests the Government to keep it informed of the final court decisions handed down in the cases concerning Mr Guebli Samir and Mr Araf Imad.

(c) The Committee urges the Government to provide its observations on the situation of Mr Hichem Khayat, SNATEG union leader who is the subject of a judicial inquiry as a result of his trade union activities.

(d) The Committee expects the Government to commit to ensuring that Mr Mellal can return to the country to carry out his trade union activities in an environment free of violence, pressure or threats.

(e) The Committee is bound to urge the Government once again to conduct an independent inquiry to determine the circumstances that led to the administrative decision to dissolve SNATEG. Furthermore, the Committee expects the Government to review the decision to dissolve SNATEG without delay and urges it to keep the Committee informed of any action taken in that regard.

(f) The Committee urges the Government to send its observations concerning the allegations that the SNATEG headquarters in Algiers were closed down on 21 February 2021 by means of a simple administrative decision.

(g) The Committee once again urges the Government to implement its recommendations without delay in order to ensure an environment within the enterprise in which trade union rights are respected and guaranteed for all trade union organizations, and in which workers are able to join the union of their choice, elect their representatives and exercise their trade union rights without fear of reprisals and intimidation.

(h) The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.

Case No. 3141

Definitive report

Complaint against the Government of Argentina presented by the Association of Judicial Officers of the Province of Mendoza (AFJM)

Allegations: The complainant organization(s) allege(s) that it has not been able to collectively bargain over working conditions for the graded staff of the Judicial Authority in the Province of Mendoza, who it represents exclusively

135. The complaint is contained in a communication from the Association of Judicial Officers of the Province of Mendoza (AFJM) dated 3 June 2015. The AFJM submitted new allegations in a communication dated 23 May 2018.

136. The Government sent its observations in communications dated 14 June 2016, 25 September 2019 and 1 May 2023.

137. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

138. In its communication dated 3 June 2015, the AFJM indicates that it obtained simple trade union registration in 2009 and in 2012 it obtained legal trade union status to represent all the graded staff of the Judicial Authority in the Province of Mendoza in all categories and judicial districts, from the Secretary of the Ministry (First Superior Officer) to the Secretary of the Supreme Court of Justice of Mendoza, or equivalent posts, whether professionals or not, with an area of action in the Province of Mendoza. The complainant also notes that it is not a member of any second or third level organization.

139. The complainant indicates that: (i) since 2004/2005, the Government decision to open up collective bargaining in the public sector as a way to agree wages meant that the only existing trade union in the judicial sector, the Trade Union Association of the Employees of the Mendoza Judicial Authority (AGEPJ), became involved in that regard; (ii) as soon as it obtained legal recognition as a trade union in 2012, the AFJM was invited to participate in collective bargaining in a unique and separate forum and held just two meetings to that effect; (iii) paradoxically, immediately afterwards, that forum transformed into one of plural representation, and it remains as such to date, and (iv) the fact that the representative trade union associations in the sector have diametrically opposed viewpoints but are contained within a single remunerative framework, fighting from different philosophical and political positions, for a whole range of criteria for dividing up the payroll, generates an inevitable conflict of interests, as a result of which it is advisable to recommend separating the sector's negotiating table; as a result the matter has not been and will not be resolved within the domestic jurisdiction of the Argentine Republic and thus turns to the Committee on Freedom of Association for its valued and definitive intervention.

140. In its 2015 communication, the complainant organization alleges that for two years the Government of Mendoza refused to sign wage agreements with it and that in 2015 the Government agreed wages in the judicial sector with the AGEPJ, which does not represent the 10 per cent of unionized officials required by Provincial Decree No. 955/04, and which justifiably undermines its legal authority to agree officials' wages. The complainant alleges that it was excluded from the salary agreement in 2015 capriciously and also states that it has fruitlessly pursued the opening of a forum for drafting the collective agreement for judicial officials/graded staff for two years.

141. In its communication dated 23 May 2018, the complainant notes that the dispute that gave rise to the presentation of the complaint in 2015 was partially resolved thanks to the presentation of the complaint to the Committee, as when it was presented, the Government of the Province of Mendoza issued resolution No. 102 of 2016 creating an *ámbito paritario* (a meeting carried out on the basis of equality, in which decisions are taken collectively) for all graded staff operating under the Judicial Authority of Mendoza, with the Judicial Authority Negotiating Committee made up of Judiciary Officials from that province. The complainant notes that two members of the AFJM and one member of the AGEPJ participated in that committee, representing the workers. The complainant maintains that this does not conform with what was determined by the Supreme Court of Justice of the Nation (CSJN) in a ruling issued on 22 November 2016, which put an end to the conflict between the organizations by establishing that the AFJM exercised sole representation of the graded staff in the sector. The complainant attached a copy of that ruling in which the CSJN indicated that: (i) the AFJM obtained legal recognition as a trade union in 2012 to represent all the graded staff in the Judicial Authority of Mendoza; (ii) the AGEPJ appealed that decision, providing evidence that the graded staff were already covered by its own legal recognition as a trade union; (iii) while the National Appeals Chamber rejected those objections, it indicated that both entities share legal recognition as trade unions with regard to graded staff; and (iv) the AFJM lodged an extraordinary federal appeal against that ruling that was finally overturned by the CSJN, indicating that it was clear that the AGEPJ obtained legal recognition as a trade union in 1970 excluding the representation of graded staff; so that when the AFJM requested legal recognition as a trade union, it did not have to compete for it with another association. The complainant alleges that the Ministry of Government, Labour and Justice did not arrange the composition of the Negotiating Committee in accordance with the guidelines established in the aforementioned CSJN ruling, which created an unjustified and unnecessary atmosphere of uncertainty.

142. The complainant indicates that by means of an agreement, dated 18 December 2017, a wage increase was granted and, without prejudice to that, it was also agreed that the separate collective bargaining forum for judiciary officials would remain open in order to continue deliberating over working conditions that were to be established in 2018 (clause 8 of the agreement).

143. The complainant also indicates that, in the context of the restructuring of the provincial judicial system, the Supreme Court of Justice of Mendoza handed down Decree No. 28.502 of 23 November 2017, which regulates working conditions relating to working hours and minimum workplace security guarantees for workers in the Interdisciplinary Auxiliary Corps under the Supreme Court of Justice of Mendoza (mental health, internal medicine and social work professionals specializing in different areas relating to childhood, adolescence and family, who participate in legal cases with jurisdiction in family law and criminal justice for minors), and for other agents of the Public Prosecutor's Office who are subject to the same treatment. The complainant alleges that not only did the aforementioned decree remove the negotiation of working conditions from the collective bargaining forum, it did so while establishing conditions that violate the legal working time regime and security norms. The complainant indicates that the Decree created an off-site system for night guards on Saturdays, Sundays and holidays which aims to make workers completely available to their employer 24 hours a day and 365 days a year, and regulated entry into high conflict zones without minimum protection guarantees and lacking a mandatory protocol to ensure the physical safety of everybody involved, which violates the legal working time regime and security norms.

144. The complainant states that, although it proposed taking part in the draft decree, advising that the new labour conditions be within the legal limits, the Decree does not make reference to the fact that it was the result of a consensus measure with the AFJM in collective agreements, which highlights that the decision was adopted unilaterally, in conflict with what was agreed in clause 8 of the aforementioned agreement. Indeed, the complainant alleges that the approach of the *paritario* members from the Judicial Authority and the Government of Mendoza in the negotiation forum to debate working conditions was evasive and inconclusive, resorting to delaying tactics that obstructed and hindered a serious and consensual consideration of the issue that had been created which detracted from the active participation of the trade union organization.

145. The complainant believes that the systematic excuses given – both in the *ámbito paritario* and elsewhere – have a direct and negative impact on its legal capacity to debate and agree working conditions. The complainant notes that it was not heard and that all its efforts to have dialogue and reach consensus were fruitless or broke down. The complainant alleges that there has been no willingness to create proactive or favourable conditions for collective bargaining and that all bargaining power has been limited, restricted or cancelled. The complainant also alleges that for the past three years it has promoted the opening of its own forum for debate and for the drafting of the collective agreement for judiciary officials/graded staff that includes a wide range of issues relating to working conditions and the working environment. Lastly the complainant notes that there are a series of ongoing legal cases relating to the aforementioned events and provides a list of those cases. Those cases include: (i) an appeal for nullity with regard to the aforementioned Judicial Authority Decree; and (ii) an application for special judicial review for unconstitutionality and annulment that relates to the AFJM and AGEPJ submitted to the Supreme Court of Justice – Second Chamber, Judicial Authority of Mendoza in the month of March 2016 (case No. 153.300).

B. The Government's reply

146. In its communication dated 14 June 2016, the Government forwarded a letter in which the Undersecretariat for Labour and Employment of the Ministry of Labour, Justice and Government in the Province of Mendoza indicates that: (i) in resolution 102 the Government Ministry arranged the establishment of a separate *ámbito paritario* for the graded staff who work in a relationship of dependence for the Judicial Authority of Mendoza; (ii) this was implemented at the *paritario* meeting held on 6 May 2016; and (iii) during that negotiation, the secretary general of the AFJM committed to carrying out the relevant presentations, with a view to requesting the closure of the complaint submitted to the Committee (Case No. 3141) after having created the separate *ámbito paritario*, which was, appropriately, what motivated the presentation.

147. In a communication dated 25 September 2019, the Government submitted a copy of a note sent by the Regional Delegation of Mendoza to the Undersecretariat for Labour and Employment in the Ministry of Government, Labour and Justice in the province, in which the provincial government authorities are requested to send a detailed report on the issues set out in the complaint. This note emphasizes that the information requested is of vital importance for the defence that the Government must provide to the Committee on Freedom of Association.

148. In its communication dated 1 May 2023, the Government notes that a special judicial review for unconstitutionality and annulment that relates to the AFJM and AGEPJ, submitted to the Supreme Court of Justice – Second Chamber, Judicial Authority of Mendoza in the month of March 2016, (Case No. 153.300) is currently pending.

C. The Committee's conclusions

149. *The Committee observes that, although this complaint was presented in 2015 by the AFJM, which represents the graded staff of the Judicial Authority in Mendoza Province, in 2016 the Government reported that the issues contained therein had been resolved following the creation of an ámbito paritario (a meeting carried out on the basis of equality, in which decisions are taken collectively) for all graded staff in the Judicial Authority of Mendoza, which is what had motivated the complaint, and so the secretary general of the AFJM had committed to requesting the closure of the complaint.*

150. *The Committee notes that, in its 2018 communication, the complainant notes that an ámbito paritario for all graded staff was indeed established in 2016, and a Judicial Authority negotiating committee was made up of judiciary officials from that province, in which the workers were represented by two representatives of the AFJM and one representative of the trade union organization known as AGEPJ. The Committee notes that the complainant alleges that the AGEPJ should not have been part of the committee since, on 22 November that same year, the CSJN had made it clear that AFJN was the sole trade union organization representing the graded staff of the Judicial Authority of Mendoza. The Committee observes that in this ruling the CSJN indicated that the AGEPJ obtained legal recognition as a trade union in 1970 excluding the representation of graded staff and the AFJM obtained legal recognition as a trade union in 2012 to represent the graded staff. The Committee understands that this ruling shows that, while both organizations have legal recognition as trade unions, and as such have bargaining power, the AFJM represents the graded staff of the Judicial Authority of Mendoza exclusively.*

151. *The Committee observes that the Government notes in addition that a special judicial review for unconstitutionality and annulment that relates to the AFJM and AGEPJ, submitted to the Supreme Court of Justice of Mendoza in March 2016, is currently pending. The Committee notes that it does not have further details regarding the specific subject of the case mentioned by the Government and observes that, according to the website of the Judicial Authority of Mendoza, there have been no movements in the case since 2019.*

152. *With regard to the configuration of the Negotiating Committee, the Committee observes that, according to the documentation provided by the complainant organization, Provincial Decree No. 955/04 establishes that when there is no agreement between the trade union organizations with bargaining power with regard to the configuration of the will of the worker sector in the Negotiating Committee, the Ministry of Government, through the Undersecretariat of Labour and Social Security, defines the percentage of votes corresponding to each party, with the number of votes being proportional to the number of contributing members.*

153. *The Committee understands that the complainant objects to the participation of the AGEPJ in the Negotiating Committee because it is an ámbito paritario for graded staff, who the complainant* *organization represents exclusively. The Committee nonetheless observes that it is not clear from the complaint whether the Negotiating Committee established in 2016, known as the "Judicial Authority Negotiating Committee for Judiciary Officials in the Province of Mendoza" was set up exclusively with regard to the graded staff. Without further details in that respect and observing that the Committee does not have information with regard to the functioning of this Committee since 2018, the Committee hopes that its configuration conforms to what is provided in the relevant provincial regulations and that the ruling handed down by the CSJN on 22 November 2016 is taken duly into account.*

154. *The Committee notes that the complainant alleges that the Supreme Court of Justice of Mendoza handed down a decree in November 2017 which regulates working conditions for workers in the Interdisciplinary Auxiliary Corps under the Judicial Authority of Mendoza, which not only removed the negotiation of working conditions from the collective bargaining forum, it did so while establishing conditions that violate the legal working time regime and security norms. The Committee notes that the complainant alleges that the Decree was not agreed with the AFJM, that their attempts at dialogue with the Government have broken down, that for the past three years they have been promoting the drafting of a collective agreement for judiciary officials, and that there has been no willingness to create favourable conditions for collective bargaining.*

155. *The Committee regrets that it has not received the Government's reply to these allegations. The Committee is obliged to examine them without significant information on the background of the matters raised in this case.*

156. *The Committee observes that the Judicial Authority's Decree indicates that it was necessary to strengthen the structure of the Interdisciplinary Auxiliary Corps (mental health, internal medicine and social work professionals who participate in legal cases with jurisdiction in family law and criminal justice for minors) and achieve full 24-hour coverage every day of the year. It also observes that the Decree was handed down one month before the wage agreement was reached in December 2017 and that, in that agreement, the parties committed to continue deliberating over working conditions that were to be established in 2018. That is to say that the commitment to negotiate working conditions came after the dictates of the Decree.*

157. *The Committee observes that, although the Negotiating Committee was established in 2016 and the parties committed to continue deliberating over working conditions in December 2017, no agreement had been reached before the presentation of the complaint in May 2018, at least. The Committee has not been given evidence of whether any agreements materialized between 2018 and the present. In these circumstances, and observing that what the complainant organization is requesting is the possibility to negotiate the working conditions of graded staff in a separate ámbito paritario, the Committee encourages the Government to take measures to create favourable conditions for constructive dialogue and effective negotiation between the parties concerned with regard to the working conditions of the graded staff of the Judicial Authority of the Province of Mendoza, with a view to reaching agreements in that respect.*

158. *The Committee notes that the complainant indicates that there are a series of ongoing legal cases relating to the aforementioned events, including with regard to the Judicial Authority Decree, and that the Government also makes reference to a pending legal action before the Supreme Court of Justice of Mendoza. Not having any updated information on the matter, the Committee hopes that rulings will be promptly issued in that regard . In these circumstances, the Committee considers that this case is closed and does not call for further examination.*

The Committee's recommendations

159. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee encourages the Government to take measures to create favourable conditions for constructive dialogue and effective negotiation between the parties concerned with regard to the working conditions of the graded staff of the Judicial Authority of the Province of Mendoza, with a view to reaching agreements in that respect.

(b) The Committee hopes that rulings will be promptly issued with regard to the legal cases relating to the events mentioned in this case.

(c) The Committee considers that this case is closed and does not call for further examination.

Case No. 3428

Definitive report

Complaint against the Government of Cameroon presented by the Confederation of Public Service Unions (CSP)

Allegations: The complainant organization alleges the prohibition of a public demonstration due to the health situation associated with the COVID-19 pandemic, and the inappropriate deployment of police at the site of the rally planned for this occasion

160. The complaint is contained in a communication dated 23 May 2022 submitted by the Confederation of Public Service Unions (CSP) on behalf of the trade union action platform the Cameroon Workers' Forum (CAWOF).

161. The Government sent its observations in a communication dated 22 June 2022.

162. Cameroon 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).

A. The complainant's allegations

163. In its communication of 23 May 2022, the complainant organization indicates that in February 2022 the Cameroon trade union movement established a trade union unified action platform called the Cameroon Workers' Forum (CAWOF), made up of eight of the twelve confederations operating in Cameroon today, namely: the CSP, also focal point and coordinator; the Cameroon Workers' Trade Union Confederation (CSTC); the Confederation of Autonomous Trade Unions of Cameroon (CSAC); the Cameroon Confederation of Free Trade Unions (USLC); the Cameroon National Trade Union Confederation Workers' Alliance (ENTENTE); the Cameroonian

Confederation of Labour (CCT); the Cameroon United Workers Confederation (CTUC); and the Confederation of Cameroon Workers Trade Unions (CCWTU).

164. The complainant organization alleges that on 1 May 2022, the CAWOF was faced with police deployed to prevent the organization of a rally on the occasion of the Labour Day celebration at the headquarters of the CSP, although the activity had been registered prior to the stipulated deadline, in accordance with article 3 of Act No. 90/55 of 19/12/1990 of the Act regulating public meetings and demonstrations. The CSP alleges that the headquarters of the organization was surrounded from 6 a.m. onwards by approximately 50 heavily armed police officers, preventing its president from reaching his office and prohibiting the activists from approaching the headquarters of the organization. The CSP also denounces a "manhunt" of the journalists and photographers who had come to cover the event.

165. The complainant organization indicates that in response to this provocation the activists from the member confederations of the CAWOF, who had turned out en masse for the occasion, decided to "oppose the administrative illegality, the republican legality" by way of a mobilization punctuated by songs and other actions of resistance, which eventually led to the police backing down and lifting the siege at about midday. It was only after their departure that the various activities scheduled could finally be held.

166. The complainant organization alleges that the authorities used the pretext of health restrictions associated with the COVID-19 pandemic to stop the demonstration being organized. According to the CSP, this is a misleading argument as other large gatherings were regularly authorized during the same period, starting with the Africa Cup of Nations in January 2022, the youth festival held on 11 February 2022 across the country, International Women's Day celebrated on 8 March 2022 across the country without restriction, and the National Day, celebrated on 20 May 2022 in the presence of the head of State and in all administrative regions of the country.

167. The complainant organization considers that the danger of COVID-19 is apparently only present for workers and trade union organizations in Cameroon, as it was only invoked on the occasion of the Labour Day celebrations to prevent any denunciation of abuse of authority and other rights violations experienced by workers in the country

B. The Government's reply

168. In its communication dated 22 June 2022, the Government indicates that during the preparations for the celebration of the 136th edition of Labour Day on 1 May 2022, prior tripartite consultations were held under the authority of the Minister of Labour and Social Security, following which it was decided that the workers' march could not take place owing to the health situation associated with the COVID-19 pandemic.

169. The Government states that the final format of the Labour Day celebrations was brought to the attention of the social partners and covered a variety of activities, including the establishment of occupational safety and health committees, a webinar on occupational health with the participation of the social partners, a tripartite live chat with the participation of the Minister of Labour and Social Security, a visit by the Minister to the headquarters of the trade union organizations located in Yaoundé, and a dinner discussion with trade union officials on the theme chosen for Labour Day, namely: "World of Work: Fight against COVID-19, protection of jobs and productivity".

170. The Government states that it is in this context that the CSP, acting on behalf of the CAWOF, submitted a notification of a public demonstration to be held on 1 May 2022 to the competent administrative authority, in which it was specified that it was to be held in the courtyard of the CSP headquarters. However, according to the Government, during the examination of this request it became clear that the CSP, disregarding the conclusions of the prior tripartite consultations, intended instead to organize demonstrations on the main thoroughfare of the district concerned and not in the courtyard of the CSP headquarters as indicated in the correspondence sent to the administrative authority. On this basis, the authority informed the CSP of its inability to issue a receipt of notification for 1 May 2022.

171. The Government indicates that the organizers deliberately decided to occupy the public street. Consequently, in order to maintain public order, the competent administrative authority took steps on the one hand to ensure the smooth flow of traffic on this important city thoroughfare and on the other to ensure the smooth running of this street rally.

172. The Government also indicates that "despite this temporary situation", the activities planned for 1 May 2022 proceeded according to plan. Thus, the Minister of Labour and Social Security visited the headquarters of the trade union confederations, including that of the CSP, where he was warmly welcomed by the trade union officials and workers gathered for the celebration. According to the Government, no trade union organization headquarters were blocked on 1 May 2022, no clashes with police were recorded, and no arrests were made. Finally, the Government notes that no legal action has been initiated by officials from the organizations concerned to challenge the administrative action taken in this case. The Government considers that the facts presented by the CSP are biased and that the allegations are fantastical.

C. The Committee's conclusions

173. *The Committee observes that the present case relates to allegations concerning the prohibition of a public demonstration on the occasion of the 1 May 2022 celebration due to the health situation associated with the COVID-19 pandemic, and the inappropriate deployment of police at the site of the rally planned for that day by the CSP.*

174. *The Committee notes that, according to the CSP, police were deployed on 1 May 2022 to prevent the organization of a rally on the occasion of the Labour Day celebration at the headquarters of the CSP, although the activity had been registered prior to the stipulated deadline, in accordance with prevailing legislation. The Committee observes that the CSP alleges in this regard that the headquarters of the organization was surrounded from very early in the morning by approximately 50 heavily armed police officers, preventing its president from reaching his office and prohibiting the activists from approaching the headquarters of the organization. The Committee notes that the complainant organization also denounces a "manhunt" of the journalists and photographers who had come to cover the event.*

175. *The Committee notes that the Government denies all the allegations presented, which it describes as "fantastical", indicating that: (i) the trade union organizations were duly informed of the format decided for the celebration of 1 May 2022 in view of the health crisis and that prior tripartite consultations had been held under the authority of the Minister of Labour and Social Security for this purpose; (ii) in this context, the CSP submitted a notification of a public demonstration to be held on 1 May 2022 to the competent administrative authority, in which it was specified that the demonstration was to be held in the courtyard of the CSP headquarters. However, during the examination of this request, it became clear that the CSP, disregarding the conclusions of the prior tripartite consultations, intended instead to organize demonstrations on the main thoroughfare of the district concerned and not in the courtyard of the CSP headquarters as indicated in the correspondence sent to the administrative authority, which led the authority to inform the CSP of its inability to issue a receipt of notification for 1 May 2022; (iii) as the organizers had deliberately* *decided to occupy the public street, the police were deployed to ensure the smooth flow of traffic on the thoroughfare in question and to maintain public order; (iv) the activities planned for 1 May 2022 then proceeded normally in accordance with the format decided. The Minister of Labour and Social Security visited the headquarters of the trade union confederations, including that of the CSP, where he was warmly welcomed by trade union officials and workers gathered for the celebration; (v) no trade union organization headquarters were blocked on 1 May 2022 in Cameroon, no clashes with police were recorded, no arrests were made, and no legal action has been initiated by officials from the organizations concerned to challenge the administrative action taken in this case.*

176. *The Committee notes the information provided by the Government concerning the refusal by the competent authority to authorize the gathering of CAWOF activists at the initiative of the CSP, due to the health situation and the measures taken in that regard. The Committee observes that, according to the Government, the trade union organizations agreed to the exceptional format planned for the celebration of 1 May 2022, while the information provided by the complainant, as the subject of the complaint itself, gives the impression that at the very least there was a misunderstanding between the parties regarding what had been agreed. The Committee observes that, according to the documents brought to its attention: (i) the request by the CSP sent to the competent authority on behalf of the CAWOF specifies that the public demonstration was to be held at the headquarters of the organization; (ii) the competent authority replied indicating that it was not in a position to issue the receipt of notification of the demonstration, as the festivities to mark the day had to be organized in small committees owing to the health situation and in accordance with the outcome of the consultations; and (iii) the Government, in its communication of 22 June 2022, states that the CSP was in fact planning to occupy the public street, but does not provide any evidence to substantiate this claim. The Committee also observes that the CSP and the CAWOF that it represents intended to go ahead with the public demonstration, with it not being possible to establish whether or not the intention was to occupy the public street.*

177. *The Committee notes that, while the reasons for the prohibition of the public demonstration related to COVID-19, as stressed by the Government, according to the CSP's allegations, to which the Government has not responded, restrictive measures of this kind were not taken on the occasion of other large gatherings, namely the Africa Cup of Nations (January 2022), the youth festival (11 February 2022), International Women's Day (8 March 2022), and the National Day (20 May 2022).*

178. *While noting the diverging versions of events presented by the Government and the complainant organization regarding the health situation, and considering that it is not for the Committee to evaluate the restrictions associated with the pandemic, the Committee recalls that the right to organize public meetings and processions, particularly on the occasion of May Day, constitutes an important aspect of trade union rights [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 212].*

179. *While duly noting the measures to impose limitations on the holding of public meetings, which, according to the Government, were accepted by the trade unions, the Committee recalls that these restrictions should fulfil strict criteria, satisfy the principles of necessity and proportionality, and be assessed on a case-by-case basis. The Committee regrets in this regard that the Government did not hold discussions with the CSP following its request to organize a public demonstration on 1 May 2022 in a manner that both respects the measures taken to ensure public order and takes into account the importance of organizing public meetings on May Day as a traditional form of trade union action.*

180. *With regard to the allegations concerning the deployment of police at CSP premises, and while noting the contradictory nature of the information brought to its attention, the Committee wishes to recall that the authorities should resort to the use of force only in situations where law and order is* *seriously threatened. The intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace. [see* ***Compilation****, para. 217.] The Committee also wishes to recall that a free and independent trade union movement can only develop in a climate free of violence, threats and pressure, and it is for the Government to guarantee that trade union rights can develop normally. [see* ***Compilation****, para. 87.]*

181. *Finally, regarding the allegations of a "manhunt" of journalists and photographers, the Committee observes that the complainant does not provide any evidence in support of such allegations. In view of these circumstances, the Committee will not pursue its examination of this matter.*

182. *In light of the above, the Committee invites the Government to take the necessary measures to ensure that workers' organizations can in future freely organize the meetings they wish to celebrate Labour Day, while respecting the measures taken to ensure public order.*

The Committee's recommendations

183. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee invites the Government to take the necessary measures to ensure that workers' organizations can in future freely organize the meetings they wish to celebrate Labour Day, while respecting the measures taken to ensure public order.

(b) The Committee considers that this case is closed and does not call for further examination.

Case No. 3397

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Colombia presented by the General Confederation of Labour (CGT)

Allegations: The complainant organization alleges that numerous anti-union acts and interference carried out by the enterprise. led to the judicial dissolution of the National Union of Workers of Gaseosas Lux S.A. (SINALTRALUX)

184. The complaint is contained in a communication of 30 October 2020 from the General Confederation of Labour (CGT).

185. The Government of Colombia sent its observations on the allegations in a communication of August 2021.

186. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

187. The complainant organization alleges that the National Union of Workers of Gaseosas Lux S.A. (SINALTRALUX) has been subjected to a series of anti-union acts by the enterprise Gaseosas Lux S.A.S. (hereinafter the enterprise), which led to its judicial dissolution in 2018. The complainant organization states in particular that: (i) SINALTRALUX is a first-level and enterprise trade union that was established in 1959; (ii) the trade union and the enterprise concluded a collective agreement on 24 April 2007 for the period 2007–12; (iii) the collective agreement has been duly updated, in accordance with the provisions of sections 476 and 478 of Colombia's Substantive Labour Code.

188. The complainant organization states that, in July 2015, the enterprise initiated a procedure to dissolve and liquidate the trade union and to cancel its inclusion in the trade union register through legal proceedings before Labour Court 35 of the Bogotá Circuit, claiming that the "withdrawal of members" had reduced the trade union's membership to fewer than 25, "until finally there were no members left in the trade union in question". The organization claims that the reduction in membership was not a consequence of voluntary withdrawals but rather the result of the mass dismissal of workers who were members of the trade union or of its executive board, including the president of SINALTRALUX, Julio César Acero Palacios.

189. The complainant organization states that, in both the first and the second instances (decision of Labour Court 35 of the Bogotá Circuit of 17 June 2016 and ruling of the Bogotá High Court of 28 October 2016), the courts rejected the application for the dissolution of the trade union and confirmed that the collective agreement signed by the trade union and the enterprise in 2007 was applicable.

190. The complainant organization adds that, as a result of the enterprise's failure to accept the trade union and in view of the legal proceedings and complaints brought in this regard, on 8 October 2015, a representative of the enterprise, representatives of UNISINTRAGAL (another trade union present in the enterprise), representatives of the national social partners, a representative of the Ministry of Labour and a representative of the ILO met in the framework of the Special Committee for the Handling of Conflicts Referred to the ILO (CETCOIT) and an agreement was signed, in which the parties undertook to establish a permanent dialogue in which the CETCOIT would act as observer and mediator. Under the agreement, the Ministry of Labour also agreed to carry out a detailed study into the legal status of SINALTRALUX.

191. The complainant organization claims that, despite the above-mentioned dialogue process, the enterprise continued to deny the trade union's existence and to refuse to apply the collective agreement (in particular article 143, which provides that the enterprise will conduct its permanent operations with 40 unionized workers on indefinite contracts and 80 workers on fixed-term contracts) and carried out further acts in violation of trade union rights and the trade union's statutes. It states that, in view of this situation, administrative and legal proceedings were initiated as follows: (i) in 2016, complaints were filed with the Ministry of Labour for violation of freedom of association and discrimination; and (ii) on 31 January 2017, an action was lodged for the protection of constitutional rights (tutela) for violation of freedom of association.

192. The complainant organization states in this respect that Municipal Small Claims Labour Court 11 of Bogotá, which was designated to examine the tutela action, found in favour of the trade union as follows: its decision was "to protect the fundamental rights of SINTRALUX to freedom of association and to due process which have been violated by the enterprise and to require the enterprise concerned to cease immediately the discriminatory acts and omissions against the members of the trade union and any persons affiliated to it". The complainant organization states that this decision was upheld in the second instance by Labour Court 5 of the Bogotá Circuit.

193. The complainant organization then refers to the events since 2017 leading to the judicial dissolution of the trade union. It states in this regard that: (i) the last main executive board of SINALTRALUX was registered and the registration documents deposited (Certificate No. JD-070) on 1 September 2017 and was composed as follows: Julio César Acero Palacios (President); Yefinson Gill Gutiérrez (Vice-President); Leonardo Rodriguez Ruiz (General Secretary); Reinel Ernesto Castillo Torres (Treasurer); Jhon Fair Prado Cajamarca (Adviser); Edison Fabian Sanabria Yafia (First Deputy); Manuel Fernando García Aya (Second Deputy); Juan Carlos Bustos Rozo (Third Deputy); Gelman Trujillo Rojas (Fourth Deputy); and Mauricio Moreno Norato (Fifth Deputy); (ii) despite the fact that, because of previous dismissals, SINALTRALUX had fewer than 40 members at the beginning of 2017 and that, according to the collective agreement, those members should have had indefinite contracts, the enterprise laid off most of the trade union's members upon the expiry of their fixed-term contracts; (iii) the enterprise forced the trade union to appoint a new vice-president, who sided with the enterprise, preventing any new members from joining the trade union and facilitating, in exchange for compensation, the resignation of the last members so that the requirements necessary to request the judicial dissolution of the trade union were met; (iv) on 9 November 2017, the enterprise filed another application to the courts, this time in the municipality of Funza, to dissolve the trade union on the grounds that it did not have at least 25 members, which is the minimum required by national law to establish a trade union and is grounds for dissolution under the Substantive Labour Code; and (v) on 13 February 2018, the Civil Circuit Court of Funza ordered the dissolution of the trade union on that grounds that it had fewer than 25 members.

194. The complainant organization claims that the president of the trade union, Julián César Acero Palacios, and the other active trade union members were never informed about the aforementioned dissolution procedure, which is why the president was able to submit a response to the application only on 8 May 2018, after the decision had been handed down. For this reason, on 14 August 2018, the trade union filed a complaint for fraud with the Funza Public Prosecutor's Office.

195. The complainant organization then refers to the employment situation of Julián César Acero Palacios, president of SINALTRALUX. It states in this regard that: (i) following his dismissal, Mr Acero Palacios filed a petition for reinstatement on the grounds that his trade union immunity had been violated; (ii) on 23 April 2018, Labour Court 20 of the Bogotá Circuit declared that the complainant was covered by the 2007–12 collective agreement and, therefore, by virtue of article 143 thereof, he benefited from an indefinite employment contract and, accordingly, the enterprise was ordered to reinstate the worker and to pay him the wages owed; (iii) this decision was later upheld by the Bogotá High Court; (iv) the tutela action brought by the enterprise against the aforementioned court decisions was rejected by the Labour Cassation Chamber of the Supreme Court; (v) in the light of the above, the enterprise was obliged to reinstate the president of the trade union on 11 August 2018 at 9.15 a.m.; and (vi) however, at 9.23 a.m. that day, Mr Acero Palacios received another letter terminating his contract.

196. The complainant organization then refers to another criminal complaint filed by the trade union against the enterprise for procedural fraud and for having acted in bad faith in the sale of the trade union's headquarters in 2011, in that the funds received were not recorded in the trade union's account and the sale was made without prior authorization from the assembly with the complicity of a former president of the union, Manuel Alberto Casallas, who is alleged to have personally benefited from this transaction.

197. The complainant organization also refers to the request made to the Office of the Attorney-General to follow up on all the claims and complaints filed with the Ministry of Labour. It states in this regard that: (i) as a result of this request, a working group was set up in which the Ministry of Labour undertook to put in place the measures necessary for the prevention, monitoring and control of the cases and to report on them; (ii) after several requests and three years after the initial claims and complaints were filed, the Ministry of Labour issued a report on the investigations carried out into the situation of three workers for alleged non-compliance with occupational safety and health regulations. The complainant organization regrets the delays by the Ministry of Labour in examining the different claims and complaints.

198. Regarding the efforts by SINALTRALUX to secure the involvement of the CETCOIT in settling the present case, the complainant organization states that this body reported in November 2019 that it could examine cases only if there was a willingness on both sides to settle the dispute through dialogue, which is why it was not competent to examine the subject matter of the case in question.

199. In sum, the complainant organization claims that the enterprise: (i) even before the court's decision to dissolve the trade union, refused to deduct the union dues of the workers who were members of SINALTRALUX; (ii) refused to implement the collective agreement signed in 2007; (iii) ordered the mass dismissal of union members and officials so that the union's membership would fall below the threshold of 25 members, thereby also violating the clause in the collective agreement concerning the indefinite duration of these employment contracts; and (iv) arranged with the few remaining members for the union to disappear, by preventing any new members from joining it, facilitating in exchange for compensation the resignation of the last remaining members, and fraudulently requesting the judicial dissolution of the union. The complainant organization notes with regret that the different administrative and judicial procedures that were taken were not able to prevent the dissolution of the union as a result of the anti-union acts carried out by the enterprise and the dismissal of most of its members. In the light of the above, the complainant organization asks first for the reinstatement of all the union officials and members who were dismissed without just cause, or at least for them to receive compensation, and, second, for the return of the union's property that was fraudulently disposed of through an illegal sale in 2011.

B. The Government's reply

200. The Government sent its response to the present complaint in a communication of August 2021. The Government refers first to a series of events, presented in chronological order: (i) SINALTRALUX is a first-level trade union that was established in 1959; (ii) in 2011, the members of the union decided to dissolve and liquidate the union in question; (iii) in 2012, the enterprise denounced the last collective agreement, which had been signed with SINALTRALUX in 2007; (iv) in 2015, the enterprise filed an application to the courts for the dissolution of the union, considering that it had fewer than 25 members; (v) in both the first and the second instances, the courts rejected the application for the dissolution of the union and ordered the employer to apply the collective agreement signed with the union in 2007; (vi) on 31 January 2017, the union filed a tutela action for failure to apply the collective agreement, obtaining decisions in its favour in both the first and the second instances; (vii) on 1 September 2017, the Ministry of Labour registered the union's new executive board, the president of which was Julio César Acero Palacios; (viii) the same year, the enterprise filed another application to the courts for the dissolution of the union on the grounds that it had fewer than 25 members; (ix) on 13 February 2018, the Civil Court of Funza ordered the dissolution and liquidation of the union on the grounds that it had fewer than 25 members; (x) the president of the union responded belatedly to the legal action, after the court had issued its decision; (xi) on 25 May 2018, the union filed a tutela action against the ruling in question, which was rejected by the Court of the Judicial District of Cundinamarca; (xii) on 4 July 2018, the Labour Cassation Chamber of the Supreme Court upheld that court's decision; and (xiii) on 3 April 2018, the Ministry of Labour ordered the cancellation of the trade union registration of SINALTRALUX.

201. With regard to the complainant organization's allegations concerning various irregularities associated with the dissolution of the trade union, the Government states that: (i) the procedure to dissolve a trade union owing to insufficient membership requires an executory court order; (ii) according to case law, a reduction in membership that is only temporary and that has subsequently been resolved is not sufficient to justify dissolution; (iii) the complainant organization does not provide any evidence that the reduction in the membership of SINALTRALUX was the result of the mass dismissal by the enterprise of workers who were members of the trade union; and (iv) neither does the complainant organization provide evidence of the alleged failure to notify the union president of the legal action for dissolution, considering that in Colombia it is compulsory to notify the parties personally or to issue a notice of the decisions taken in a procedure or investigation.

202. The Government also provides information on the administrative labour complaints filed by SINALTRALUX. The Government states that, according to the Ministry of Labour's database, which was consulted on 13 August 2021, there are two ongoing investigations against the enterprise, one concerning trade union rights and the other relating to allegations of non-compliance with occupational safety and health standards, which does not fall within the competence of the Committee on Freedom of Association.

203. The Government then refers to the involvement of the CETCOIT in the dispute between the trade union and the enterprise. The Government states in this respect that: (i) on 13 July 2015, another trade union present in the enterprise, UNISINTRAGAL, established on 17 May 2015, requested the intervention of the CETCOIT in respect of the difficulties encountered since its establishment (allegations of dismissals, pressure to prevent new members from joining and obstacles to collective bargaining); (ii) in the agreement reached on 8 October 2015 in respect of the UNISINTRAGAL case, the parties requested the Ministry of Labour to carry out an analysis of the legal status of SINALTRALUX and to report to the parties in that regard in the framework of the CETCOIT; (iii) at the first session to follow up on the agreement of 8 October, which was held on 6 November 2015, the representatives of the enterprise expressed reservations about SINALTRALUX, a trade union that had been liquidated on 2 November 2011 and reactivated by retirees who were no longer working in the enterprise and that had a new executive board composed of staff who were not union members; (iv) in view of the reservations expressed by the enterprise, the Ministry of Labour was requested to provide a legal opinion; (iv) in its legal opinion of 7 January 2016, the Ministry of Labour stated that an employer cannot be requested to apply the collective agreement of a liquidated trade union to new workers; nevertheless, workers have the right to organize, which means that they can set up a new union and present a new list of demands; (vi) in a second follow-up session held on 7 March 2017, which focused on the concerns of UNISINTRAGAL, UNISINTRAGAL stated that the right to freedom of association continued to be violated, even though in certain respects the labour relationship had improved since there had been a change of regional human resources manager; UNISINTRAGAL's concern was that its membership would decrease as a result of the termination of fixed-term employment contracts; (vii) in May 2019, the CGT requested the intervention of the CETCOIT to address the situation of SINALTRALUX, but the CETCOIT, after analysing the file, concluded that the issues fell under the competence of other authorities.

204. With regard to the criminal proceedings filed by SINALTRALUX for fraud in connection with the sale of the union's premises, the Government submits the information provided on 25 August 2021 by the Office of the Attorney-General, according to which: (i) the investigation in question is under way and is being conducted by the judicial police; and (ii) there are several suspects and once the material evidence mentioned in the last decision is obtained, action will be taken accordingly.

205. With regard to the allegations by the complainant organization concerning the refusal by the enterprise to deduct ordinary union dues, the Government states that: (i) the information provided by the enterprise includes a record of the deductions of union dues applied for 2017 to workers who were members of SINALTRALUX; and (ii) no deductions of union dues have been made since the dissolution of the union was ordered by the court. With regard to the allegation that the collective agreement was not applied to workers who were members of the union, the Government states that: (i) insofar as the trade union in question no longer exists, case law applies, according to which the benefits of the collective agreement continue to be valid for workers who belonged to the union and had an active employment relationship with the enterprise at the time the court decision was issued, as those benefits became part of their employment contracts; however, the situation is not the same for workers recruited after the court decision was issued; (ii) accordingly, it was acknowledged by the court that the collective agreement applied to the president of the union's executive board, Julio César Acero Palacios; (iii) according to the enterprise, 20 workers who were members of the union at the time of its dissolution are still on its payroll, and three of them are members of the executive board that was registered in 2017; and (iv) the complaint does not include the names of the workers who are allegedly in this situation and who, in claiming recognition of their rights, should apply to the judicial authority in order to settle the matter.

206. Regarding the alleged mass dismissal of workers who were members of the trade union, the Government again states that: (i) there is no evidence that the enterprise did actually commit the act in question and there is no list of the workers allegedly dismissed en masse; (ii) the enterprise maintains that the loss of workers was due to retirements or voluntary departures; (iii) it will be for the court to define the rights and to order the enterprise to pay the wages owed and/or to reinstate the workers, if so decided; (iv) the enterprise sent copies of workers' letters of resignation, voluntary conciliation agreements signed at the Ministry of Labour and handwritten texts by workers concerning their withdrawal from the union; and (v) in the light of the above, it is not possible to conclude that the enterprise carried out the mass dismissal of its workers and thereby violated the right to freedom of association and the respective ILO Conventions.

C. The Committee's conclusions

207. *The Committee notes that the present case concerns the judicial dissolution of a first-level trade union, based on the reduction in its membership to a number below the minimum required by law, as requested by an enterprise in the beverages sector. The Committee notes that the complainant organization alleges primarily that: (i) the reduction in membership is the result of a long series of anti-union acts carried out by the enterprise, including the fraudulent sale of the union's premises* *in 2011, mass dismissals, ploys to prevent new members from joining and a refusal to apply the collective agreement signed with the union in 2007; and (ii) the legal action to dissolve the union gave rise to a series of fraudulent acts that prevented the union from exercising its right to due process. The Committee notes that, for its part, the Government states primarily that: (i) the judicial dissolution of the union followed all legal channels and was based on the finding that the union no longer had the minimum number of members required by law; (ii) the complainant organization does not provide any evidence that the judicial dissolution was preceded by mass dismissals or that the union's right to due process was violated throughout the legal proceedings; and (iii) some of the administrative labour complaints mentioned by the complainant organization did not relate to freedom of association but concerned compliance with occupational safety and health regulations.*

208. *The Committee notes that the following facts emerge from the information provided by the parties: (i) SINALTRALUX is a first-level trade union that was established in 1959; (ii) in 2012, the enterprise denounced the last collective agreement, which had been signed with the union in 2007; (iii) in 2015, the enterprise filed an application to the courts for the dissolution of the union, considering that it had fewer than 25 members; (iv) in both the first and the second instances, the courts rejected the application for the dissolution of the union and ordered the employer to apply the collective agreement signed with the union in 2007; (v) in 2016, the union filed complaints with the Ministry of Labour for violation of freedom of association and failure to apply the collective agreement, as well as complaints regarding occupational safety and health matters; (vi) on 31 January 2017, the union filed a tutela action for failure to apply the collective agreement, obtaining decisions in its favour in both the first and the second instances; (vii) on 1 September 2017, the Ministry of Labour registered the union's new executive board, the president of which was Julio César Acero; (viii) the same year, the enterprise filed another application to the courts for the dissolution of the union on the grounds that it had fewer than 25 members; (ix) on 13 February 2018, the Civil Court of Funza ordered the dissolution and liquidation of the union; (x) the president of the union responded belatedly to the legal action, after the court had issued its decision; (xi) the union filed two criminal complaints with the Office of the Attorney-General, one in 2016 concerning alleged fraud in relation to the sale of the union's premises in 2011 and the other in 2018 concerning alleged fraud in the filing of the legal action for dissolution in 2017; and (xii) the CETCOIT was apprised of the conflict between the enterprise and SINALTRALUX, first in 2015 in the context of a dispute between the enterprise and another union present at the enterprise and again in 2019, with no consensual settlement of the disputes being achieved.*

209. *As to the facts of the case prior to 2017 (the year in which the second application for judicial dissolution was filed), the Committee notes that it appears from the above and from the many annexes provided by the parties – in particular the texts of several judicial and administrative decisions – that: (i) the union experienced a significant drop in its membership in 2011, a period in which the enterprise experienced a reduction in its workforce (the enterprise submitted to the Government a list of voluntary resignations signed that year by workers who left the enterprise in exchange for severance payments) and the time when the union premises was sold; (ii) the union was reactivated in 2015, which gave rise to disputes with the enterprise not only about the applicability of the collective agreement signed in 2007, but also about the validity of the new memberships registered and about the enterprise's obligation to apply the corresponding deductions of union dues; (iii) against this backdrop, both parties brought various actions (the enterprise filed the initial legal action for dissolution and the trade union filed administrative labour complaints in 2016 and tutela action the same year for violation of freedom of association); (iv) the various decisions in this regard, issued both by the courts and by the Ministry of Labour, were in favour of the union and, although the authorities did not find evidence of anti-union dismissals, they did find that anti-union acts had taken place, including acts preventing new members from joining the union and acts of anti-union discrimination.*

210. *With regard to the judicial dissolution of the union on 13 February 2018 and the circumstances leading up to it, the Committee notes, on the one hand, the allegations by the trade union that the dissolution was the result of mass dismissals and that the legal action for dissolution brought on 9 November 2017 was coupled with a number of cases of fraud that prevented the trade union from exercising its right to due process insofar as the president of the trade union, who was not at the enterprise because he had been dismissed, was not notified of the dissolution action, while the vice-president of the trade union allegedly colluded with the enterprise to expedite the dissolution of the union. The Committee further notes that the Government stated that: (i) from the documents provided by the enterprise, it appears that the union had only 20 members at the time it was dissolved and that a significant number of members had voluntarily withdrawn from it; (ii) the complainant organization did not provide any evidence of the mass dismissal of union members or of a failure to provide notification of the judicial dissolution proceedings; and (iii) the tutela action filed against the decision concerning judicial dissolution was dismissed in both the first and the second instances by the Labour Cassation Chamber of the Supreme Court.*

211. *Before examining the specific facts of the case, the Committee wishes to recall that it has already had occasion to examine situations involving the judicial dissolution of trade unions whose membership has fallen below the minimum required by law. In one such case, the Committee considered that a legal provision which requires the dissolution of a trade union if its membership falls below 20 or 40, depending on whether it is a works union or an occupational union, does not in itself constitute an infringement of the exercise of trade union rights, provided that such winding up is attended by all necessary legal guarantees to avoid any possibility of an abusive interpretation of the provision; in other words, the right of appeal to a court of law [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 983]. Furthermore, in a case in which it concluded that the reduction in the number of union members to below the legal minimum of 25 was the consequence of anti-trade union dismissals or threats, the Committee requested the government, should it be concluded that these were anti-trade union dismissals and that the withdrawal from union membership of trade union leaders resulted from pressure or threats from the employer, to impose the penalties provided by the legislation, reinstate the dismissed workers in their jobs and permit the dissolved trade union to be reconstituted [see* ***Compilation****, para. 985].*

212. *With regard to the legislative context of the judicial dissolution being examined in the present case, the Committee notes that judicial dissolution on the grounds of a reduction in membership to fewer than 25 members is covered by section 401 of the Substantive Labour Code, which provides that the applicable process for dissolution shall be that set out in section 380 of the Substantive Labour Code. The Committee notes in this respect that paragraphs (e), (f) and (g) of section 380 provide that: the union, from the time of notification, has a period of five (5) days to respond to the complaint and to submit any evidence deemed relevant; once this period has expired, the court shall issue a decision, taking into account the evidence made available within that period of five (5) days; the court's decision may be the subject of an appeal, with suspensive effect, before the respective high court of the judicial district, which shall take a final decision within five (5) days of receipt of the case file. No appeal may be lodged against the high court's decision. The Committee notes that, in its last observation concerning the application of Convention No. 87 by Colombia, the Committee of Experts on the Application of Conventions and Recommendations requested the Government to indicate the reasons that could justify the application of the very short procedural time limits set out in section 380(2) of the Substantive Labour Code.*

213. *As to the factual context of the court's decision of February 2018 to dissolve the union, the Committee notes that it appears from the information and annexes provided by the parties that: (i) the enterprise submitted to the Government handwritten letters concerning 20 withdrawals from the* *trade union dated from 30 July to 2 December 2017; (ii) the complaint and the annexes thereto do not contain specific indications or evidence of the mass dismissal of union members; (iii) it is, however, established that the president of the union, Mr Acero, was dismissed on 1 April 2017 and that his reinstatement, ordered in 2018 by court decisions in both the first and the second instances, led to the issuance by the court of an executive order against the enterprise of 10 December 2018; and (iv) by Decision No. 002193 of 26 June 2019, upheld by Decision No. 000716 of 18 February 2020 in relation to an administrative complaint filed by the trade union in 2016, the Territorial Directorate of Bogotá of the Ministry of Labour imposed a sanction on the enterprise upon "finding the existence of obstacles preventing workers interested in joining the trade union from doing so".*

214. *Although it does not have the text of the court decision ordering the dissolution of the trade union, the Committee further notes that it appears from Ruling No. 10112-2018 of the Labour Chamber of the Supreme Court of 4 July 2018, which dismissed the tutela action brought by the trade union against that decision, that the president of the trade union was not officially notified of the dissolution proceedings because at the time he did not have a relationship with the enterprise as a result of his dismissal, as mentioned in the paragraph above. '*

215. *Lastly, the Committee notes that the trade union filed two criminal complaints with the Office of the Attorney-General, one in 2016, concerning alleged fraud in respect of the sale of the union's premises in 2011 and the other in 2018 concerning alleged fraud in the filing of the judicial proceedings for dissolution in 2017. The Committee notes that the Government reported that the investigations relating to the criminal proceedings of 2016 were ongoing and notes that it has not received any information on the handling of the criminal proceedings initiated in 2018. In the light of the foregoing, and recalling that the dissolution of a trade union is a serious act that must be attended by all the necessary guarantees, the Committee regrets that it is not in a position to verify whether all the background information, in particular the judicial and administrative decisions cited in the present conclusions concerning the situation of compliance with trade union rights within the enterprise, was taken into account by the court that ordered the dissolution of SINALTRALUX. In particular, the Committee regrets that Decision No. 002193 of the Ministry of Labour, which found that there were obstacles to trade union membership, was issued three years after the filing of the corresponding complaint and, therefore, after the court decision declaring the dissolution of the trade union. In these circumstances, the Committee requests the Government to inform it of the outcome of the investigations in connection with the criminal proceedings brought by the trade union, and expects these to be concluded as soon as possible. In the event that the investigations identify the existence of fraud against the trade union, the Committee stresses that the rights of the union should be restored; and noting that the Government has not provided its observations on the dismissal of Mr Acero, the president of the trade union, the Committee further requests the Government to provide information on the employment situation of Mr Acero and to ensure that the various judicial decisions ordering his reinstatement have been effectively implemented.*

216. *In the light of the foregoing and especially in the light of the judicial and administrative decisions determining the existence of violations of trade union rights, the Committee requests the Government to take the necessary measures to ensure in the future full respect for freedom of association in the enterprise in question.*

The Committee's recommendations

217. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to inform it of the outcome of the investigations in connection with the criminal proceedings brought by the trade

union and expects these to be completed as soon as possible. Should the investigations identify the existence of fraud against the trade union, the Committee emphasizes that the rights of the trade union should be restored.

(b) The Committee requests the Government to provide it with information on the employment situation of the union's president, Mr José Acero, and to ensure that the judicial decisions ordering his reinstatement have been effectively implemented.

(c) The Committee requests the Government to take the necessary measures to ensure in the future full respect for freedom of association in the enterprise in question.

Case No. 2923

Interim report

Complaint against the Government of El Salvador presented by
– the Union of Municipal Workers of Santa Ana (SITRAMSA) and
– the Autonomous Confederation of Salvadorian Workers (CATS)

Allegations: Murder of a trade union leader

218. The Committee last examined this case at its March 2021 meeting, when it presented an interim report to the Governing Body [see 393rd Report, paras 355–366, approved by the Governing Body at its 341st Session (March 2021)]. [3]

219. The Government sent its observations in a communication dated 8 October 2021.

A. Previous examination of the case

220. At its March 2021 meeting, the Committee made the following recommendations [see 393rd Report, para. 366]:

(a) The Committee urges the Government and all the competent authorities to make in a coordinated manner, as a matter of urgency and priority, all the necessary efforts to expedite the investigations under way in order to identify and punish without delay both the instigators and the perpetrators of the murder of Mr Victoriano Abel Vega. In particular, the Committee urges the Government to take the necessary measures so that the competent authorities are provided with the required human and financial resources and that they ensure that when conducting the investigations, special attention is paid to exchanging information with the complainant organizations in the present case with a view to clarifying whether this crime has had an anti-union nature. Firmly hoping that tangible progress will be made in this regard, the Committee asks the Government to keep it informed of all developments in the investigation and criminal proceedings.

(b) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

[3] GB.341/INS/12/1, paras 355–366.

B. The Government's reply

221. In its communication of 8 October 2021, the Government indicates that on 19 May 2021 it asked the Public Prosecutor of the Republic to reopen the file related to the murder of Mr Victoriano Abel Vega, general secretary of the Union of Municipal Workers of Santa Ana (SITRAMSA), in accordance with section 293(2) of the Code of Criminal Procedure, which states that: "the public prosecutor may, ex officio or at the request of a party, reopen the case until the investigation has been exhausted when new evidence or proof emerges that nullifies the reasons for which it was closed, unless the public action has been converted…". The Government indicates that this request was made to exhaust the investigation, take the necessary measures to uncover the truth and identify the perpetrators.

222. The Government states that on 5 October 2021, the Public Prosecutor of the Republic indicated that the investigation remains open. The Government also states, as indicated by the Specialized Prosecutorial Unit for Extortion and Organized Crime, that the investigation into suspects for the offence of aggravated homicide (section 129 of the Criminal Code) against Mr Victoriano Abel Vega was reopened and that directives have been issued to the Central Investigation Division of the National Civil Police of El Salvador to interview possible informants concerning the homicide and prepare the corresponding reports.

C. The Committee's conclusions

223. *The Committee recalls once again that the case refers to the murder, on 16 January 2010, of Mr Victoriano Abel Vega, general secretary of SITRAMSA, who, according to the complainant organizations, had already received death threats for his union activities.*

224. *The Committee takes note of the Government's indication that, in May 2021, the Ministry of Labour and Social Welfare requested that the Public Prosecutor of the Republic reopen the file on the murder of Mr Victoriano Abel Vega, general secretary of SITRAMSA, in order to conclude the investigation, take the necessary measures to uncover the truth and identify the perpetrators. The Committee also takes note that the Government conveyed the information provided by the Public Prosecutor of the Republic in October 2021, which indicate that the Specialized Prosecutorial Unit for Extortion and Organized Crime reopened the investigation into the suspects for aggravated homicide (section 129 of the Criminal Code) against Mr Victoriano Abel Vega and that directives have been issued to the Central Investigation Division of the National Civil Police of El Salvador to interview possible informants concerning the homicide and prepare the corresponding reports.*

225. *The Committee regrets to note that, in spite of repeated requests made by the Ministry of Labour and Social Welfare to the Public Prosecutor of the Republic to shed light on the case, it was closed without the perpetrators being identified or punished and later reopened for further investigation at the request of the Ministry of Labour and Social Welfare. The Committee deplores that, more than 13 years since the murder of Mr Victoriano Abel Vega, no tangible progress has yet been made towards identifying and punishing the perpetrators of this serious crime. The Committee is obliged therefore to recall once again that it is important that all instances of violence against trade union members, whether these be murders, disappearances or threats, are properly investigated. Furthermore, the mere fact of initiating an investigation does not mark the end of the Government's work; rather, the Government must do all within its power to ensure that such investigations lead to the identification and punishment of the perpetrators [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 102].*

226. *The Committee also observes that, as indicated by the Government, possible informants will be interviewed as part of the murder investigations, and in view of the different lines of investigation* *indicated by the Government in the previous examination of the case (of which two are linked to Mr Victoriano Abel Vega's union activities, and the most probable theory is that Mr Vega was murdered by accident by gang members that were attempting to murder another municipal worker who was a witness in another homicide case), the Committee further recalls that the Government is under a responsibility to take all necessary measures to have the guilty parties identified and punished – in particular by ensuring that witnesses, who are crucial for the successful identification and prosecution of suspects, are effectively protected – and to successfully prevent the recurrence of human rights violations. Even in the absence of a formal filing of charges, each case should be thoroughly investigated and, where witnesses have come forward, appropriate and adequate protection should be provided [see* ***Compilation****, para. 97].*

227. *In the light of the foregoing, the Committee firmly urges the Government and all the competent authorities to make, in a coordinated manner and as a matter of urgency and priority, all the necessary efforts to expedite and conclude the investigations under way in order to identify and punish as soon as possible both the instigators and the perpetrators of the murder of Mr Victoriano Abel Vega, while ensuring the protection of all witnesses who could be instrumental in the resolution of the case. In particular, the Committee urges the Government to take all appropriate measures so that the competent authorities are provided with the required human and financial resources and ensure that when conducting the investigations, special attention is paid to exchanging appropriate information with the complainant organizations in the present case with a view to clarifying whether this crime is of an anti-union nature. Firmly expecting that tangible progress will be made in this regard, the Committee requests the Government to keep it informed of any progress in the investigation and criminal proceedings.*

The Committee's recommendations

228. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee, deploring the absence of tangible progress towards the resolution of the case more than 13 years since the murder, firmly urges the Government and all the competent authorities to make, in a coordinated manner and as a matter of urgency and priority, all the necessary efforts to expedite and conclude the investigations under way in order to identify and punish as soon as possible both the instigators and the perpetrators of the murder of Mr Victoriano Abel Vega, while ensuring the protection of all witnesses who could be instrumental in the resolution of the case. In particular, the Committee urges the Government to take all appropriate measures so that the competent authorities are provided with the required human and financial resources and that they ensure that when conducting the investigations, special attention is paid to exchanging appropriate information with the complainant organizations in the present case with a view to clarifying whether this crime is of an anti-union nature. Firmly expecting that tangible progress will be made in this regard, the Committee requests the Government to keep it informed of any progress in the investigation and criminal proceedings.

(b) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

Case No. 3363

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Guatemala presented by
- **the Workers' Union of Frito-Lay Company Ltd of Guatemala (SINTRAFRITOLAY-GUA) and**
- **the Workers' Union of GFLG Services Company Ltd (SITRA GFLG)**

supported by
- **the Confederation of Trade Union Unity of Guatemala (CUSG)**

Allegations: The complainant organizations allege anti-union acts including dismissals, disciplinary suspensions, denial of access to workplaces for union leaders, failure to comply with reinstatement orders, interference by the employer, changes in conditions of work, and repression on the part of enterprises in the food sector

229. The complaint is contained in communications dated 7 March, 24 May, 7 and 21 June, 11, 22 and 26 July and 10 August 2019 presented by the Workers' Union of Frito-Lay Company Ltd of Guatemala (SINTRAFL-GUA) and the Workers' Union of GFLG Services Company Ltd (SITRA GFLG), supported by the Confederation of Trade Union Unity of Guatemala (CUSG) on 21 June 2019.

230. The Government of Guatemala sent its observations on the allegations in communications dated 6, 9, 10 and 23 September, 7 October and 18 and 23 December 2019, 14 January 2020, 15 April 2021, 16 December 2022, and 25 and 27 April 2023.

231. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

232. SINTRAFL-GUA, established on 18 August 2016, and SITRA GFLG, established on 1 December 2016, claim that they represent sales workers at the enterprises Frito Lay Company Ltd of Guatemala (hereinafter: enterprise 1) and GFLG Services Company Ltd (hereinafter: enterprise 2), which are part of the PepsiCo corporation (hereinafter: the corporate group or the enterprises) dedicated to the manufacture and distribution of food, and that at the time the complaint was presented these unions had 110 and 340 members, respectively.

Allegations concerning acts of interference and anti-union discrimination

233. SINTRAFL-GUA claims that it presented its proposed collective agreement to the General Labour Inspectorate on 31 March 2017. This trade union alleges that after the 30-day period established by section 51 of the Labour Code for direct negotiations had elapsed, and having received no response from the employer, it brought a judicial action concerning an economic and social collective dispute on 26 July 2017. The economic and social collective dispute was assigned to the Fourteenth Labour and Social Security Court (case file No. 01179-2017-8560). Similarly, SITRA GFLG claims that on 17 October 2017 it presented its proposed collective agreement to the General Labour Inspectorate, which sent a notification regarding the proposed agreement to the union and the corresponding enterprise on 21 November 2017. This union alleges that up to the date when the complaint was presented to the Committee (7 March 2019) it had not received any response from the employer regarding its proposed collective agreement. SITRA GFLG brought two economic and social collective disputes before the labour courts on 15 March and 20 May 2019 (case files Nos 01173-2019-02619 and 01173-2019-04484, respectively).

234. The complainant organizations allege that they had recourse jointly to the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining, in which two meetings were held with the employers (25 October and 10 November 2017). The complainants indicate that at the second meeting they presented a proposal to the enterprises to negotiate a single collective agreement, but no response was received.

235. The complainants allege specifically that the enterprises: (i) have refused to settle the dispute through collective bargaining, arguing low sales and lack of profits; (ii) have made various investments, including the purchase of vehicles, which, according to the complainants, is an indication that the enterprises have made profits; and (iii) are unwilling to engage in dialogue or collective bargaining.

Allegations concerning acts of interference and anti-union discrimination

236. The complainants claim that the enterprises have offered benefits to unionized workers in exchange for quitting union membership (for example, transferring them to a route with better sales in order to earn higher wages), and that they have prepared a form to facilitate withdrawal from union membership. The complainants also allege that: (i) the enterprises threaten persons who do not give up their union membership with reprisals in the form of changes to their conditions of work (such as reductions in customer numbers in their work routes); (ii) the enterprises have pressurized unionized workers with verbal attempts at dismissal and have asked them to sign a document terminating their employment contracts by mutual consent and if the workers refuse to sign they are suspended from work for an indefinite period; and (iii) the enterprises are seeking to reduce the number of union members so that the unions cannot fulfil the legal requirements for engaging in collective bargaining. The complainants also claim that newly recruited workers are given better sales routes and other privileges unlike union members, to whom the enterprises deny access to social security facilities or who they oblige to make up for days of sick leave with rest days, public holidays and Sundays to cover the deficit in sales and working time.

237. The complainants allege that the enterprises seek to intimidate union members with various actions such as administrative suspensions. SITRA GFLG alleges that it brought a judicial action on 12 September 2018 (case file No. 01215-2018-02178) relating to the suspension of 18 unionized workers (some of whom have been suspended for more than two years). SITRA

GFLG indicates that a hearing was scheduled for 30 October 2019, that is to say 13 months after the judicial action was brought. Furthermore, the complainants allege the following specific cases relating to anti-union suspensions:

(a) Mr Werner Salomón Barrios García, SINTRAFL-GUA leader and advisory board member, who was suspended from work for eight days without pay (on two occasions in June and July 2019) without the due process indicated in the internal company regulations being followed, including the right to a hearing and to representation by the leaders of his union.

(b) Mr Yonny Fernando de la Cruz, SINTRAFL-GUA leader and advisory board member, who was the subject of an administrative disciplinary procedure by enterprise 1 without his presence, entailing financial losses, and resulting in his suspension from work in July 2019.

(c) Mr Alejandro Beltrán and Mr Julio Audelino Morales Pineda, SITRA GFLG members, who were suspended for supposed administrative offences but were actually the victims of a repressive measure.

238. The complainants allege that the enterprises have effected anti-union dismissals in order to break up the unions. Specifically, SINTRAFL-GUA alleges the dismissal without judicial authorization of the unionized worker Ms Candy Guadalupe Castillo Ramírez on 1 April 2019. In this regard, the union brought a judicial action before the Twelfth Labour and Social Security Court (case file No. 1173-2019-4102), relating to the refusal of enterprise 1 to comply with the reinstatement order. Furthermore, the union alleges that it brought a judicial action (case file No. 01173-2016-07134) for non-compliance by enterprise 1 with a judicial reinstatement order relating to the unionized worker Mr Maycon Willy Joel Montufar Chacón. SITRA GFLG, for its part, states that it brought a judicial action (case file No. 01173-2019-03048) for non-compliance by enterprise 2 with a judicial reinstatement order (10 May 2019) relating to the unionized worker Mr Flavio Mauricio García Chacaj. Lastly, the complainants allege that Mr Josué David Teletor Molina, a SITRA GFLG member, was the victim of extortion by persons unrelated to enterprise 2 in June 2019 in the course of his work, and that he was subsequently dismissed by enterprise 2 on 13 July 2019. Consequently, SITRA GFLG went with labour inspectors to the premises of the corporate group, which denied access to the authorities and to the union leaders. The complainants indicate that in all cases they have represented their members with a view to settling the disputes through dialogue, but that the enterprises have not shown any willingness to settle, even failing to attend hearings in the presence of the labour authorities.

239. The complainants further allege that one of the repressive measures adopted by the corporate group was the decision to withdraw the agents who provided security services on board trucks involved in the distribution of products (April 2018). In this regard, the complainants allege that as a result of this measure many workers, including union members and leaders, have been the victims of assaults, abductions, armed violence, extortion and, in one case, murder.

240. The complainants state that on 23 February 2018, at a meeting in Geneva, Switzerland, the corporate group recognized the complainant organizations and another union as the representatives of the production, sales and distribution workers at the enterprises. The complainants further indicated that at this meeting the international management of the corporate group had confirmed that no changes would be made to security arrangements until the concerns raised by the unions representing the workers were addressed through dialogue.

241. The complainants further allege that the enterprises denied access to their premises for the union leaders in order to prevent the unionized workers from being represented, especially in relation to acts of violence and insecurity in the performance of their work. This was in the wake of the withdrawal, by order of the enterprises, of the security guards who accompanied the workers on their sales routes. Specifically, the complainants refer to three occasions, two of them with labour inspectors present, involving the following acts: (i) 26 June 2019: an attack against two workers and another attack in which the trade unionist Mr Mario Joel Ruiz Sosa was murdered in the performance of his work; (ii) 2 July 2019: other violent actions against workers and trade unionists; and (iii) 5 July 2019: the enterprises threatened union leaders who were requesting access to the enterprise premises that they would conduct breathalyser tests on them. The complainants allege that on repeated occasions they requested the enterprises to restore the security arrangements, including in June and July 2019, through various means, but the enterprises refused.

242. Lastly, SITRA GFLG alleges that: (i) on 27 July 2018 it brought a judicial action before the courts (case file No. 01214-2018-01548) in relation to worker safety issues; and (ii) the first hearing scheduled for 26 August 2019, that is to say, more than a year after the judicial action was brought, was postponed until 14 October 2019 and assigned to another court (Fifteenth Labour and Social Security Court).

B. The Government's reply

Allegations concerning violations of the right to collective bargaining

243. In its communication of 23 September 2019, the Government forwarded the information provided by the legal representative of enterprises 1 and 2, who indicated that the membership of the complainant organizations does not exceed 25 per cent of the total number of workers of each of the enterprises considered individually, and so the parties are not obliged to engage in collective bargaining in accordance with section 51 of the Labour Code. The information sent by the enterprises indicates that enterprise 1, as at 6 September 2019, had 654 workers, of whom 96 were union members (14.6 per cent), and that enterprise 2, at the same date, had 1,382 workers, of whom 283 were union members (20.4 per cent). The Government also states that the two enterprises add that, in case file No. 1173-2017-8560, SINTRAFL-GUA did not have the requisite number of workers to trigger the obligation for enterprise 1 to engage in collective bargaining. Enterprise 1, in the information forwarded by the Government, attaches the ruling of 9 January 2018 of the Fourteenth Labour and Social Security Court, which concluded the case and was upheld by the ruling of 23 May 2018 of the Third Chamber of the Labour and Social Security Court of Appeal, the grounds of which ruling are indicated as follows: (i) the inadmissibility of a collective agreement for non-compliance with the terms of section 51 of the Labour Code; (ii) the lack of legitimacy of the persons who requested the processing of the case file; and (iii) the inadmissibility of the dispute owing to the existence of a collective agreement in force.

244. In its communication of 9 September 2019, the Government indicates that the present complaint was brought before the National Tripartite Committee on Labour Relations and Freedom of Association at its meeting of 5 July 2019. The Government indicates that at this meeting the workers' representatives stated that: (i) in the corporate group there are three unions (one for the manufacturing plant and two for sales); (ii) since the emergence of the unions there have been reprisals against the workers, including the removal of security measures, resulting in attacks while doing their work, and that in one of those attacks a worker died; and (iii) since 2018, the workers have been asking for security measures to be restored, and for a dialogue to be established between workers and employers with a view to ending the existing collective dispute. The Government also indicates that a dialogue round table was set up to address the case.

245. The Government indicates that on 29 August 2019, at the mediation session of 10 November 2017 of the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining (which was replaced by the Subcommittee in matters relating to the case), the corporate group agreed with the Unionized Workers' Coordination Unit in the corporate group (comprising SINTRAFL-GUA, SITRA GFLG and the Union of a related entity in the corporate group (SITRAFL)) "to negotiate a new agreement in consensus with the three unions …" (record No. 30-2017). In the same communication, the Government indicates that it followed up on the agreements adopted but that the enterprise did not respond to the communications sent.

246. In its communication of 7 October 2019, the Government indicates that on 26 July 2017 SINTRAFL-GUA brought an action relating to an economic and social collective dispute against enterprise 1 before the Fourteenth Labour and Social Security Court of Guatemala. The Government forwarded the information provided by the above-mentioned Court indicating that, by a ruling of 9 January 2018, it had established the following: (i) the inadmissibility of a collective agreement for non-compliance with the terms of section 51 of the Labour Code; (ii) the lack of legitimacy of the persons who had requested the processing of the case file; and (iii) the inadmissibility of the dispute owing to the existence of a collective agreement in force. The Court therefore withdrew the summons against enterprise 1 relating to the collective dispute, and the Third Chamber of the Labour and Social Security Court of Appeal, by a ruling of 23 May 2018, upheld the above-mentioned ruling.

247. The Government also indicates that SITRA GFLG brought two actions relating to economic and social collective disputes against enterprise 2. The first was concluded since the union did not fulfil the requirements set by the judicial body within the indicated time frame, and did not appeal against the ruling, whereupon the proceeding was terminated. The Government states that, on account of the refusal of enterprise 2 to engage in collective bargaining, the same union brought an action on 20 May 2019 relating to a second collective dispute (case file No. 00173-2019-00484). In this proceeding, the Government states that on 23 May 2019, the competent court requested SITRA GFLG, enterprise 2 and other authorities to provide various types of information, and that, as of 16 December 2022, the proceeding was still under way.

248. Lastly, in its communication of 25 April 2023, the Government indicates that on 2 December 2021 a collective agreement on conditions of work negotiated and signed by a related entity in the corporate group and SITRAFL was approved. In the above-mentioned communication the Government affirms that all the judicial actions initiated with regard to the approval of a collective agreement on conditions of work have been dealt with, and that it has received the corresponding ruling, which has been notified to the interested parties.

Allegations concerning acts of interference and anti-union discrimination

249. In a communication of 23 September 2019, the Government forwarded the information from the enterprises on the complainants' allegations concerning interference in trade union activities, indicating that: (i) there are no judicial or administrative files in which such incidents are denounced; (ii) the union statements are false, since the complaint is too imprecise with respect to the date, place and workers affected to enable an investigation of the reported incidents; and (iii) the enterprises have received complaints from many workers who have decided to quit union membership, and when the workers have made their requests to leave the union, the enterprises have refused to receive such requests since this would infringe freedom of association.

250. In the same communication, with regard to the allegations concerning unjustified dismissals, the Government forwarded the information from the enterprises, which state that, having been the subject of a summons for four years, they require judicial authorization to be able to dismiss workers. The enterprises indicate that the complaint only provides details of the cases of three unionized workers, namely Mr Maycon Montufar Chacón, Mr Flavio Mauricio García and Ms Candy Guadalupe Castillo Ramírez, and so the reported cases constitute a very small number on which to base an allegation of an anti-union violation, and indicate that these workers do not have the status of union representatives. As regards the application of disciplinary suspensions, the enterprises affirm that these have been applied in cases of work-related offences, and so the measures do not constitute arbitrary acts. As regards the allegations concerning acts of anti-union discrimination, including that the enterprises do not assign better routes to trade unionists and that the latter are intimidated or are denied access to social security facilities, the enterprises assert that the complainants' allegations do not refer to specific cases.

251. In its communication of 9 September 2019, the Government indicates that, through the General Labour Inspectorate at the Ministry of Labour and Social Security (hereinafter: Ministry of Labour), the receipt of complaints made against enterprises 1 and 2 was verified. The Government states that, according to data from the General Labour Inspectorate, a total of 16 complaints between 2015 and 2019 relate to the case and refer to the allegations of anti-union acts such as coercion, threats, intimidation and unjustified dismissals, including the following: (i) one complaint concerning anti-union actions such as coercion and reprisals was settled (terminated); (ii) eight complaints concerning violations of freedom of association (for alleged illegal deductions from wages in order to be able to take union leave, violations of Convention No. 87, reprisals against unionized workers, dismissals in the context of a summons for the enterprise, suspensions without pay and a disciplinary procedure imposed on a unionized worker) were being processed in accordance with the law; (iii) five complaints concerning reprisals against unionized workers, suspensions without pay and reprisals for belonging to a union, violations of freedom of association, and verification of the employment situation of a unionized worker were examined and resulted in the imposition of sanctions on the enterprises; (iv) one complaint was terminated because the complainant did not pursue it; and (v) one complaint concerning the dismissal of unionized workers was terminated because the veracity of the complaint could not be established.

252. In its communications of 15 April 2021 and 27 April 2023, the Government forwarded information provided by the General Labour Inspectorate on the allegations of administrative suspensions against trade union members and leaders, indicating that: (i) in the case of Mr Werner Salomón Barrios García, a SINTRAFL-GUA leader and advisory board member, the labour inspector established non-compliance on the part of the enterprise and a sanction ruling was issued; (ii) in the case of Mr Yonny Fernando de la Cruz, a leader and advisory board member of the same union, an agreement was reached between the parties and so the case file will be closed; (iii) in the case of Mr Alejandro Beltrán, a SITRA GFLG member, the corresponding sanction was issued on account of the failure of the enterprise to attend the hearing of 8 July 2019 and the enterprise lodged an appeal against the sanction, which is pending; and (iv) in the case of Mr Julio Audelino Morales Pineda, a SITRA GFLG member, a sanction was imposed on enterprise 2, which paid the sanction, but a judicial proceeding in which the enterprise requested authorization to dismiss this unionized worker remains pending.

253. As regards the allegations of dismissals of unionized workers, the Government states in its communication of 15 April 2021 that, in the case of Mr Josué David Teletor Molina, in administrative proceeding No. R-0101-07763-2019, the labour inspector established non-compliance with the legal requirements which the labour inspector had imposed on enterprise 2 and the sanction ruling was due to be notified. The Government indicates that protection measures were granted to Mr Teletor Molina, who was a victim of the crime of extortion. The Government also forwarded the information provided by the General Labour Inspectorate on the alleged unjustified dismissal of Ms Candy Guadalupe Castillo Ramírez (case file No. R-0101-03700-2019), the enterprise being the subject of a summons in an economic and social collective dispute. The Government indicates that the enterprise did not comply with the reinstatement order in favour of Ms Castillo Ramírez. In its communication of 7 October 2019, the Government indicates that enterprise 1 appealed against the reinstatement order for Ms Castillo Ramírez and that a decision on the appeal was pending. In its communication of 16 December 2022, the Government indicates that a judicial proceeding is under way in the First Chamber of the Labour and Social Security Court of Appeal (No. 01173-2019-04102), and in its communication of 27 April 2023, it indicates that a related administrative proceeding is pending.

254. In its communications of 7 October 2019, 16 December 2022 and 25 April 2023, with regard to the judicial action (case file No. 01173-2019-03048) brought by SITRA GFLG before the Fourteenth Labour and Social Security Court (in relation to the alleged failure of the enterprise to comply with a reinstatement order regarding the unionized worker Mr Flavio Mauricio García Chacaj), the Government indicates that: (i) on 2 March 2020, a period of three days was given to the plaintiff to coordinate his reinstatement and as of 2 September 2022 he had still not appeared in person; and (ii) as at 2 September 2022, an *amparo* ruling (for the protection of constitutional rights) was pending and the first-instance court had not received any definitive ruling in this regard.

255. In its communications of 6 September and 7 October 2019, regarding the status of the proceeding relating to failure by the enterprise to comply with a judicial reinstatement order regarding the unionized worker Mr Maycon Willy Joel Montufar Chacón, the Government states that the aforementioned worker was reinstated on 27 February 2019.

256. In its communications of 7 October 2019 and 25 April 2023, regarding the judicial action that SITRA GFLG brought in September 2018 relating to the suspension of 18 unionized workers, the Government indicates that it sent a request to the Eleventh Labour and Social Security Court, which stated that: (i) the action was brought on 11 September 2018 and there are currently six plaintiffs since the others withdrew from the action; (ii) the corresponding hearing was held on 23 June 2022; (iii) a ruling is pending; and (iv) none of the workers has been reinstated, since this is a standard labour proceeding.

257. As regards the allegation concerning the ban on union leaders from entering the premises of the enterprises, the Government forwarded the information provided by the General Labour Inspectorate, indicating that: (i) an administrative proceeding was opened; (ii) an inspection was conducted on the enterprise premises and nobody appeared on behalf of the enterprise, and so the authority recorded the denial of entry and found that the enterprises had committed an offence in obstructing the inspection work; (iii) a hearing was notified, which was not attended by the enterprises, and the labour inspector imposed the relevant sanction in accordance with the law; and (iv) the enterprises alleged a violation of the right of defence and this point is pending resolution.

258. In its communication of 9 September 2019, the Government indicates that the General Labour Inspectorate informed it that in the administrative proceeding relating to reprisals against trade unionists and affiliated workers and the verification of safety and health measures in accordance with the law, a dialogue round table was held, in which the complainants, representatives of the enterprises and Ministry of Labour officials participated. The Government adds that a hearing was subsequently held in which the enterprises stated that they would not reinstate the security guards and asked the trade unions to refrain from getting involved in the process and to shelve the legal action. The Government indicates that, given these circumstances, the workers considered the conditions for dialogue to have been exhausted and reaffirmed that "the union is required to represent all affiliated and non-affiliated workers".

259. As regards the judicial action brought by SITRA GFLG before the Fifteenth Labour and Social Security Court relating to the enterprise's decision to withdraw the agents who provided security on trucks involved in the distribution of products, the Government forwarded the information from the enterprise in a communication of 23 September 2019, indicating that: (i) the dispute has nothing to do with a violation of freedom of association; rather, it is a discussion on occupational safety and health obligations; (ii) the State should guarantee public safety in accordance with article 2 of the Political Constitution of the Republic of Guatemala; (iii) the workers do not claim in their legal action that the change in the security arrangements is a reprisal against unionized staff, as they have stated to the Committee; and (iv) the parties are in a process of amicable dialogue with a view to finding a solution to the dispute with the intervention of the Ministry of Labour and the Ministry of the Interior. In this regard, the Government indicates that: (i) the action was submitted to the Auxiliary Services Centre of the Justice Administration on 25 July 2018; (ii) after the first hearing had been rescheduled several times, it took place on 23 August 2021; (iii) on 20 June 2022, the competent court issued a ruling against SITRA GFLG; and (iv) the aforementioned union lodged an appeal against this ruling, which was decided in the union's favour on 12 August 2022, but its dispatch to the respective court chamber is pending. The Government adds in its communications that as regards the acts of violence against workers and trade unionists at the enterprises, it has provided various protection measures in favour of the workers.

260. As regards the murder of Mr Mario Joel Ruiz Sosa, the Government in its communications of 18 December 2019, 16 December 2022 and 25 April 2023 forwarded the information provided by the Public Prosecutor's Office indicating that: (i) the Municipal Prosecutor's Office of Villa Nueva, Guatemala, Prosecution Team 1 for Crimes against Life, handled the case file (No. MP015-2019-7076); (ii) some 40 investigative procedures were conducted; (iii) on 23 March 2023, the investigation was shelved since it had not been possible to identify the perpetrators; (iv) the shelving of the investigation does not imply the definitive termination of the case (no res judicata); and (v) the investigation will have to be resumed if new elements emerge that enable the individual perpetrators to be identified, as long as criminal proceedings are not time-barred. The Government indicates that it will keep the Committee informed and that it is reporting on this same case in the context of Case No. 2609, since the allegation was submitted by the complainants in 2021, and that it is also keeping the Governing Body informed in this regard in the context of the road map under Convention No. 87 and as part of the actions undertaken by the Government and the National Tripartite Committee on Labour Relations and Freedom of Association. The Government asks the Committee to examine the case of Mr Ruiz Sosa in the context of Case No. 2609 and not as part of the present case.

C. The Committee's conclusions

261. *The Committee observes that the present case refers to allegations of violations of freedom of association and of the right to collective bargaining, as from the establishment in 2016 of trade unions representing sales workers at two enterprises belonging to a corporate group in the food sector. The Committee observes that the complainant organizations allege a refusal by the enterprises to engage in collective bargaining and acts of interference and anti-union discrimination. The Committee notes that the enterprises, in the information forwarded by the*

Government, deny that they had any obligation to bargain collectively because the complainant organizations did not have the requisite number of members, and they also deny that they committed acts of interference or anti-union discrimination. The Committee observes that the Government, for its part, provides information on the various administrative and judicial proceedings, some of which have been concluded while others are in progress, relating to the allegations in the case.

Allegations concerning violations of the right to collective bargaining

262. *The Committee notes the allegations of the complainant organizations indicating that after presenting their proposed collective agreements to launch the process of collective bargaining with the enterprises, they had to refer economic and social collective disputes to the judicial authorities owing to the lack of response from the employers. The Committee notes the complainants' allegation that, in order to settle the collective disputes, they had recourse jointly to the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining, in which two meetings were held with the employers (25 October and 10 November 2017), and at the second meeting the complainants proposed to negotiate a single collective agreement, but no reply was obtained from the enterprises.*

263. *The Committee also notes the information from the enterprises forwarded by the Government with regard to this allegation, indicating that the membership of the complainant organizations does not exceed 25 per cent of the total number of workers of each of the enterprises considered individually. In this regard, enterprise 1, as at 6 September 2019, had 654 workers, of whom 96 were union members (14.6 per cent), and enterprise 2, at the same date, had 1,382 workers, of whom 283 were union members (20.4 per cent). The Committee notes the enterprises' assertion that, under section 51 of the Labour Code, the parties are not obliged to enter into a collective bargaining process.*

264. *The Committee notes the detailed information provided by the Government with regard to such allegations, indicating that on 10 November 2017, at the mediation session of the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining, representatives of the corporate group and the three trade unions with a presence in that group (comprising the two complainant organizations which represent sales workers and another union organization) agreed to negotiate a new agreement in consensus with the three unions. The Committee notes the Government's indication that during 2018 it followed up on compliance with this agreement with all the parties that signed it, but it did not obtain a response from the corporate group. The Committee notes the Government's statement that the National Tripartite Committee on Labour Relations and Freedom of Association (which assumed the functions of the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining) conducted a dialogue on the case at its meeting of 5 July 2019.*

265. *The Committee also notes that the Government provides information on the collective disputes referred to various judicial bodies by the complainants regarding the refusal of the enterprises to launch the collective bargaining process. In this regard, the Committee notes that the Government reiterates the information provided by the enterprises concerning the conclusion of one of the economic and social collective disputes brought to court by SINTRAFL-GUA against enterprise 1. The Committee notes the ruling of 9 January 2018 of the Fourteenth Labour and Social Security Court and that this was upheld on 23 May 2018 by the Third Chamber of the Labour and Social Security Court of Appeal, as indicated by the Government and by enterprise 1. The Committee observes that the ruling of 9 January 2018 indicates: (i) the invalidity of a collective agreement for failure to comply with section 51 of the Labour Code (representativity threshold of 25 per cent to trigger the obligation to engage in collective bargaining); and (ii) the lack of legitimacy of the persons who requested the processing of the case file. The Committee further observes that the above-mentioned ruling also* *notes that: (i) the collective dispute brought to court by the union is inadmissible since a collective agreement dated 9 July 2015 was in force at enterprise 1, concluded between an ad hoc workers' committee and the enterprise, covering all the workers and valid for three years; and (ii) the foregoing does not imply any violation of labour rights since on the expiry of the signed agreement new conditions of work could be negotiated with a view to improving the previous ones. As regards the disputes brought to court by SITRA GFLG against enterprise 2, one of which was terminated since the authorities' requirements were not met, the Committee notes the Government's indication that the second dispute brought to court by SITRA GFLG (No. 01173-2019-04484) is being processed.*

266. *The Committee takes due note of the elements set out above. The Committee observes that these elements reveal that the main legal obstacles to the negotiations proposed by the unions lie, firstly, in the fact that both unions did not reach the representativity threshold (25 per cent) established by the Labour Code for triggering the obligation to negotiate and that, secondly, in the case of enterprise 1, there was already a collective agreement in force, signed in 2015 with an ad hoc workers' committee. The Committee observes that section 49 of the Labour Code defines a "collective agreement on conditions of work" as "one that is concluded between one or more workers' unions and one or more employers, or one or more employers' organizations, for the purpose of regulating the conditions in which work is to be done and other related matters". While observing that when the collective agreement was signed between the enterprise and the ad hoc workers' committee in 2015, the union which brought an action regarding the collective dispute in 2017 had not yet been formed, the Committee recalls that collective agreements with the non-unionized workers should not be used to undermine the rights of workers belonging to the trade unions [see* ***Compilation of decisions of the Committee on Freedom of Association,*** *sixth edition, 2018, para. 1347]. The Committee also recalls that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members [see* ***Compilation,*** *para. 1389].*

267. *The Committee also notes the information provided by the Government indicating that there is a collective agreement in force dated 2 December 2021, signed by SITRAFL and a related entity in the corporate group. Furthermore, observing that on 10 November 2017 at the mediation session of the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining, representatives of the corporate group and the three trade unions with a presence in this group agreed to negotiate a new collective agreement in consensus with these three unions, the Committee recalls that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee also recalls that it has considered that bargaining at the enterprise level with the most representative higher trade union level organization should only take place if it has a number of members in the company in accordance with the national legislation [see* ***Compilation,*** *paras 1231 and 1364].*

268. *In the light of the above, while noting that the Government refers to the negotiation and conclusion of a collective agreement with another union, the Committee requests the Government to take all possible steps to encourage the corporate group and the complainant organizations to improve the climate of dialogue and mutual respect with a view to settling the matters of common interest and the points of contention that can arise through collective bargaining.*

Allegations concerning acts of interference and anti-union discrimination

269. *The Committee notes the general allegations of the complainant organizations concerning acts of anti-union interference and discrimination. The Committee notes the complainants' allegations* *regarding administrative suspensions of trade union members and leaders, with specific reference to the cases involving four of them and one case supported by the unions involving 18 suspended workers. The Committee also notes the complainants' allegations regarding four cases of unionized workers who were dismissed. Furthermore, the Committee notes the allegations concerning acts of interference and unequal treatment between trade unionists and non-unionized workers by the enterprises, including the drawing up of a form to promote withdrawal from union membership. With regard to the alleged administrative suspensions, the Committee notes the enterprises' indication that these suspensions have been applied in cases of work-related offences, and so the measures do not constitute arbitrary acts. With regard to the alleged anti-union dismissals, the Committee notes the information supplied by the enterprise indicating that: (i) the cases of only three unionized workers are described in the complaint, and so the reported cases constitute a very small number on which to base an allegation of an anti-union violation; and (ii) these workers do not have the status of union representatives. As regards the allegations concerning acts of interference and unequal treatment by the enterprises between unionized and non-unionized workers, the Committee notes the enterprises' indication that: (i) there are no judicial or administrative cases in which such acts are denounced; (ii) the union statements are false, since the complaint is imprecise with respect to the date, place and workers affected; and (iii) the enterprises have received requests to quit union membership, which they have rejected since this would infringe freedom of association.*

270. *The Committee notes the information provided by the Government indicating that, according to data from the General Labour Inspectorate, a total of 16 complaints between 2015 and 2019 relate to the case, as follows: (i) one complaint concerning anti-union actions such as coercion and reprisals was settled (terminated); (ii) eight complaints concerning violations of freedom of association (for alleged illegal deductions from wages in order to be able to take union leave, violations of Convention No. 87, reprisals against unionized workers, dismissals in the context of a summons for the enterprise, suspensions without pay and a disciplinary procedure imposed on a unionized worker) were being processed in accordance with the law; (iii) five complaints concerning reprisals against unionized workers, suspensions without pay and reprisals for belonging to a union, violations of freedom of association, and verification of the employment situation of a unionized worker were examined and resulted in the imposition of sanctions on the enterprises; (iv) one complaint was terminated because the complainant did not pursue it; and (v) one complaint concerning the dismissal of unionized workers was terminated because the veracity of the complaint could not be established. The Committee notes the Government's indication that administrative sanctions have been imposed in five complaints and that one of the cases has been settled with the agreement of the parties. The Committee also notes the Government's indication that in the case of the alleged anti-union dismissals: (i) reinstatement orders have been issued and one of the trade unionists has already been reinstated; (ii) in one of the cases, a judicial proceeding is pending because an appeal was lodged against the reinstatement order; (iii) in another case, the worker did not appear before the authority to coordinate his reinstatement pending judicial proceedings; and (iv) protection measures were granted to the worker who was a victim of extortion, and also to other workers who were the victims of other offences, and sanctions were imposed on the enterprise in the context of the alleged dismissal.*

271. *The Committee takes due note of the various elements provided by the parties regarding the various allegations of acts of anti-union discrimination referred to above, including, inter alia, administrative suspensions and anti-union dismissals. The Committee observes that several administrative and judicial proceedings relating to these allegations were initiated before the complaint was presented to the Committee in 2019 and these are still awaiting settlement, despite several years having elapsed. In this regard, the Committee recalls that cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective;*

*an excessive delay in processing such cases constitutes a serious attack on the trade union rights of those concerned [see **Compilation**, para. 1139].*

272. *The Committee notes that the complainants also allege that trade union leaders were barred from entering enterprise premises to perform their representative duties. The Committee notes that the Government forwarded the information provided by the General Labour Inspectorate, indicating that an administrative proceeding was initiated and is still pending subject to resolution of an issue raised by the enterprise. In this regard, the Committee recalls that workers' representatives should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representation function [see **Compilation**, para. 1591].*

273. *The Committee notes the complainants' allegation that one of the measures of anti-union repression adopted by the enterprise was the decision by the employers to withdraw the agents who provided security services on trucks engaged in the distribution of products (April 2018). In this regard, the Committee notes the complainants' allegation that as a result of this measure many workers, including trade union members and leaders, have been the victims of assaults, abductions, armed violence, extortion and, in one case, murder. The Committee notes the enterprise's information indicating that: (i) the dispute has nothing to do with a violation of freedom of association; rather, it is about occupational safety and health obligations; (ii) the State should guarantee public safety in accordance with article 2 of the Political Constitution of the Republic of Guatemala; (iii) the workers do not claim in their complaint to the local authorities that the change in security arrangements is a reprisal against unionized staff as they have stated to the Committee; and (iv) the parties are in a process of amicable dialogue with a view to finding a solution to the dispute with the intervention of the Ministry of Labour and the Ministry of the Interior. The Committee notes the indication by the complainants and the Government that SITRA GFLG brought a judicial action (case file No. 01214-2018-01548) for the application of that measure. The Committee notes the Government's indication that a ruling in favour of SITRA GFLG was issued on 12 August 2022. The Committee observes that it does not have details of the content of the judicial action which was brought and that the Government did not attach the above-mentioned ruling, which are documents that would enable the Committee to conduct a full examination of this serious allegation, specifically regarding whether or not the measure indicated and adopted by the enterprise was an anti-union act. On this particular matter, the Committee recalls, on the one hand, that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions [see **Compilation**, para. 1072]. On the other hand, the Committee also recalls that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, due process and the protection of premises and property belonging to workers' and employers' organizations, are fully respected and guaranteed, and that the exercise of trade union rights is incompatible with violence or threats of any kind and it is for the authorities to investigate without delay and, if necessary, penalize any act of this kind [see **Compilation**, paras 83 and 88].*

274. *In the light of the above, the Committee requests the Government to take all necessary steps to ensure the prompt resolution of the pending administrative and judicial proceedings relating to the allegations concerning: dismissals, anti-union suspensions, and the alleged denial of access by the enterprises to trade union leaders to perform their representative duties for their members, and to ensure that the competent authorities determine whether the measure adopted by the enterprises to remove the security staff who were guarding the sales workers could have had an anti-union motive. The Committee requests the Government to provide information in this respect.*

275. *Also observing that a number of complaints presented regarding allegations of anti-union acts have already resulted in the imposition of sanctions, the Committee requests the Government to take all necessary measures to prevent acts of interference and anti-union discrimination and thereby* *ensure full respect for freedom of association within the corporate group. The Committee requests the Government to keep it informed in this respect.*

276. *The Committee notes with concern the complainants' allegation regarding the murder of Mr Mario Joel Ruiz Sosa, a trade unionist, and notes the Government's information in this regard, indicating that an investigation was conducted comprising around 40 procedures to elucidate the facts. The Committee also notes the Government's indication that on 23 March 2023 the investigation was shelved since it had not been possible to identify the perpetrators, that the shelving of the investigation does not imply the definitive termination of the case (no res judicata), and that the investigation will have to be resumed if new elements emerge that enable the individual perpetrators to be identified, as long as criminal proceedings are not time-barred. In this regard, the Committee recalls that, in the context of Case No. 2609 relating to numerous murders of trade union members and other acts of anti-union violence, it is examining allegations of murder and death threats against members of workers' organizations at the enterprises referred to above, and so it will examine matters relating to the murder of Mr Ruiz Sosa in the context of Case No. 2609.*

The Committee's recommendations

277. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) While noting that the Government provides information on the negotiation and conclusion of a collective agreement with another trade union, the Committee requests the Government to take all possible steps to encourage the corporate group and the complainant organizations to improve the climate of dialogue and mutual respect with a view to settling the matters of common interest and the points of contention that can arise through collective bargaining.

(b) The Committee requests the Government to take all necessary measures to ensure the prompt resolution of the pending administrative and judicial proceedings relating to the allegations concerning dismissals, anti-union suspensions, the alleged denial of access by the enterprises to trade union leaders to perform their representative duties for their members, and whether the measure adopted by the enterprises to remove the security staff who were guarding the sales workers could have had an anti-union motive. The Committee requests the Government to provide information in this respect.

(c) Observing that a number of complaints presented regarding allegations of anti-union acts have already resulted in the imposition of sanctions, the Committee requests the Government to take all necessary measures to prevent acts of interference and anti-union discrimination and thereby ensure full respect for freedom of association within the corporate group. The Committee requests the Government to keep it informed in this respect.

Case No. 2508

Interim report

Complaint against the Government of the Islamic Republic of Iran presented by
- **the International Confederation of Free Trade Unions (ICFTU, the initial complainant in 2006 before merging into the International Trade Union Confederation, ITUC) and**
- **the International Transport Workers' Federation (ITF)**

Allegations: The complainants denounce acts of repression against the local trade union at a city bus company, as well as the arrest and detention of large numbers of trade unionists

278. The Committee last examined this case (submitted in 2006) at its October 2022 meeting, when it presented an interim report to the Governing Body [see 400th Report, approved by the Governing Body at its 346th Session, paras 479–518]. [4]

279. The International Trade Union Confederation (ITUC) sent additional information in a communication dated 2 February 2023.

280. The Government forwarded its observations in a communication dated 1 May 2023.

281. The Islamic Republic of Iran has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

282. At its November 2022 meeting, the Committee made the following recommendations [see 400th Report, para. 518]:

(a) The Committee notes the further steps taken by the Government for the ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and expects that the process of ratification of Conventions Nos 98 and 144 will soon come to conclusion and that the expert and tripartite working groups within the Ministry of Labour working on the compatibility of national law with Convention No. 87 will soon produce concrete proposals. It requests the Government to keep it informed of developments in this regard.

(b) The Committee notes the government measures taken to review Chapter VI of the Labour Law, the by-law on establishment, the scope of duties and powers, and the forms of operation of trade associations and their confederations, and the guidelines and procedures concerning arts, media, and culture professional organizations, with a view to bringing them into conformity with the principles of freedom of association. It firmly expects that these review processes will result in a legislative reform that will at last allow

[4] Link to previous examination.

for union pluralism at all levels in Iran. It requests the Government to keep it informed of any progress in this regard. The Committee once again recalls that the technical assistance of the Office remains available to it should it so desire.

(c) The Committee once again urges the Government to ensure that the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH) can function without hindrance through its de facto recognition pending legislative reform, and by ensuring that its officials and members are not arrested, detained and prosecuted for legitimate trade union activities.

(d) The Committee urges the Government to immediately release Mr Reza Shahabi, Mr Hassan Saeedi, Mr Rasoul Bodaghi, Ms Cécile Kohler, Mr Jacques Paris and all other trade unionists arrested and detained merely for having met and discussed matters of common workers' interest. The Committee further urges the Government to ensure that all those arrested in this case are provided with due process guarantees, including immediate consular assistance for Ms Kohler and Mr Paris, and to refrain from using solitary confinement as a tool of psychological pressure. The Committee requests the Government to keep it informed of the measures taken in this regard.

(e) The Committee requests the Government to take all the necessary measures to ensure that when trade unionists are prosecuted, their right to a fair trial is duly respected, and that in particular the judgments issued are made public.

(f) The Committee once again urges the Government to ensure Mr Shapour Ehsani Raad's immediate release. It further requests the Government to ensure that Mr Mohammadi's sentence is not executed should he have been convicted due to his trade union activities.

(g) The Committee draws the Governing Body's attention to the extremely serious and urgent nature of this case.

B. Additional information from the complainants

283. In a communication dated 2 February 2023, the ITUC sent updated information in relation to the situation of Ms Cécile Kohler and Mr Jacques Paris, two French trade unionists arrested in the Islamic Republic of Iran on 8 May 2022. The ITUC recalls that Ms Kohler, who is 37, is a teacher. She and Mr Paris, aged 69, are both members of the French trade union FO Federation of National Education and Vocational Training (FNEC FP FO). The complainant states that the couple are unlawfully detained in the Islamic Republic of Iran since the date of their arrest and are accused of "association and collusion with the aim of undermining the security of the State". For seven months Ms Kohler and Mr Paris' whereabouts remained unknown and no information on their conditions of detention, or their health and well-being could be obtained.

284. The ITUC indicates that on 23 November 2022, the Iranian Government granted a brief consular visit, and the French ambassador met the two trade unionists separately for ten minutes in Evin Prison. On 18 December the two were allowed to speak on the phone with their respective families for four minutes. Since then, neither the embassy nor the families have received any news. The complainant alleges that the brief contacts confirmed that both trade unionists were held in very bad detention conditions, including solitary confinement in the first three months, and their mental and physical health was severely impacted and deteriorating.

C. The Government's reply

285. Concerning ratification of international labour Conventions related to freedom of association, the Government indicates that ratification of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and Convention No. 98, has been a priority for it over the recent years. Concerning Convention No. 98, the Government indicates that the ratification bill was discussed at Parliament on 12 July 2022 and passed unanimously. The adopted text was subsequently submitted to the Constitutional Council, which made some comments and therefore the text was returned to the council of ministers for amendment. It was decided that issues and concerns will be discussed by the tripartite working group and be returned to the Constitutional Council after amendment. Concerning Convention No. 144, the Government indicates that the related bill is expected to be considered by the technical parliamentary committees.

286. Concerning the situation of Ms Cécile Kohler and Mr Jacques Paris, the Government indicates that they have been under provisional detention since 7 May 2022 in accordance with an order issued by an investigating judge at Tehran Prosecutor's Office and are both prosecuted under the charge of assembly and collusion with the intention of committing crime against national security. No judgment has yet been delivered in their case. The Government further indicates that Ms Kohler and Mr Paris formed a team, training Iranian union members and directing protests under the cover of a family travelling on ordinary French passports. They entered the country one day before Labour Day 2022 and since their arrival held training meetings with workers and teacher activists and famous organizations while being attentive to security considerations. Most of these meetings were documented and Ms Kohler and Mr Paris' arrest was coordinated in accordance with a judicial warrant. The Government adds that the couple had meetings with the Teachers' Association, the Teachers' Coordination Council, the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH) and the left-wing labour alliance, affiliated to Marxist opposition agents and leaders, focusing on how to transform the teachers' and the SVATH claims into street protest actions against the State. Prior to their arrival while they were still in France, they had organized online meetings and training webinars with the participation of the Coordination Council of Representatives of Iranian Teachers. During those virtual meetings, methods of organizing, safe contacts and fighting with the State were presented and training pamphlets were provided. The Government adds that Ms Kohler and Mr Paris, had also held several webinars and face-to-face training courses in a safe home located in a Tehran neighbourhood, aiming at holding teachers' union strikes and protests; injected significant amounts of money for financial support; provided technical support and sent technical items in order to covertly communicate and not be discovered by intelligent services, seeking to overthrow the Islamic Republic of Iran. The Government finally adds that the couple had visited Abyaneh as part of their cover-up travel and Ms Kohler had used professional cameras to shoot from the heights around Natanz. According to the Government Ms Kohler is an experienced person in training, organizing protests of teachers and workers in US-targeted countries including Serbia, Hungary, Türkiye, Egypt, Congo, and some other African countries and has sought to launch a project in the ILO training department to support empowerment of young communist unions under the protection of the French National Syndicate. The Government adds that the couple has continuous access to consular assistance and family visits.

287. Regarding the situation of Mr Reza Shahabi, the Government indicates that he was arrested in accordance with a warrant issued by the competent judicial authority and was transferred to Evin prison on 12 May 2022, where he is currently held in the public ward. He is charged with "assembly and collusion for committing crime against national security". He was indicted and his case was sent to the court in Tehran. He received six visits from his first-degree relatives and his attorney and was once referred to the social assistance centre in the prison for follow-up concerning his judicial affairs. Regarding Mr Shahabi's health situation, the Government indicates that due to his cervical spine condition measures were taken to obtain a judicial permit to refer him to a specialized clinic, but on 1 October 2020 he withdrew in writing his request to be sent to the clinic.

288. Regarding Mr Hassan Saeedi, the Government indicates that he is sentenced to five years' imprisonment and is currently serving his term in the public ward of Evin prison. Concerning Mr Saeedi's activities, the Government indicates that he is affiliated to Mr Shahabi and has accompanied him in all his gatherings and meetings, as well as Ms Kohler and Mr Paris in their meetings in the Islamic Republic of Iran. The Government further indicates that in his communication with foreign elements concerning the reception of grants, he has been guided by international organizations and in one of the "assignments" entrusted to him it was mentioned that "the amount of assistance has increased … we recommend you as a syndicate member to establish a special task force for guidance and provision of donations, with a view to be able to report to donors accurately. You should identify the local organizations for these strikes and distribute the donations among them. This is not charity in the red-crescent style, but a fight and continuous assistance".

289. Regarding Mr Shapour Ehsani Raad, the Government indicates that he was sentenced to five years imprisonment under charges of assembly and collusion with the intention of committing crime against national security and propaganda against the State, starting from 16 June 2020 and that he is currently free as he was released on parole. Regarding Mr Jamil Mohammadi, the Government indicates that he has absconded and, due to his absence from prison, it was impossible to announce his latest status.

D. The Committee's conclusions

290. *The Committee recalls that this case, lodged in 2006, concerns acts of repression against the SVATH, as well as the arrest, detention and condemnation of large numbers of trade union members and officials, and the inadequate legislative framework for the protection of freedom of association.*

291. *The Committee notes with deep concern the updated information from the complainant and the Government reply concerning the continued detention of Ms Cécile Kohler and Mr Jacques Paris, two French trade unionists who were visiting the Islamic Republic of Iran around May Day 2022, and who were arrested just before leaving the country on 8 May, detained incommunicado without access to consular assistance, and charged with the crime of assembly and collusion with the aim of committing crime against the security of the State for having met with Iranian trade unionists and labour activists, in particular members of teachers' organizations and the SVATH.*

292. *The Committee notes with deep concern that the Ms Kohler and Mr Paris have been detained in reportedly deplorable conditions without trial for a year now and recalls in this regard that preventive detention should be limited to very short periods of time intended solely to facilitate the course of a judicial inquiry. The Committee further recalls once again that it is one of the fundamental rights of the individual that a detainee be brought without delay before the appropriate judge and, in the case of trade unionists, freedom from arbitrary arrest and detention and the right to a fair and rapid trial are among the civil liberties which should be ensured by the authorities in order to guarantee the normal exercise of trade union rights, and detained trade unionists, like anyone else, should benefit from normal judicial proceedings and have the right to due process, in particular, the right to be informed of the charges brought against them, the right to have adequate time and facilities for the preparation of their defence and to communicate freely with counsel of their own choosing, and the right to a prompt trial by an impartial and independent judicial authority [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 140, 163 and 167].*

293. *Concerning the concrete acts that the Government attributes to Ms Kohler and Mr Paris, the Committee notes that they include virtual and face-to-face meetings with Iranian trade unionists from the SVATH and the Teachers' trade unions, including the local Teachers' Trade Associations*

(TTAs) and the Coordination Council of Iranian Teachers' Trade Association (CCITTA). The Committee notes the Government's general indication that the French couple had focused on methods of "transforming" the teachers' and the SVATH claims into street protest actions against the State. The Committee notes that the Government specifies that the couple had provided training to the members of teachers' unions on methods of organizing, holding strikes and protests; as well as on methods of safe contacts and communications, avoiding surveillance by intelligence services. The Government also indicates that they had provided financial support and technical items for covert communication.

294. *The Committee notes that the above-cited acts attributed to Ms Kohler and Mr Paris, were qualified as "assembly and collusion with the intention of committing crime against the security of the State" under section 610 of the Islamic Penal Code (IPC, Book V), which carries a punishment of two to five years imprisonment. As the Committee recalled in its most recent consideration of this case in 2022:*

> *The principles of freedom of association include a right of affiliation to international organizations, which flows from the solidarity of interests of workers or employers, a solidarity of interests that is not limited to the national economy. Moreover, it is a fully legitimate trade union activity to seek advice and support from other well-established trade union movements in the region to assist in defending or developing the national trade union organizations, even when the trade union tendency does not correspond to the tendency or tendencies within the country, and visits made in this respect represent normal trade union activities [see* ***Compilation****, para. 1051]. These rights include the right of unionists of any nationality to contact and meet each other when in a given country and discuss matters of common interest and concern. The Committee recalls that it is an infringement of the principles of freedom of association to arrest, detain and prosecute unionists for having made such contacts and participated in such meetings. Furthermore, the Committee recalls that the right to organize public meetings and processions, particularly on the occasion of May Day, constitutes an important aspect of trade union rights; and that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike, public meetings or processions, particularly on the occasion of May Day [see* ***Compilation****, paras 212 and 156]" [see 400th Report, paras 509–510].*

295. *Concerning the "training" activities that reportedly concerned public protests and strikes, the Committee draws the attention of the Government to the point that, in its examination of Case No. 2566, which concerns alleged violation of the freedom of association of Iranian teachers' organizations, it has underlined that "with regard to the rallies and strikes organized by the teachers unions, the Committee firstly recalls that freedom of association implies not only the right of workers and employers to form freely organizations of their own choosing, but also the right for the organizations themselves to pursue lawful activities including peaceful demonstrations for the defence of their occupational interests" [see* ***Compilation****, para. 717]. The Committee further considers that the choice of trade unionists to take part in purely union-organized courses, wherever held, would be covered by the right of organizations freely to organize their activities and formulate their programmes. Therefore, the Committee considers that if there had been meetings between the French and Iranian trade unionists, where the exercise of the right to peaceful demonstrations and the right to strike, which are matters of common interests and concern to all workers, have been discussed, such meetings fall fully within legitimate trade union activities and no one should be arrested, detained, prosecuted, and sentenced for having participated in such activities.*

296. *Concerning "safe communications" training, with the aim of avoiding surveillance by intelligence services, the Committee recalls that "employers and workers organizations must be allowed to conduct their activities in a climate that is free from pressure, intimidation, harassment, threats or efforts to discredit them or their leaders, which includes the adulteration of documents" [see* ***Compilation****, para. 719]. The Committee notes in this regard the Government's indication that most of the meetings between the French and Iranian unionists "were documented" and observes that this* *indication refers to the continuous surveillance of those meetings. The Committee recalls in this regard that it has in previous cases requested a government to issue appropriate high-level instructions to: (i) ensure that any emergency measures aimed at national security do not prevent in any way the exercise of legitimate trade union rights and activities, including strikes, by all trade unions irrespective of their philosophical or political orientation, in a climate of complete security; and (ii) ensure the strict observance of due process guarantees in the context of any surveillance and interrogation operations by the army and police in a way that guarantees that the legitimate rights of workers' organizations can be exercised in a climate that is free from violence, pressure or threats of any kind against their leaders and members. The Committee is bound to note that broad and persistent surveillance of trade unionists' communications and their gatherings and meetings by intelligence services is likely to be perceived as a significant source of pressure and intimidation and appears to be aimed at discrediting these independent unions and incriminating their leaders and members, especially in light of the context where legitimate trade union activities are frequently qualified under vague penal law provisions, such as sections 500 and 610 of the IPC. Therefore, the mere attempt to teach and learn methods of avoiding surveillance, can be understood as part of the effort to carry on legitimate trade union activities in greater safety, which in absence of any other evidence cannot be considered in and of itself as an indication of criminal activity. The Committee thus requests the Government to refrain from having recourse to broad and persistent surveillance of trade unionists' communications and meetings and to refrain from prosecuting and sentencing trade unionists for having used methods and technics to avoid such surveillance or for having provided training or technical assistance to other trade unionists in this regard.*

297. *In view of the foregoing, the Committee firmly urges the Government to take the necessary measures to ensure that Ms Kohler and Mr Paris are immediately released and to guarantee their safe return to their country.*

298. *The Committee recalls that in its previous examination of the case it had noted the arrest and detention of Messrs Hassan Saeedi and Reza Shahabi, members of SVATH for having met with Ms Kohler and Mr Paris and participated in May Day protests and had requested the Government to immediately release them. The Committee notes from the Government's reply and publicly available information, that one year after their arrest on 12 and 17 May 2022 respectively, Mr Saeedi and Mr Shahabi have remained in detention and that in the meantime branch 26 of Tehran Revolutionary Court has sentenced them to six years' imprisonment – five years of which is enforceable – on charges of propaganda against the State and assembly and collusion to commit crime against the security of the State (sections 500 and 610 of the IPC) and that this sentence has been confirmed by the Court of Appeal on 12 January 2023. The Committee recalls that several other Iranian trade unionists, including Mr Rasoul Bodaghi, were also arrested, detained and prosecuted for having met with their French counterparts, whose cases are covered in the Committee's examination of Case No. 2566.*

299. *Regarding the sentencing of Mr Shahabi, the Committee notes that the Government's reply does not provide any indication concerning the concrete acts attributed to him, which could have constituted the material element of the crime codified under section 610 of the IPC. Regarding Mr Saeedi, the Government refers to his links with Mr Shahabi and his accompanying Cécile Kohler and Jacques Paris during their visit to the Islamic Republic of Iran as well as his participation in meetings with them. The Committee further notes that the Government cites what seems to be excerpts of transcripts of messages exchanged with unspecified "foreign elements" without providing further detail or evidence. The Committee recalls in this regard that in cases involving the arrest, detention or sentencing of a trade union official, the Committee taking the view that individuals have the right to be presumed innocent until found guilty, it has considered that it was incumbent upon the Government to show that the measures it had taken were in no way occasioned by the trade union activities of the individual concerned [see* ***Compilation****, para. 158]. In view of the information it has* *received, the Committee is bound to note that the Government has failed to show that the sentencing of Messrs Shahabi and Saeedi to imprisonment is in no way occasioned by their trade union activities. Therefore, recalling that no one should be prosecuted, sentenced or sanctioned for the exercise of trade union activities, the Committee firmly urges the Government to ensure the immediate release of Messrs Shahabi and Saeedi should their conviction be related to their trade union activities and to keep it informed of the measures taken in this regard.*

300. *Noting that the sentencing of Messrs Shahabi and Saeedi is in continuation of the long history of measures taken against SVATH members and leaders since the beginning of the examination of the present case, the Committee is bound to reiterate its long-standing recommendation and once again urge the Government to ensure that the SVATH can function without hindrance through its de facto recognition pending legislative reform, and by ensuring that its officials and members are not arrested, detained and prosecuted for legitimate trade union activities.*

301. *The Committee recalls that in its previous examination of this case, it had urged the Government to ensure Mr Shapour Ehsani Raad's immediate release [see 400th Report, para. 518(f)]. It further recalls that Mr Ehsani Raad,, a leading member of the Free Union of Workers of Iran, was in prison since 16 June 2020 to serve a five-years sentence for action against national security and propaganda against the state. The Committee notes the Government's indication that he has been released on parole. The Committee welcomes Mr Ehsani Raad's release and expresses the firm hope that he will not again be subject to arrest and prosecution for trade union activities in the future.*

302. *The Committee notes the Government's indications concerning the process of ratification of Conventions Nos 98 and 144, and notes that despite the "unanimous" vote of the parliament to adopt the bill concerning the ratification of Convention No. 98, the process was remanded to the Parliament following the adjustments proposed in the opinion of the "Constitutional Council". The Committee expects that the process of ratification of Conventions Nos 98 and 144 will soon come to conclusion and requests the Government to keep it informed of developments in this regard.*

303. *The Committee recalls that in its previous examination of the present case, it had requested the Government to keep it informed of the progress made in reviewing Chapter VI of the Labour Law, the by-law on establishment, the scope of duties and powers, and the forms of operation of trade associations and their confederations, and the guidelines and procedures concerning arts, media, and culture professional organizations, with a view to bringing them into conformity with the principles of freedom of association. It notes that in its latest communication, the Government does not provide any information in this regard. The Committee is therefore bound to reiterate its previous recommendation concerning the legislative reform process.*

The Committee's recommendations

304. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following:

(a) The Committee expects that the process of ratification of Conventions Nos 98 and 144 will soon come to conclusion and requests the Government to keep it informed of developments in this regard.

(b) The Committee firmly expects that the processes of reviewing Chapter VI of the Labour Law; the by-law on establishment, the scope of duties and powers, and the forms of operation of trade associations and their confederations; and the guidelines and procedures concerning arts, media, and culture professional organizations will soon come to their conclusion, resulting in a legislative reform

that will at last allow for union pluralism at all levels in the Islamic Republic of Iran. It requests the Government to keep it informed of any progress in this regard.

(c) **The Committee once again urges the Government to ensure that the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH) can function without hindrance through its de facto recognition pending legislative reform, and by ensuring that its officials and members are not arrested, detained and prosecuted for legitimate trade union activities.**

(d) **The Committee firmly urges the Government to ensure the immediate release of Messrs Shahabi and Saeedi, should their conviction be related to their trade union activities. It further firmly urges the Government to take the necessary measures to ensure that Ms Kohler and Mr Paris are immediately released and to guarantee their safe return to their country and to keep it informed of the measures taken in this regard.**

(e) **The Committee requests the Government to refrain from having recourse to broad and persistent surveillance of trade unionists' communications and meetings and to also refrain from prosecuting and sentencing trade unionists for having used methods and technics of avoiding surveillance or for having provided training or technical assistance to other trade unionists in this regard.**

(f) **The Committee recalls the importance it attaches to the 1970 Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, and draws the Governing Body's attention to the extremely serious and urgent nature of this case.**

Case No. 3337

Interim report

Complaint against the Government of Jordan presented by
– the Jordanian Federation of Independent Trade Unions (JFITU) supported by
– the International Trade Union Confederation (ITUC)

Allegations: The complainants allege that the Labour Code restricts the right of workers to freely organize and bargain collectively. They further allege acts of anti-union discrimination, interference and retaliation by the Government against independent trade unions

305. The Committee last examined this case (submitted in 2018) at its March 2022 meeting and on that occasion presented an interim report to the Governing Body [see 397th Report, approved by the Governing Body at its 344th Session (March 2022), paras 441–479.] [5]

[5] Link to previous examination.

306. The International Trade Unions Confederation (ITUC) provided additional information on a communication dated 22 February 2023.

307. The Government provided its observations in communications dated 14 February and 15 March 2023.

308. Jordan has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. Previous examination of the case

309. During its previous examination of the case, in March 2022, the Committee made the following recommendations [see 397th Report, para. 479]:

(a) The Committee reiterates its request to the Government to amend section 98(e) of the Labour Code so as to eliminate the restriction placed on the organizing rights of migrant workers and to keep it informed of all measures taken in this respect.

(b) The Committee reiterates its request to the Government to take the necessary measures, in consultation with the social partners, to ensure that foreign workers enjoy their freedom of association rights, including the right to be elected to trade union office. It requests the Government to keep it informed of the measures taken in this respect.

(c) The Committee expects that the Government will adopt without delay the necessary regulatory measures to ensure that agricultural workers can establish and join the organization of their own choosing. It further expects that the Government will take the necessary measures to ensure that domestic workers can freely establish or join the organization of their own choosing and not be restricted to joining an existing and registered trade union. The Committee requests the Government to provide information on the measures taken in this respect.

(d) The Committee urges the Government to take the necessary measures, in consultation with the social partners, to amend section 98(f) so as to ensure that minors who have reached the legal age for employment, whether as workers or trainees, are fully protected in their exercise of the freedom of association rights. It requests the Government to provide information on measures contemplated or adopted in this respect.

(e) The Committee requests the Government to take meaningful steps, including specific legal provisions, to ensure the right to organize and to bargain collectively in the public sector, including in the public service. It requests the Government to keep it informed of the developments in this regard.

(f) The Committee requests the Government to provide the expanded list of sectors in which workers have the right to organize, specifying the occupations and industries reclassified by decisions of the Ministry of Labour. It trusts that the new system will enable all workers to exercise their right to organize and to benefit from collective bargaining rights.

(g) In the absence of observation in this regard, the Committee is bound to request once again the Government to take the necessary measures, in consultation with the social partners, to amend the Labour Code so as to ensure that more than one trade union organization per sector or industry can be established if the workers so desire. It requests the Government to keep it informed of the developments in this regard.

(h) The Committee urges the Government to amend section 116 of the Labour Code in consultation with the social partners and to keep it informed of the measures taken in this regard.

(i) The Committee requests the Government to indicate whether it had engaged in consultation with the social partners in order to determine whether the new fines would represent a sufficiently dissuasive sanction against acts of interference. It requests the Government to keep it informed of the adoption of the amendment.

(j) In the absence of reply, the Committee urges the Government to provide detailed information on any investigation conducted into the alleged acts of discrimination against trade unionists.

(k) The Committee requests the Government to review the allegations of cancellation by the authorities of public meetings organized by independent trade unions with the competent authorities with a view to giving appropriate instructions in the event that they have interfered with the right to hold meetings and the freedom of assembly of the trade unions involved and to keep the Committee informed of the measures taken in this respect.

(l) The Committee urges the Government to take the necessary steps to ensure that the independent trade unions may be recognized without delay so that they may carry out their activities without interference.

(m) The Committee trusts that steps will be taken without further delay to amend the Code with special attention to the importance of ensuring the right of all workers to form and join the organization of their own choosing, and requests the Government to keep it informed in this respect.

(n) The Committee must express its firm expectation that the Government will take swift action in this case and will be able to report on meaningful progress, as this necessarily has an impact on the industrial relations and the exercise of freedom of association rights of all workers in the country.

(o) The Committee draws the legislative aspects of the case relating to Convention No. 98 to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

(p) The Committee invites the Government to avail itself of the technical assistance of the Office in respect of the matters raised in this case.

B. Additional information from the complainant

310. In a communication dated 22 February 2023, the ITUC informs that on 1 August 2022, the Ministry of Labour published Resolution No. (45/2022) which amended the list of 17 sectors that are entitled to organize and form unions. The Ministry added two new groups of workers, agricultural workers and domestic workers, to the existing listed sectors, the food industry sector and the service sector respectively. As such the list still only contains 17 sectors, which the Committee has repeatedly observed violates the right of all workers without distinction to form and join a union of their own choosing.

311. Furthermore, according to the complainant, the law also still denies union pluralism by preventing the formation of more than one union in the same sector. Since there is already a union in the food industry sector and the service sector, agricultural workers and domestic workers have no practical right to form a union though they may now join an existing one. These 17 sectoral unions are also still required to affiliate with the official Jordanian Trade Union Confederation.

312. The ITUC urges the Committee to issue conclusions directing the Government to: (i) comply with its obligations under international labour standards, in particular, to ensure the effective application of the principles of freedom of association and the right to organize; (ii) amend the labour laws to be fully compatible with relevant international labour standards; (iii) take the necessary measures to ensure that all agricultural workers including migrant workers are free to exercise their right to form or join a trade union of their choice; and (iv) ratify Convention No. 87 as a matter of urgency.

C. The Government's reply

313. In its communications dated 14 February and 15 March 2023, the Government provides the following information in reply to certain recommendations of the Committee and to the additional information provided by the ITUC.

314. In relation to recommendation (a) regarding the restriction placed on the organizing rights of migrant workers and recommendation (b) on the granting of freedom of association rights, including the right to be elected to trade union office, to foreign workers, the Government recalls that the Jordanian Constitution limits the right to form syndicates to Jordanians only and refers to the law the method of forming associations, unions and political parties and monitoring their resources. Paragraph (f) of section 98 of the Labour Code No. (8) of 1996, as amended, allows Jordanian and non-Jordanian workers to join trade unions without any restriction. The labour law is therefore in line with the provisions of the Constitution by stipulating that the right to establish trade unions is limited to Jordanians only.

315. In relation to recommendation (c) regarding regulatory measures to ensure that agricultural workers and domestic workers can establish and join organizations of their own choosing, the Government informs that the Regulation on agricultural workers (No. 5715 of 14 March 2021) refers to the Labour Code all aspects of labour relations that are not covered by the regulation, including the right of agricultural workers to freedom of association and collective bargaining. Consequently, the 2022 Decision of the Minister of Labour concerning the categories of industries and economic activities in which workers may establish unions, included agricultural workers in the professions that can join the union of food industries, which is henceforth called the General Union of Water, Agriculture and Food Industries Workers. The Government adds that the process for enabling agricultural workers to engage in trade union activity would commence in March 2023 after the issuance of the classification of the categories of industries and economic activities in which workers are allowed to establish unions. This process is conducted by the Afaq Jordan for Development and Training (a Jordanian Non-Governmental Organization) in collaboration with the International Labour Office in Jordan, and the General Trade Union for Workers in Water, Agriculture and Food Industries and the General Federation of Jordanian Trade Unions (GFJTU). The latter is holding workshops on basic aspects of union activity for workers in the agricultural sector in collaboration with the Friedrich-Ebert Foundation (FES). Regarding domestic workers, the Government indicates that section 3(b) of the Labour Code excludes them from the scope of the Code, and that their rights and obligations are set out in Regulation No. (90) of 2009, amended by Regulation No. (64) of 2020. Nevertheless, the 2022 Ministerial Decision has added domestic workers to the professional categories covered by the General Union of Workers in Public Services, Liberal Professions, Communications, and Information Technology, which enables them to join this union.

316. Additionally, in reply to ITUC's denunciation of the refusal by the authorities to register a trade union for agricultural workers, the Government asserts that the decision of the Registrar of Trade Unions and Employers' Associations to refuse to register any new trade union with the same aims and purposes as an existing registered trade union is to avoid making the sector vulnerable to fragmentation and conflict of interest. This is in line with the objective sought by the legislator under section 98(d) of the Labour Code. In the view of the Government, the law does not go against the freedom to establish trade unions but regulates it in a way compatible with the Jordanian Constitution (article 16(ii)) or international Covenants, such as the International Covenant on Civil and Political Rights (article 22) and the International Covenant on Economic, Social and Cultural Rights (article 8(1)(a)), which stipulate that no restrictions may be placed upon the practice of forming trade unions other than those restrictions specified by law and which constitute necessary measures in a democratic society for maintaining national security, public safety or public order, protecting public health or public decency, or for protecting the rights of others and their freedoms. These Covenants are deemed international framework agreements, obligating States to amend their legislation to comply to them. Hence, the provision of section 98(d) of the Labour Code and the Governmental Decision issued in accordance with it do not infringe International Covenants or the Jordanian Constitution.

317. In relation to the Committee's request to amend section 98(f) of the Labour Code so as to ensure that minors who have reached the legal age for employment, whether as workers or trainees, are fully protected in their exercise of the freedom of association rights (recommendation (d)), the Government points out that the Civil Code provides that a person must have reached the age of legal majority, 18 years of age, in order to exercise his civil rights and perform acts with legal effect, such as the establishment and membership of trade unions and/or the participation in elections of executive board members. Accordingly, the requirement of the Labour Code, under section 98, that the founder or member of the union must have reached the age of 18 years, is a protection of the will of the worker restricted to the age of majority in order to take into account the legal actions issued in all matters related to his right to organize trade unions and collective bargaining. The Government adds that this is in line with the position of the Jordan Chamber of Commerce which was consulted on the affiliation of juveniles to trade unions.

318. Regarding the need to take meaningful steps to ensure the right to organize and to bargain collectively in the public sector, including in the public service (recommendation (e)), the Government reiterates that articles 16(2) and 23(f) of the Constitution of Jordan guarantee the right to organize legal associations to Jordanian workers in both the public and the private sectors, within the limits of the law. Consequently, the Jordanian Civil Service Law (No. 9 of 2020) governing workers in the public sector does not prohibit any public sector worker in certain professions from joining professional unions such as the Medical Association, the Engineers' Association, the Teachers' Association, the Dental Association, the Pharmacists' Association and the Agricultural Engineers' Association. Each professional association is formed and functions according to its own statutes. Additionally, according to the Interpretative Decision (No. 6 of 2013) of the High Council for the Interpretation of the Constitution, public employees in any ministry, department, body or government institution may establish a union for the defence of their interests, provided that these professional unions are established pursuant to the provisions of special laws. Therefore, public sector employees are denied the right to establish trade unions, as these are established pursuant to the Labour Code which excludes public sector employees from its scope.

319. In relation to the Committee's request for the expanded list of sectors in which workers have the right to organize (recommendation (f)), the Government provides the 2022 Decision of the Ministry of Labour on the classification of industries and economic activities in which workers may establish unions.

320. Regarding the Committee's call to amend section 116 of the Labour Code (recommendation (h)), the Government asserts that the purpose of this provision is to address disputes that may occur within trade unions, a number of which have led to damages to the public interest and the interests of their members. The Government indicates that section 116 of the Labour Code, as amended, confers the power to the Minister to dissolve an administrative body of a trade union, or an employer's organization, if it violates provisions of the Code, regulations issued pursuant to it or if the by-laws of the organization are in violation of the legislation in force. The Minister's decision is subject to appeal before court. Furthermore, pursuant to the same provision, in consultation with the General Federation of Jordanian Trade Unions (GFJTU), the

Minister appoints an interim administrative body from the General Assembly to administer the union and to hold elections of a new administrative body within a defined period of time.

321. In relation to recommendation (i) on the determination of new fines which would represent a sufficiently dissuasive sanction against acts of interference, the Government indicates that the bill amending the Labour Code is presently before the House of Representatives and that in the amended section 139, the highest fines imposed on employers in case of breach of labour law have increased from 100 Jordanian dinars (US$140) to 1,000 Jordanian dinars (US$1,400).

322. The Government asserts that no case of discrimination against trade unionists has been recorded in its reply to the Committee's call for information on any investigation conducted into alleged acts of discrimination against trade unionists (recommendation (j)).

323. In reply to the Committee's request to review the allegations of cancellation by the authorities of public meetings organized by independent trade unions with the competent authorities (recommendation (k)), the Government recalls that the Public Meetings Act (No. 6 of 2004) regulates the mechanism for holding meetings, including the requirement to notify the authorities in advance, and reiterates that independent unions or the JFITU are entities that have not complied with the procedures set out in the Labour Code for their establishment and operation. Therefore, their legal existence cannot be recognized and they do not represent workers and cannot defend their interests.

324. With regard to the recognition of independent trade unions (recommendation (l)), the Government recalls that the establishment, registration, functioning and dissolution of trade unions and employers' organizations are regulated by the Labour Code while independent unions and the JFITU have not complied with the procedures therein. Therefore, their legal existence cannot be recognized and they do not represent workers and cannot defend their interests. This situation prompted the Ministry of Labour, in order to protect the rights of workers joining these independent unions, to send an official note to all ministries and State-owned companies informing them that the entity known as the JFITU is not a recognized union, with a view to strengthening the rule of law, identifying the authorities with which they can deal officially and enabling them to distinguish in their dealings with unions between those that are legally registered and those that are not.

325. Finally, the Government indicates that it does not object to the technical assistance of the Office if agreed with the Ministry of Labour.

D. The Committee's conclusions

326. *The Committee recalls that in this case, the Jordanian Federation of Independent Trade Unions (JFITU) alleges that the Labour Code restricts the right of workers to freely organize and bargain collectively. The JFITU has further alleged acts of anti-union discrimination, interference and retaliation by the Government against independent trade unions in practice.*

327. *The Committee takes note of the observations provided by the Government in relation to its previous requests to undertake legislative changes. The Committee recalls its previous recommendation whereby it drew the legislative aspects of the case relating to Convention No. 98 to the attention of the Committee of Experts on the Application of Conventions and Recommendations (CEACR). In this regard, the Committee refers to the comments of the CEACR made at its November–December 2022 session on the application of Convention No. 98 on these various legislative aspects and notes that in its comments, the CEACR urged the Government to take steps in relation to the effective recognition of organizing and collective bargaining rights of foreign workers, agricultural and domestic workers, minor workers, public sector workers not engaged in the administration of the*

State, as well as the determination of fines which would represent a sufficiently dissuasive sanction against acts of interference.

328. *In relation to its recommendation on the determination of sufficiently dissuasive sanction against acts of interference, the Committee notes the Government's indication that the bill amending the Labour Code before the House of representatives provides for an increase of the highest fines imposed on employers in case of breach of labour law. The Committee requests the Government to indicate whether the determination of these fines was made in consultation with the social partners.*

329. *The Committee recalls its previous recommendation regarding the restriction placed on the organizing rights of migrant workers and on the granting of freedom of association rights, including the right to be elected to trade union office, to foreign workers, and notes the Government's indication that while section 98(f) of the Labour Code allows Jordanian and non-Jordanian workers to join trade unions without any restriction, the right to establish trade unions is limited to Jordanians only. The Committee observes that no measure has been taken to amend the law as requested and recalls once again that the right of workers, without distinction whatsoever, to establish and join organizations of their own choosing, without previous authorization, implies that anyone legally residing in the country benefits from trade union rights, including the right to vote, without any distinction based on nationality. The Committee further recalls that legislation should be made flexible so as to permit the organizations to elect their leaders freely and without hindrance, and to permit foreign workers access to trade union posts, at least after a reasonable period of residence in the host country [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 322 and 623]. The Committee is therefore bound to reiterate its request to the Government to amend section 98(e) of the Labour Code so as to eliminate the restriction placed on the organizing rights of migrant workers and to ensure that foreign workers may be elected to trade union office at least after a reasonable residence period and to keep it informed of all measures taken in this respect.*

330. *The Committee refers to its previous request that the Government take measures to ensure that agricultural and domestic workers can establish and join organizations of their own choosing, and notes the information provided by the ITUC that, under Decision (No.2022/45) of the Ministry of Labour, both categories of workers were added to the list of 17 sectors that are entitled to organize and form trade unions. The ITUC however regrets that the law still denies union pluralism by preventing the formation of more than one union in the same sector, and since there is already designated unions in the food industry sector and the service sector, agricultural workers and domestic workers have no practical right to form a union although they may now join the existing ones.*

331. *The Committee further notes the Government's indication that the Regulation on agricultural workers (No. 5715 of 14 March 2021) refers to the Labour Code all aspects of labour relations that are not covered by the regulation, including the right of agricultural workers to freedom of association and collective bargaining. Accordingly, the 2022 Decision of the Minister of Labour concerning the categories of industries and economic activities in which workers may establish unions included agricultural workers in the professions that can join the General Union of Water, Agriculture and Food Industries Workers. Furthermore, the Committee notes the Government's indication that the rights and obligations of domestic workers are set out in Regulation No. (90) of 2009, amended by Regulation No. (64) of 2020, and that the Ministry of Labour has added domestic workers to the professional categories that can join the General Union of Workers in Public Services, Liberal Professions, Communications, and Information Technology.*

332. *While it duly notes the Ministerial Decision (No. 2022/45) enabling agricultural and domestic workers to join designated sectoral trade unions is a step towards their capacity to exercise their* *freedom of association and collective bargaining rights, the Committee remains concerned that the current system still impedes these workers from forming or joining the organization of their own choosing. Therefore, the Committee calls on the Government to ensure that agricultural workers and domestic workers can form organizations of their own choosing outside the designated unions. In this regard, the Committee refers to its conclusions below concerning the possibility of trade union pluralism.*

333. *The Committee recalls its previous request to the Government to amend section 98(f) of the Labour Code so as to ensure that minors who have reached the legal age for employment can fully exercise their freedom of association rights. The Committee notes that the Government merely reiterates that the national legislation provides that a person must have reached the age of legal majority, 18 years of age, in order to perform acts with legal effect, such as the establishment and membership of trade unions and/or the participation in elections of executive board members. According to the Government, the requirement of the Labour Code under section 98 that the founder or member of a trade union must have reached the age of 18 years is a protective measure concerning the age of majority and the capacity to exercise civil rights. The Government adds that the Jordan Chamber of Commerce which was consulted on the affiliation and establishment of juveniles to trade unions is in agreement with the current age limit. While noting the clarification provided by the Government, the Committee recalls its previous observation that section 73 of the Labour Code prohibits the employment of minors under 16 years of age, as well as its consistent position that minor workers who have reached the legal age of employment should be able to form and join organizations of their own choosing. The Committee requests once again the Government to take without delay the necessary measures, in consultation with all social partners concerned, to amend section 98(f) of the Labour Code so as to ensure that minors who are working or trainees as from the age of 16 years (the legal age for employment) are fully protected in their exercise of trade union rights. It requests the Government to provide information on measures contemplated or adopted in this respect.*

334. *In relation to its previous request regarding the right to organize and to bargain collectively in the public sector, including in the public service, the Committee notes that the Government merely reiterates that articles 16(2) and 23(f) of the Constitution of Jordan guarantee the right to organize legal associations to Jordanian workers in both the public and the private sectors, within the limits of the law, and that public servants are excluded from the provisions of the Labour Code and are subject to the provisions of the civil services administration system. Moreover, according to the Government, the Jordanian Civil Service Statute (No. 9 of 2020) governing workers in the public sector does not prohibit any public sector worker from joining professional unions, such as the Medical Association, the Engineers' Association, the Teachers' Union, the Dental Association, the Pharmacists' Association and the Agricultural Engineers' Association, which are formed and function according to their respective statutes. The Committee had previously observed that these professional unions participate in the Public Service Council as well as committees established for the purpose of amending the Public Service Regulations, thus ensuring their participation in the adoption of public policies, plans and programmes for human resources management in the public sector and in the development of public service legislation and regulations. The Committee also notes the Government's indication that, according to the Interpretative Decision (No. 6 of 2013) of the High Council for the Interpretation of the Constitution, public employees in any ministry, department, body or government institution may establish a union for the defence of their interests, provided that these professional unions are established pursuant to the provisions of special laws. The Committee understands, from the information of the Government provided to the CEACR, that these special laws can be enacted by the constitutionally competent authorities, namely the Council of Ministers and the King.*

335. *The Committee takes note of the information and observes that no meaningful measure has been taken by the Government. It is bound to recall that public servants, like all other workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests [see **Compilation**, para. 336]. Therefore, the Committee urges the Government to take meaningful steps, including specific legal provisions, to ensure the right to organize and to bargain collectively in the public sector, including in the public service. In the meantime, the Committee requests the Government to provide copy of any special law enabling public employees in a ministry, department, body or government institution to establish a union for the defence of their interests.*

336. *The Committee recalls its previous conclusions and recommendations in relation to its request to the Government to amend section 116 of the Labour Code which confers the power to the Minister to dissolve an administrative body of a trade union (or an employer's organization) if it violates provisions of the Code, regulations issued pursuant to it or if the by-laws of the organization are in violation of the legislation in force. The Committee notes the Government's assertion that the purpose of this provision is to address disputes that may occur within trade unions, a number of which have led to damages to the public interest and the interests of their members. The Government also reiterates that section 116 of the Labour Code confers the power to the Minister to dissolve an administrative body of a trade union, or an employer's organization, if it violates provisions of the Code, regulations issued pursuant to it or if the by-laws of the organization are in violation of the legislation in force. The Minister's decision is subject to appeal before court. Furthermore, pursuant to the same provision, in consultation with the General Federation of Jordanian Trade Unions (GFJTU), the Minister appoints an interim administrative body from the General Assembly to administer the union and to hold elections of a new administrative body within a defined period of time.*

337. *While taking due note of this information, the Committee is bound to recall once again that the removal by the Government of trade union leaders from office is a serious infringement of the free exercise of trade union rights [see **Compilation**, para. 654]. The Committee must also reiterate its view that the power of the Minister to remove a freely elected administrative body of an organization on the basis of such a broad criteria as "any violation of the legislation" constitutes a serious interference in trade union activities, including the right of trade unions to elect their own representatives and organize their administration, even if it can be appealed to the Administrative Court, as the latter bases its decisions on the legislation in force setting out the same broad criteria. Furthermore, the Committee recalls that, in its view, the nomination by the authorities of members of executive committees of trade unions constitutes direct interference in the internal affairs of trade unions. Therefore, the Committee once again urges the Government to amend without delay section 116 of the Labour Code in consultation with the social partners and to keep it informed of the measures taken in this regard.*

338. *The Committee recalls its previous call for investigation into allegations of the following acts of anti-union discrimination, interference and retaliation against independent trade unions: (i) dismissal (Mr Khaled Hasan Ali, worker at the water company); (ii) suspension (Mr Tayel Al Khamayseh, ex-President of the Independent Union of Phosphate Mine Workers); (iii) pressure to resign from the job (President and Secretary of the Chemical Industries' Independent Union and Mr Khalil Butros Wahhab, Vice-president of the Independent Trade Union of Civil Aviation Workers); (iv) deferral of promotion and withholding of wages (Mr Jalal El Harasees, President of the Independent Union of Jordan Electricity Workers), transfer (Mr Mahmoud Shihada Al-Khateeb, President of the Independent Trade Union of Workers at the Jordan Water Company Miyahuna); and (v) threats against company workers wishing to join the independent trade union and exerting pressure to sign pledges not to engage in trade union activities (President of the Independent Trade Union in the Pharmaceutical*

Industries and its board members, as well as at the water company). The Committee notes with deep concern that the Government merely indicates that no case of discrimination against trade unionists has been recorded. Observing that the lack of recognition of any cases of discrimination may be linked to the non-recognition of the independent unions addressed below, the Committee is bound to urge once again the Government to take swift measures to investigate the above allegations and to provide without delay information on their outcome, including on the status of the union leaders mentioned.

339. *The Committee recalls that it had previously urged the Government to: (i) review the allegations of cancellation by the authorities of public meetings organized by independent trade unions with the competent authorities with a view to giving appropriate instructions in the event that they have interfered with the right to hold meetings and the freedom of assembly of the trade unions involved, and to keep the Committee informed of the measures taken in this respect; and (ii) take the necessary steps to ensure that the independent trade unions may be recognized without delay so that they may carry out their activities without interference. The Committee notes with concern that the Government merely reiterates its previous statement that independent unions or the JFITU are entities that have not complied with the procedures set out in the Labour Code for their establishment and operation. Therefore, their legal existence cannot be recognized and they do not represent workers and cannot defend their interests. This situation prompted the Ministry of Labour, in order to protect the rights of workers joining these independent unions, to send an official note to all ministries and State-owned companies informing them that the entity known as the JFITU is not a recognized union.*

340. *The Committee notes more generally the Government's indication that the refusal of the Registrar of Trade Unions and Employers' Associations to register any new trade union with the same aims and purposes as an existing trade union is to avoid rendering the sector vulnerable to fragmentation and conflict of interest. This is in line with the objective of section 98(d) of the Labour Code. In the view of the Government, the law does not go against the freedom to establish trade unions but regulates it in a way that is compatible with the provisions of the Jordanian Constitution and the United Nations Covenants on civil and political rights and economic, social and cultural rights. The Committee wishes to recall in this regard that when a State decides to become a Member of the International Labour Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association [see* ***Compilation****, para. 44].*

341. *The Committee recalls from its previous examination of this case that the union monopoly situation imposed by the law has led to the non-recognition of independent unions by the Government, and while it duly notes that following the amendment introduced to the Labour Code in 2019 (Act No. 14 of 2019) to promote by Ministerial decision the expansion of occupations for which trade unions may be established, thereby allowing new categories of workers to exercise their freedom of association and collective bargaining rights – that is, most recently agricultural and domestic workers, the fact remains that these categories of workers are required to join a designated sectoral union, thereby limiting their ability to form and join unions of their own choosing, including independent trade unions. The Committee is bound to recall its previous conclusions that the principle of trade union pluralism is grounded in the right of workers to come together and form organizations of their own choosing, independently and with structures which permit their members to elect their own officers, draw up and adopt their by-laws, organize their administration and activities and formulate their programmes without interference from the public authorities and in the defence of workers interests. It also recalls that while it is generally to the advantage of workers and employers to avoid the proliferation of competing organizations, a monopoly situation imposed* *by law is at variance with the principle of free choice of workers' and employers' organizations [see **Compilation**, para. 483 and 486].*

342. *Therefore, the Committee must reiterate its long-standing request for measures to amend the Labour Code so as to ensure that more than one trade union organization per sector or industry can be established, if the workers so desire, and it urges once again the Government to take the necessary steps to ensure that the independent trade unions may be recognized without delay so that they may carry out their activities without interference. Similarly, the Committee further requests for measures to amend the Labour Code to ensure that workers in all sectors of the economy can exercise their right to organize and freely bargain collectively through the organization of their choosing.*

343. *In conclusion, while the Committee notes some useful information on the actions taken by the Government in relation to its previous requests for legislative changes, it must again express its concern over the absence of tangible developments concerning the majority of the issues under examination in this case. The Committee must express its firm expectation that the Government will take swift action in relation to these recommendations it is bound to repeat. The Committee expects the Government to report on meaningful progress, as this necessarily has an impact on the industrial relations and the exercise of freedom of association rights of all workers in the country.*

344. *While taking note of the statement that the Government is benefitting from the collaboration of the ILO Office in Jordan in the process of enabling agricultural workers to engage in trade union activity, the Committee invites the Government to continue to avail itself of the technical assistance of the Office in respect of the remaining matters raised in this case.*

The Committee's recommendations

345. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee reiterates its request to the Government to amend section 98(e) of the Labour Code so as to eliminate the restriction placed on the organizing rights of migrant workers and to ensure that foreign workers may be elected to trade union office, at least after a reasonable residence period. It requests the Government to keep it informed of all measures taken in this respect.

(b) The Committee requests once again the Government to take without delay the necessary measures, in consultation with all social partners concerned, to amend section 98(f) of the Labour Code so as to ensure that minors who have reached the legal age for employment, whether as workers or trainees, are fully protected in their exercise of the freedom of association rights. It requests the Government to provide information on measures contemplated or adopted in this respect.

(c) The Committee urges the Government to take meaningful steps, including specific legal provisions, to ensure the right to organize and to bargain collectively in the public sector, including in the public service. In the meantime, the Committee requests the Government to provide a copy of any special law enabling public employees in a ministry, department, body or government institution to establish a union for the defence of their interests.

(d) The Committee once again urges the Government to amend without delay Section 116 of the Labour Code (conferring to the Ministry of Labour the power to dissolve and replace the administrative body of a representative organization) in consultation with the social partners and to keep it informed of the measures taken in this regard.

(e) The Committee is bound to urge once again the Government to take swift measures to investigate the alleged acts of discrimination against trade unionists and to provide without delay information on their outcome, including on the status of the union leaders mentioned.

(f) The Committee must reiterate its long-standing request for measures to amend the Labour Code so as to ensure that more than one trade union organization per sector or industry can be established, if the workers so desire. Similarly, the Committee further requests for measures to amend the Labour Code to ensure that workers in all sectors of the economy can exercise their right to organize and freely bargain collectively through the organization of their choosing. It urges once again the Government to take the necessary steps to ensure that the independent trade unions may be recognized without delay so that they may carry out their activities without interference.

(g) The Committee requests the Government to indicate whether the determination of the new fines imposed on employers in case of breach of labour law included in the bill amending the Labour Code was made in consultation with the social partners.

(h) The Committee must express its firm expectation that the Government will take swift action in relation to the recommendations it is bound to repeat. The Committee expects the Government to report on meaningful progress, as this necessarily has an impact on the industrial relations and the exercise of freedom of association rights of all workers in the country.

(i) The Committee invites the Government to continue to avail itself of the technical assistance of the Office in respect of the remaining matters raised in this case.

Case No. 3275

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Madagascar presented by the International Transport Workers' Federation (ITF)

Allegations: The complainant organization alleges anti-union discrimination from a port sector company, by: (i) its refusal to recognize the General Maritime Union of Madagascar (SYGMMA) as the legitimate representative of its workforce; and (ii) its penalization and dismissal of union leaders and members in retaliation for carrying out legitimate trade union activities

346. The Committee last examined this case (which was presented in 2017) at its meeting in June 2022 and presented a new interim report to the Governing Body on that occasion [see 399th Report, approved by the Governing Body at its 345th Session (June 2022), paras 197–207]. [6]

347. In the absence of a reply from the Government, the Committee has twice been obliged to postpone its examination of the case. At its meeting in March 2023 [see 401st Report, para. 6], the Committee expressed regret at the Government's continued lack of cooperation and launched a further urgent appeal to the Government, indicating that it would present a report on the substance of the matter at its next meeting, even if the requested information or observations had not been received on time. To date, the Government has not sent any information.

348. Madagascar 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). It has not ratified the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

349. At its previous examination of the case in June 2022, the Committee made the following recommendations [see 399th Report, para. 207]:

(a) The Committee deeply regrets that the Government has failed to provide a reply to its recommendations, even though it has been requested several times to do so, including through an urgent appeal, and urges the Government to be more cooperative in the future.

(b) The Committee urges the Government to take the necessary measures to ensure that, in accordance with the decision of the Arbitration Board of the Court of First Instance dated 26 July 2013, trade union rights are respected at the Port of Toamasina, allowing the SYGMMA to carry out its trade union activities freely.

(c) The Committee urges the Government to provide detailed information on the situation of the 43 dismissed workers, as well as on the outcome of the appeal lodged in September 2015 against the decision by the Court of First Instance. If it is found that acts of anti-union discrimination were committed by the company, the Committee calls on the Government to take the necessary measures of redress, including ensuring that the workers concerned are reinstated without loss of pay and, if reinstatement is not possible, the Government should ensure that the workers concerned are paid adequate compensation.

B. The Committee's conclusions

350. *The Committee deplores that, despite the time that has elapsed since the presentation of the complaint, the facts of which date back more than ten years, the Government has failed to date to provide a reply to the Committee's recommendations, even though it has been requested several times to do so, including through an urgent appeal.*

351. *Under these circumstances, and in accordance with the applicable rule of procedure [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee finds itself obliged once again to present a report on the substance of the case, without the benefit of the information it had expected to receive from the Government.*

352. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association of employers and workers is to promote and ensure respect for this freedom in law and*

[6] Link to previous examinations.

in fact [see ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 3.]. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report, 1952, para. 31]. The Committee urges the Government to be more cooperative in the future, especially as it has benefited from technical assistance from the Office on several occasions and is involved in a development cooperation project on labour standards.*

353. *The Committee recalls that this complaint concerns allegations of anti-union discrimination from a port sector company, by: (i) its refusal to recognize the General Maritime Union of Madagascar (SYGMMA) as the legitimate representative of its workforce; and (ii) its penalization and dismissal of union leaders and members in retaliation for carrying out legitimate union activities.*

354. *The Committee deplores that the Government has failed to provide the requested information regarding the recognition of the SYGMMA and the respect of trade union rights in the Port of Toamasina, as well as the situation of the 43 workers dismissed in 2012 and the outcome of the related judicial proceedings. The Committee wishes to recall once again that dockers, in view of their status and conditions of recruitment, may prove to be especially vulnerable to anti-union discrimination, and that it considers that the lack of information on the outcome of the judicial proceedings relating to the dismissal of the 43 workers, compounded by the Government's silence over the measures taken to protect the trade unionists and the free exercise of trade union activities, would appear to corroborate the more general allegations of a lack of respect for trade union rights in the country.*

355. *In view of the longstanding absence of information from both the Government and the complainant, the Committee confines itself to recalling the conclusions of its last examination of this case [see 399th Report, paras 197–207], reiterates its previous recommendations and requests the Government to keep it informed of developments.*

The Committee's recommendations

356. In light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee deplores that the Government has failed to provide a reply to its recommendations, even though it has been requested several times to do so, including through an urgent appeal, and urges the Government to be more cooperative in the future.

(b) The Committee urges the Government to take the necessary measures to ensure that, in accordance with the decision of the Arbitration Board of the Court of First Instance dated 26 July 2013, trade union rights are respected at the Port of Toamasina, allowing the SYGMMA to carry out its trade union activities freely.

(c) The Committee once again urges the Government to provide detailed information on the situation of the 43 dismissed workers, as well as on the outcome of the appeal lodged in September 2015 against the decision by the Court of First Instance. If it is found that acts of anti-union discrimination were committed by the company, the Committee calls on the Government to take the necessary measures of redress, including ensuring that the workers concerned are reinstated without loss of pay and, if reinstatement is not possible, the Government should ensure that the workers concerned are paid adequate compensation.

(d) **Given the difficulty in obtaining the requested information, the Committee invites the Government to accept an advisory mission to facilitate the resolution of the outstanding issues.**

Case No. 3018

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Pakistan presented by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

Allegations: The complainant organization alleges anti-union actions by the management of a hotel in Karachi and the failure of the Government to ensure freedom of association

357. The Committee last examined this case at its March 2021 meeting, when it presented an interim report to the Governing Body [see 393rd Report, paras 581–599, approved by the Governing Body at its 341st Session]. [7]

358. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) provided additional information in communications dated 21 April, 12 June and 21 October 2021, and 8 March and 1 December 2022.

359. The Government of Pakistan provided its observations in communications dated 17 May 2022 and 13 February 2023.

360. Pakistan 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).

A. Previous examination of the case

361. At its March 2021 meeting, the Committee made the following recommendations [see 393rd Report, para. 599]:

(a) With regard to the situation of the trade union members who benefited from a reinstatement order from the Sindh Appellate Labour Tribunal in January 2013, the Committee is bound to reiterate its firm expectation that the Sindh High Court's decision on the management's appeal will be rendered without further delay and requests the Government to transmit a copy of the judgment once it has been issued. Should the reinstatement order be confirmed, the Committee expects that the Government will ensure the full execution of the ruling and secure the effective reinstatement of the workers in question (or payment of pension for those who have reached the retirement age) and compensation for lost wages, as well as any damages suffered. In this regard,

[7] Link to previous examinations.

noting from the information provided that the case of Mr Ghulam Mehboob, General Secretary of the Hotel trade union, who is among the officers who benefited from the reinstatement order and is now retired, was decided by Court and that his legal dues were being calculated and shall be paid shortly, the Committee requests the Government to keep it informed of any development in this regard. It also requests the Government to provide detailed information on the steps taken to implement its recommendation that the heirs of the union member who died while awaiting the enforcement of the reinstatement judgment receive adequate compensation. With regard to the five cases regarding claims for compensation pending before the Compensation Commissioner of the Sindh Labour Department, the Committee requests the Government to keep it informed of the outcome of these cases.

(b) In view of the lengthy proceedings still pending concerning the workers who were allegedly denied access to the workplace after the events of March 2013, the Committee must express its firm expectation that the Sindh High Court's decision on the matter will be rendered without further delay and that all proceedings pending before the NIRC will be properly and expeditiously dealt with. The Committee firmly expects that the Government will provide detailed information on meaningful development concerning these proceedings or any follow-up to the recommendations of the Tripartite Committee set up by the MOPHRD in this regard.

(c) The Committee requests the Government to clarify whether the Tripartite Committee established by the MOPHRD in April 2018 to conduct an independent inquiry into the allegations of anti-union harassment and violence has concluded its examination of the following allegations: harassment of union members; the acts of violence on 25 February and 13 March 2013 against several members of the Hotel trade union, its General Secretary, Mr Ghulam Mehboob and workers participating in a strike; and the subsequent brief arrest of union officers and members and filing of criminal charges against 47 of them. The Committee requests the Government to provide without further delay concrete updated information on the outcome of the investigations and of any follow-up measures thereto.

(d) The Committee must express its firm expectation that the decision of the Sindh High Court on the Hotel management's appeal challenging the decision of the NIRC on holding elections at the national level to determine the collective bargaining agent will be rendered without delay and urges the Government to keep it informed of any developments regarding the recognition of the national union by the Hotel, in accordance with the Tripartite Committee's recommendations.

(e) The Committee encourages the Government to pursue its effort to facilitate the engagement of the parties to find solutions to the pending matters. In view of the time that has elapsed since the lodging of the complaint in 2013, the Committee expresses once again the firm expectation that the Government will take swift action and will be able to report meaningful progress regarding the outstanding matter of this case.

B. The complainant's additional information

362. In its communications dated 21 April, 12 June and 21 October 2021, and 8 March and 1 December 2022, the complainant provides information on the follow-up given by the Government to the recommendations of the Committee.

363. As regards the situation of the trade union members who benefited from a reinstatement order from the Sindh Appellate Labour Tribunal in January 2013 (recommendation (a)), the complainant informs that a meeting of the tripartite committee established by the Ministry of Overseas Pakistanis and Human Resource Development (MOPHRD) was held on 2 August 2022 to discuss the present case and in which the National Labour Union representative was able to explain in detail the pending issues. According to the complainant, while there was no follow-up meeting of this Committee, the Pearl Continental Hotel Karachi (hereinafter "the hotel") paid the dues of Mr Ghulam Mehboob, General Secretary of the hotel trade union, a few days after the meeting.

364. With respect to the workers who were allegedly denied access to the workplace after the events of March 2013 (recommendation (b)), the complainant indicates that, as of 1 December 2022, the remaining three workers are still refused access to the hotel premises due to their role in the committee of the hotel's national union.

365. Regarding the holding of elections at the national level to determine the collective bargaining agent (recommendation (d)), the complainant informs that on 27 April 2021, the Sindh High Court dismissed the hotel's appeal challenging the registration of the hotel's national union. The latter therefore requested the National Industrial Relations Commission (NIRC) to hold a national referendum (recognition ballot); the NIRC then appointed an authorized officer to commence the process on 15 July 2021. The hotel filed a petition against the NIRC's decision with the Islamabad High Court, which rejected the petition on 6 July 2021. However, on 29 August 2021, the hotel challenged that ruling before the Supreme Court. According to the complainant, in order to undermine and suspend the referendum proceedings, the hotel and an opposing union filed additional petitions on various issues before the NIRC and the Islamabad, Lahore and Karachi High Courts. However, these petitions were ultimately dismissed and the Islamabad High Court decided on 12 September 2022 that a referendum should be held within 15 days. The referendum was finally held on 14 October 2022 at all hotels, namely Karachi, Lahore, Rawalpindi, Bhurban, Peshawar and the hotel Head Office, but the NIRC did not announce the result or issue the collective bargaining agent certificate to the winning trade union by order of the Supreme Court, which has not yet ruled on a civil petition for leave to appeal (application for the right to appeal) filed by the hotel. Hence, there is no recognized union for collective bargaining in the hotel. The complainant states that a hearing date has not yet been announced by the Supreme Court and it is likely that the hotel will attempt to delay the proceedings. The complainant urges the Government, through the NIRC, to request the Supreme Court to make an early hearing of the case and decide as soon as possible, so to enable workers to elect their representatives for collective bargaining.

C. The Government's reply

366. In communications dated 17 May 2022 and 13 February 2023, the Government provides documented information about developments in the present case, including a reply to the additional information submitted by the complainant. At the outset, the Government recalls that the hotel is a chain owned, operated and franchised by a national company engaged in the hotel business, and the case was lodged on behalf of the hotel union.

367. With regard to its previous recommendation (a) whereby the Committee expected that the courts would reach a final decision on the situation of the trade union members who benefited from a reinstatement order from the Sindh Appellate Labour Tribunal back in 2013, the Government indicates that although pending miscellaneous applications filed by the union members have been dismissed by the court (NIRC Karachi Branch) vide order dated 17 September 2021, an out-of-court settlement, mutually agreed by both parties, has been made of all cases pending before the Compensation Commissioner of the Sindh Labour Department. The Government specifies that the payments in respect of the deceased workers have been made to the Commissioner of Workmen Compensation. Finally, the Government provides documented attestations of the payment of final dues to litigant workers who reached the age of retirement, including Mr Ghulam Mehboob – the General Secretary of the hotel trade union, Mr Muhammad Yaseen, Mr Mumtaz Khan, Mr Muhammad Zarif, Mr Quresh Khan, Mr Bashir Hussain and Mr Tauqeer Ul Hassan. According to the Government, all cases have now been settled amicably and there is no pending case before court (recommendation (b)).

368. Concerning the Committee's recommendation (c) requesting whether the tripartite committee established by the MOPHRD to conduct an independent inquiry into the allegations of anti-union harassment and violence has concluded its examination, the Government asserts that the out-of-court settlement between the hotel and the workers has ended all pending matters in the present case.

369. With regard to recommendation (d) whereby the Committee expressed its firm expectation of a final decision by the Sindh High Court on the hotel's appeal challenging the decision of the NIRC to hold elections at the national level to determine the collective bargaining agent, the Government informs that the proceedings of a national union referendum under the auspices of the NIRC Islamabad were challenged by the hotel before the Islamabad High Court in a writ petition dated 16 February 2022 barring the NIRC from proceeding with the referendum until the conclusion of the writ petition. The court dismissed the writ petition on 12 September 2022. Accordingly, the NIRC resumed the proceedings and set the election date on 14 October 2022. The election was held successfully on that date. The Government indicates that the official result and the collective bargaining agent certificate have not yet been issued by the NIRC Islamabad due to the restraining order of 14 October 2022 from the Supreme Court of Pakistan seized by a civil petition for leave to appeal (No. 5094/2021). According to the Government, as soon as the final order is received from the Supreme Court in the corresponding case, the NIRC will issue the collective bargaining agent certificate. In the meantime, the Government indicates that, according to the hotel, local unions are operating in the establishment and a collective bargaining agreement was signed with the union named Pearl Continental Hotel Workers Union Karachi in 2021 whereby workers were provided with benefits including a raise in salary and allowances.

370. The Government indicates that with the efforts of all stakeholders, positive developments have been attained. All cases of reimbursement and compensation have been resolved amicably and the referendum to determine the collective bargaining agent that had been pending has been held successfully to the satisfaction of both the consenting unions (the PC Hotel National Labour Union and the PC Hotel Staff Union). Consequently, on account of these positive developments the Government requests the Committee to close the present case.

C. The Committee's conclusions

371. *The Committee recalls that this case concerns serious allegations of anti-union actions including transfer and dismissal, harassment, arrest and criminal prosecution of trade union members and officials by a hotel in Karachi in the Sindh Province, and ultimately the failure for many years to organize elections in the establishment to designate the collective bargaining agent, hence preventing the workers from fully enjoying their freedom of association and collective bargaining rights.*

372. *With regard to the situation of the trade union members who benefited from a reinstatement order from the Sindh Appellate Labour Tribunal in January 2013 (these dismissals were the subject of Case No. 2169 examined by the Committee, the predecessor to this case concerning the same hotel [see 331st Report, June 2003]), the Committee notes the Government's indication that despite the fact that the pending applications filed by the union members have been dismissed by court, an out-of-court settlement, mutually agreed by the parties, has been made in respect of all cases pending before the Compensation Commissioner of the Sindh Labour Department. The hotel made payment of final dues to litigant workers who reached the retirement age. The Committee notes from documents* *provided by the Government that Mr Ghulam Mehboob, General Secretary of the hotel trade union, is among the officers who benefited from the payment of pension. The Committee notes that the complainant also indicates that the hotel paid the dues to Mr Mehboob shortly after a meeting of the tripartite committee established by the MOPHRD held in August 2022 to discuss the case. The hotel also made payment to the Commissioner of Workmen Compensation in respect of the deceased. Therefore, according to the Government, all cases have now been settled amicably and there is no pending claim before court. The Committee welcomes the report of the amicable settlement of all claims of anti-union dismissal in this case.*

373. *Furthermore, the Committee notes the complainant's indication that the three workers who were denied access to the workplace after the events of March 2013, are still denied access to the hotel premises due to their role in the committee of the hotel national union. The Committee understands from the information provided previously by the complainant that while these workers are not permitted to resume work, the hotel does pay their salaries and benefits. The Committee does not intend to examine the working arrangements concerning the three workers, which is the responsibility of the hotel insofar as it complies with national laws and regulations on non-discrimination in employment and freedom of association. The Committee has drawn the attention of governments to the principle that workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including access to workplaces. If necessary, workers' organizations and employers could reach agreements so that access to workplaces, during and outside working hours, can be granted to workers organizations without impairing the functioning of the establishment or service. Governments should guarantee the access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization. [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 1589, 1599 and 1590.] The Committee trusts that the Government will take the necessary measures to ensure that the hotel allows access to those trade union representatives concerned to carry out their functions without impairing the functioning of the establishment.*

374. *With regard to the certification request lodged by the hotel's national union in March 2017 and the choice by the hotel to challenge the decision of the NIRC on holding elections at national level to determine the collective bargaining agent, the Committee recalls that it previously noted with regret the overly lengthy proceedings that were undoubtedly detrimental to the conduct of sound labour relations in the hotel and observed that initiating collective bargaining in the hotel remained a daunting process. The Committee also noted the recommendation of the tripartite committee established by the MOPHRD that the hotel recognize and work in harmony with the national union. The Committee notes the Government indication that the NIRC Islamabad commenced proceedings of a national union referendum, but the hotel challenged the decision before the Islamabad High Court in a writ petition dated 16 February 2022 barring the NIRC from proceeding with the referendum until the conclusion of the writ petition. Following the dismissal of the writ petition in September 2022, the NIRC resumed the proceedings and set the election date for 14 October 2022. While the election was held successfully, the official result and the collective bargaining agent certificate have not yet been issued by the NIRC Islamabad due to a restraining order of 14 October 2022 from the Supreme Court of Pakistan following the filing of a civil petition for leave to appeal filed by the enterprise (No. 5094/2021). According to the Government, as soon as the final order is received from the Supreme Court in the corresponding case, the NIRC will issue the collective bargaining agent certificate. In addition, the Committee notes that the complainant expressed its concern that the hotel might attempt to delay the proceedings for the certification and that it calls for an early hearing of the case, so as to enable workers to choose their representative union. Regretting the lengthy time that has elapsed since the national union has sought collective bargaining recognition (March 2017), the Committee hopes that the Supreme Court will render its* *decision without delay so that the NIRC may declare the results of the referendum and issue the collective bargaining agent certificate. The Committee requests the Government to keep it informed of any development in this regard.*

375. *While regretting that the matter of collective bargaining agent recognition still remains unresolved, the Committee welcomes the tangible progress made towards the resolution of a number of other long-standing matters between the hotel and the union. The Committee acknowledges the valuable role of the tripartite committee set up by the MOPHRD to facilitate the engagement of the parties in this regard and expects the Government to provide the remaining information without delay, in order to enable it to close this case.*

The Committee's recommendations

376. **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**

(a) **The Committee trusts that the Government will take the necessary measures to ensure that the hotel allows access to the trade union representatives concerned to carry out their functions without impairing the functioning of the establishment.**

(b) **The Committee hopes that the Supreme Court will render its decision without delay, so that the NIRC may declare the results of the referendum and issue the collective bargaining agent certificate. The Committee requests the Government to keep it informed of any development in this regard.**

Case No. 3245

Definitive report

Complaint against the Government of Peru
presented by
– the Single Union of Education Workers of Lima (SUTE Lima)
– the Single Union of Education Workers of the Ayacucho Region (SUTE Ayacucho)
– the Single Union of Education Workers of Huamanga Province (SUTE Huamanga)
– the Single Union of Education Workers of the Tacna Region (SUTEP Tacna) and
– the National Federation of Education Workers of Peru

Allegations: Improper fixing, through regulations, of the level of collective bargaining and of the trade union authority responsible for naming the representatives granted union leave in the public education sector

377. The complaint is contained in a communication from the Single Union of Education Workers of Lima (SUTE Lima) and the National Grass-Roots Union Committee of the Single Union of

Peruvian Education Workers dated 13 August 2016, and in a communication from the Single Union of Education Workers of the Ayacucho Region (SUTE Ayacucho) and the Single Union of Education Workers of Huamanga Province (SUTE Huamanga) dated 18 August 2016. The Single Union of Education Workers of the Tacna Region (SUTEP Tacna) sent communications relating to the complaint on 1 May and 26 November 2019, and the National Federation of Education Workers of Peru (FENATE PERU) sent a communication dated 25 May 2020 in which it endorsed and supported the information submitted by SUTEP Tacna.

378. The Government sent its observations in a communication dated 6 July 2017.

379. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant allegations

380. In their communications, the complainant organizations SUTE Lima, SUTE Ayacucho, SUTE Huamanga and SUTEP Tacna, which are four regional organizations belonging to the Single Union of Peruvian Education Workers (SUTEP), call into question two provisions of the Teaching Reform Act Regulations (RLRM), which were amended by Supreme Decree No. 13-2016 MINEDU and which, according to the complainants, violate the freedom of association and right to collective bargaining of the regional education sector organizations for the following reasons:

(i) article 194.2 of the RLRM grants the secretary-general of the national union education workers or the national federation of teachers, as appropriate, the authority to accredit regional representatives for the purpose of granting paid leave. This same provision establishes that each regional education directorate is responsible for granting paid leave to two representatives of the grass-roots education union or teachers' union duly included on the Register of Trade Unions of Public Servants (ROSSP). The complainants believe that this allocation of powers by the RLRM to the secretary-general of SUTEP is excessive and conflicts with the rights of trade union representation held by the regional SUTEs duly included on the register. The complainants add that no authorization from the national executive committee was required for the registration of their regional directorates – which demonstrates that, under the protection of freedom of association, accreditation at the national level is not necessary. They believe that this provision of the regulations turns the national executive committee of SUTEP – with which they can have significant disagreements – into a union monopoly, and so it should not be given such accreditation in any way.

(ii) article 207-A b) of the RLRM only permits collective bargaining between the national trade union and the Ministry of Education. This provision defines a collective agreement as an agreement made between the Ministry and the national union of education workers or national federation of teachers with majority representation (which is SUTEP). This definition denies regional trade unions (the regional SUTEs) the opportunity to represent their members by negotiating with regional governments. The complainants believe that reserving this power for the national union does serious harm to the regional SUTEs, which do not necessarily agree with the list of claims presented by SUTEP. The regional SUTEs believe that their leaders were elected specifically for the purpose of participating in collective bargaining with the Ministry of Education or with other relevant national or regional authorities.

381. The complainants emphasize that these regional trade unions have the right to represent their members to the authorities and recall in this regard that numerous regional trade unions have been established in the country, which have legal status and have been registered with the Ministry of Labour and Employment Promotion. They believe that these provisions restrict their rights of representation and their freedom of association. They allege that they should be able to participate in collective bargaining and determine which of their representatives are granted union leave.

382. In addition, SUTEP Tacna alleges that the anti-union practices by SUTEP towards the regional trade unions are ferocious and that this was demonstrated by an administrative appeal lodged in 2014 in which it requested to cancel the registration of SUTEP Tacna. SUTEP Tacna also makes reference to the request to cancel the registration of other regional trade unions.

B. The Government's reply

383. In its communication of 13 July 2017, the Government provides the following observations from the relevant authorities, in response to the allegations made:

(i) The Teaching Reform Act (LRM) and its Regulations (RLRM) recognize the union of education workers at the national level, a position held by SUTEP (which is included on the ROSSP), although it also has grass-roots or regional trade unions.

(ii) According to what is established in article 194 of the RLRM (as amended by Supreme Decree No. 13-2016 MINEDU, which the complainants are calling into question), trade union representation leave is granted to: (a) eight members of the executive committee of the teaching union or federation set up to defend the rights and interests of teachers at a national level; and to (b) two grass-roots representatives of the union for each regional education directorate nationally. The secretary-general of the union at the national level is the person responsible for accrediting regional representatives for the purpose of granting paid leave. As a result, education sector bodies are obliged to grant union representation leave both to the national leaders of SUTEP and to those from grass-roots unions (regional, provincial, etc.) and in both cases they must be duly included on the ROSSP.

(iii) With regard to collective bargaining, the Ministry of Education does not negotiate with grass-roots unions or regional teaching unions. With a view to guaranteeing the defence of the teachers' interests, the aforementioned Supreme Decree provides that collective bargaining is undertaken between the Ministry of Education and the union or federation that has an absolute majority of teachers as members (50 per cent plus one of the unionized teachers at the national level). This provision is in line with the "most representative union system" and provides an interim solution to trade union plurality: equal treatment of trade unions and strengthening the effectiveness of the protection of workers' interests.

(iv) This system does not entail discrimination against minority unions, but rather better standardization and active channelling of petitions, claims or proposals that could represent minority unions through a majority union. SUTEP is made up of different sections or grass-roots unions, including the regional SUTE organizations. These grass-roots unions, by virtue of the principle of union leadership, are subject to the provisions of the SUTEP authorities and the regulations of its Statute. In addition, each regional SUTE organization is responsible for electing its own representatives and for accrediting them with the authorities accordingly. Those SUTEs are part of the organic structure of SUTEP, which means they are represented by it in the collective bargaining processes and are able to channel their claims that way.

C. The Committee's conclusions

384. *The Committee observes that in the present case, first presented by four regional trade unions from the education sector belonging to the national trade union SUTEP, it is alleged that it is contrary to freedom of association and collective bargaining to determine by means of Regulations which trade union authority appoints the regional representatives of the education union or teachers' union that are granted paid leave and which level of the trade union structure is able to collectively bargain in the public education system.*

385. *The complainant organizations from the education sector, SUTE Lima, SUTE Ayacucho, SUTE Huamanga and SUTEP Tacna, believe that articles 194.2 and 207-A b) of the RLRM, as amended by Supreme Decree No. 13-2016, limit freedom of association: (i) by granting the secretary-general of SUTEP the authority to determine which representatives of the regional SUTEs will be granted paid leave, even though they have their own leaders and autonomy; and (ii) by restricting the opportunity for collective bargaining at the national level (with SUTEP as the majority union), excluding the capacity of grass-roots unions, such as the regional SUTE organizations, to bargain collectively. In addition, the Committee takes note that the complaint also makes reference to specific situations of conflict between SUTEP and several of its regional unions, such that the national trade union is alleged to have requested the cancellation of the registration of several of its regional organizations*

386. *The Committee also notes the Government's reply to the allegations relating to the contents of the RLRM. The Committee notes that the Government states in this regard that: (i) the secretary-general of the union at the national level is the person responsible for accrediting the regional representatives for the purpose of granting paid leave and as a result, the education sector bodies are obliged to grant union representation leave both to the national leaders of SUTEP and to those from grass-roots unions (regional, provincial, etc.); (ii) the existing system, while permitting union pluralism, grants the authority to negotiate to the most representative trade union at the national level (SUTEP) and this strengthens the defence of the workers' interests; (iii) for this reason, the Ministry of Education does not negotiate with grass-roots unions or regional teaching unions; and (iv) grass-roots unions, such as the regional SUTE organizations, are part of the organic structure of SUTEP, so it can channel their petitions and appointments, and can represent them in collective bargaining processes.*

387. *Observing that different aspects of the present complaint indicate the existence of conflicts between several of the regional constituent groups of SUTEP and the national leadership, the Committee first wishes to recall that conflicts within a trade union lie outside the competence of the Committee and should be resolved by the parties themselves or by recourse to the judicial authority or an independent arbitrator [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1622].*

388. *With regard to trade union leave, the Committee recognizes that, depending on the approach to the law and labour relations in each country, different procedures can be established to give effect to the facilities granted to trade union representatives. With regard to this specific case, the Committee takes note of the complainants' allegations that the regulations grant the central body of the teaching union the authority to name which regional representatives are granted leave, even though the regional branches of that union are included as such on the register of trade unions, they have their own legal status and, furthermore, they should be in a position to choose for themselves which of their members will receive trade union leave. The Committee also notes the Government's reply,* *according to which the regulations permit the granting of union leave to both the central and regional bodies of the teaching unions.*

389. *The Committee observes that, since the complaint was submitted, Supreme Decree No. 1-2020 has been issued, which amended article 194.2 of the RLRM on trade union representation leave. The Committee observes in this regard that the amended version of article 194.2 of the RLRM: (i) on the one hand, considers the possibility that several representative trade union organizations exist in the education sector, at both the central and regional levels, and on the other hand, considers the possibility that the sector's regional unions either do or not belong to a national organization; and (ii) provides that a maximum of three trade union leaves are granted in each region, rather than two, as established by Supreme Decree No. 13-2016. The Committee nonetheless observes that the revised regulations continue to grant the central body of the representative unions in the field of education the authority to accredit the representatives of the regional unions receiving regional union leave before the Regional Education Directorate, when those regional unions are part of a national organization.*

390. *The Committee recalls that in previous cases it has considered that the regulation of procedures and methods for the election of trade union officials is primarily to be governed by the trade unions' rules themselves. The fundamental idea of Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of their organizations and the elections which are held therein [see* ***Compilation*** *para. 592]. In line with the above, the Committee invites the Government, in full consultation with the representative trade unions in the sector, to consider how to revise the current regulations such that it is the organizations of education workers themselves that determine the internal mechanisms by which the representatives that will receive union leave are named. The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*

391. *With regard to the level of collective bargaining, the Committee firstly recalls that it has considered that, while the public authorities have the right to decide whether they will negotiate at the regional or national level, the workers, whether negotiating at the regional or national level, should be entitled to choose the organization which shall represent them in the negotiations [see* ***Compilation****, para. 1370]. Secondly, the Committee observes that, since the complaint was submitted, the rules applicable to collective bargaining in the public service have been amended by the adoption in 2021 of Act No. 31188 on Collective Bargaining in the Public Sector and by the adoption in 2022 of Supreme Decree No. 008-2022-PCM, which establishes guidelines for the application of Act No. 31188, and that those standards also address collective bargaining in the public education sector. The Committee observes in that regard that: (i) article 5.b of Act No. 31188 defines the decentralized level of collective bargaining in the public sector as that which is carried out at the sectoral and territorial level, and within each public body, or at the level deemed suitable by the trade union organizations; and (ii) the second supplementary repeal provision in Supreme Decree No. 008-2022-PCM expressly repeals articles 207-A and 207-B of the RLRM, which are the subject of this case. In light of the foregoing, the Committee will not pursue its examination of this allegation.*

The Committee's recommendations

392. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee invites the Government, in full consultation with the representative trade unions in the sector, to consider how to revise the current regulations such that it is the organizations of education workers themselves that determine the

internal mechanisms by which the representatives that will receive union leave are named.

(b) **The Committee considers that this case does not call for further examination and is closed, and refers the legislative aspects of the case to the Committee of Experts on the Application of Conventions and Recommendations.**

Case No. 3342

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Peru presented by the Autonomous Confederation of Workers of Peru (CATP)

Allegations: The complainant alleges a series of actions contrary to freedom of association and the right to collective bargaining on the part of a mining enterprise

393. The complaint is contained in a communication dated 9 October 2018 from the Autonomous Confederation of Workers of Peru (CATP).

394. The Government of Peru sent its observations on the allegations in communications dated 6 May and 1 July 2019, 10 August 2022 and 31 March 2023.

395. 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).

A. The complainant's allegations

396. The complainant states that the Single Union of Mining and Metal Workers of the Argentum Mining Company (STUMMCMA) has, since 2008, bargained collectively with the Argentum Mining Company (hereafter "the company"), a subsidiary of the transnational Pan American Silver S.A.C., with a view to improving the working conditions of its members. The complainant notes that, as a result of non-compliance with the signed agreements and the company's refusal to engage in dialogue the workers turned to the Huancayo Regional Labour Directorate, which convened a special meeting that the company did not attend, which is why a general strike took place on 2 and 3 May 2017, which concluded with a settlement agreement dated 3 May 2017 in which the company expressly committed not to take reprisals.

397. In spite of the agreement that had been reached, the company took reprisals for the aforementioned industrial action and dismissed four trade union members – Mr Edwin Martel Paucarcaja, Mr Epifanio Ore Eslava, Mr Melecio Crispin Laureano and Mr Jhover Ceras Castillón – charging them with alleged serious misconduct. Only one of those workers, Mr Jhover Ceras Castillón, agreed to drop his legal action in exchange for financial compensation. As a result of these dismissals, which were intended to intimidate and break up the trade union, the workers decided to resume the strike, which took effect on 21 June 2017 and lasted for seven days.

398. At the end of the strike, when the workers arrived at their place of work on the night of 27 June, the security personnel blocked the entry of 160 workers, in spite of the documents that had been given to them when the strike was lifted. The workers had to appeal to the Justice of the Peace in Morococha, go to the city of Huancayo and chain themselves together in front of the Regional Government headquarters in order to be heard, so that the Regional Government would send a labour inspector to verify the allegations. It was only in the presence of the labour inspector that the company management finally allowed all the workers to go back in.

399. Subsequently, in spite of knowing that the measures that the union had taken were legal, the employer continued to take reprisals, such that: (i) alleging non-compliance with the company's internal labour regulations, they dismissed seven workers (Mr Luis Estrada Torres, Mr Cipriano Montes Boza, Mr José Quispe Hernández, Mr Edwin Ambrosio Bustillo, Mr Ceferino Escobar Acuña, Mr Rusabel Arroyo Quispe and Mr Vicente Rojas Torres) who had participated in the strike; and (ii) suspended 116 unionized workers without pay for periods of three to eight days. The trade union made the relevant complaints to the administrative authority in the Junín region, which, upon verification of the allegations, issued infraction reports for gross misconduct, as well as to the judicial authorities, where File No. 20287 is ongoing.

400. The complainant goes on to state that the union reported a series of illegal acts of wage discrimination by the company to the National Labour Inspection Authority (SUNAFIL), which resulted in the imposition of the following penalties: (i) in infraction report No. 58-2017, the company was fined a total of 492,075.00 Peruvian soles; (ii) in File No. 142-2017, an infraction report was issued for up to a total of 18,225.00 soles for hostility towards a trade union member; (iii) in File No. 520-2017, a penalty of 437,400.00 soles was imposed for blocking entry into the workplace (entry to the mine); (iv) in File No. 143-2017, an infraction report was issued for up to 100,237.50 soles for actions impeding the free exercise of the right to strike, reaching a total sum of 1,047,937.50 soles. In addition, reports were made of discrimination against trade union leaders, as there is a blacklist that includes the names of people who should not be hired by companies because they are trade union activists or members.

401. The complainant adds that the company, in a clear act of interference, has promoted the establishment of a new trade union organization, promising wage increases, cessation of hostilities, recategorization at a higher professional level and other benefits for workers who leave STUMMCMA and join the union sponsored by the company. They declare that through these manoeuvres, the company succeeded in disaffiliating 80 workers from the union. The complainant alleges that, based on this, the company has refused to discuss the draft collective agreement with STUMMCMA since 22 June 2017, considering it to be a minority union. The complainant states specifically in this regard that: (i) 60 days after presenting the draft, the Labour Authority began a special process on 31 August to initiate the collective bargaining process; (ii) during this phase, which lasted until November, the company refused to negotiate seriously, stating that it had already concluded a collective agreement with the other minority union of employees and proposing only to reproduce the clauses that had already been agreed with the other union; (iii) in order to prevent the conclusion of the collective bargaining process and to intimidate the union, the company accused the General Secretary Mr Alejandro Beramendi Soto (who has permanent union leave) of coming in to work intoxicated and assaulting security staff, destroying company property. The company illegally and fraudulently got the La Oroya forensic pathologist to certify these false statements, for which the aforementioned union leader was accused of serious misconduct and dismissed, in spite of having made the relevant defence; the dismissed leader went to the judicial authorities to request reinstatement; (iv) on the basis of the alleged conduct of the General Secretary, the company suspended its participation in the collective bargaining process; (v) in continuation of its acts of intimidation, the company sent letters giving notice to Mr Roly Prieto Huamán, Mr José Pariona Ancieta, Mr Roberto de la Cruz Lazo and Mr Alfredo Tueros Yaurivilca, citing unjustified absences.

402. The complainant goes on to state that: (i) at the request of the trade union, which had made a complaint for obstruction of collective bargaining, on 8 February 2018 the labour authority issued a report on the basis of which negotiations were resumed; (ii) nonetheless, the company did not move from its previous positions; (iii) in order to continue damaging and eliminating union activity, the company decided to deprive STUMMCMA of the necessary economic resources by not depositing union dues in the bank account belonging to the trade union since July 2017; these violations of freedom of association were duly reported to the labour authority and to the company's general management, but to date no response has been given; (iv) the company broke off direct negotiations on 15 February 2018, but without forwarding to the union the notification of that decision sent to the Ministry of Labour, which demonstrates the complicity of some officials in the Junín Regional Government with the company; (v) in the absence of this information, on 18 February the union requested union leave for Mr Jhonny Avalos Huamán, deputy General Secretary of the union, from 19 to 25 February, in order to continue negotiations; (vi) on the basis of its decision to break off direct negotiations, which had not been communicated to the union, as well as the aforementioned request for union leave, the company dismissed Mr Avalos Huamán on 12 March 2018.

403. The complainant organization adds that, on 9 April 2018, the dismissed General Secretary, Mr Beramendi, was violently assaulted by five individuals who did not steal any money or belongings from him. They affirm that the resulting injuries required a stay of more than 11 days in Huancayo hospital The organization believes that the aforementioned actions constitute violations of Articles 1, 2, 3 and 4 of Convention No. 98. They also state that the public authorities have not taken sufficient measures to overcome the obstacles to collective bargaining created by the company's actions.

B. The Government's reply

404. In its communication dated 6 May 2019, the Government submitted the company's response to the various elements of the complaint. In the first instance, the company states that it is greatly saddened by the unjust allegations made by CATP, considering that throughout all its years of operation the company has considered the protection of its workers to be fundamental. With regard to collective bargaining with STUMMCMA and the alleged acts of obstruction, the company states that: (i) the arbitral award granted with regard to this negotiation process (File No. 014-2017-GRD-DRTPE-DPSC-SDNCRG) contains a detailed record of the negotiation that shows the good faith with which the company has attempted to reach fair and appropriate agreements; and (ii) the investigation carried out by SUNAFIL into the suspension of collective bargaining meetings at the initiative of the company concluded that the suspension was carried out in accordance with article 69 of Supreme Decree No. 010-2003-TR on collective labour relations, recommending that both parties resume and continue collective bargaining.

405. The company goes on to refer to the dismissals of Mr Edwin Martel Paucarcaja, Mr Epifanio Ore Eslava, Mr Melecio Crispín Laureano and Mr Jhover Ceras Castillón. In this regard the company states that: (i) these workers were dismissed for breaching their professional obligations, specifically, for falling asleep during the working day (night shift), putting at risk the health and safety of both themselves and the other workers; (ii) Mr Ceras Castillón acknowledged the misconduct and proceeded to end his employment relationship, while the other cases are still ongoing before the judicial authority; and (iii) there is currently a first instance ruling in favour of the company in the case brought by former employee Mr Ore Eslava.

406. With regard to the strike that took place on 21 June 2017, the company states that: (i) it was declared improper and later illegal by the Administrative Labour Authority (Directive No. 011-2017) because the workers presented their own selection of necessary workers to ensure the essential services of the company, without questioning the list drawn up by the employer in good time; (ii) a group of these workers who did not do their work during the strike were suspended; and (iii) nonetheless, with a view to reaching a peaceful solution, the company and the trade union signed a conciliatory agreement in a legal setting in which the union organization declared that their aims in this regard had been satisfied.

407. With regard to Mr Luis Estrada Torres, Mr Cipriano Montes Boza, Mr José Quispe Hernández, Mr Edwin Ambrosio Bustillo, Mr Ceferino Escobar Acuña, Mr Rusbel Arroyo Quispe and Mr Vicente Rojas Torres, the company stresses that the right to strike is not absolute and that, as a consequence, the group that exercises it must, by law, commit to making available a minimum number of so-called “emergency” workers to the employer. In this regard, STUMMCMA did not comply with making this emergency staff available to the company, which is why it proceeded with the aforementioned dismissals, in accordance with the law.

408. With regard to the dismissal of the General Secretary of STUMMCMA, Mr Alejandro Beramendi Soto, the company states that: (i) the dismissal is not part of any anti-union strategy, but is in fact the result of extremely serious misconduct by the worker who, in a clearly inebriated state, committed serious acts of physical violence towards the company’s security staff and workers, as well as causing damage to company property; (ii) the blood alcohol level test administered by the police showed that Mr Alejandro Beramendi Soto had 1.02g of ethyl alcohol per litre of blood when he caused serious harm to the workers and to company property; and (iii) the legal ruling is still pending in this case. The company adds that it is governed by the principles of integrity and honesty in all its activities which is why it emphatically rejects any insinuation that it might be involved in the alleged physical assault of Mr Beramendi Soto, according to the CATP.

409. With regard to the letters sent to Mr Roly Prieto Huamán, Mr José Pariona Ancieta, Mr Roberto de la Cruz Lazo and Mr Alfredo Tueras Yaurivilca giving notice that they had been absent without cause and requesting them to present a defence, the company states that this was not an anti-union measure in any way, and that, in accordance with the law, after evaluating each case, the aforementioned workers were kept on by the company.

410. With regard to the dismissal of Mr Jhonny Avalos Huamán, the company states that his position as a union leader does not exonerate him from responsibility for serious misconduct. For this reason, the Eleventh Labour Court of the Lima Superior Court of Justice declared that the request for reinstatement for reasons of unfair dismissal was unfounded, as it was proved irrefutably that the former employee had been absent from the workplace without any justification.

411. With regard to the CATP’s allegations relating to the company’s alleged interference in the establishment of a new trade union, the company states that: (i) with regard to the collective rights of its workers, who are entitled to freely choose the union that is aligned with their interests according to the particularities of each occupational group; (ii) it is evident that in this case, members of the employed occupational group made use of their right to meet and unionize to form their own trade union, with different interests to those of the Single Union, which has as members the majority of the workers in the labourer occupational group; and (iii) there has not been any kind of interference by the company, particularly when such comments do not have any foundation.

412. Lastly, the company states that: (i) it is in compliance with its legal labour obligations, including those established in the collective agreements; (ii) it is obvious that the characterizations made by STUMMCMA lack any factual or legal basis, particularly since all the industrial disputes are currently pending resolution in the relevant courts; and (iii) it will comply with the judicial rulings as it has always done.

413. In its various communications, the Government goes on to provide updates on the legal cases relating to the dismissals of the following seven workers: (i) Epifanio Ore Eslava; (ii) Melecio Crispin Laureano; (iii) Edwin Ambrosio Bustillos; (iv) Ceferino Escobar Acuña; (v) Vicente Rojas Torres; (vi) Alejandro Beramendi Soto; and (vii) Jhonny Avalos Huamán.

414. With regard to Mr Epifanio Ore Eslava, the information provided by the Government shows that, by means of a second instance ruling of 2 April 2019, the company was ordered to comply with the reinstatement of the worker; through a resolution of the Permanent Labour Court of Lima, court costs were awarded to the worker. With regard to Mr Melecio Crispin Laureano, the information provided by the Government shows that: (i) the first instance decision to issue a provisional injunction to reinstate the worker was overturned in the second instance; (ii) the worker lodged an appeal for judicial review of the second instance decision that was ruled valid; and (iii) the original court (the Superior Labour Chamber) must issue a new ruling, pending since December 2022.

415. With regard to Mr Edwin Ambrosio Bustillos, the information provided by the Government shows that: (i) the Supreme Court of Justice ruled that the appeal lodged by the company against the ruling of 21 March 2019 from the Eighth Labour Chamber of Lima ordering the reinstatement of the worker was inadmissible; and (ii) the legal case has concluded in the worker's favour. With regard to Mr Cerefino Escobar Acuña, the information provided by the Government shows that in resolution No. 19, the Second Temporary Labour Court of Lima ordered the company to reinstate the worker; the legal case is in the ruling implementation phase.

416. With regard to Mr Vicente Rojas Torres, the information provided by the Government shows that the parties made a conciliatory agreement in a legal setting. With regard to Mr Alejandro Beramendi Soto, the information provided by the Government shows that: (i) overturning the first instance decision, the second instance ruled that the worker's dismissal was null and void, ordering that he be reinstated; (ii) on 21 October 2022, the Supreme Court of Justice decided that the appeal for judicial review lodged by the company was admissible, so a court ruling on the merits is now pending. With regard to Mr Jhonny Avalos Huamán, the information provided by the Government shows that the worker's lawsuit was rejected in the first and second instance, and on appeal, so the case is definitively closed.

417. In its communication dated 6 July 2019, the Government also reports on the actions of the labour inspectorate – through the inspection services of the Junín Regional Government and the National Labour Inspection Authority (SUNAFIL) – with regard to the actions reported by the complainant organization in this case. The Government cites three cases in which the labour inspectorate imposed sanctions on the company for violations of freedom of association: (i) in File No. 194-2017, the company was fined 492,000 soles for having granted a pay rise for workers not affiliated with the trade union and those who gave up their membership during the collective bargaining process, which harmed 312 workers; (ii) in File No. 033-2017, the company was sanctioned for harassment of a unionized worker, Mr Lulo Ponce; and (iii) in File No. 041-2017, the company was sanctioned for obstructing the free exercise of the right to strike of the company's workers between 21 and 27 June 2017, by suspending numerous workers who had participated.

C. The Committee's conclusions

418. *The Committee notes that the present case refers to allegations of a series of anti-union activities and obstruction of collective bargaining by a mining company. The Committee notes that the complainant organization states that the company: (i) has repeatedly refused to engage in dialogue and negotiate with the union; (ii) in reprisal for two strikes that the union had to carry out, proceeded to suspend and dismiss many workers, including the general secretary and the deputy general secretary of the organization; and (iii) has committed illegal acts of wage discrimination against members of STUMMCMA at the same time as it promoted the establishment of a parallel trade union in the company with which it rapidly signed a collective agreement. The Committee notes that the complainant organization also alleges physical aggression towards the general secretary of the union in the city of Huancayo and regrets the insufficient intervention of the public authorities to protect the right to collective bargaining. The Committee notes that, on the other hand, the company states that it fully respects freedom of association according to the law and that, in this context: (i) it has not refused to bargain collectively, as demonstrated by the arbitral award that ended the negotiation process with the union; (ii) the dismissals reported by the complainant organization were the result of serious misconduct committed by the workers concerned; (iii) it had no involvement in the establishment of another union, as demonstrated by the lack of any proof to support the allegations of interference; and (iv) the various issues mentioned in the complaint are being addressed in judicial settings and the company will, as it always does, comply with the rulings issued by the courts. The Committee notes that the Government, for its part, provides information about a series of administrative and judicial decisions relating to various events in the present case.*

419. *On the basis of the information and the appendices provided by the parties, the Committee observes that the events contained in the present case took place mainly between May 2017 and March 2018 during a collective dispute relating, in the first instance (May–June 2017), to the application of the collective agreement in force at the time and, in the second instance, to the negotiation of a new agreement. The Committee observes that the period in question was marked by two periods of strike action in May and June of 2017, several interruptions in the negotiation process, and various decisions to suspend and dismiss union members and leaders. The Committee observes that the majority of these events have given rise to administrative and judicial proceedings.*

420. *With regard to the alleged obstruction of the collective bargaining process by the company and the supposed insufficient intervention of the public authorities in that regard, the Committee notes that the complainant states that: (i) the company took more than two months to sit down to negotiate with the union after the union presented its proposal on 22 June 2017; (ii) it did not enter into real negotiations on the union's proposals between August and November 2017, on the basis of the conditions negotiated with the other union; (iii) it suspended its participation in the negotiation in November 2017; (iv) without notifying the union, it put an end to its participation in direct negotiation on 15 February 2018; and (v) the numerous anti-union activities reported in the present case aimed to obstruct the union's capacity to negotiate. The Committee notes that, for its part, the company states that: (i) the arbitral award granted with regard to this negotiation process contains a detailed record of the negotiation that shows the good faith with which the company has attempted to reach fair and appropriate agreements; and (ii) the investigation carried out by SUNAFIL into the suspension of collective bargaining meetings at the initiative of the company concluded that the suspension was carried out in accordance with the legislation on collective labour relations, recommending that both parties resume and continue collective bargaining. In the light of this information and the information contained in the appendices provided by the parties, the*

Committee observes that: (i) the documents attached by the complainant show that the labour authorities have noted on several occasions that the company did not attend special conciliation meetings between 31 May and December 2017; (ii) the main suspension of the company's participation in the negotiations in November 2017 followed a controversial event (the alleged assault committed by the general secretary of the union, leading to his dismissal) that is the subject of a court case; (iii) between 15 March and 18 April 2018, the administrative conciliation phase of the negotiation process took place, with the company's participation in several meetings; (iv) in accordance with the law and at the request of the union, an arbitration process began on 18 April 2018, which concluded on 7 March 2019 with the unanimous adoption by the three arbiters of an arbitral award. In the light of the foregoing, the Committee observes, on the one hand, that the negotiation of the collective agreement took place in a context of high tension between the parties and, on the other hand, that the labour authorities provided active follow up to the process that resulted in the adoption of an award regulating the working conditions of STUMMCMA members. At the same time, the Committee is bound to note that the aforementioned allegations of obstruction of collective bargaining cannot be considered apart from the other allegations of anti-union activity examined below.

421. *With regard to the alleged wage discrimination against members of STUMMCMA alongside company's interference in the establishment of a new trade union in the company, the Committee notes that the complainant alleges that the company: (i) promised workers who left STUMMCMA and joined the union sponsored by the company various economic and professional benefits; (ii) through these manoeuvres, the company succeeded in disaffiliating 80 workers from the union; and (iii) favoured negotiation with the new union, with which it soon concluded a collective agreement, refusing to negotiate different conditions with STUMMCMA. The Committee notes that, for its part, the company: (i) denies any interference in the formation of the new union and points to the lack of any evidence presented by the complainant organization; and (ii) states that the new union is composed of employees while STUMMCMA for the most part is a group made up of labourers, which could explain the disaffiliation of certain employees. The Committee notes that the Government has not provided specific observations on this matter. Whereas the Committee observes that the appendices provided by the complainant and the Government show that: (i) on the basis of inspections carried out between 27 April and 11 July 2017, in the framework of inspection order No. 194-2017, the labour inspectorate found that a very serious violation had been committed and sanctioned the company, in a resolution dated 26 April 2019, for having economically favoured workers who were not members of STUMMCMA, including those who were disaffiliating from the union; (ii) there were a significant number of disaffiliations from STUMMCMA between the months of March and July 2017. The Committee notes however that, in the information provided, there is no concrete evidence of the alleged involvement of the company in the formation of a new trade union in the company. The Committee therefore observes that it is apparent from the above that, on the one hand, there is no proof that the company directly favoured the new union, but on the other hand, it was sanctioned for discriminating against the members of STUMMCMA. Recalling that workers shall have the right to join organizations of their own choosing without any interference from the employer [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1189], the Committee requests the Government to continue taking the necessary measures to ensure that, in future, freedom of association is respected and that there is strict equal treatment of the different unions existing in the company.*

422. *With regard to the allegations of the complainant organization that union dues had not been deposited in the union's bank account since July 2017 and that the labour authority had not ruled on the complaints lodged in this respect, the Committee notes that it has not received specific comments from the Government. The Committee therefore requests the Government to provide information in this respect.*

423. *With regard to the alleged anti-union dismissals in the context of the conflict between the company and the union, the Committee notes that the complainant alleges that the company proceeded to dismiss a series of trade union leaders and members in reprisal for the strikes that had taken place and with a view to undermining the negotiating and organizing capacity of the union. The Committee notes that the complainant specifically states that the company: (i) dismissed Mr Edwin Martel Paucarcaja, Mr Epifanio Ore Eslava, Mr Melecio Crispin Laureano and Mr Jhover Ceras Castillón in reprisal for the strike carried out at the beginning of May 2017; (ii) dismissed Mr Luis Estrada Torres, Mr Cipriano Montes Boza, Mr José Quispe Hernández, Mr Edwin Ambrosio Bustillo, Mr Ceferino Escobar Acuña, Mr Rusbel Arroyo Quispe and Mr Vicente Rojas Torres for their participation in the strike of 21 June 2017; (iii) dismissed the general secretary of the union, Mr Alejandro Beramendi Soto during the collective bargaining process; (iv) sent dismissal letters and called for questioning Mr Roly Prieto Huamán, Mr José Pariona Ancieta, Mr Roberto de la Cruz Lazo and Mr Alfredo Tueras Yaurivilca; and (v) dismissed on March 13, 2018, the deputy general secretary of the union, Mr Jhonny Avalos Huamán without informing the union that it had withdrawn from direct negotiations. The Committee notes that, for its part, the company states that all its actions were within the law, that trade union activity and the right to strike does not exempt members of the union from respecting the law and that all the dismissals were based on misconduct, such that: (i) the first group of workers were dismissed for having fallen asleep during working hours; (ii) another group was dismissed for having participated in strike action in spite of being on the list of workers that have to continue their essential security functions during strikes; (iii) Mr Beramendi was dismissed for extremely serious misconduct after assaulting the company's security staff while intoxicated, causing physical injuries to the workers and material damage to company facilities; (iv) Mr Jhonny Avalos Huamán was dismissed for being absent from his post for several days without the proper authorization; (v) after questioning Mr Roly Prieto Huamán, Mr José Pariona Ancieta, Mr Roberto de la Cruz Lazo and Mr Alfredo Tueras Yaurivilca, examination of their cases permitted the company to decide not to proceed with their dismissals, and so the four workers are still in their posts at the company.*

424. *With regard to the seven dismissals of members and leaders of STUMMCMA for which the Government has submitted information on the related legal cases, the Committee observes that: (i) in three cases the workers have received definitive rulings of reinstatement (Mr Epifanio Ore Eslava, Mr Edwin Ambrosio Bustillos and Mr Ceferino Escobar Acuña); (ii) in one case, the worker and the company have signed a conciliation agreement (Mr Vicente Rojas Torres); (iii) in one case the worker's request for reinstatement has been definitively denied (Mr Jhonny Avalos Huamán); and (iv) two cases are still pending final resolution after presenting appeals for judicial review (in the case of Mr Alejandro Beremendi Soto, after a reinstatement ruling in the second instance, the Supreme Court of Justice decided that the appeal for judicial review lodged by the company was admissible, so a court ruling on the merits is now pending; in the case of Mr Melecio Crispin Laureano, the first instance decision to issue a provisional injunction to reinstate the worker was overturned in the second instance; the worker lodged an appeal for judicial review of the second instance decision that was ruled valid; and therefore, the original court must issue a new ruling, pending since December 2022). Recalling that cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective; an excessive delay in processing such cases constitutes a serious attack on the trade union rights of those concerned [see* ***Compilation****, para. 1139], the Committee trusts that the two cases pending final ruling will be resolved as soon as possible and requests the Government to keep it informed in this regard.*

425. *The Committee notes that it has not received information on the results of the legal challenges of the dismissals of the following workers: Mr Edwin Martel Paucarcaja, Mr Luis Estrada Torres, Mr Cipriano Montes Boza, Mr José Quispe Hernández and Mr Rusbel Arroyo Quispe, in spite of the fact that both the complainant organization and the company noted that the cases have led to legal* *action. The Committee therefore requests the Government and the complainant organization to provide information on the rulings issued in that regard.*

426. *With regard to the alleged suspension of numerous workers in reprisal for their participation in the strike carried out from 21 to 27 June 2017, the Committee notes that the complainant states that, at the end of the strike action, the entry of 160 workers was blocked, in spite of the documents that had been given to them when the strike was lifted, and that 116 unionized workers were suspended without pay for periods of three to eight days. The Committee also notes that the company states that: (i) the strike action in question was declared illegal by the Administrative Labour Authority (Directive No. 011-2017) for not having complied with the rules relating to the availability of workers; (ii) a group of these workers who did not do their work during the strike were suspended; and (iii) nonetheless, with a view to reaching a peaceful solution, the company and the trade union signed a conciliatory agreement on the matter in a legal setting. Lastly the Committee notes that the information provided by the Government shows that, in File No. 041-2017, the labour inspectorate sanctioned the company in resolution No. 005-2019 for obstructing the free exercise of the right to strike and freedom of association by suspending numerous workers who had participated in the strike action. In the light of the decision taken by the labour inspectorate and the conciliatory agreement referenced by the company, the Committee will not continue its examination of this allegation.*

427. *With regard to the alleged assault of Mr Beramendi Soto, General Secretary of the trade union, in the city of Huancayo on 9 April 2018, by several unknown persons, the Committee notes that: (i) the complainant mentions s that the assault, which resulted in 11 days of hospitalization for the victim, did not involve any robbery; (ii) the company emphatically denies any kind of link with the alleged incident; and (iii) the Government has not provided its observations in this regard. The Committee observes that one of the appendices provided by the Government shows that the assault led to a criminal complaint being made to the Provincial Criminal Prosecutor's Office for Corporate Affairs in Huancayo and that this case was closed on 12 July 2018 in the absence of evidence enabling the identification of the perpetrators, with the possibility to reopen the case if evidence is discovered. The Committee recalls that a free and independent trade union movement can only develop in a climate free of violence, threats and pressure, and it is for the Government to guarantee that trade union rights can develop normally. The Committee also recalls that in cases of physical or verbal violence against workers' and employers' leaders and their organizations, the Committee has emphasized that the absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see* ***Compilation****, paras 87 and 108]. Observing that, with the exception of taking into account the testimony of the victim's daughter, the decision to close the case does not make reference to any specific investigations being carried out, the Committee requests the Government to provide information in this respect.*

The Committee's recommendations

428. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to continue taking the necessary measures to ensure that, in future, freedom of association is respected and that there is strict equal treatment of the different unions existing in the company.

(b) The Committee requests the Government to provide information on the alleged failure of the company to deposit the union dues since July 2017 and the alleged absence of decisions from the labour authority on the complaints filed in this regard.

(c) The Committee trusts that the cases regarding the dismissal of Mr Beramendi Soto and Mr Crispin Laureano pending final ruling will be resolved as soon as possible and requests the Government to keep it informed in this regard; the Committee also requests the Government and the complainant organization to provide information on the results of the legal challenges of the dismissals of the following workers: Mr Edwin Martel Paucarcaja, Mr Luis Estrada Torres, Mr Cipriano Montes Boza, Mr José Quispe Hernández and Mr Rusbel Arroyo Quispe.

(d) Observing that the decision to close the complaint made by the General Secretary of STUMMCMA in relation to the assault he was the victim of does not make reference, with the exception of taking into account the testimony of the victim's daughter, to any specific investigations being carried out, the Committee requests the Government to provide information in this respect.

Case No. 3067

Interim report

Complaint against the Government of Democratic Republic of the Congo presented by
- **the Congolese Labour Confederation (CCT)**
- **the Espoir Union (ESPOIR)**
- **the National Union of Teachers in Catholic Schools (SYNECAT)**
- **the Union of State Officials and Civil Servants (SYAPE)**
- **the National Trade Union for the Mobilization of Officials and Civil Servants of the Congolese State (SYNAMAFEC)**
- **the Pioneer Union of Executives and Workers (SYPICAT)**
- **the Union of Workers – State Officials and Civil Servants (UTAFE)**
- **the National Union of Officials and Civil Servants in the Agri-rural Sector (SYNAFAR)**
- **the Trade Union Association of Public Administration Personnel (ASPAP)**
- **the National Trade Union of Higher Education and Scientific Research (SYNESURS)**
- **the National Trade Union of Agents and Civil Servants of the Congo (SYNAFOC)**
- **the General Trade Union of the Finance Administrations of the State, Parastatal Organizations and Banks (SYGEMIFIN)**
- **the Trade Union of Workers of the Congo (SYNTRACO)**
- **the Trade Union Renewal of the Congo (RESYCO)**
- **the State Civil Servants and Public Officials Trade Union (SYFAP) and**
- **the National Board of State Officials and Civil Servants (DINAFET)**

Allegations: The complainant organizations allege Government interference in trade union elections in the public administration, intimidation, and the suspension and detention of union officials at the instigation of the Ministry of Public Service

429. The Committee last examined this case, which was brought by several public administration trade unions, at its meeting in June 2022 and, on that occasion, presented another interim report to the Governing Body [see 399th Report, approved by the Governing Body at its 345th Session (June 2022), paras 261–269].

430. The Committee has been obliged to postpone its examination of this case twice, in the absence of a reply from the Government. At its meeting in March 2023 [see 401st Report, para. 6], the Committee expressed regret at the continued lack of cooperation and launched another urgent appeal to the Government, indicating that it would present a report on the substance of the matter at its next meeting even if the information or observations requested had not been received in due time. To date, the Government has not sent the requested information.

431. The Democratic Republic of the Congo has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

432. When it last examined the case, in June 2022, the Committee made the following recommendations [see 399th Report, para 269]:

(a) The Committee deplores that, despite the time that has elapsed since the presentation of the complaint, which concerns events that date back a decade, the Government has still not provided a response to the Committee's recommendations. The Committee urges the Government to demonstrate greater cooperation in the future. The Committee further urges the complainant organizations to provide all relevant information concerning the status of the numerous issues raised in this case.

(b) The Committee trusts that the Government will take the necessary steps without delay to review the contested 2013 decrees of the Ministry of Public Service in consultation with the relevant workers' organizations.

(c) The Committee once again strongly urges the Government to undertake, without delay, consultations with all the representative workers' organizations concerned, including the national inter-union body for the public sector (INSP) and the Independent Trade Unions of the Public Administration (SIAP), on ways of representing workers' interests in collective bargaining in the public administration. The Committee requests the Government to keep it informed in this regard.

(d) The Committee urges the Government to provide the founding document of the national public administration inter-union association (INAP) and the handover document between the former inter-union association (INSP) and the INAP and to report its observations on the matter.

(e) The Committee trusts that the Government will issue immediate instructions so that trade union members who are exercising their rightful trade union duties in public administration cannot be subjected to prejudice in the workplace and so that those responsible for these acts are punished. Furthermore, the Committee once again urges the Government to conduct investigations on the mentioned disciplinary action cases against trade union leaders in order to determine if they were punished for lawfully exercising their trade union activities and, if appropriate, to award compensation that sufficiently discourages further disciplinary action.

(f) Noting that Mr Muhimanyi and Mr Endole Yalele filed complaints before the appeals court for the violation of the legal time limit for concluding a disciplinary case, the Committee urges the Government to keep it informed of the result of these complaints.

(g) The Committee once again urges the Government to conduct without delay an investigation into the circumstances behind the arrest and detention of trade union leaders in July 2013 and November 2014 and to keep it informed of the findings and follow-up action.

(h) The Committee urges the Government to inform it of the follow-up given to the administrative and judicial appeals brought by the complainants.

(i) Firmly recalling that trade union leaders should not be subject to retaliatory measures, and in particular arrest and detention, for having exercised their rights which derive from the ratification of ILO instruments on freedom of association, including for having lodged a complaint with the Committee on Freedom of Association, and underlining the importance of ensuring that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of pressure, fear and threats of any kind, the Committee once again urges the Government to provide detailed information without delay on the reasons for and the status of the dismissals and disciplinary action against the following trade union leaders and members: Mr Nkungi Masewu, President of SYAPE; Mr Embusa Endole, President of ESPOIR; Mr Gongwaka, trade union leader; Mr Kaleba, President of the CCT/Finance union committee; and Mr Kalambay, coordinator of COSSA. Noting with concern that fresh allegations have been made of harassment of trade union leaders, the Committee urges the Government to provide information on the situation of Mr Mulanga Ntumba, General Secretary of SAFE, and Mr Tshimanga Musungay, General Secretary of Trade Union Renewal of the Congo (RESYCO).

(j) The Committee once again urges the Government to provide without delay detailed information in response to the allegations that trade union leaders in the public service have been subjected to disciplinary measures, including dismissal, and particularly on the reasons given to justify the termination in May 2016 of the President of the Union of State Officials and Civil Servants (SYAPE), Mr Nkungi Masewu.

(k) Given the difficulty in obtaining the requested information from both the Government and the complainant organizations, the Committee invites the Government to accept an advisory mission to facilitate understanding and resolution of the outstanding issues.

B. The Committee's conclusion

433. *The Committee deplores once again that, despite the time that has elapsed since the presentation of the complaint, which concerns events that date back more than ten years, the Government has still not provided a response to the Committee's recommendations, even though it has been requested several times to do so, including through another urgent appeal.*

434. *Under these circumstances and in accordance with the applicable procedural rule [see 127th Report, approved by the Governing Body at its 184th Session (1972), para. 17], the Committee is obliged to present a new report on the substance of the case without being able to take account of the information that it hoped to receive from the Government.*

435. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association of employers and workers is to promote and ensure respect for this freedom in law and in fact [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 3.] The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, 1952, para. 31]. The Committee once again urges the Government to be more cooperative in the future, especially since it has availed itself of ILO technical assistance on several occasions and engaged in a standards-orientated development cooperation programme.*

436. *Recalling that this case, presented by several public administration trade unions, concerns the alleged interference, with impunity, of the Government, as the employer, in trade union activities, particularly intimidation of, and disciplinary measures against, trade union officials, and the adoption of contentious regulations concerning the organization of trade union elections in the public administration aimed at the establishment of an inter-union association (INAP) under the control of the Government as its sole representative, the Committee is obliged to refer once again to the conclusions and recommendations it made during the examination of this case at its meeting in June 2022 [see 399th Report, paras 261–269]. The Committee once again further urges the* *complainant organizations to provide all relevant information concerning the status of the numerous issues raised in this case. Lastly, given the difficulty in obtaining the requested information from both the Government and the complainant organizations, the Committee recalls its invitation to the Government to accept an advisory mission to facilitate understanding and resolution of the outstanding issues.*

The Committee's recommendations

437. **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**

(a) The Committee deeply deplores that, despite the time that has elapsed since the presentation of the complaint, which concerns events that date back more than ten years, the Government has still not provided a response to the Committee's recommendations. The Committee once again urges the Government to demonstrate greater cooperation in the future. The Committee once again further urges the complainant organizations to provide all relevant information concerning the status of the numerous issues raised in this case.

(b) The Committee firmly urges the Government to take the necessary steps without delay to review the contested 2013 decrees of the Ministry of Public Service in consultation with the relevant workers' organizations.

(c) The Committee can only once again firmly urge the Government to undertake, without delay, consultations with all the representative workers' organizations concerned, including the national inter-union body for the public sector (INSP) and the Independent Trade Unions of the Public Administration (SIAP), on ways of representing workers' interests in collective bargaining in the public administration. The Committee requests the Government to keep it informed in this regard.

(d) The Committee firmly urges the Government to provide the founding document of the national public administration inter-union association (INAP) and the handover document between the former inter-union association (INSP) and the INAP and to report its observations on the matter.

(e) The Committee firmly expects that the Government will issue immediate instructions so that trade union members who are exercising their rightful trade union duties in public administration cannot be subjected to prejudice in the workplace and so that those responsible for these acts are punished. Furthermore, the Committee once again urges the Government to conduct investigations on the mentioned disciplinary action cases against trade union leaders in order to determine if they were punished for lawfully exercising their trade union activities and, if appropriate, to award compensation that sufficiently discourages further disciplinary action.

(f) Noting that Mr Muhimanyi and Mr Endole Yalele filed complaints before the appeals court for the violation of the legal time limit for concluding a disciplinary case, the Committee once again urges the Government to keep it informed of the result of these complaints.

(g) The Committee firmly urges the Government to conduct without delay an investigation into the circumstances behind the arrest and detention of trade union

leaders in July 2013 and November 2014 and to keep it informed of the findings and follow-up action.

(h) The Committee once again urges the Government to inform it of the follow-up given to the administrative and judicial appeals brought by the complainants.

(i) Firmly recalling that trade union leaders should not be subject to retaliatory measures, and in particular arrest and detention, for having exercised their rights which derive from the ratification of ILO instruments on freedom of association, including for having lodged a complaint with the Committee on Freedom of Association, and underlining the importance of ensuring that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of pressure, fear and threats of any kind, the Committee firmly expects the Government to provide detailed information without delay on the reasons for and the status of the dismissals and disciplinary action against the following trade union leaders and members: Mr Nkungi Masewu, President of SYAPE; Mr Embusa Endole, President of ESPOIR; Mr Gongwaka, trade union leader; Mr Kaleba, President of the CCT/Finance union committee; and Mr Kalambay, coordinator of COSSA. Noting with concern that fresh allegations have been made of harassment of trade union leaders, the Committee urges the Government to provide information on the situation of Mr Mulanga Ntumba, General Secretary of SAFE, and Mr Tshimanga Musungay, General Secretary of Trade Union Renewal of the Congo (RESYCO).

(j) The Committee firmly expects the Government to provide without delay detailed information in response to the allegations that trade union leaders in the public service have been subjected to disciplinary measures, including dismissal, and particularly on the reasons given to justify the termination in May 2016 of the President of the Union of State Officials and Civil Servants (SYAPE), Mr Nkungi Masewu.

(k) Given the difficulty in obtaining the requested information from both the Government and the complainant organizations, the Committee recalls its invitation to the Government to accept an advisory mission to facilitate understanding and resolution of the outstanding issues.

Case No. 3430

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of the Republic of Korea presented by
- the Korean Public Service and Transport Workers' Union (KPTU)
- the Korean Confederation of Trade Unions (KCTU) and
- Public Services International (PSI)

Allegations: The complainants allege that the Government employs Budget, Management and Innovation Guidelines, as well as management performance evaluations, to pressure public institutions and their unions to agree to changes in working conditions disadvantageous to workers, in particular in relation to wages in violation of the principle of free collective bargaining

438. The Complaint is contained in a communication dated 15 June 2022 from the Korean Public Service and Transport Workers' Union (KPTU), the Korean Confederation of Trade Unions (KCTU), and Public Services International (PSI).

439. The Government provided its observations in a communication dated 3 February 2023.

440. The Republic of Korea 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).

A. The complainants' allegations

441. In their communication dated 15 June 2022, the complainants allege that through the unilateral issuance of "guidelines" concerning matters covered by collective bargaining between public employers and unions, and by penalizing public employers that fail to comply with those guidelines through reducing their points in management performance evaluations, the Government of Korea has been compelling public sector employers and workers to enter and enforce only collective agreements that meet the standards set in the guidelines.

442. The complainants recall that similar allegations were raised in Case No. 2829 concerning the Republic of Korea [see 365th Report, paras 430–582] and that on that occasion, the Committee had requested the Government to ensure that trade unions were consulted prior to adopting measures such as the issuance of budgetary guidelines regarding public institutions and the assessment of the soundness of their financial situation through performance management evaluation reports, audits or inspections. The complainants allege that despite this recommendation, the Government has steadfastly precluded unions from decision-making on various governmental directives and management performance evaluations. According to the complainants, the Government has used these unilateral measures to forbid collective agreements on wage increases beyond the ceilings set, to introduce job-based pay and wage peaks, to reduce in-company loans for employees and to alter eligibility criteria for certain types of wages. The Government has also used these measures to prevent the implementation of signed collective agreements.

443. Regarding the structure of governance over public institutions in the Republic of Korea, the complainants indicate that pursuant to the Act on the Management of Public Institutions (AMPI), the Ministry of Economy and Finance (MOEF) designates the public institutions subject to its management oversight within one month following the commencement of each fiscal year and that in 2022, the number of such institutions amounted to 350, including 36 public corporations, 94 quasi-governmental institutions, and 220 “other” institutions.

444. These institutions are subject to regulation and control by the MOEF and the Committee on the Management of Public Institutions (CMPI). The CMPI is the apex of the hierarchy of governance over public institutions in Korea. It is chaired by the Minister of Economy and Finance and has about 20 members, including officials from the Prime Minister’s Office and deputy-ministers or similarly ranked civil servants from various ministries and administrative and other major governmental agencies. The CMPI deliberates over matters such as the designation and un-designation of public institutions, review of proposed creation of new public institutions, appointment and dismissal of directors to boards of public institutions, management performance evaluations and management guidelines.

445. The complainants state that together, the MOEF and the CMPI establish three sets of guidelines:

- Budget Guidelines for Public Corporations and Quasi-Governmental Institutions (Budget Guidelines), each year. They cover issues concerning labour costs and reserve funds for public institutions.
- Guidelines on the Management of Public Corporations and Quasi-Governmental Institutions (Management Guidelines), which are regularly updated and distributed. They cover organization and personnel quotas, personnel management, budget and capital administration, and boards of directors of public institutions.
- Guidelines on Innovation of Public Institutions, which are also regularly updated and distributed. They cover management reforms and “streamlining” of employee benefits.

446. The complainants allege that the 2022 Budget Guidelines limit the increase in each public institution’s total labour cost to 1.4 per cent of the corresponding figure in 2021. Also, article 10 of the latest Management Guidelines (revised on 9 April 2021) require all public institutions to adopt wage peaks, while the latest Innovation Guidelines (revised on 29 July 2021) require public institutions to exert tighter control over in-company loans for employees by providing for stricter eligibility criteria, reduce the amount of money available for loans and raise interest rates.

447. Concerning management performance evaluations, the complainants indicate that every year, the MOEF evaluates the management performance of public institutions for a total score of 100 points, and that institutions are divided into six classes or grades depending on how they fare on evaluation, including superior (S), excellent (A), good (B), average (C), poor (D) and very poor (E). According to the complainants it is not uncommon for as little as a half point to determine the grade an institution obtains. This grade has an impact on the amount of bonus to which the workers are entitled, namely, workers of the institutions scoring a D or an E would not receive any bonus. Furthermore, the MOEF has the authority to dismiss or propose the dismissal of the directors of poorly performing institutions. The enforcement decree of the

AMPI requires the MOEF to prepare a manual for the management performance evaluation before the beginning of every fiscal year. According to the 2022 manual, the six evaluation indicators are: (1) management strategy and leadership; (2) social values; (3) efficiency; (4) organizational, human resource, and financial management; (5) remuneration and benefits management; and (6) major projects, activities and achievements. Under the fifth indicator, there are “control of total labour costs” with 3 points, and “labour relations” with 2 points.

448. The complainants further denounce the absence of channels of direct negotiation and communication between the unions and the Government. They allege that although the Korean Government is the de facto employer of public sector workers, it neglects its duty to engage in collective bargaining by hiding behind the nominal heads and boards of public institutions. According to the complainants, while the governmental guidelines and management performance evaluations largely determine the working conditions of public sector workers, the Government claims that the guidelines are simply recommendations and that it leaves individual public institutions free to negotiate and bargain with their respective unions on matters of wages and working conditions.

449. To illustrate their allegations, the complainants provide further details with regard to the impact of government guidelines and management performance evaluation on free and voluntary collective bargaining between individual public institutions and their unions concerning the following subjects: (1) total labour costs and rates of wage increases; (2) payment of performance incentives (bonuses); (3) replacement of seniority-based pay system by a skill-based wage system; (4) introduction of wage peaks and; (5) allocation of in-company loans to employees.

Budget Guidelines, total labour costs and rates of wage increases

450. The complainants state that the annual Budget Guidelines indicate the percentage by which the total labour costs of all public institutions may be increased. This percentage has been fixed at 0.9 for 2021 and 1.4 for 2022. The Guidelines also indicate that an institution that is found to have exceeded the maximum rate of increase in the total labour cost in management performance evaluation, is to limit their budget for the total labour cost of the current year by the same amount by which they had exceeded it the previous year. The complainants indicate that individual public institutions organize collective bargaining annually after the release of the year’s Budget Guidelines. These negotiations only cover the allocation of the total labour cost budget that is given in the Guidelines, which are established without any consultation with unions. The complainants allege that unions of public institutions cannot bargain wage agreements that don’t comply with the government Guidelines, because if an institution and their union agree on a wage increase beyond the maximum increase in total labour costs indicated in the annual Budget Guideline, the institution will have to reduce its total labour cost by as much the following year, which will cancel the effect of the agreed increase. Furthermore, going beyond the maximum increase rate permitted in the Budget Guidelines will result in the loss of the three points given for “total labour cost control” in management performance evaluation. This might entail the reduction or even suppression of the workers’ bonuses as well as the dismissal of the executives of the institution.

451. The complainants further refer to the case of the unimplemented agreement concerning wage increase in KORAIL Networks, a subsidiary of Korea Railroad Corporation (KORAIL), whose activities range from handling of station tasks, ticketing, phone customer services, parking, and special cargo freight by KTX trains on behalf of KORAIL. According to the complainants, KORAIL holds 98.98 per cent of the equity at KORAIL Networks and effectively determines the wages and working conditions of the latter’s employees by assigning and providing consignments for those workers' wages. Therefore, the complainants hold that KORAIL is the real employer of KORAIL Network's workers.

452. The complainants indicate that nearly 1,600 out of 1,800 workers at the company are temporary and contract-based workers who receive minimum and near-minimum wage and on average earn only 44.8 per cent of regular KORAIL workers' earnings. In 2019, the parent company convened a council composed of labour and employer representatives and external experts with a view to discussing ways of improving wages and working conditions for workers affiliated with its subsidiaries. The council mediated an agreement dated 25 November 2019 between KORAIL and the Korean Railway Workers' Union (KRWU) which represents workers of both KORAIL and KORAIL Networks, according to which KORAIL raised its consignment for wages of KORAIL Networks to reflect 100 per cent of the market rate for comparable jobs. Pursuant to the agreement, the 2020 basic wages of KORAIL Network employees were to be determined by multiplying the market rate for comparable jobs at the time of the signature of the agreement by the rate of increase set out in the annual governmental Guidelines. This entailed a 13.2 per cent increase in KORAIL Network's total labour cost as compared to 2019, while the 2020 Budget Guidelines only allowed for raises of up to 4.3 per cent only for workers whose average wage in 2018 was 90 per cent or less of the industrywide average or 60 per cent or less of the average wage at all public institutions. Therefore, despite having obtained a significantly greater budget for wages from the parent company, KORAIL Networks ended up raising its workers' wages by 4.3 per cent only, citing the 2020 Budget Guidelines as the ground for this decision. The complainant alleges that in this instance, governmental Guidelines and management performance evaluations effectively neutralized an agreement freely reached between the parties, obstructing the wage increase needed for chronically underpaid workers.

453. Further, on the control of "total labour costs" and its impact on the right to free collective bargaining on various wage components, the complainants allege that most employers in Korea, in both private and public sectors, have been paying their workers less than required by the law for overtime, night-time and holiday work, as well as for other statutory and holiday allowances. A watershed Supreme Court decision dated 18 December 2013 changed the situation by providing that any agreement reached between a particular employer and its workers about paying less than what the law requires for extended, night-time or holiday work is null and void, and workers must be paid the proper amounts of overtime pay they are owed according to the law. The complainants allege that the majority of private sector employers have paid the amounts of statutory and other allowances as required by the Supreme Court decision, whereas the majority of public sector employers have not done so. According to the complainants, since 2013, public sector workers have repeated similar lawsuits to force their employers to pay past withheld wages, benefits and allowances. Until 2021, Public employers who lost these lawsuits, were paying the court-ordered damages from their reserve funds rather than their labour cost budgets, over which the MOEF exerts tight control, and this was in accordance with the Budget Guidelines which provided that public institutions could pay the actual increases in the cost of wages as a result of payment of court-ordered damages out of their reserve funds, regardless of the limit on the annual increase in the total labour cost. However, the MOEF subsequently changed the Budget Guidelines in this regard and announced that it intends to induce public employers to reform their remuneration systems by revising the list of labour-related costs and expenses payable from accounts other than the total labour cost account, and that as of 2022, public employers were to include the additional wages they pay following court decisions over ordinary wage lawsuits in their total labour cost account. The institutions whose total labour costs would exceed the limit set out in the Guidelines will lose points on management performance evaluation, regardless of their paying or not court-ordered damages.

454. The complainants allege that the new policy weakens the bargaining power of unions by pitting the workers who work overtime and those who don't against each other. Meanwhile, the pressure that this new policy exerts on the total labour cost budget, induces public institutions to reduce the amount of ordinary wages at stake, and to do this they have to enter new collective agreements that are more disadvantageous to workers, and/or obtain the consent of unions representing the majority of their workers, or the consent of the majority of workers directly if there is no such union at the workplace, to alter the rules of employment. In other words, through the new Guidelines, in the making of which unions did not participate in any way, the Government is pressuring both public employers and unions to change their wage policies in ways more detrimental to workers.

Payment of performance incentives (bonuses)

455. The complainants indicate that performance incentives or bonuses may represent up to 250 per cent and 100 per cent of the monthly wages of workers in public corporations and quasi-governmental institutions respectively. The Budget Guidelines recommend that institutions pay performance incentives out of their reserve funds. Pursuant to the Guidelines, the amount of the performance incentives paid depends both on the result of the management performance evaluation of the institution concerned, and the performance of the individual workers or their department. The complainants add that in its decision dated 13 December 2018, the Supreme Court of Korea ruled that performance incentives dependent on the results of management performance constitute part of the workers' ordinary wages.

456. The complainants indicate that the Budget Guidelines require the public corporations and quasi-governmental institutions to establish criteria for the differentiation of performance incentives to be paid to individual workers or their departments, dividing workers and departments into at least six grades according to their performance records. The highest grade should cover at least 10 per cent of the employees; and the two lowest grades together should also include at least 10 per cent of all employees. No single grade may contain more than 50 per cent of all employees. The Guidelines further provide that the workers obtaining the lowest grade should not be paid performance incentives, while the workers and departments garnering the highest grade should receive at least double the amount of performance incentives of those in the second-lowest grade.

457. Concerning the impact of management performance evaluations on the performance incentives allocated to each institution's workers, the complainants indicate that the 2022 Management Performance Evaluation Manual, performance incentives are to be allocated to each institution's workers according to the final grade that the institution garners, within the amount of the budget set in the Budget Guidelines. According to the MOEF recommendation in the Reform Measures for Management Performance Evaluations of Public Institutions dated 31 August 2021, the workers of public corporations scoring S should receive up to 250 per cent of their basic monthly wages; those scoring A up to 200; B up to 150 and C up to 100 per cent, while the workers of corporations scoring D or E will not be paid any performance incentives. For workers of quasi-governmental institutions these percentages range between 100 and 40 for institutions scoring S to C respectively.

458. The complainants state that public institutions in Korea indeed decide how to calculate the amounts of performance incentives as well as when and to whom they are to be paid in accordance with collective agreements with unions, or rules of employment established in consultation with the unions. Nevertheless, governmental guidelines determine much of the rules and the amounts of performance incentives to be paid to public sector workers in Korea. As an example of public sector workers having expressed their opposition to the rule of differentiation of performance incentives dictated by the Budget Guidelines, the complainants refer to the case of the Land and Geospatial Informatrix Corporation (LX), which paid significantly different amounts of performance incentives to its individual employees in 2016 as had been recommended by the Guidelines. The union in the company re-collected and re-distributed the performance incentives with some of the better paid workers' voluntary contribution. The company reacted by forcing the president of the union to step down, however, the Supreme Court found this decision unlawful and ordered his reinstatement, arguing that the fact that he had led the redistribution of the 2015 performance incentives can be construed as his fulfilling the role he had as the head of the union and as an action to raise an issue with the company's decision and there are no grounds to conclude that it was unlawful or unfair to raise and register his complaint about the company decision is such a way.

Replacement of seniority-based pay by job-based pay system

459. The complainants state that in the past, seniority-based pay was the norm in the vast majority of public institutions in Korea. However, the Government decided to transform the remuneration system in the public sector to prioritize performance and skills. In this framework, the Government's 2020 Economic Policy Direction which was published on 19 December 2019 provided for reviewing incremental measures to support transition from seniority-based pay to job and competence-based pay, for example through mitigating the impact of seniority by introducing performance review and strengthening the connection between productivity and wages, and building public support through social dialogue, for instance by assembling labour relations committees. In May 2020, the Government convened a meeting for remuneration reforms in public institutions, officially encouraging the heads of those institutions to adopt a performance-based and job-centred wage system.

460. The complainants further indicate that on 19 May 2020, the Joint Action Committee for Public Sector Unions, a joint initiative of the KCTU and the Federation of Korean Trade Unions (FKTU) released a joint statement, demanding, among other things, that the MOEF refrain from pushing for the revision of management performance evaluation indicators with a view to promoting wage reforms that were included without consulting labour. The statement also emphasized that discussions on wage reforms ought to proceed through dialogue between the representatives of workers, including those representing the five industry level trade unions and federations from the KCTU and the FKTU and the Government and that the Government/MOEF, as the de facto employer of public sector workers, should not introduce a new wage system that utterly disrespects the concerns and wishes of workers. The complainants add that despite the foregoing statement, on 24 September 2020 the MOEF released the Revised Manual of Management Performance Evaluations for Public Institutions without ever having consulted labour representatives and in this revised version, it had included a new criterion within the "Remuneration and Benefits" indicator, namely "efforts and outcomes for transitioning into a more rational, job-based remuneration system", which was assigned two points. Points were also assigned for "revising the remuneration policy on the basis of consent from labour", which, according to the complainants, effectively meant disadvantaging public institutions that failed to garner the workers' consent and therefore ultimately prevented unions form registering their complaints in any way. The complainants stress that it is essential for the Government to have sufficient dialogue with public employers and workers before introducing such a paradigm shift, because even if all the parties agreed to its introduction, it would be necessary to invest some time in reviewing and preparing for potential issues.

Introduction of wage peaks

461. The complainants state that wage peaks allow the employer to keep reducing the employee's wage at a predefined rate year to year, once it has reached the peak, so that the employee can keep working in the same workplace for a longer time. The Government based wage peaks on section 19(2) of the Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion (EEPA), which provided that the employer and the union in a workplace extending its retirement age to 60 years shall take the necessary measures, including the restructuring of its wage system. The complainants affirm however that the statute does not mention wage peaks. On 7 May 2015, the MOEF distributed the Recommendations Concerning Wage Peaks in Public Institutions, which were finalized after deliberation in the CMPI and the adoption of a resolution by this body. The Recommendations required all public institutions in Korea to adopt wage peaks. Wage peaks were also included as an indicator of management performance evaluation in the Manual released by the CMPI in September 2015. The complainants allege that by the end of 2015 all 313 subject institutions had adopted the policy. They indicate that in March 2018, the Government revoked the 2015 Recommendation, nevertheless, wage peaks remained part of the Management Guidelines, which in their revised 2021 edition provide that public corporations and quasi-governmental institutions are to adopt wage peaks in relation to every employee but may decide not to apply them to very low wage earners, such as those earning 150 per cent or less of the minimum wage. The 2021 Manual on Management Performance Evaluation also retained the application of wage peaks as an indicator of public corporations' performance.

462. The complainants cite the Financial Analysis of Public Institutions for the financial year 2018 according to which between mid-2015 when wage peaks were introduced and 2018, the wages of workers to whom the wage peaks applied were cut by 23 per cent a year on average, with the cumulative rate of wage loss amounting to 56.7 per cent during the 2.5 years wage adjustment period, while wage peaks served to extend the average retirement age only marginally, from 59.4 years to 60.2. They conclude that as the wage peaks clearly disadvantage workers, pursuant to section 94 of the Korean Labour Standards Act (LSA), before introducing them the employer must gain consent from the unions representing the majority of workers or the majority of workers themselves in the absence of such unions. However, unions at most public institutions in Korea feel pressured to accept wage peaks so that their respective employers can fare well on management performance evaluations to avoid other unwanted consequences. According to the complainants this amounts to interference by the Government in the free negotiation between unions and employers in public institutions, where both parties are compelled to consent because of the pressure to conform with Guidelines and management performance evaluation indicators.

Allocation of in-company loans to the employees

463. The complainants state that the Employee Welfare Fund Act allows the public sector employer to use the Employee Welfare Fund, to which both the employer and the employees contribute, to provide loans and financial aid for employees at low interest rates. According to the complainants, as of 2021, in-company loan programmes were in place in 66 Korean public institutions. On 29 July 2021 after deliberation and resolution of the CMPI, the MOEF released an amended edition of the Innovation Guidelines which instructed all public institutions to tighten their in-company loan programmes by imposing stricter eligibility conditions, reducing the amount of money available for loans and raising interest rates. The MOEF also reflected this change in the revised edition of the Management Performance Evaluation Manual released 1 October 2021, by including two new qualitative criteria, which were worth 1.5 points together, reflecting the new restriction on in-company loans. The complainants allege that these changes were introduced into performance management evaluation criteria despite strong criticism on the part of the Korean labour community, condemning this as an intervention in free negotiation between employers and unions, to which the MOEF responded by claiming that this is merely a non-binding guideline. However, according to the complainants, because of the risk of losing points on management performance evaluations, public institutions and their unions entered collective agreements downsizing the availability of in-company loans, while throughout this process, the Government refused to consult or engage with the labour community as a whole or with the unions of individual public institutions.

464. In conclusion, the complainants state that the Korean Government unilaterally determines the wages and working conditions of public sector workers by employing the Budget, Management and Innovation Guidelines as well as management performance evaluations to pressure public institutions and their unions to agree to conditions disadvantageous to workers, such as the limit by which total labour costs may be increased, the amounts of performance incentives that may be paid and the rules governing their distribution, job-based pay and wage peaks and reduction of in-company loans for employees. More importantly, workers in Korea have no opportunity or channel through which to participate in decision-making on these subjects. The complainants conclude that the Government's practice violates the principle of free negotiation set out in Article 4 of Convention No. 98 and also goes against the principle of worker's participation in decision-making on their working conditions.

B. The Government's reply

465. In its communication of 3 February 2023, the Government indicates that when establishing the Budget Guidelines, it had resorted to tripartite consultations through the Economic, Social and Labour Council (ESLC), which was previously called the Economic and Social Development Tripartite Council. The Government indicates that a body called "Public Sector Development Committee" (PSDC), which was intended to come up with future-oriented reform measures for the public sector was created under the ESLC. This body was composed of 15 members including a chairperson and five public interest commissioners and labour, employers and government were each represented by three commissioners. The PSDC held several meetings between September 2014 and April 2015. According to the Government, issues related to the 2015 Budget Guidelines were on the agenda of the ESLC meetings and two working-level meetings between the MOEF and worker representatives concerning labour proposals on the Budget Guidelines were held in November 2014. The outcome of these meetings was some progress on the issue of rate of contribution to Employee Welfare Funds, which although did not lead to an agreement, was finally considered by the Government in the partial revision of the 2015 Budget Guidelines.

466. The Government further indicates that in November 2020 the ESLC, created the Public Institution Council, consisting of ten members from labour, Government and public interest groups with a view to revamping the wage system of public institutions, to reflect the objective value of the job in the wage system. An agreement was reached on the principle that the restructuring of the wage system will be implemented autonomously and gradually, through the agreement of labour and management in each public institution, rather than in a unilateral and standardized way. The Government adds that the ESLC decided to continue the labour-government dialogue for the follow-up concerning sustainable wage system in public institutions and finalized a detailed agenda on those matters. This decision entailed the holding of the second Public Institution Council on 25 June 2021, which facilitated a survey on public institutions' wage system and wage peak. The Report on the Outcome of the Survey Onsite Public Institutions was issued by the public interest commissioners and the mission was completed on 24 March 2022.

467. Regarding the applicable domestic law, the Government refers to the constitutional and legislative provisions guaranteeing the right to collective bargaining and indicates that even though Budget and Innovation Guidelines are informed, public institutions should first engage in their own decision-making process – by resolution of the executive board or otherwise – and propose revision frameworks, such as employment rules or collective agreements related to wages, welfare, contribution to employee welfare fund and in-company loans programmes. The Government concludes that therefore the Guidelines do not violate the right to collective bargaining under the Korean law. Public institutions may decide not to amend their employment rules or collective agreements in line with the Guidelines due to opposition from workers or labour unions. Even in such cases, the institutions are merely evaluated as insufficient in management performance evaluation regarding matters such as wages and welfare expenses.

468. Regarding the alleged violation of the right of public sector workers to collective bargaining through the Budget Guidelines, the Government indicates that these are a type of management guideline under section 50 of the AMPI and their enactment and notification is a matter of internal supervision between the Government and public institutions. The MOEF finalizes the Budget Guidelines after deliberation and resolution made by the Public Institution Steering Committee, which also examines and evaluates whether they have been followed, including regarding the increased rate of the total labour cost, by assessing management performance. According to the Government, as the Supreme Court has ruled in a decision concerning the 2001 Budget Guidelines, the Guidelines do not have the force of legal regulations mandating specific rights or obligations. Their content concerning wages, welfare benefits and Employee Welfare Fund are merely internal recommendations to the investee (the institution concerned), and do not force or intervene in collective bargaining. The Government concludes that therefore the Budget Guidelines do not affect the public institution workers' right to collective bargaining.

469. Concerning the alleged violation of public sector workers' right to collective bargaining through management performance evaluations, the Government indicates that while it ensures that the management of public institutions is autonomous and responsible, it also conducts management performance evaluations to enhance publicity and management efficiency and to induce improvement of public services. Evaluation standards and methods are presented in advance in the "Management Evaluation Manual of Public Institutions" which does not have binding force and if public institutions do not comply, they will only be evaluated as insufficient in the management improvement concerning the relevant indicators. For example, three institutions had total labour costs greater than the ceiling indicated in the 2021 Budget Guidelines and reflected as an indicator in the Management Evaluation Manual, and many applied criteria different from those set forth in the Innovation Guidelines and the Manual concerning in-company loans. Therefore, the Government concludes that management performance evaluation or the Manual related to it do not violate the right of public institutions' unions to engage in collective bargaining and to conclude collective agreements. It affirms that as management performance evaluation only concerns internal supervision by the Government, they do not need to be the object of prior consultation with the union.

470. Concerning the alleged absence of channels of communication and participation for public sector unions, the Government reiterates its indications concerning the consultations in the

PSDC in 2014 and the activities of the Public Institution Council in 2020 and 2021–2. It further adds that the parties to collective bargaining are employers' and workers' organizations, not the Government.

471. More particularly, concerning the alleged unilateral decision of the Government on total labour costs, rates of increase and performance incentives, the Government indicates that the system of regulation of total labour cost aims at preventing excessive expansion and lax management of the public sector. Most public institutions receive government budget support and are legally granted exclusive business rights, and therefore strict management of their labour cost is essential. The Government operates the system in a flexible manner, for example by managing the rate of increase in labour cost according to the level of remuneration of institutions, with a view to reducing the wage gap between institutions. The Government adds that the Budget Guidelines only set the rate of increase in total labour cost commonly applied to all public institutions, while each institution can freely and autonomously decide on specific payment methods and amounts within the ceiling of the total labour cost based on labour-management agreements. The Guidelines do not invalidate collective agreements that have already taken effect, and Government agencies do not block or restrict the effectiveness of the concluded collective agreements. The Budget Guidelines are not binding standards for collective agreements and do not require Government approval for collective agreements.

472. Concerning the allegations relating to the neutralization of the collective agreement on wage increase in KORAIL Network, the Government reiterates that the operation of the total labour cost system is flexible and takes into consideration the level of remuneration and the wage gap between institutions. It further indicates that the company has been gradually raising the increase rate (+1.0%–1.5%) of its total labour cost over eight years since 2015, in accordance with the Government's differential management of public institutions' total labour cost. It concludes that the complainants' allegation that it has neutralized the collective agreement on wage increase at KORAIL Networks is unfounded.

473. Concerning the new policy requiring inclusion of the amounts paid in implementation of court decisions concerning ordinary wage lawsuits in the total labour cost account, the Government indicates that most public institutions have not experienced such lawsuits or prevented them by reforming their wage system, encouraging the use of annual leave and reducing overtime work immediately after the lawsuit. However, several public institutions continued to be targeted by lawsuits because they had not amended their remuneration regulations. Therefore, in 2022, the exception to the total labour cost limit was abolished after eight years with a view to restore equity and fairness between institutions and after collecting opinions from related agencies. The exception was allowed because the payment of these amounts required preparation processes, such as amendment of regulations of each institution, but considering that it had been in place for quite a long time, as of 2022 additional wages paid according to the results of ordinary wage lawsuits were included in the total labour cost limit as well. The Government further reiterates that the Budget Guidelines are not binding and do not invalidate collective agreements that have already taken effect and that therefore the complainants' allegation concerning the forced payment of additional wages following ordinary wage lawsuits from the total labour cost budget is invalid.

474. Concerning performance-based pay, the Government indicates that it is proposed in the Budget Guidelines as an ideal model, as an action of management and supervision of the Government over public institutions, but as such does not infringe or have a direct impact on the right to collective bargaining.

475. Concerning the wage peak system, the Government indicates that it was first introduced in 2016 with the agreement of tripartite groups and with the aim of reconciling the extension of the retirement age with robust youth employment. The Government emphasizes that wage peaks should be maintained for restructuring the retirement system in an employment-friendly manner. Therefore, the Government provides guidelines to public institutions stating that the labour cost of the newly employed is to be compensated by the reduction of costs resulting from the wage peak system. Nevertheless, the details of the wage peak system, such as the payment rate and the adjustment period can be designed reasonably considering the age distribution and wage system of each institution and decided by agreement between their workers and employers. The Government thereby rejects the allegation that it has forced labour and management consent in this regard.

476. Regarding the tightening of requirements for obtention of in-company loans through the revision of the 2021 Innovation Guidelines and the alleged forcing of public institutions to accept collective agreements along these lines, the Government indicates that like the Budget Guidelines, Innovation Guidelines don't bind public institutions but are proposed by the MOEF for innovation in their management. Their enactment and notification are part of the internal supervisory operations between the Government and public institutions. The Government affirms that pursuant to sections 4 and 94 of the LSA, public institutions that amend their internal regulations concerning in-company loans to bring them into conformity with Innovation Guidelines must obtain the agreement of their trade unions, and they may decide not to follow the Guidelines in their regulation of limits and interest rates of in-company loans. Unions can freely practice their right to collective bargaining guaranteed by the LSA or the Trade Union and Labour Relations Adjustment Act (TULRAA) despite the provisions of the Guidelines. The Government indicates that public institutions benefit from a series of business and financial advantages compared to similar private entities and as an investor, the Government makes recommendations regarding welfare benefits and in-company loans to their employers considering these special characteristics of public service, which do not interfere with collective agreements in public institutions.

477. In conclusion, the Government rejects the complainants' allegation that it sets the wages and working conditions of public institution workers unilaterally through Guidelines, indicating that it has enforced social dialogue on relevant Guidelines through the PSDC and other committees under the ESLC. The Government emphasizes that because most public institutions operate with its budget support and enjoy exclusive business rights, it is essential for the Government/investor to establish and publish Guidelines concerning their operation and this is in conformity with ILO standards. It further reiterates that the Guidelines only concern internal supervisory operations between the Government and public institutions and do not have a binding legal character. Public institution workers can freely exercise their right to collective bargaining through unions in accordance with domestic law and constitution. Therefore, Guidelines do not infringe the right to collective bargaining, nor do they have a direct impact on it.

C. The Committee's conclusions

478. *The Committee notes that this case concerns the part of social dialogue in the elaboration of Budget, Management and Innovation Guidelines concerning public institutions established by the Government of the Republic of Korea, as well as the impact of those Guidelines, as enforced through the management performance evaluation, on the exercise of the right to free and voluntary collective bargaining by workers and employers of Korean public institutions, in particular with regard to wage and benefit related issues.*

479. *The Committee notes that the complainants allege that by setting the Guidelines without consulting workers' organizations, the Government unilaterally defines the ceiling of total labour costs and wage increases in public institutions; determines how performance incentives should be distributed; changes the structure and principles governing the wage system through the introduction of wage peaks and replacement of seniority-based wage system by a skill and performance-based one; requires changes to the wage system with regard to overtime and holiday work and, tightens the conditions of allocation of in-company loans to employees. The complainants allege that the Guideline recommendations regarding these matters have a great force in practice, as they are reflected in management performance evaluation indicators and scoring poorly in those evaluations can entail concrete consequences for workers and employers of public institutions concerned, in terms of budget allocation and possible dismissal of executives. The Committee notes that according to the complainants, this system puts a great deal of pressure on collective bargaining which takes place at each public institution, whereby employers and workers/unions feel compelled to validate in their agreements the measures recommended in the Guidelines, so as to avoid the unwanted consequences of a poor score at management performance evaluation. Therefore, the complainants allege that the Government practice violates the principle of free collective bargaining set out in Article 4 of Convention No. 98 as well as the principle of participation of workers in the determination of terms and conditions of employment.*

480. *The Committee notes that the Government rejects these allegations by indicating that: (i) social dialogue has taken place under the ESLC, in 2014 concerning the 2015 Budget Guidelines through the Public Service Development Committee and, since November 2020 through the Public Institution Council concerning wage system restructuring with a view to reflecting the objective value of the job to the wage system; (ii) management performance evaluation and the related manuals concern only internal supervision by the Government and do not violate the right to collective bargaining, therefore they do not require prior consultation with unions; (iii) the enactment and notification of Guidelines is only a matter of internal supervision between the Government and public institutions. Guidelines have no legal force, do not invalidate effective collective agreements, and do not require Government approval of concluded collective agreements; and (iv) the right to collective bargaining is guaranteed under the Korean law and public institutions should obtain consent from unions, or in their absence, from the majority of workers, regarding matters related to wages and welfare. Public institutions may refrain from following the Guidelines' recommendations due to opposition from workers, and in this case their decisions will be valid, and they would only be evaluated as insufficient in the management performance evaluation in relevant matters.*

481. *The Committee notes that the Government agrees that the issues raised in the complaint are within the scope of collective bargaining in the public sector and affirms that the right to collective bargaining can be, and is, freely exercised in Korean public institutions. The Committee also notes that collective bargaining on terms and conditions of employment in the public institutions of the Republic of Korea is completely decentralized and takes place at the individual public institution level. Nevertheless, it notes that regarding certain terms and conditions of employment referred to in the complaint, the Government has formulated general standards and policies in form of Guideline "recommendations" that are applicable to all public institutions under MOEF monitoring. These recommendations are not legally binding but are integrated into the indicators used to evaluate the management performance of public institutions, which in turn determines budget availability in future exercises. As such, they operate as a legally soft, but practically effective framework for collective bargaining at the individual institution level.*

482. *Observing that workers and employers of Korean public institutions should have the right to determine terms and conditions of employment, including wage and welfare-related issues, by means of collective bargaining, the Committee recalls that, in its examination of a previous case* *concerning Korea, it has acknowledged that collective bargaining in the public sector called for verification of the available resources in the various public bodies or undertakings, that such resources were dependent on state budgets and that the period of duration of collective agreements in the public sector did not always coincide with the duration of the budgetary laws – a situation which could give rise to difficulties. The Committee considered at the time that the financial authorities could formulate in this regard recommendations in line with government economic policy [see Case No. 2829, 365th Report, para. 572]. As regards the matters in the case at hand, the Committee considers that in view of the special characteristics of most public institutions which the Government has underlined, such as their receiving Government budget support and their enjoyment of exclusive business rights, a framework may be defined for the exercise of the right to collective bargaining in those institutions with a view to ensuring the preservation of public interest. Nevertheless, the Committee also considers that, as in previous cases, to be compatible with the right to free and voluntary collective bargaining, this framework should "leave a significant role to collective bargaining" and that "it is essential that workers and their organizations be able to participate fully and meaningfully in designing this overall bargaining framework, which implies in particular that they must have access to all financial, budgetary and other data enabling them to assess the situation on the basis of the facts" [see Cases Nos 3026 and 2941, 374th Report, para. 666].*

483. *In view of the above considerations, the Committee notes that the present case raises two main questions: (i) whether the Government Guidelines, as upheld through management performance evaluations, still leave a significant role to collective bargaining in public institutions with regard to the issues raised in the complaint, and (ii) whether the workers and their organizations have been able to participate fully and meaningfully in designing the framework put in place through the Guidelines' recommendations.*

484. *Regarding total labour cost control and the ceiling on wage increases provided in the Budget Guidelines, the Committee notes that according to the complainants' indication, which the Government does not challenge, the Budget Guidelines are established and notified annually. The Committee notes however that the Government refers to social dialogue in a tripartite body concerning them only on one occasion, in 2014, at which occasion, according to the Government no agreement was reached. The Committee notes therefore, that every year the workers in public institutions subject to the Guidelines and their organizations have been denied participation in designing the framework governing collective bargaining on wage increase and total labour cost control. As to the significance of the role left to collective bargaining concerning these matters, the Committee notes that, while the Government indicates that the Budget Guidelines set the rate of increase in total labour cost commonly applied to all public institutions, and each public institution can freely decide payment methods and the amount of the wage based on labour-management agreements, considering its characteristics and the total labour cost limit, the complainants state that individual public institutions do organize collective bargaining annually, but only after each year's Budget Guidelines are released, determining the maximum rate of increase in the total labour cost. Collective bargaining is then used to decide how to allocate the total labour cost budget that has been established without consulting unions. It also notes the complainants' indication, that the agreement concerning wage increases in KORAIL Networks which was concluded in November 2019, was finally not fully implemented on the grounds that it provided for an increase rate that went beyond the limit set in the 2020 Budget Guidelines. The Committee further notes the Government's indication that in 2021 three – out of more than 300 – institutions went beyond the total labour cost limit provided in the Budget Guidelines.*

485. *Concerning the inclusion of the amount of court-ordered damages paid to workers following ordinary wage lawsuits in total labour costs, which the Government confirms is intended to induce* *public institutions that have not already done so to amend their wage system, for example by encouraging the use of annual leave and reducing overtime work to prevent lawsuits, the Committee notes that this was introduced through the removal of the relevant exception from the 2022 Budget Guidelines. The Committee notes that the Government indicates in this regard that considering equity and fairness towards other institutions that had already revised their remuneration regulations, the eight years exception was abolished in 2022 after "collecting opinions from related agencies", but it does not indicate if workers' organizations were also consulted in this regard. It notes that the complainants allege that there was not a single opportunity by which unions could voice their opinions or participate in the making of the 2022 Budget Guidelines. As to the significance of role left to collective bargaining concerning this matter, the Committee notes that the Government indicates that in the case of "other" lawsuits related to wages and labour cost, individual institutions take measures after an autonomous agreement between labour and management; while additional wages paid according to the results of ordinary wage lawsuits from 2022, are included in total labour cost limit. The Committee thus observes that, as from 2022, there would appear to be no role for autonomous management labour agreements in relation to the source of payment of the second category and the impact that may have more globally on working conditions.*

486. *Regarding the amount and differential distribution of the variable component of wages, namely performance incentives/bonuses – which the Committee notes constitute a significant part of the total wage – the Committee notes that the Budget Guidelines, which the Government confirms are drawn up without participation of workers' organizations, set the general rule of differential distribution. As to the link between management performance evaluation score and the amount of bonus paid to the workers of the evaluated institutions, the Committee notes the complainants' allegation, which is not challenged by the Government, that the relevant standard was formulated in the document entitled "Reform Measures for Management Performance Evaluations of Public Institutions", without the participation of unions. Regarding the role left to collective bargaining on this matter, the Committee notes the complainants' indication that public institutions indeed decide how to calculate the amounts of performance incentives as well as when and to whom they are to be paid in accordance with the collective agreements with unions or the rules of employment devised in consultation with unions, however, the complainants emphasize that the framework set by the Government Guidelines determines much of the rules.*

487. *Concerning wage peaks, the Committee notes that according to the Government, they were first introduced in 2016 with the agreement of tripartite groups aiming at harmonizing the extension of the retirement age with the amendment of the "Prohibition of Age Discrimination in Employment and Elderly Employment Promotion Act" (EEPA). The Government further adds that in 2021 the Second Public Institution Council facilitated a survey on public institutions' wage system and wage peak system. The Committee notes however that the complainants present the situation differently in this regard alleging that: the MOEF first finalized and distributed the Recommendations Concerning Wage Peaks in Public Institutions on 7 May 2015 requiring all public institutions to adopt wage peaks. This was also integrated as an indicator into the Management Performance Evaluation Manual as revised and published in September 2015, and by the end of that year all 313 subject institutions had adopted the new policy. The complainants state that the EEPA requires the employers and the unions of the enterprises that extend their retirement age to take necessary measures, including the "restructuring of their wage system", without making any reference to wage peaks. The complainants add that the 2015 Recommendation was revoked in 2018, but the wage peaks remained as a recommendation in the Management Guidelines released that year and are also maintained in the management performance evaluation manuals released since then. As to the role left to collective bargaining in introduction of wage peaks, the complainants indicate that as a change in the conditions of employment that clearly disadvantages workers, the law requires the union/workers' consent for its application within an enterprise, but unions at most public institutions* *in Korea feel pressured into accepting wage peaks so that their respective employers can fare well on management performance evaluations. The Committee also notes the Government's indication that the details of the wage peak system, including payment rate and the period for adjustment can be designed reasonably by considering the age distribution and wage system of each institution and is decided upon the agreement of workers and employers of each institution.*

488. *Regarding the replacement of seniority-based wage system by performance-based wage system, the Committee notes the complainant's indication that the Government announced its decision to transform the remuneration system in the public sector to prioritize performance and skills more and declared its plans to support and incentivize job analysis to prepare for the shift to job-based pay in public institutions in the 2020 Economic Policy Direction published in December 2019. The Committee further notes that according to the complainants, the Joint Action Committee for Public Sector Unions, an initiative of the KCTU and the FKTU, released a statement in May 2020 urging the Government to stop unilateral efforts for wage reforms and to refrain from pushing for the revision of relevant management performance evaluation indicators, affirming that any discussion on wage reforms should proceed through dialogue between the representatives of workers, including those representing the five industry level trade unions and federations (the KCTU and the FKTU), and the Government. The complainants add that despite this call for dialogue, in September 2020 the MOEF released a revised edition of the Management Performance Evaluations Manual which contained a new criterion in wage management indicators concerning "efforts and outcomes for transitioning into a more rational, job-based remuneration system" without having consulted labour representatives. The Committee notes that the Government indicates that in November 2020 the ESLC established the Public Institution Council, a tripartite body, with a view to making efforts to revamp the wage system of public institutions to reflect the objective value of the job to it. It also refers to the survey facilitated by this tripartite body concerning the public institutions' wage system and the report produced on that basis in March 2022. As to the role left to collective bargaining in regulating the transition, the Committee notes that the complainants indicate that the revised Management Performance Evaluation Manual also assigned points to the revision of remuneration policy "on the basis of consent from labour", which, according to the complainants, would ultimately prevent unions from voicing their complaints on this topic so as not to compromise the management performance evaluation score. The Committee also notes that the Government indicates that in November 2020, the ESLC agreed on the principle that restructuring of the wage system will be implemented autonomously and gradually through the agreement of labour and management in each public institution, rather than in a unilateral and standardized way. The Committee recalls that in Cases Nos 3237 and 3238 that were lodged in 2016, it had examined allegations concerning the introduction of the performance-based wage system by certain public institutions without the employees' consent, after the Government had issued unilaterally drafted recommendations in January 2016, providing for incentives and penalties in relation to this matter and the addition of a management performance evaluation indicator in this regard. The Government had replied that to address the situation it had removed the deadline for the introduction of the performance-based pay system; abolished the penalties (such as freezing total labour costs budget); and removed the criteria of the implementation of the new system from the assessment of public institutions index. The Committee had welcomed "the Government's removal of intrusive penalties and incentives with a view to allowing the parties to restructure their wage systems autonomously on the basis of freely reached agreements between labour and management" [Case No. 3237, 386th Report, para. 200 and Case No. 3238, para. 290].*

489. *Finally, concerning the tightening of conditions of allocation of in-company loans, the Committee notes that the standards initiating change in this regard were introduced in the 2021 Innovation Guidelines and were also reflected in the indicators of the Management Performance Evaluation in the Manual released the same year. As to the role left to collective bargaining regarding this matter,* *the Committee notes that the complainants indicate that the labour community strongly criticized this intervention as a violation of free negotiation between employers and unions, but the MOEF rejected the criticism responding that the Guidelines are non-binding. According to the complainants, public institutions and their unions had to enter collective agreements downsizing the availability of in-company loans, because they sought to avoid losing management performance evaluation points. The Committee notes however, that the Government indicates that modification of the internal regulations of public institutions on conditions of allocation of in-company loans requires the consent of unions and they can freely practice their right to collective bargaining in this regard despite the Innovation Guidelines. The Government further affirms that in 2021, many public institutions applied criteria on inter-company loans that did not comply with the Guidelines.*

490. *In view of the foregoing, the Committee notes that the standards set in Government Guidelines in relation to the issues raised in the complaint, indeed constitute a framework that in several respects limits the content of collective bargaining at the individual institution level, although collective bargaining maintains a role in many aspects relating to the determination of the modalities of implementation of the general principles formulated in centrally issued recommendations. The Committee expresses its concern that the combined effect of many of the recent recommendations limits the effective space for collective bargaining and does so on the basis of guidelines over which there has been no recent consultation or workers' participation.*

491. *The Committee recalls that Case No. 2829 concerning the Republic of Korea, which was lodged in 2011, contained similar allegations relating to the restriction of collective bargaining in public institutions by means of "management directives" and "management evaluation". On that occasion, the Committee, while being mindful of the fact that collective bargaining in the public sector calls for verification of the available resources in the various public bodies or undertakings, requested the Government to ensure that trade unions are consulted prior to adopting measures such as the issuance of budgetary guidelines regarding public institutions and the assessment of the soundness of their financial situation though performance management evaluation reports, audits or inspections [365th Report, para. 582(a)]. Furthermore, in Case No. 3237, the Committee recalled that tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining were a particularly appropriate method for resolving the difficulties raised in the allegations and invited the Government to take the necessary measures so that reviews of the pay system may take place through collective bargaining [386th Report, para. 201]. Finally, the Committee recalls that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements [see* ***Compilation of Decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1231].*

492. *The Committee notes that in the present case, the complainants refer to the absence of channels of participation and communication for unions and indicate that the Government rejects the request of public sector unions to participate in discussions on these matters at the central level. In particular in relation to the ongoing replacement of seniority-based wage system by performance-based wage system, the complainants refer to the 19 May 2020 statement of the Joint Action Committee for Public Sector Unions affiliated to the KCTU and the FKTU, which urges the Government, as the de facto employer of public sector workers in public institutions, to engage in a centralized dialogue with representatives of workers, including the five industry level unions and federations. The Committee notes the Government's reply indicating that the parties to collective bargaining are workers' and employers' organizations, not the Government.*

493. *The Committee recalls in this regard that it has always emphasized the importance it attaches to the promotion of dialogue and consultation on matters of mutual interest between the public* *authorities and the most representative occupational organizations of the sector involved; and in the case concerning the public corporate sector, it highlighted the importance of making changes to working conditions such as cuts to wages and other allowances and benefits the subject of in-depth consultation with the most representative organizations in the sector [see* ***Compilation,*** *paras 1523 and 1528]. The Committee therefore considers that the Government should refrain from formulating "recommendations" enforced through management performance evaluation indicators concerning terms and conditions of employment in public institutions without the workers' participation. In the Committee's view, to ensure the meaningful participation of workers' organizations in designing the overall bargaining framework that is formulated at the central level, the Government should establish a regular consultation mechanism that would allow full and meaningful participation of workers' organizations on the matters raised in the complaint so as to ensure that guidelines issued at central level do not effectively interfere with collective bargaining on the terms and conditions of employment in public institutions. The Committee requests the Government to keep it informed of the measures taken in this regard.*

494. *The Committee notes the complainants' allegations related to Case No. 1865 and the Government replies thereto, which it will consider in the framework of its examination of that case.*

The Committee's recommendation

495. **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:**

> **The Committee requests the Government to establish a regular consultation mechanism that would allow the full and meaningful participation of the organizations representing workers of public institutions in the formulation on the matters raised in the complaint, so as to ensure that the guidelines issued at central level do not effectively interfere with collective bargaining in public institutions. The Committee requests the Government to keep it informed of the measures taken in this regard.**

Case No. 3376

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Sudan presented by
– the Sudan Workers Trade Union Federation (SWTUF) and
– the Organization of African Trade Union Unity (OATUU)

Allegations: The complainant organizations allege the dissolution of workers' and employer's organizations, the removal and arrest of several union leaders, the confiscation of properties and assets of a trade union federation, as well as the dismissal of thousands of workers, including union leaders and members, by the Government following a change of regime

496. The complaint is contained in communications dated 3 February, 19 March and 3 May 2020, and 28 May 2022, submitted by the Sudan Workers Trade Union Federation (SWTUF), as well as communications dated 23 July 2020 and 8 February 2021 submitted by the Organization of African Trade Union Unity (OATUU).

497. The Government of Sudan transmitted its observations on the allegations in communications dated 23 March and 4 October 2021.

498. Sudan 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).

A. The complainants' allegations

499. In their communications dated 3 February, 19 March, 3 May and 23 July 2020, the complainants allege that several trade unions and professional associations, including the SWTUF and its 15 affiliates, were dissolved by the Transitional Sovereignty Council of Sudan (hereinafter "the TSC") on the false accusation of being an integral part of the ousted regime of the former President of Sudan. They further allege that the properties and assets of the SWTUF were confiscated, that several union leaders were removed and, in some cases, arrested for refusing to hand over their mandates, and that thousands of workers, including union leaders and members, were dismissed for non-professional motives following a change of government.

500. The complainants inform that the SWTUF, which was established in 1950, comprises 15 general unions and their 18 state unions, representing 1.5 million workers organized in different sectors of the Sudanese economy. They indicate that the SWTUF and its 15 affiliates, which are legally registered and independent entities, have been dissolved several times in the past by successive decisions of Sudanese military governments, but that these previous decisions were overturned rapidly and the SWTUF and its affiliates were reinstated and allowed to exercise their normal union functions.

501. The complainants state that on 28 April 2019, the TSC issued Resolution No. 49, which banned the activities of all workers' and employers' organizations operating lawfully in the country. They indicate that on 22 May 2019, following protests and sustained demands from several national, regional and international trade union organizations to reverse that decision, the TSC lifted the ban.

502. The complainants affirm, however, that on 14 December 2019, the TSC adopted the Dismantling of the 30 June 1989 Regime and Empowerment Elimination Act, which established an Empowerment Elimination Committee. They indicate that this Committee then proceeded to dissolve the country's workers' and employers' organizations. According to the complainants, this decision has grounded to a halt the administration and all activities of trade unions across the country.

503. The complainants inform that the SWTUF submitted an appeal to the Appeals Committee in relation with the above-mentioned measures but received no response. They also indicate that the SWTUF presented a cassation appeal to the Constitutional Court to request the annulment of the dissolution proceedings, but again there was no consideration.

504. The complainants also allege that the Empowerment Elimination Committee proceeded to confiscate the property and assets and freeze the bank accounts of the SWTUF and its 15 affiliates. They explain that, based on an order issued by the Office of the Public Prosecutor, the police were deployed to drive the elected officers and staff of the SWTUF and its affiliates out of their offices, which are currently sealed.

505. The complainants further indicate that in March 2020, the Ministry of Interior banned Mr Yousif Ali Abdelkarim, President of the SWTUF, from leaving the country. They explain that this prohibition occurred just before a meeting of the Arab Labour Organization (ALO), which was scheduled to be held in the first week of April in Oman, and that Mr Abdelkarim is a member of the ALO's Committee on Freedom of Association.

506. The complainants state that on 23 March 2020, the Empowerment Elimination Committee issued a decision on the appointment of steering committees for several trade union organizations. They affirm that on 13 April 2020, Mr Abbas Mohammed Habib Allah, Mr Tarek Mahmoud and Ms Hanane Mohammed Sayed, three leaders of the National Education Union, which is affiliated to the SWTUF, were arrested after refusing to hand over their mandates to the individuals designated by the Empowerment Elimination Committee. According to the complainants, Mr Habib Allah and Mr Mahmoud were imprisoned for two days and eventually charged and released, while Ms Sayed was questioned and released.

507. The complainants allege that on 21 June 2020, Mr Louai Abdallah, President of the Oil Workers' Union, and Ms Naamat Mokhtar Mohamed Abdelkader, President of the Health Workers' Union in the Darfur region, were also arrested. They further allege that on 2 July 2020, Mr Abdelkarim was summoned by the Empowerment Elimination Committee to its headquarters and called upon to hand over his mandate.

508. The complainants also affirm that on 25 June 2020, three SWTUF leaders, Mr Hassan Yahia Mohamed Ali from the Bank of Khartoum, Mr Khiri El Nour Ali Siam from the National Documentation Centre, and Mr Moussa Hama Kafi Tih from the Ministry of Youth and Sport, were dismissed without cause. In this regard, they also indicate that thousands of workers, including dozens of trade unionists, were fired on the pretext that they belonged to the previous regime, without any investigations being conducted.

509. The complainants inform that the OATUU, as a pan-African and regional trade union organization to which the SWTUF is affiliated, has made several attempts to approach the Sudanese authorities with a view to initiating a process of mediation and dialogue to resolve the dispute, but has so far received no response. They argue that this refusal to engage demonstrates the failure of the Government to fulfil its international and regional commitments with respect to freedom of association.

510. The complainants also indicate that the SWTUF had submitted a proposal to the Ministry of Labour and Social Development to amend the Trade Union Act of 2010 and the Professional Association Law of 2004 in conformity with the provisions of Conventions Nos 87 and 98. They state that the Government, however, is in the process of drafting a new Trade Union Act without the participation and involvement of the SWTUF.

511. In its communication of 8 February 2021, the OATUU affirms that: (i) the trade union situation in the country continues to deteriorate; (ii) on 28 January 2021, Ms Hala Al Gamar El Nour, President of the National Audit Office Workers' Trade Union, was arrested after refusing to hand over her mandate to the individuals designated by the Empowerment Elimination Committee; (iii) in general, legitimate workers' representatives are often replaced, dismissed, persecuted and arrested; (iv) a total of 4,676 workers have been arbitrarily dismissed for non-professional reasons since the change of regime, and (v) this purge affects all sectors of activity.

512. In its communication of 28 May 2022, the SWTUF indicates that its headquarters are still occupied by the police, and that workers and their families are suffering severely from the absence of services provided by the legitimate trade union representatives that they had elected.

B. The Government's reply

513. In its communications dated 23 March and 4 October 2021, the Government first refutes the claim that the SWTUF was previously dissolved in similar scenarios. It states that while the previous measures referred to by the complainants were carried out by military authorities which came to power by military coup, the current measures were conducted on the basis of a law promulgated in accordance with the Transitional Constitution that was adopted after the glorious revolution of December 2018.

514. The Government indicates that section 7(1)(c) of the Dismantling of the 30 June 1989 Regime and Empowerment Elimination Act provides for the competence of the Empowerment Elimination Committee to dissolve trade unions and federations, as well as their governing councils and executive committees, and to appoint steering committees until free and fair elections have been held and directives have been issued on the manner in which their funds, property and assets are to be disposed of. It further indicates that section 7(1)(f) of the Act gives the Empowerment Elimination Committee the right to initiate proceedings against any person or in relation with any acts which constitute crimes against public or private funds, financial or administrative corruption, illegal enrichment or abuse of influence.

515. The Government also informs that section 8 of the Act provides for the creation of a five-person Appeals Committee, which is to be formed by the TSC and ministers, to consider the appeals filed against decisions of the Empowerment Elimination Committee. It indicates that the decisions issued by the Appeals Committee may be appealed within two weeks before the Supreme Court, whose judgment shall be final. The Government points out, however, that an appeal does not have the effect of suspending a decision issued by the Empowerment Elimination Committee.

516. The Government explains that the mainstay of the recent revolution was people from all spheres of society filling the streets, besieging the premises of the SWTUF, and demanding the immediate dissolution of federations, trade unions and their executive offices. It states that the reason for these demands was the knowledge and the deep-rooted conviction of the majority of workers that the executive offices of the former SWTUF were an integral part of the previous regime, never did anything for them and used their resources to support the ruling party.

517. The Government affirms that the dissolution of the SWTUF and its affiliates was therefore expedited to avoid any rioting or civil strife with unfortunate consequences for the entire country. It indicates that it declared a national state of emergency and reviewed the country's legislation to align it with international standards and human rights requirements. The Government states that, based on its belief in freedom of association and tripartite dialogue, it established 165 steering committees as an exceptional measure to steer trade union work at various levels. It points out that a steering committee was also established for the General Federation of Sudanese employers. The Government indicates that most trade unions submitted petitions to withdraw their confidence in the SWTUF, and that the minimum wage was raised by 600 per cent to 3,000 Sudanese pounds following the revolution.

518. The Government insists that the dissolved executive office of the SWTUF was one of the arms of the previous regime, which, upon assuming power in 1989, dissolved professional associations, federations, political parties and all trade union organizations. It stresses that the dissolution of the SWTUF was not carried out by the TSC itself and that no executive authority intervened in these measures, as the Empowerment Elimination Committee it is not a political committee.

519. With respect to the allegation that trade union assets, properties and funds have been confiscated by police forces, the Government specifies that they were not confiscated or seized, but have been subject to precautionary sequestration. It argues that the purpose of these measures is to protect the assets and real estate concerned from vandalism and to ensure that documents on the premises are not tampered with, which safeguards workers' rights. The Government stresses that the above-mentioned measures were carried out under the supervision of the Public Prosecution Service, which is completely independent from the executive bodies.

520. The Government also affirms that three SWTUF leaders used the federation's means, capacities, properties and assets for their own benefit. It indicates that reports in the Public Funds and Anti-Corruption Prosecution Services were filed against these officials and that a judicial decision was subsequently issued, which led to the imposition of a travel ban. The Government stresses that the travel ban did not apply to all SWTUF leaders, but only to the officials concerned.

521. As regards the allegation that the SWTUF was excluded from the elaboration process of a new Trade Union Act, the Government informs that wide consultations are currently taking place between the various independent trade union organizations to develop a new Act which reflects the desires, ambitions and aspirations of the workers.

C. The Committee's conclusions

522. *The Committee notes that the complainants allege that, following a change of government, the TSC dissolved the country's employers' and workers' organizations, including the SWTUF and its 15 affiliates. It further notes that, according to the complainants, the properties and assets of the SWTUF and its affiliates were confiscated, legitimate union leaders were arrested for refusing to hand* *over their mandates to replacements named by the Empowerment Elimination Committee, the President of the SWTUF was banned from leaving the country, thousands of workers, including union leaders and members, were dismissed, and a new Trade Union Act is being prepared without the involvement of the SWTUF. The Committee also notes that the Government, for its part, affirms that the dissolution of the above-mentioned organizations, which was implemented through the Dismantling of the 30 June 1989 Regime and Empowerment Elimination Act, was requested by the majority of workers during the 2018 revolution, as the SWTUF and its affiliates were an integral part of the previous regime.*

523. *As regards the alleged dissolution of the Sudanese workers' and employers' organizations, the Committee notes that the complainants affirm that: (i) the adoption of the Dismantling of the 30 June 1989 Regime and Empowerment Elimination Act by the TSC on 14 December 2019 created an Empowerment Elimination Committee, which dissolved the employers' and workers' organizations, including the SWTUF and its 15 affiliates, thereby suspending the administration and activities of trade unions across the country; (ii) the SWTUF lodged an appeal before the Appeals Committee, as well as a cassation appeal before the Constitutional Court in relation with the above-mentioned decision, but did not receive any response; (iii) on 23 March 2020, the Empowerment Elimination Committee appointed steering committees for several trade union organizations; and (iv) various union leaders have been replaced.*

524. *The Committee further notes that the Government states that: (i) these measures were carried out based on section 7(1)(c) of the above-mentioned Act, which allows the Empowerment Elimination Committee to dissolve trade unions and federations, as well as their executive committees, and appoint steering committees until the holding of free and fair elections and the issuance of directives on the manner in which their funds, property and assets should be disposed of; (ii) according to section 8 of the Act, an appeal against a decision of the Empowerment Elimination Committee may be filed before the Appeals Committee, which is formed by the TSC and ministers, but such appeal does not have a suspensory effect; (iii) during the 2018 revolution, protesters besieged the SWTUF's offices and demanded the immediate dissolution of the federations and trade unions due to their conviction that the SWTUF was an integral part of the previous regime, which motivated the Government's decision to expedite the SWTUF's dissolution with a view to preventing riots and civil unrest; (iv) given its belief in freedom of association, it set up 165 steering committees on an exceptional basis to guide trade union work at different levels; and (v) a steering committee was also established for the General Federation of Sudanese Employers.*

525. *As regards the information provided by the Government in relation to the specific context in which the TSC carried out its work, the Committee observes that it has been called upon to examine several cases in the 1990s which concerned arrests, detention and violence against leaders and members of independent trade unions in a context of state-controlled trade union monopoly (Case No 1688, 287th Report and Case No 1843, 306th Report). The Committee further notes that the present complaint was submitted prior to the overwhelming turmoil existing in the country following the military coup of 25 October 2021 which dissolved the TSC and that no information has been provided by the military authorities since the take-over nor response to the more recent allegations of May 2022. Finally, the Committee is fully aware of the grave ongoing internal conflict that has led over 400,000 Sudanese to flee their country. Recalling that a system of democracy is fundamental for the free exercise of trade union rights, the Committee issues the following conclusions and recommendations in the hopes that peace will soon be restored to the country and freely chosen workers' and employers' organizations will be able to fully participate in the country's reconstruction and economic and social development.*

526. *As regards the dissolution of the SWTUF, the Committee recalls that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of* *freedom of association [see **Compilation of decisions of the Committee on Freedom of Association, sixth edition**, 2018, para. 986]. It further recalls that the removal by the Government of trade union leaders from office is a serious infringement of the free exercise of trade union rights, and that the fundamental idea of Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of their organizations and the elections which are held therein [see **Compilation**, paras 654 and 667]. The Committee notes with interest from publicly available information that the Supreme Court issued a decision on 22 February 2023 cancelling the Sovereignty Council decision No. 586 which had dissolved trade unions and employers' organizations and firmly expects that the necessary measures will be taken so that all workers' and employers' organizations may operate in full freedom. The Committee requests to be kept informed of developments in this regard.*

527. *Regarding the allegations of confiscation of property, the Committee notes that, according to the complainants: (i) the Empowerment Elimination Committee confiscated the properties and assets belonging to the SWTUF and its 15 affiliates, and froze their bank accounts; and (ii) upon order of the Office of the Public Prosecutor, the police drove the officers and staff of the SWTUF and its affiliates out of their offices, which are now sealed. The Committee notes the Government's indication that: (i) the properties and assets were subject to precautionary sequestration to ensure that they were not vandalized or documents therein tampered with; (ii) these measures were conducted under the supervision of the Public Prosecution Service, which is independent from the executive bodies; and (iii) reports were filed in the Public Funds and Anti-Corruption Prosecution Services against three SWTUF leaders for using the federation's means, capacities, properties and assets for their own benefit which led to the issuance of a judicial decision.*

528. *The Committee recalls that it has drawn attention to the importance of the principle that the property of trade unions should enjoy adequate protection, and that the occupation or sealing of trade union premises should be subject to independent judicial review before being undertaken by the authorities in view of the significant risk that such measures may paralyse trade union activities [see **Compilation**, paras 277 and 287]. The Committee also recalls that the freezing of union bank accounts may constitute serious interference by the authorities in trade union activities [see **Compilation**, para. 707]. Noting the Government's indication that anti-corruption reports had been filed leading to a judicial decision and that the property and assets were subject to precautionary sequestration under the supervision of the Public Prosecutor's Office, an independent body, the Committee requests to receive a copy of all judicial decisions relating to this matter. Further recalling that to deprive many workers of their trade union organizations because of a judgment that illegal activities have been carried out by some leaders or members constitutes a clear violation of the principles of freedom of association [see **Compilation**, para. 995], the Committee expects that the trade unions concerned will recover access to their properties, assets and funds without delay.*

529. *With respect to the alleged arrest of union leaders for refusing to hand over their mandates to the persons appointed by the Empowerment Elimination Committee, the Committee notes that the complainants affirm that: (i) between April 2020 and February 2021, Mr Abbas Mohammed Habib Allah, Mr Tarek Mahmoud, Ms Hanane Mohammed Sayed, Mr Louai Abdallah, Ms Naamat Mokhtar Mohamed Abdelkader and Ms Hala Al Gamar El Nour were arrested; and (ii) two of these union leaders, Mr Habib Allah and Mr Mahmoud, from the National Education Union, were imprisoned for two days and eventually charged. Noting with concern that the Government does not address these allegations, the Committee recalls that the arrest, even if only briefly, of trade union leaders and trade unionists, and of the leaders of employers' organizations, for exercising legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association [see **Compilation**, para. 121]. It further recalls that the detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious* *interference with civil liberties in general and with trade union rights in particular [see **Compilation**, para. 123]. The Committee requests detailed information on any charges brought against Mr Habib Allah and Mr Mahmoud, as well as any court decision handed down, and expects that the necessary measures will be taken to ensure that, if charges have been brought for motives related to their trade union activities, they are dropped by the competent authorities.*

530. *Regarding the allegation that the President of the SWTUF, Mr Yousif Ali Abdelkarim, was banned from leaving the country, the Committee notes that, according to the complainants: (i) the ban was imposed in March 2020, just before a meeting of the ALO scheduled for early April in Oman; and (ii) Mr Abdelkarim is a member of the ALO's Committee on Freedom of Association. The Committee further notes that the Government, for its part, states that, after complaints were filed against three SWTUF leaders for using the federation's means, capacities, properties and assets for their own benefit, a judicial decision was issued against them, which resulted in the imposition of a travel ban. Recalling that the imposition of sanctions, such as banishment or control of overseas travel for trade union reasons, constitutes a violation of freedom of association [see **Compilation**, para. 1060], the Committee expects that the travel ban is no longer in force and trusts that trade union leaders and members will be able to travel freely for the exercise of their trade union activity.*

531. *As regards the alleged dismissal of union leaders and members, the Committee notes that the complainants state that: (i) on 25 June 2020, three leaders of the SWTUF, Mr Hassan Yahia Mohamed Ali, Mr Khiri El Nour Ali Siam and Mr Moussa Hama Kafi Tih, were dismissed without cause; and (ii) since the change of regime, 4,676 workers from all sectors of activity, including dozens of trade unionists, have been arbitrarily dismissed for non-professional motives. While the Government has not responded to these allegations in its reply, the Committee notes from publicly available information that the Supreme Court issued a decision on 23 January 2022 annulling Decision No. 29 of 25 February 2020 terminating the service of numerous civil servants through the authority granted by the Dismantling of the 30 June 1989 Regime and Empowerment Elimination Act of 2019 and trusts that all trade unionists equally affected by arbitrary dismissals will be reinstated in their posts.*

532. *With respect to the alleged refusal of the Government to engage with the SWTUF while elaborating a new Trade Union Act, the Committee notes the Government's indication that broad consultations were being held with the different independent trade union organizations to develop the new Act. Noting the complainants' indication that the SWTUF represents 1.5 million workers across the country, the Committee recalls the importance of consulting all trade union organizations concerned on matters affecting their interests or those of their members [see **Compilation**, para. 1521]. It further recalls that it has considered it useful to refer to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), Paragraph 1 of which provides that measures should be taken to promote effective consultation and cooperation between public authorities and employers' and workers' organizations without discrimination of any kind against these organizations. In accordance with Paragraph 5 of the Recommendation, such consultation should aim at ensuring that the public authorities seek the views, advice and assistance of these organizations, particularly in the preparation and implementation of laws and regulations affecting their interests [see **Compilation**, para. 1530]. The Committee expects that all trade union organizations concerned will be consulted in the elaboration of any legislation affecting their rights and interests or those of their members.*

The Committee's recommendations

533. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) Noting with interest the 22 February 2023 Supreme Court decision cancelling the Sovereignty Council decision No. 586 which had dissolved trade unions and employers' organization, the Committee firmly expects that the necessary measures will be taken so that all workers' and employers' organizations may operate in full freedom. The Committee requests to be kept informed of any developments in this regard.

(b) Noting the Government's indication that anti-corruption reports had been filed leading to a judicial decision and that the property and assets were subject to precautionary sequestration under the supervision of the Public Prosecutor's Office, the Committee requests to receive a copy of all judicial decisions relating to this matter and expects that the trade unions concerned will recover access to their properties, assets and funds without delay.

(c) The Committee requests detailed information on any charges brought against Mr Habib Allah and Mr Mahmoud, as well as any court decision handed down, and expects that the necessary measures will be taken to ensure that, if charges have been brought for motives related to their trade union activities, they are dropped by the competent authorities.

(d) The Committee expects that the travel ban affecting Mr Abdelkarim is no longer in force and trusts that trade union leaders and members will be able to travel freely for the exercise of their trade union activity in the future.

(e) Noting the 23 January 2022 Supreme Court decision annulling Decision No. 29 of 25 February 2020 terminating the service of numerous civil servants, the Committee trusts that all trade unionists equally affected by arbitrary dismissals will be reinstated in their posts.

(f) The Committee expects that all trade union organizations concerned will be consulted in the elaboration of any legislation affecting their rights and interests or those of their members.

Case No. 3390

Definitive report

Complaint against the Government of Ukraine presented by
– the Federation of Trade Unions of Ukraine (FPU) and
– the Confederation of Free Trade Unions of Ukraine (KVPU)

Allegations: The complainant organizations allege that if adopted, the draft law of Ukraine on amendments to some legislative acts of Ukraine regarding trade union activities (No. 2681) will violate freedom of association and collective bargaining rights in Ukraine

534. The complaint is contained in a communication dated 2 July 2020 submitted by the Federation of Trade Unions of Ukraine (FPU) and the Confederation of Free Trade Unions of Ukraine (KVPU). By its communication dated 27 January 2022, the FPU supplied further information.

535. The Government of Ukraine transmitted its observations in communications dated 30 October 2020 and 24 April 2023.

536. Ukraine has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainants' allegations

537. In their communication dated 2 July 2020, the complainant organizations – the FPU and the KVPU – allege that if adopted, the draft Law "On Amendments to some Legislative Acts of Ukraine (regarding certain matters relating to trade union activities)" (No. 2681), submitted by a group of parliamentarians for consideration by the Verkhovna Rada, would violate freedom of association and collective bargaining rights in Ukraine. The complainants allege that the authors of the draft Law asserted, on the one hand, that the legislative framework in the area of trade union rights is outdated and needed to be reformed to strengthen the role of an individual worker, and on the other, that the development of digital technologies and availability of legislative databases, accessibility of legal registers and a wide network of solicitors and lawyers allow prompt and effective protection and restoration of workers' rights by workers themselves.

538. The complainants explain that the draft Law aims at amending the Law on Trade Unions, their Rights and Guarantees of Activities (Law on Trade Unions) of 1999 and the Labour Code and detail the proposed amendments as follows.

539. The draft Law (paragraph 1(1) and paragraph 2(7)) proposes to add new sections to the Labour Code (section 247-1) and the Law on Trade Unions (section 16-1) and to amend section 15 of the Law on Trade Unions to provide for a mandatory establishment of monitoring commissions to be established by trade unions. In this respect, the complainants explain that at present, trade unions establish monitoring and audit commissions as per the obligations set forth by their respective by-laws. Such commissions consist of trade union members and are not accountable to trade union leadership, thereby guaranteeing full and independent supervision of the elected bodies by trade union members. The complainants consider that the authors of the draft Law propose to establish additional and duplicate monitoring commissions which would consist of trade union members and, when necessary, would also involve, on a voluntary basis, non-union members. According to the complainants, such commissions will have the right to monitor: (1) the compliance of trade union elected bodies activities with the requirements of the legislation, by-laws and collective bargaining agreements; (2) the functioning of trade unions' elected bodies; and (3) the use of trade union funds. They will also have the right to deal with any conflicts within a given trade union. The complainants argue that such monitoring commissions are intended to replace other bodies which have been formed by trade unions in accordance with their by-laws. The FPU and the KVPU thus consider that the draft Law imposes procedures on trade unions which relate exclusively to trade unions' internal activities, thereby directly interfering in trade union internal affairs. The complainants point out that the specialists of the Main Scientific and Expert Directorate of the Verkhovna Rada proposed to delete draft new section 247-1 on monitoring commissions as the Labour Code governs labour relations whereas this issue concerns the internal organization of trade unions.

540. The complainants also consider that the proposed amendment to section 36 of the Law on Trade Unions (under paragraph 2(14) of the draft Law) imposing an obligation on elected trade union bodies to report back, within the imposed deadlines, to members of primary trade union is already governed by trade union by-laws and contravenes the requirements of Article 3 of Convention No. 87, as these matters should be governed exclusively by trade union by-laws.

541. Furthermore, in the complainants' opinion, the amendments made under paragraph 2(1) of the draft Law to section 1 of the Law on Trade Unions which limit the establishment of primary trade union organizations in educational institutions contravene Articles 2 and 3 of Convention No. 87. They further consider that amendments to the same section which would limit to two the number of trade unions that can be established in a company, institution or organization, restrict the right to freedom of association. The FPU and the KVPU consider that where there are already two existing trade unions in a company, the amendment, if adopted, would discriminate against employees preferring to establish an alternative third trade union organization. Furthermore, according to the complainants, the draft Law introduces a ban on the establishment of primary trade unions in organizations/undertakings employing fewer than ten workers, which in practice would result in banning trade union activity and collective bargaining.

542. The complainants also argue that paragraph 2(2) of the draft Law, which amends section 7 of the Law on Trade Unions by excluding the restriction on workers' rights to dual trade union membership, which trade unions can presently set out in their by-laws, to be a violation of freedom of association.

543. The complainants also indicate the proposed amendment to section 11 of the Law on Trade Unions to increase to three the number of primary trade unions to form a local trade union has been previously recognized by the Constitutional Court as being inconsistent with part 1 of Article 36 of the Constitution of Ukraine.

544. The complainants consider that the proposed amendments to section 249 of the Labour Code and section 42(3) of the Law on Trade Unions deny employees the right to transfer, upon a written request submitted to their employer, a portion of their wages as trade union membership dues. The complainants explain in this regard that an accounting data on contributions is usually used to determine the number of trade union members for collective bargaining purposes and allege that despite the current obligation to transfer trade union dues, it is not uncommon for the employer to oppose it in every possible way. Therefore, they argue, retaining the obligation to transfer membership dues by law is an additional lever to ensure the stability of trade union work and facilitate effective social dialogue at the local level. The FPU and the KVPU further consider that the proposed amendments to sections 14 and 15 of the Law on Trade Unions obliging trade unions to set up in their by-laws the amount of trade union dues and the procedure for their transfer, violates trade union rights.

545. The complainants also consider discriminatory the following proposed amendment to section 20 of the Law on Trade Unions: "where a trade union includes persons who are members of the management of the company, institution, or organization, then such trade union may not act as a workers' representative in collective bargaining. Persons representing employers shall be prohibited from negotiating and concluding collective bargaining agreements on behalf of employees." They point out in this respect that as there is no definition of the term "management" in the legislation in force, it is impossible to determine who belongs to the management; it is therefore not clear whether the term includes only the head of the legal entity or other employees holding the position of deputy head, and heads and deputies of various divisions of such entity. The draft Law, if adopted, would not only deny the management personnel the right to choose freely the trade union they wish to join, but would also deprive the entire workforce of the entity in question of the right to bargain collectively.

546. The complainants further consider that the proposed amendments to section 251 of the Labour Code, and sections 28 and 45 of the Law on Trade Unions restrict the right of trade unions to receive information necessary to form and justify their position during collective bargaining and are contrary to Article 11 of Convention No. 87.

547. The complainants also consider that paragraphs 1(7) and 2(17) of the draft Law amending section 252 of the Labour Code and section 41 of the Law on Trade Unions, deny workers elected to trade union bodies additional guarantees in disciplinary proceedings against them and allow members of elected trade union bodies to be dismissed without the consent of a higher trade union body. The FPU and the KVPU argue that such amendments would lead to unjustified dismissals of such workers and persecution for trade union activity even after the end of their mandate.

548. The complainants further consider it inadmissible to withdraw (by virtue of paragraph 1(2) of the draft Law) the right of an elected trade union body to demand the dismissal of the head of an undertaking, as currently set out in section 247(9) of the Labour Code and section 33 of the Law on Trade Unions, if he or she violates labour legislation, fails to comply with the provisions of a collective agreement, or fails to conclude such an agreement. According to the complainants, the existing guarantees enable trade unions to influence unscrupulous employers who disregard workers' rights, especially as there is no mechanism in Ukraine to involve workers in the company's management. The complainants point out that there is no abuse on the trade unions' part when exercising this right, as ultimately, the courts decide the legality of trade unions' demands and evaluates employers' actions.

549. The complainants further allege that if adopted, the draft Law would deny trade unions some social functions and, in particular, as concerns the right to represent insured persons in the system of compulsory State Social Insurance (paragraph 1(2) of the draft Law as concerns section 247 of the Labour Code and section 38 of the Law on Trade Unions); the right of trade unions to demand and obtain from the employer relevant documents, information concerning working conditions, implementation of collective agreements and compliance with the labour legislation; the right to verify payroll and State Social Insurance calculations (section 248 of the Labour Code and section 40 of the Law on Trade Unions); and the right to receive from employers contributions of no less than 0.3 per cent for cultural, physical and health-improvement activities, as well as other funding under collective agreements for cultural, physical and health-improvement activities (section 250 of the Labour Code). The complainants further consider that the amendment to section 13 of the Law on Trade Unions aimed at withdrawing the State assistance to trade unions in establishing business partnership with employers and their associations, as well as promoting training for trade union personnel does not satisfy the requirements of Article 3 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

550. The complainants further allege that reducing paid union leave from six to three calendar days for employees who are elected trade union leaders may lead in practice to employers granting only one day's leave to trade union activists (proposed amendment to section 252 of the Labour Code and section 41 of the Law on Trade Unions).

551. The FPU and the KVPU also allege that the proposed amendments to sections 21, 22, 24 and 28 of the Law on Trade Unions deny trade unions the right: to participate in considerations of draft laws regulating labour, social and economic relations; to be involved in review by executive agencies and local government bodies, as well as by employers and other citizens' associations of their proposals; to receive free of charge information on matters affecting labour and socio-economic rights and interests of their members as well as information on the economic activities of undertakings; and to join, as representatives of insured persons, supervisory boards of compulsory State Social Insurance Funds. The complainants consider that this will virtually end the existing social dialogue and destroy the trade union movement in Ukraine. In respect of the amendments to section 24 of the Law on Trade Unions revoking the right of trade union representatives to join supervisory boards, the complainants point out that under the legislation in force, representatives of employers and of insured persons are entitled to manage the fund they have established, while the State can only control, but not use, the funds' assets.

552. The complainants further consider that the deletion of part 6 of section 249 of the Labour Code, part 2 of section 42 and section 43 of the Law on Trade Unions regarding the provision by employers of buildings, premises and facilities to trade unions for cultural, educational, health and wellness activities contravenes Article 11 of Convention No. 87 and Paragraph 16 of the Workers' Representatives Recommendation, 1971 (No. 143).

553. The complainants further explain that in accordance with section 24 of the Law on Public Associations, in order to fulfil its statutory purpose (purposes), a public association with the status of a legal person shall be entitled to own, use funds and other property legally transferred to it by its members or the State, acquired as members' dues, donated by citizens, companies, institutions and organizations, acquired as a result of the association's entrepreneurial activity, or that of legal entities (companies or undertakings) established by it, as well as property purchased with its own funds, and loaned temporarily. The complainants explain that at present, some trade union organizations own office premises, training centres and social facilities (medical sanatoria, children health camps, tourist facilities, etc.), which were built and purchased using members' dues and other trade union funds. Some of the facilities were transferred free of charge by the State during the Soviet times. A large proportion of these facilities is owned by the FPU or its affiliates. For each of these facilities, the relevant State bodies issued official certificates confirming the ownership rights of the facilities in question. Thus, the FPU, all-Ukrainian industry sector trade unions and regional trade union associations are currently the lawful owners of property. The complainants indicate that despite the constitutional protection of trade union property, the final provisions of the draft Law provide for compulsory transfer to the State, that is, namely for confiscation, of all property of trade unions of the former USSR and Ukrainian SSR, currently legally owned by trade unions of Ukraine. The complainants explain that the Federation of Independent Trade Unions of Ukraine received property with the right of ownership from the General Confederation of Trade Unions of the USSR by an agreement in the prescribed manner and in accordance with the legislation in force in November 1990, that is, namely before the adoption, in August 1991, of the Act of Declaration of Independence of Ukraine. The FPU believes that paragraph 21 "Final Provisions" of the draft Law is discriminatory towards trade unions, since it violates the principle of equality of rights for trade unions in comparison to other public organizations in terms of regulating their property ownership rights. In particular, there are no property claims on behalf of the State on other all-Ukrainian public organizations in a similar situation to that of the trade unions of Ukraine, which were operating during the time of the Ukrainian SSR and were part of the public associations of the USSR (creative unions of writers, sports societies, etc.). The FPU considers that the property owned by trade unions is not public property of the USSR or Ukrainian SSR; these assets were created using trade union funds, and their confiscation in favour of the State is illegal.

554. The FPU and the KVPU indicate that while the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine, which is responsible for legal assessment of draft legislation submitted to Parliament, concluded that the draft Law, if adopted, will not be in conformity with Conventions Nos 87, 98 and 135, on 27 May 2020, the Committee on Social Policy and Protection of Veterans' Rights of the Verkhovna Rada of Ukraine decided to recommend without any amendments draft Law No. 2681 for adoption in the first reading.

555. In its communication dated 27 January 2022, the FPU alleges that, in addition to draft Law No. 2681, there are 28 other draft laws registered in the Verkhovna Rada aimed at reforming social and labour relations in the country without proper social dialogue with trade unions, which, if adopted, will deprive or significantly restrict the right of trade unions to represent and defend the rights and interests of their members. The FPU states that under pandemic conditions, mass protest actions against these draft laws were more difficult or even prohibited.

556. The FPU adds that a novelty in the law-making process in Ukraine is the inclusion of anti-union provisions in draft laws that have no relation to trade union activities. It explains in this respect that during the preparation for the second reading of the draft Law "On Amending Certain Legislative Acts of Ukraine concerning Improvement of Healthcare Management and Provision on Health Services to the Population", the Committee of the Verkhovna Rada on Healthcare included a provision pertaining to the employer's obligation – as the payer of the single social contribution – to report employees' trade union membership to the authorities. Despite the fact that the Main Legal Department of the Verkhovna Rada considered that this provision to be in violation of the national legislation, the law was passed by the Rada on 15 December 2021 and signed by the President of Ukraine on 6 January 2022. The FPU alleges in this respect that it has received numerous notifications of collection of information by the local authorities, through their subordinate institutions, establishments and enterprises, on trade unions operating in such entities, as well as on the payment of membership dues – for subsequent transmission to the third parties.

557. The FPU further informs that on 10 December 2021, two draft laws prepared by the Government of Ukraine – "On Legal Regime of Property of All-Union Public Associations (Organizations) of the Former USSR" and "On Moratorium on Alienation of Property of All-Union Public Associations (Organizations) of the Former USSR" – where registered in Verkhovna Rada under Nos 6420 and 6421, respectively. According to the FPU, the drafts provide for the confiscation of property of public organizations. As concerns trade unions, the FPU indicates that the draft laws provide for the confiscation of buildings, training centres, health resorts, sports and tourism facilities, which trade unions have legally owned for many decades and which are used in the interests of workers. According to the FPU, despite the fact that the Ministry of Justice and the State Property Fund did not support draft Law No. 6420 as not being in line with the international treaties ratified by Ukraine, the draft laws were supported by the Cabinet of Ministers of Ukraine and submitted to the Verkhovna Rada.

558. The FPU further alleges that on 19 October 2021, an investigating judge of the Kyiv Pechersky District Court issued an order to arrest the property and prohibit the disposal and the use of several property objects belonging to trade unions, including the Trade Union House in Kyiv, which houses the headquarters of the FPU and 33 national sectoral trade unions and where 250 trade unionists work. The Trade Union House hosts all trade union statutory events, meetings of the joint representative body of trade unions at the national level – the trade union side of the National Tripartite Socio-Economic Council. It was built in the 1980s exclusively on trade union membership fees, and after the 2014 fire it was rebuilt by trade unions without any help from the State. Foreign national trade union confederations helped to rebuild the Trade Union House by contributing funds to a foundation set up specifically for that purpose. The FPU alleges that the consideration of the case by the judge took place without notifying the FPU and the order itself was made public only two months later, on 10 December 2021. The information about the arrest was included in the Register of Immovable Property Rights on 5 January 2022. The prosecutor's request was based on the same unconstitutional and unlawful assumptions as draft Law No. 6420. The FPU indicates that this was the fourth attempt to arrest the property of trade unions in 2021. Three previous cases were appealed and dismissed as illegal, groundless and made with violations of substantive and procedural law. The very fact of continuous attempts of the prosecutor's office to arrest the trade unions' property indicates that certain oligarchic clans are behind them, rushing to seize the trade union property and undermine trade unions. The FPU appealed the court order and is awaiting the outcome of the appeal. At the same time, on 19 January 2022, the prosecutor's office filed a new request to transfer the arrested trade union property to the National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes. A court hearing to consider this request was scheduled for 3 February 2022.

559. The FPU concludes by indicating that combined with the advancement of the reform aimed at liberalization of the labour law, which, inter alia, envisages that individual employment contracts would take precedence over laws and collective agreements, and with amendments to the Law on Trade Unions, the confiscation of trade union property would deprive trade unions of their right-protection functions, undermine their ability to promote the principles of decent work and to fight against inequalities and poverty among workers.

B. The Government's reply

560. In its communication dated 30 October 2020, the Government indicates that draft Law No. 2681 was considered with the participation of trade union representatives at the sittings of the Verkhovna Rada Committee on Social Policy and Protection of the Rights of Veterans on 5 February and 27 May 2020, as well as at the sitting of the Verkhovna Rada Committee on Integration of Ukraine with the European Union on 2 July 2020. The Government points out that on 19 February 2020, during the hearing of the Committee on Social Policy and Protection of the Rights of Veterans on "The current situation of Ukrainian trade unions. The need to reset social/public dialogue", people's deputies, representatives of trade unions and their associations, representatives of employers' associations, and academics expressed their views on the need for further elaboration of draft laws in a working group. It was agreed that the elaboration and considerations of draft laws pertaining to trade union activities in Ukraine should take place in an open format, with the involvement of a wide circle of interested parties.

561. The Government indicates that while social dialogue actors generally agree that there is a need to update the legislation on trade union activity, the draft Law needs to be further amended to ensure its conformity with the ILO Conventions ratified by Ukraine, the recommendations adopted by Ukraine, the European Social Charter (revised), and Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

562. The Government further indicates that the Ministry for Development of Economy, Trade and Agriculture submitted proposals concerning the draft Law to the Committee on Social Policy and Protection of the Rights of Veterans, with respect to the: (i) deletion of provisions restricting the number of trade union members and organizations that can be established in an undertaking; (ii) the right of trade unions to receive information on matters regarding the employment and socio-economic rights, the legitimate interests of their members, and the socio-economic development of an enterprise, institution or organization, etc.; (iii) protection of the rights of workers elected to trade union bodies; and (iv) collective bargaining rights of trade unions whose members include the managerial staff.

563. The Government states that, on 27 May 2020, the Committee on Social Policy and Protection of the Rights of Veterans decided to establish a working group – involving trade union representatives – to elaborate proposals for the second reading of the draft Law which would then be introduced by the Chairperson of the said working group if the draft Law is approved in essence at its first reading. The inaugural meeting of the working group took place on 4 September 2020 and social partners at national level elaborated proposals with regards to the draft.

564. The Government points out that pursuant to section 104 of the Rules of Procedure of the Verkhovna Rada, the executive bodies are not empowered to withdraw draft laws that have been tabled by people's deputies.

565. As regards the expropriation of trade union property, the Government indicates that, to date, the question of determining the holders of the right to ownership of the property of all-Union public organizations of the former USSR located on the territory of Ukraine, including the property of trade union organizations, remains unresolved at the legislative level. By Decision No. 3943-XII of 4 February 1994 on "Property of the All-Union Public Organizations of the Former USSR", the Verkhovna Rada decided that temporarily, pending the legislative determination of property owners, the said property shall be the property of the State as a whole. The Ministry for Development of Economy, Trade and Agriculture has drawn up a draft Law "On Legal Regime of Property of All-Union Public Associations (Organizations) of the Former USSR". The comments on that draft Law have now been received from the interested bodies and are being processed by the Ministry with the aim of submitting agreed proposals for consideration by the Government.

566. In its communication dated 24 April 2023, the Government provides the following information. With regard to Law No. 1962-IX on Amendments to Certain Legislative Acts of Ukraine on Improving the System of Healthcare Management and Provision of Medical Care to the Population, dated 15 December 2021, which amended Law No. 2464-VI on Collection and Accounting of the Single Contribution for Obligatory State Social Insurance and, in particular, as regards the reporting by an employer on employees' membership in a trade union to the tax authority and the provision to the State Register of Compulsory State Social Insurance of information on trade unions membership, the Government indicates that Law No. 2173-IX dated 1 April 2022 on Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine on the Administration of Certain Taxes during the Period of Martial Law and State of Emergency amended Law No. 2464 by excluding the above provisions.

567. The Government further informs that pursuant to subparagraph 4 of paragraph 3 of Section II of Law No. 2215-IX dated 21 April 2022 on the De-Sovietization of the Legislation of Ukraine, the Ministry of Economy has developed a draft Law on Labour with a view to abandoning the Soviet legislative heritage in the field of employment and labour relations and introducing internationally recognized principles and standards for regulating labour relations. Unlike the current Labour Code, the draft Law on Labour includes current trends in the labour market while ensuring decent working conditions. To ensure public discussion, on 23 September 2022, the Ministry of Economy published the draft on its official website. In October 2022, the draft Law was sent to the International Labour Organization. The Government points out that the draft Law does not provide for any restrictions on freedom of association and the right to organize. These relations are regulated by the Law on Trade Unions, which has not been amended and is not expected to be amended to restrict the rights enshrined in Conventions Nos 87 and 98. The Ministry of Economy is currently consulting with the social partners and the scientific and expert community to finalize the draft Law. The Ministry of Economy assures that it is ready for a comprehensive and open dialogue that would facilitate a full understanding of international labour law, as well as the implementation of its norms in the national legislation.

568. Regarding the notifications on the collection by local governments (regional councils) of information from their subordinate institutions, establishments and enterprises on the number of trade union organizations operating in them and information on the payment of membership fees, for further transfer to third parties, the Government indicates that according to section 12 of the Law on Trade Unions, trade unions and their associations are independent. Interference by state bodies, local self-government bodies, their officials, employers and their associations in the statutory activities of trade unions is prohibited. The Ministry of Economy is not authorized to request, analyse, publish or disseminate information on trade union membership in any way. At the same time, the relevant information may be provided directly by a trade union if it makes such a decision.

569. The Government further informed of the adoption, on 23 February 2023, of the Law on Collective Bargaining Agreements and Contracts No. 2937-IX, which will come into force six months after the date of termination or lifting of martial law.

570. Regarding draft laws Nos 6420 on the Legal Regime of Property of All-Union Public Associations (Organizations) of the former USSR and 6421 a moratorium on the alienation of property of all-Union public associations (organizations) of the former USSR, the Government indicates that in accordance with Resolution of the Verkhovna Rada No. 3943-XII on the Property of All-Union Public Organizations of the Former USSR, dated 4 February 1994, until the legislative definition of the subjects of ownership of the property of all-union public organizations of the former USSR located in Ukraine is established, the said property is defined as state property, and the State Property Fund of Ukraine is vested with the right to dispose of this property and has the authority to act as a lessor of property complexes of enterprises and organizations. A significant portion of the trade union property is the property of trade union public associations of the former USSR. All existing sanatoriums, which in the Soviet times were under the jurisdiction of the Main Department of Resorts, Sanatoriums and Rest Homes of the Ministry of Health of the USSR, were transferred to the Ukrainian Republican Council of Trade Unions pursuant to Resolution No. 606 of the Council of Ministers of the USSR of 23 April 1960 on the Transfer of Sanatoriums and Rest Homes of the Ministry of Health of the USSR to Trade Unions. The Ministry of Health of the Ukrainian SSR transferred this property from the jurisdiction of the Main Department of Resorts, Sanatoriums and Rest Homes of the Ministry to the jurisdiction of trade unions free of charge without changing the ownership of this property. Trade unions were granted the right to manage this property within the limits stipulated by Resolution No. 606. Paragraph 5 of Resolution No. 606 stipulated that the State Planning Committee of the Ukrainian SSR, together with the Ministry of Finance of the Ukrainian SSR, the Ministry of Health of the Ukrainian SSR had to determine the amount of investment and sources of funding for the new construction, reconstruction and improvement of sanatorium and resort facilities, which were to be transferred to the Ukrainian Republican Council of Trade Unions. The Government points out that given that the property was not granted to trade unions, they did not have the right to independently dispose of this property and change its form of ownership.

571. The Government further explains that until a special law is adopted to define the ownership of property managed by all-Union public organizations of the former USSR located in Ukraine, the issue of ownership of such property is resolved in court. According to the State Property Fund of Ukraine, since 2011 the ongoing lawsuits were initiated by prosecutors to return the property of all-Union public associations of the former USSR to state ownership. The Government further points out that the need to adopt a special law is also evidenced by the decision of the National Security and Defense Council of Ukraine of 18 February 2015 "On measures to create an appropriate material and technical base for the treatment, rehabilitation and rehabilitation of servicemen and other persons who directly participated in the antiterrorist operation, ensuring its implementation, as well as combatants and disabled veterans", and the judgment of the European Court of Human Rights of 9 September 2018 in the case of the *Parental Care Foundation v. Ukraine* (application No. 5876/15), in which the European Court of Human Rights pointed out that Ukraine had no law that would clearly regulate the legal status of the property of all-Union public organizations of the former Soviet Union located in Ukraine and provide for an inventory of the property of such organizations.

572. To resolve this issue, the Ministry of Economy has developed and submitted to the Verkhovna Rada draft Laws Nos 6420 and 6421 of 10 December 2021. The Government indicates that draft Law No. 6420 was repeatedly sent for approval to the Joint Representative Body of Representative All-Ukrainian Trade Union Associations at the national level and the Joint Representative Body of the Employers' side at the national level. Representatives of the relevant stakeholders were also invited to a conciliation meeting on the draft Law. The Government concludes by indicating that the draft laws are aimed at protecting state property and do not affect the legitimate interests of bona fide purchasers. The adoption of these draft laws will help to establish the legal basis for determining the ownership of the relevant property.

573. Regarding the alleged seizure of trade union property, the Government indicates that part 2 of section 328 of the Civil Code provides that ownership is deemed to have been acquired lawfully unless otherwise is expressly provided by law or the illegality of the acquisition of ownership or the unreasonableness of the assets in the property is established by a court. Court decisions that have entered into force are binding on all state authorities, local governments, their officials and employees, individuals and legal entities and their associations throughout Ukraine.

C. The Committee's conclusions

574. *The Committee notes that the complainants in this case allege that, if adopted, the draft Law "On Amendments to some Legislative Acts of Ukraine (regarding some issues of trade union activities)" (No. 2681) will violate freedom of association and collective bargaining rights in Ukraine. The Committee notes that the draft Law intends to amend the Labour Code and the Law on Trade Unions.*

575. *The Committee observes that since the filing of the complaint, a draft Law on Labour has been prepared by the Ministry of Economy of Ukraine in 2022 to give effect to the final and transitional provisions of the Law on the De-Sovietization of the Legislation of Ukraine on the need to replace the Labour Code of 1971. The Committee welcomes the Government's engagement with the International Labour Office in this regard. The Committee observes that the draft Law on Labour, intended to replace the Labour Code as a whole, does not contain any of the amending provisions pertaining to the Labour Code set out by draft Law No. 2681. The Committee notes the Government's indication that the Law on Trade Unions is not expected to be amended to restrict the rights enshrined in Conventions Nos 87 and 98. The Committee notes, in particular, the Government's indication that the draft Law needs to be further amended to ensure its conformity with the ILO Conventions ratified by Ukraine, the European Social Charter (revised) and Directive 2002/14/EC of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European Community. The Committee notes, however, that according to the information on the official portal of the Verkhovna Rada, draft Law No. 2681, amending the Labour Code and the Law on Trade Unions, is still awaiting consideration and is included, by Resolution 2911-IX of 7 February 2023, in the agenda of the 9th session of the Rada. The Committee will therefore proceed to examine the proposed amendments to the Labour Code and the Law on Trade Unions as set out in draft Law No. 2681.*

576. *The Committee notes the proposed addition of section 241-1 to the Labour Code and of section 16-1 to the Law on Trade Unions, as well as the amendment of section 15 of the Law on Trade Unions providing for a mandatory establishment of monitoring commissions within trade union associations. The Committee notes the complainants' explanation that currently, by virtue of their by-laws, trade unions are required to set up audit and other monitoring bodies. The complainants consider that the new legislative requirement, which would oblige trade unions to set up (additional) monitoring commissions and which regulates in detail their powers and membership violates the right of trade unions to organize their administration without interference. The Committee recalls in this respect that freedom of association implies the right of workers and employers to elect their representatives in full freedom and to organize their administration and activities without any interference by the public authorities [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 666]. The Committee considers that this implies that trade unions and their associations should be able to decide which internal bodies they wish to establish, and the composition thereof, in accordance with its by-laws and the democratic decisions of its membership. The Committee expects the Government to take the necessary measures, in consultation with the social partners, to remove these draft provisions so as to ensure that workers' organizations are able to organize their administration without Government interference.*

577. *The Committee further notes that the complainants question the proposed deletion of paragraph 9 from section 247 of the Labour Code, which currently allows trade unions to demand the dismissal of the head of an enterprise/institution if he or she violates the Law on Trade Unions, labour legislation, collective labour agreement or evades participation in collective bargaining and similar provisions from the Law on Trade Unions (sections 33 and 38(9)). Noting that section 46 of the Law on Trade Unions, which provides that violation of trade union rights carries disciplinary,* *administrative or penal responsibility, would remain unchanged, the Committee considers that the deletion of the provisions in question would not be in violation of freedom of association.*

578. *The Committee further considers that the deletion of paragraphs 13 and 14 of section 247 of the Labour Code as well as similar provisions of the Law on Trade Unions (section 38(13 and 14)), which currently provide for the right of trade unions to exercise control over the preparation of documents for pension and the provision of retirees and persons with disabilities who worked at the undertaking/institution with medical care, housing, vouchers to health and preventive care facilities and other social services and benefits in accordance with the rules of the undertaking/institution and collective agreement, would not be in violation of freedom of association and that these matters may also be regulated through negotiated collective agreements. The Committee considers that the right to inspect the operation of catering, healthcare, childcare facilities, dormitories, transport, etc. (section 248(4) of the Labour Code), the right to verify the payroll and state social insurance payments, and the use of funds for social and cultural events and housing construction (section 248(6) of the Labour Code), as well as the right to receive at least 0.3 per cent of the payroll fund for cultural, physical education and health improvement activities (section 250 of the Labour Code and section 44 of the Law on Trade Unions) are matters that could be regulated through a collective bargaining agreement.*

579. *The Committee further observes that while the reference to the right to request information on working conditions, implementation of collective agreements and labour legislation from the enterprise owner or his or her authorized representative would be deleted, the right to receive such information is maintained (section 248(2) of the Labour Code)).*

580. *The Committee notes that by virtue of the proposed amendment to section 249 of the Labour Code and the corresponding amendments to section 42 and removal of section 43 of the Law on Trade Unions, the list of certain obligations imposed on an owner of an enterprise to create conditions for trade union activities as provided for in a collective agreement (provision of premises, check-off facilities, transfer of buildings and premises intended for cultural, educational, health, sport and similar activities on contractual basis) would be removed and replaced with a general obligation to create such conditions for the operation of trade unions at the enterprise/institution as specified in a collective agreement. The Committee recalls that facilities to be afforded to workers' representatives as referred to in Convention No. 135, ratified by Ukraine, may be given effect through national laws or regulations or collective agreements, or in any other manner consistent with national practice (Article 6) and considers that the proposed amendments do not appear to limit freedom of association.*

581. *The Committee notes, in particular, that under the proposed amended sections 28 and 45 of the Law on Trade Unions and 251 of the Labour Code, trade unions would no longer have the right to request, free of charge, information on labour and socio-economic rights and interests of their members, as well as on the results of economic activity of the enterprise, and that sections 40 of the Law on Trade Unions and 251 of the Labour Code would no longer stipulate that trade unions, associations and trade union representatives may request from the employer information and relevant documents related to working conditions, implementation of collective bargaining agreements, compliance with labour legislation, and social and economic rights of workers. The Committee further notes that section 28 would no longer require the requested information to be provided within five days. While observing that the general obligation to provide information on the implementation of collective agreements is maintained, the Committee recalls that Recommendation No. 143, provides that the management of the undertaking should make available to workers' representatives such material facilities and information as may be necessary for the exercise of their functions [see* ***Compilation****, para. 1581] requests the Government to take the necessary measures to amend the draft Law, in consultation with the social partners, so as to ensure that the legislation continues to allow trade* *unions to request information from the management of an undertaking which relate to issues that are necessary for them to carry out their functions.*

582. *As concerns the guarantees for employees elected to trade union bodies, the Committee notes the proposed amendments to section 252 of the Labour Code and section 41 of the Law on Trade Unions and observes that while an obligation to obtain consent of an elected trade union body prior to amending their conditions of employment, including remuneration, as provided for in an employment contract, as well as for their dismissal is maintained, such consent will no longer be needed prior to taking disciplinary actions against trade union leaders. Furthermore, in case of a dismissal, while the need to obtain prior consent of the elected body is maintained, the existing requirement to obtain an additional consent of the highest elected body of the trade union (association of trade unions) would be deleted. The provision prohibiting dismissal of an employee who was elected to a trade union body for up to a year after the expiration of the term for which they were elected will also be deleted pursuant to the draft Law. The draft Law also proposes to delete a provision guaranteeing the same employment (or similar with the consent of the employee in question) upon the expiration of their trade union mandate. The Committee recalls that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see* ***Compilation****, para. 1117]. The Committee considers that while the requirement to obtain a prior agreement of an elected trade union body, a moratorium on dismissal for a year after the expiration of a trade union mandate and the guarantee of the same employment are among the protective means that may be set forth by the legislation or a collective agreement, revoking these existing measures would appear to be a retreat in overall protection of trade union representatives. The Committee encourages the Government to engage with the social partners to review these measures with a view to ensuring that the legislative framework continues to provide effective protection against anti-union discrimination or other prejudicial measures due to their trade union membership or exercise of trade union activity.*

583. *Regarding the amendment reducing the number of days of additional paid leave provided to employees elected to trade union bodies for trade union training from six to three (proposed amendments to section 252 of the Labour Code and corresponding section 41 of the Law on Trade Unions), the Committee underlines the need to strike a balance between two elements: (i) facilities in the undertaking should be such as to enable trade unions to carry out their functions promptly and efficiently; and (ii) the granting of such facilities should not impair the efficient operation of the undertaking [see* ***Compilation****, para. 1580]. Observing that by virtue of the same draft provision, section 252 of the Labour Code would also provide that the company may provide employees elected to trade union bodies with additional benefits at its expense pursuant to a collective agreement, the Committee considers that the proposed amendment does not appear to limit freedom of association.*

584. *As concerns the amendments to the Law on Trade Unions set out in draft Law No. 2681, the Committee notes the following proposed amendments to section 1 of the Law on Trade Unions, which sets out the definition of the term "primary trade union" (an enterprise/institution level trade union). Firstly, the draft amendment deletes the reference to "those who study at the same education institution", thereby excluding students from being trade union members, and not prohibiting trade unions in educational institutions, as argued by the complainants. The Committee recalls in this* *respect that the function of the ILO is to secure and promote the right of association of workers and employers [see para. 13 of the Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association], which implies that students, if they are not workers (e.g. teaching assistants) are outside of its sphere of competence. Secondly, the amended definition would set a minimum membership in such unions at ten. The Committee recalls in this respect that while a minimum membership requirement is not in itself incompatible with Convention No. 87, the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. What constitutes a reasonable number may vary according to the particular conditions in which a restriction is imposed [see* ***Compilation****, para. 441]. The Committee expresses its concern at the effect this amendment may have on workers of small and microenterprises who at present, are able to exercise the right to form primary trade unions at their place of work and requests the Government to review this amendment in consultation with the social partners so as to ensure that the workers may be able to continue to exercise their right to organize. Thirdly, the proposed amendment limits the number of primary trade unions at a given enterprise /institution to two. The Committee considers that workers should be free to choose the union which, in their opinion, will best promote their occupational interests without interference by the authorities. It may be to the advantage of workers to avoid a multiplicity of trade unions, but this choice should be made freely and voluntarily. By including the words organizations of their own choosing in Convention No. 87, the International Labour Conference recognized that individuals may choose between several workers' or employers' organizations for occupational, denominational or political reasons. The Committee therefore requests the Government to review this proposed amendment in consultation with the social partners.*

585. *The Committee notes that by virtue of the proposed amendment to section 7 of the Law on Trade Unions, paragraph 5 of that section which stipulates that "trade union by-laws may provide for restriction on dual trade union membership" will be deleted and considers that this in itself does not violate trade union rights as there is nothing in the law that prohibits trade unions from setting out this restriction in their by-laws should they consider it necessary, thereby leaving it to the internal decision of the organizations concerned.*

586. *The Committee also notes the amendments to section 11 of the Law on Trade Unions aimed at increasing to three the number of primary trade union organizations in the same administrative-territorial unit or amalgamated territorial community to obtain local status. While considering that the proposed minimum requirement is not so high as to hinder the establishment of local trade union organizations, the Committee notes the complainants' indication that previously, such proposed requirement had been considered unconstitutional by the Constitutional Court of Ukraine.*

587. *Regarding the proposed amendment to section 13 of the Law on Trade Unions aimed at withdrawing state assistance to trade unions in establishing business partnerships with employers and their associations and training of trade union personnel, the Committee notes that the complainants allege violation of Convention No. 111, which is outside this Committee's mandate.*

588. *The Committee further notes the proposed amendments to sections 14 and 15 of the Law on Trade Unions aimed at requiring trade union by-laws/statutes to set the amount of trade union membership fees and the procedure for their transfer. The Committee observes that the proposed amendment of section 249 of the Labour Code, examined above, implies that the procedure for transfer of trade unions dues shall be regulated by collective agreement and thus the amendments to sections 14 and 15 appear to be contrary to that intention. The Committee recalls in this respect that the deduction of trade union dues by employers and their transfer to trade unions is a matter which should be dealt with through collective bargaining between employers and all trade unions without legislative obstruction [see* ***Compilation****, para. 701]. Given the concerns raised by the complainants as to how this legislative obligation imposed on trade unions to set out in their by-*

laws for the exact amount of trade union dues might hinder their internal administration, the Committee requests the Government to review the proposed amendments in consultation with the social partners.

589. *Regarding the complainants' allegation that the draft restricts trade union rights for managerial and supervisory staff, the Committee notes that the amended section 20 of the Law on Trade Unions states that if a trade union includes persons belonging to the management staff of an enterprise, institution, or organization, such trade union may not act as a representative of employees in collective bargaining. The Committee further notes that no definition of the term "management" is provided by the legislation in force. The Committee considers that such omission can allow for broad interpretation of that term and by virtue of the proposed amendment, deny collective bargaining rights to trade unions whose membership include staff that may be legitimately represented by them. It recalls in this respect that as regards provisions which prohibit supervisory employees from joining workers' organizations, the Committee has taken the view that the expression supervisors should be limited to cover only those persons who genuinely represent the interests of employers [see* ***Compilation****, para. 382]. Furthermore, it is not necessarily incompatible with the requirements of Article 2 of Convention No. 87 to deny managerial or supervisory employees the right to belong to the same trade unions as other workers, on condition that two requirements are met: first, that such workers have the right to establish their own associations to defend their interests; and, second, that the categories of such staff are not defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership [see* ***Compilation****, para. 381]. The Committee requests the Government to take the necessary measures in consultation with the social partners with a view to taking into account the above considerations.*

590. *The Committee takes note of the complainants' allegation that the proposed amendments to sections 21, 22, and 24 of the Law on Trade Unions hinder social dialogue and are aimed at destroying the trade union movement in Ukraine. The Committee notes that sections 21 and 22, as amended, would exclude the right of trade unions to draft laws and regulations related to labour, social and economic policies, and the right to participate in consideration of their proposals by various authorities as well as employers and their associations and the right to participate and hold appropriate consultations on issues pertaining to the attraction and use of foreign labour in the country. While noting that the right to submit proposals to those with the right of legislative initiative would remain, the Committee recalls that it has called the Government's attention to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), which establishes that consultations "should aim, in particular, at joint consideration of matters of mutual concern with a view to arriving, to the fullest possible extent, at agreed solutions" and includes among the matters for consultation "the preparation and implementation of laws and regulations affecting their interests". The Committee has also highlighted the importance for harmonious labour relations of full and frank consultations on matters affecting the workers' occupational interests [see* ***Compilation****, paras 1517 and 1519]. The Committee expects that full consultation with the social partners will take place with a view to ensuring respect for the above considerations.*

591. *The Committee considers that the issue raised by the complainant with regard to the proposed amendment to section 24 of the Law on Trade Unions which would exclude trade unions and their associations, as representatives of insured persons, from joining supervisory boards of compulsory State Social Insurance Funds, while maintaining their right to be elected to the boards of such funds, falls outside its competence.*

592. *The Committee further notes that the amended section 36 of the Law on Trade Unions would impose on the elected trade union bodies an obligation to report regularly to the members of the trade union on the fulfilment of their obligations and to submit an extraordinary report on its activities at* *the request of at least two thirds of the members of its primary trade union. In the Committee's view, at the outset, the purpose of the proposed amendment to guarantee the members' right to participate democratically in the organization is in line with the principle of freedom of association, however, the thresholds for any such requests by trade union members should be left to the decision of the organization concerned and not set by legislation.*

593. *Regarding the issue of trade union property, the Committee notes that the final provisions of the draft Law provide that the property of the trade unions and their association of the former USSR and Ukrainian SSR, which is situated in the territory of Ukraine and which was managed, owned and/or used thereby as of 24 August 1991, shall be State property. The Committee also notes the FPU allegation that two other draft Laws, Nos 6420 and 6421, stipulate that the property of public organizations, legal successors to all-union public organizations of the former USSR, including trade unions and their organizations, is to be confiscated. The Committee recalls its conclusions and recommendations in Case No. 3341 where it had noted the creation of a working group to discuss possible ways to regulate the issue and invited the Government to engage in consultations with the trade union organizations to find a mutually agreeable solution (see Report 392, October 2020, para. 966). The Committee will examine all issues relating to trade union property in the framework of that case.*

594. *The Committee notes the Government's general indication that draft Law No. 2681 needs to be further amended to ensure its conformity with the ratified ILO Conventions and that a working group has been established to that effect and began its work in September 2020. It further notes the Government's indication that the Law on Trade Unions is not expected to be amended to restrict the rights enshrined in Conventions Nos 87 and 98. The Committee understands, however, that the version of the draft Law to be examined in Verkhovna Rada had no further amendments since the date it was submitted. The Committee recalls that the membership of a State in the International Labour Organization carries with it the obligation to respect in national legislation freedom of association principles and the Conventions which the State has freely ratified [see* ***Compilation****, para. 45]. The Committee urges the Government to engage with the social partners in respect of the draft legislation affecting their interests and rights (draft Law No. 2681) with a view to bringing the legislation into conformity with freedom of association prior to any further consideration by Verkhovna Rada. It requests the Government to provide information on all developments in this respect to the Committee of Experts on the Application of Conventions and Recommendations to which it refers the legislative aspects of the case. The Committee recalls that the Government may avail itself of technical assistance from the Office in this respect.*

595. *The Committee further notes the FPU's allegation that a novelty in law-making in Ukraine is the inclusion of anti-union provisions in laws which are unrelated to the activities of trade unions, referring as an example to the Law "On Amending Certain Legislative Acts of Ukraine concerning Improvement of Healthcare Management and Provision on Health Services to the Population", which includes a provision pertaining to the employer's obligation to report employees' union membership to the authorities. While noting the FPU's indication that the draft Law was adopted by the Rada on 15 December 2021 and signed into Law by the President on 6 January 2022, the Committee further observes the Government's indication that the provision in question has been repealed by an amendment of the Law in April 2022.*

596. *The Committee further notes the FPU's allegations that it has received information on numerous instances of collection of data by the local authorities on trade unions operating in their subordinate institutions, establishments, and enterprises, as well as on the payment of union dues for the subsequent transmission to third parties. The Committee notes the Government's indication to the effect that such collection and dissemination of information on trade union affiliation is contrary to the legislation. In light of the repeal of the above-mentioned legislative provisions which allowed for* *the collection of information on trade union membership, the Committee requests the Government to engage with the social partners to review if such instances continue to occur with a view to taking appropriate action in line with the national legislation which prohibits such acts.*

The Committee's recommendations

597. **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**

(a) The Committee urges the Government to engage with the social partners in respect of the draft legislation affecting their interests and rights (draft Law No. 2681) with a view to bringing it into conformity with freedom of association prior to any further consideration by Verkhovna Rada. It requests the Government to provide information on all developments in this respect to the Committee of Experts on the Application of Conventions and Recommendations to which it refers the legislative aspects of the case.

(b) The Committee recalls that the Government may avail itself of technical assistance from the Office in this respect.

(c) The Committee requests the Government to engage with the social partners to review if instances of collection of trade union data continued to occur with a view to taking appropriate action in line with the national legislation which prohibits such acts.

(d) The Committee considers that this case is closed and does not call for further examination.

Case No. 3420

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Uruguay presented by
– the National Federation of Secondary School Teachers (FENAPES) and
– Education International (EI)

Allegations: The complainant organizations allege that since the change of government the public education authorities, through various decisions and actions, have violated the right to freedom of association at various secondary schools in the country, to the detriment of FENAPES and its activists

598. The complaint is contained in a communication from the National Federation of Secondary School Teachers (FENAPES) and Education International (EI) dated 10 November 2021. The Inter-Union Assembly of Workers–Workers' National Convention (PIT–CNT) sent a communication in November 2021 stating its support for the complaint. FENAPES sent additional information in communications dated 9 February, 6 April, 5 May and 21 September 2022.

599. The Government sent its observations in communications dated 21 May, 16 August and 15 December 2022, as well as 26 April 2023.

600. Uruguay has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

601. In their communications dated 10 November 2021, 9 February, 6 April, 5 May and 21 September 2022, the complainant organizations allege that as from 2020, following the change of government, the new education authorities began to limit various forms of trade union action. The complainants allege specifically that the Directorate-General for Secondary Education (DGES), a decentralized body of the National Public Education Administration (ANEP), has through various decisions and actions violated freedom of association in a number of secondary education establishments (*liceos* – high schools) in the country, to the detriment of the FENAPES, the most representative trade union in public secondary education, and its activists.

602. The complainants allege that this anti-union policy has been manifested through the implementation of repressive disciplinary procedures with regard to the performance of union activities, namely: (i) anti-union repression with threats of dismissal against teachers at High School No. 1 in the department of San José on account of union activities; (ii) an investigation into the participation of FENAPES leaders in an activity with teachers from the high school in Canelones; (iii) an investigation into the use of the union noticeboard by teachers at High School No. 16 in Montevideo; (iv) anti-union acts aimed at limiting and suppressing the use of trade union leave; and (v) disregard for collective bargaining and interference by the DGES authorities in relation to the Association of Secondary Education Non-Teaching Staff (ATES).

Anti-union repression against teachers at San José High School No. 1

603. The complainants indicate that on 27 October 2019 a plebiscite on constitutional reform with respect to the subject of security in Uruguay was held at the same time as presidential elections. They indicate that, together with other organizations, including the PIT–CNT, they carried out various actions to contribute to the campaign against this constitutional reform, which was instigated by certain political sectors and in the end was not approved. The complainants indicate that the proposal for reform gave rise to intense public debate because it included aspects of major social interest, including the forming of a national guard trained by the military, the possibility of establishing reviewable penalties of permanent imprisonment, and the demarcation of alternative measures to prison. They also indicate that the debate on reform included various social organizations concerned with the defence of human rights, academic circles, the political parties and especially the trade union and student movements. The complainants indicate that those who opposed the constitutional reform adopted the motto that fear was not the way, advocating education as the way to tackle problems of insecurity and initiating a campaign against the proposal.

604. The complainants indicate that as part of this campaign, which included publicity on the radio and television and through billboards, FENAPES activists and members went to take photos of each other with a banner proclaiming "No to the reform", with a view to posting the images on social networks. The complainants allege that: (i) during the evening of 23 October 2019, activists from the Teachers' Association of the department of San José, affiliated to FENAPES, assembled at High School No. 1; (ii) eight teachers took photos of each other on the public thoroughfare near the school and six teachers did so inside the school but in spaces for the use of teachers during breaks between classes; (iii) on 29 October 2019, the principal of the school reported this activity to the DGES, being of the view that secularism had been violated since the activity constituted propaganda, resulting in the establishment of an administrative file, which ended up being archived; (iv) in June 2020, with the change of government and new authorities at the DGES (formerly the Secondary Education Board (CES)), the school principal persisted with her previous complaint, the file was reopened, and an investigation was ordered into incidents that had occurred a year earlier, without the teachers being granted the right of defence; this culminated in a final report which contains errors, omitting to mention the trade union nature of the activity that took place on 23 October 2019, and condemning freedom of expression on a subject of public interest; (v) the intention to cause harm to the union was evident and a context of public censure of the activists was created (no measures were taken against teachers who influenced students in favour of the constitutional reform): (vi) even though the proceedings against those who took photos outside the school were concluded without any liability being established, the decision indicated that the activity constituted political propaganda, dismissing its union nature; and (vii) the legal advisers proposed that the teachers who took photos inside the school premises should be dismissed, with the exception of two cases in which it was agreed that such a sanction would be excessive.

605. The complainants consider that the report produced by the attorney acting in the investigation committed an inexcusable error, in denying the union nature of the activity that took place on 23 October 2019, clearly indicating his malicious and repressive intent through the sentence: "The undersigned considers that, in a situation such as this, the reason 'why' no longer predominates and 'where' the activity takes place assumes vital importance." The complainants indicate that the prohibition on propaganda or proselytism is established by article 58 of the Constitution of Uruguay, which provides that: "In workplaces and during working hours, any activity unrelated to official duties shall be prohibited and any activity for propaganda purposes of any kind shall be deemed unlawful." In other words, the constitutional provision itself requires the intention or ultimate aim of the activity to be stated. The complainants consider that the omission of any mention of the union nature of the activity opened the way for censure of the exercise of freedom of expression on a subject of public interest, also ignoring the terms of article 57 of the Constitution, which promotes the right to organize. The complainants consider that a coherent interpretation of both articles would have enabled the investigator to conclude that article 58 actually bans political propaganda, while article 57 places all union activities under the protection of the ban established by article 58, and establishes an obligation to promote them.

Investigation of FENAPES leaders for participating in an activity together with teachers in the department of Canelones

606. The complainants allege that on 7 September 2020 the CES decided to initiate an investigation into a suspected violation of the principle of secularism by FENAPES leaders for assembling at Empalme Olmos High School in October 2019 with the intention of establishing communication with the members of the union branch at that school, as part of a mobilization of students against the constitutional reform (the students had denounced limitations imposed by the school management on the right of assembly and expression by the students' union).

Investigation into the use of the trade union noticeboard by teachers at Montevideo High School No. 16

607. The complainants allege that: (i) in April 2021, the principal of Montevideo High School No. 16 reported the fact that informative material on the referendum against a law entitled the “Urgent Consideration Act” (LUC) had appeared on the trade union noticeboard at the school, further to which the DGES ordered an investigation to be launched; and (ii) the existence of trade union material on the noticeboard is normal and so the investigation under way (of a disciplinary nature and without any guarantees) can only constitute harassment by the employer in reprisal for the kind of material displayed on the noticeboard, and is therefore a clear act of interference for the purposes of anti-union repression.

Anti-union acts aimed at limiting and suppressing the use of trade union leave

608. The complainants allege that since the change of government a number of hostile actions were recorded calling into question the use of trade union leave by FENAPES and they allege that: (i) the principal of San José High School No. 1 reported the allegedly excessive use of paid hours for the purposes of trade union activity, pointing out that an inappropriate legal basis had been used to justify this (the complaint was directed against the teacher and FENAPES leader Mr Marcel Slamovitz); and (ii) the anti-union actions of the principal began to receive the backing of a parliamentarian belonging to one of the parties in the government coalition who accused the authorities of the previous government and FENAPES of having issued false certificates for trade union leave. The complainants indicate that on account of the above a commission was set up in the National Parliament with the mandate to investigate the granting and justification of irregular union leave to FENAPES members by the CES during the 2015–19 period.

609. The complainants indicate that on account of the above-mentioned complaint an administrative investigation was launched at the DGES into the hours used by Mr Slamovitz for trade union purposes and that, although the investigating counsel suggested that the investigation should be archived since there did not appear to be any elements that called for action to be taken, the DGES ordered the suspension of the teacher from his post for 180 days with total deduction of pay for gross misconduct on account of using “trade union power” to mislead the school principal. The complainants indicate that as part of the investigation it was decided to file a criminal complaint against the teacher for allegedly excessive use of paid hours for trade union activity and also against other members of the FENAPES executive committee, seeking to classify the union leaders’ activity as a criminal offence for having issued and used false records of union activity in the context of agreements concluded with the authorities of that time. The complainants allege that the education authorities are calling for the imprisonment of the union leaders who argue that there are no formalities in the collective bargaining process, postulating formal bases over and above the basic elements that in themselves form the core of negotiations, as illustrated by Professor Barreto in a report attached to the complaint, who indicates that there are no formal requirements for registering agreements and that the lack of such requirements does not affect the validity of what is agreed upon. This report mentions that Resolution No 12 of Record No. 90 of 2006 features an agreement concluded in the context of collective bargaining in the “Working Group on trade union immunity” comprising the ANEP and the PIT–CNT and indicates that the said agreement also refers to other agreements that may be concluded, which would demonstrate the interplay of different existing bargaining processes.

610. The complainants allege that the investigating commission set up in Parliament operated outside the legal framework, with the clear intent of persecution of the trade union, and indicate that what the commission was investigating was not the misuse of time for trade union activity but whether or not an appropriate legal basis had been used to justify such time, also launching a media campaign against FENAPES. The complainants indicate that the key issue was the unwritten agreement concluded at the time between FENAPES and the former authorities so that hours taken for union activities in excess of those fixed by the agreement signed in 2006 could be justified by invoking section 70.10 of the Teaching Staff Regulations (EFD). The complainants indicate that there are no formalities of any kind in Uruguayan law that require that an agreement must be in writing, whether in the public or private sphere, and that customary compliance with the terms of an agreement also contributes to the understanding that an agreement exists even if not in writing. The complainants indicate that the investigating commission concluded its activity with two final reports.

- Firstly, a majority report, drawn up by the members of the coalition government which suggest the existence of criminal offences by the FENAPES chairpersons and general secretaries, using terminology and constructs which are erroneous and tendentious (such as considering a mere record of trade union activity to be a "certificate" and the consequent request for justification of the absence in question as "deception of the school principals", it being a serious matter to claim the existence of a criminal offence for requesting the justification of leave for union activities). The report highlights the existence of irregularities, omissions and alleged unlawful conduct by members of the CES of the previous government and of the "leadership" of FENAPES and refers these actions to the ANEP, the Transparency and Public Ethics Board and the Public Prosecutor's Office, seeking the criminal prosecution of the FENAPES leaders for performing activities of a strictly trade union nature.
- Secondly, a minority report, voted on by members of the outgoing government party, which emphasized the absolutely unlawful inquisitorial role performed by the investigating commission in interrogating officials, and the violation of the right of defence of the FENAPES leaders, to whom criminal liability was ultimately ascribed. The report concludes that no criminal acts were established, and if irregularities existed these should be investigated and sanctioned by the administrative authorities. The report further asserts that there was no deception of the school managers, since they have the discretion whether or not to justify the absences, that there was no omission on the part of the outgoing authorities, and ultimately that there were no grounds for referring the activities to any state office.

Disregard of collective bargaining and interference by the DGES authorities in relation to the ATES

611. The complainants allege that: (i) in 2007, the Coordinating Committee of Uruguayan Teaching Unions (CSEU), to which FENAPES belongs, signed a collective agreement with the ANEP regulating the use of trade union leave by the leaders of the ATES; (ii) in October 2021, the DGES issued Decision No. 4141 unilaterally regulating, in total disregard for the above-mentioned collective agreement, the allocation of trade union hours for the ATES, prescribing that only named officials on a staff list shall be authorized to be members of representative committees and shall not be replaced by other officials, thereby committing interference that violates trade union autonomy; and (iii) this decision also prescribes that the records of hours taken for trade union activity shall be signed by the DGES or the ATES president and, in the case of the latter's trade union hours, by the secretary designated for such purposes; if established hours are exceeded, these shall be deducted, with retroactive effect, thereby constituting interference in trade union activity and restricting the free exercise thereof.

612. The complainants indicate that the above-mentioned collective agreement had established the number of officials who were union members (whether or not they paid union dues) as a basis for calculating the number of free hours paid. The complainants allege that for the period from 1 March 2021 to 28 February 2022, the secondary education authorities changed the aforementioned criterion, excluding teachers who were union members but did not pay union dues, thereby reducing the number of units corresponding to union leave. It is alleged that this action has affected the exercise of freedom of association with a possible impact on the quality of collective bargaining.

Complaints to the National Human Rights Institution

613. The complainants mention other facts in the complaint which, in their view, enable the context of anti-union repression which started in 2020 to be understood and indicate that: (i) on 20 May 2020, the ANEP issued a decision ordering the removal of all banners that might infringe upon the guiding principles of education (secularism and the ban on propaganda); and (ii) FENAPES filed a complaint in this respect with the National Human Rights Institution (INDDHH), an impartial body under the aegis of Parliament, which issued a decision recommending the deletion of the most controversial sections of the above-mentioned decision. The complainants indicate that they have brought another complaint before the INDDHH, in which various situations are described, including the ban on holding union meetings inside the school or at its entrance in the context of a stoppage held by a branch of FENAPES.

B. The Government's reply

614. In its communications of 21 May, 16 August and 15 December 2022, as well as 26 April 2023, the Government indicates that the ANEP is an autonomous entity with legal personality which governs public education and comprises the following bodies: the Central Executive Board (CODICEN), the Directorate-General for Initial and Primary Education, the DGES (formerly the CES), the Directorate-General for Vocational and Technical Education and the Educational Training Board. The Government indicates that the ANEP has always been open to dialogue and to the negotiating bodies and that it respects and complies with all the laws and regulations in force, and so it is untrue that there have been violations of rights or of legal standards as invoked in the complaint. The Government affirms that the anti-union persecution denounced in the allegations does not exist, and that what is denounced as an attack on freedom of association is quite simply the need for the country's legal system to be respected.

615. The Government considers that the complaint does not reveal any elements that demonstrate action aimed at violating trade union autonomy or discriminatory anti-union conduct by the State and affirms that the DGES exercised the legitimate powers conferred on it by law, that its action arose on reasonable grounds that warranted investigation and that at no time was union activity investigated but the conduct of officials bound to the Administration by a set of regulations governing their behaviour.

Incidents concerning San José High School No.1

616. With regard to the incidents concerning San José High School No. 1, the Government indicates that: (i) the secondary education authorities which took office in May 2020 received an official letter from the principal of the school requesting information on a complaint made in 2019 to the CES concerning photos taken by a group of teachers inside the school with banners bearing the words "No to the constitutional reform" (which had nothing to do with the right to organize but related to issues of public safety); the principal had indicated that she had not been notified of any decision relating to the file which had been opened on account of her complaint; (ii) the CES of the time, having been apprised of the complaint, dealt with it in session, ordered it to be shelved, merely issuing an exhortation to be careful with attitudes (despite the fact that the Legal Division of the CES had suggested that an administrative investigation should be carried out), and did not notify the school principal of the action taken on her complaint; after a reasonable time, the principal asked for information in this regard; (iii) the CES authorities located the file and reopened it, as well as reopening five other files relating to similar situations on which no decision had been issued; and (iv) in August 2020, the CES Legal Division suggested that an administrative investigation should be ordered to determine whether or not administrative infringements had been committed violating the provisions of the EFD and the Management Staff Regulations, and in September 2020 the CES, on a unanimous vote of its three members (one of whom belonged to trade union circles), decided to order the opening of that investigation.

617. The Government indicates that as a result of the administrative investigation (under section 179 of Ordinance No. 10), it was found that an administrative infringement had been committed and summary proceedings were ordered against a number of teaching officials. The Government emphasizes that what was investigated was not trade union activity but actions by public officials which contravened constitutional standards, that the officials concerned enjoyed guarantees of due process and that the proposed sanction of dismissal was rejected by the education authorities. The Government points out that the Administration has the duty to investigate any act that may constitute a violation of the regulations and for which professional liability can be incurred, and that having established the existence of an administrative infringement and having identified those responsible, the disciplinary powers of the Administration came into play. In this regard, the Government states that the action of the ANEP through the decentralized DGES did not involve any violation of freedom of association, or any restriction of freedom of expression, but was in line with the duties imposed by the Constitution and the law to avoid any kind of propaganda and to preserve secularism in education. The Government indicates that the proceedings were concluded with a decision issued by the DGES, whereby a sanction was imposed on the teachers of 180 days' suspension with deduction of pay, the period of suspension already served during the proceedings being subtracted. The Government emphasizes that there was no anti-union persecution or any selective dismissal aimed at penalizing the union members, but that the stages of the proceedings were followed whose purpose is to provide guarantees, not to penalize or persecute, and are covered by the legal provisions in force. The Government informs that none of the sanctioned teachers appealed the sanctions. The Government also indicates that the files relating to the officials who took photos outside the school, on the public thoroughfare, were archived once it had been established that no administrative infringement had been committed.

618. The Government indicates that although a trade union has the right to define measures that it will adopt with regard to any event or occurrence, whether political, cultural or otherwise, in this case the teachers took photos of each other inside the school, which is their workplace, and article 58 of the Constitution provides that: "In workplaces and during working hours, any activity unrelated to official duties shall be prohibited, and any kind of activity for propaganda purposes shall be deemed unlawful. Groups may not be formed for propaganda purposes by using the titles of public agencies or invoking any link with official duties in the context of membership of such groups". Propaganda is strictly forbidden under article 58 of the Constitution and freedom of expression or trade union rights cannot be invoked in order to circumvent the prohibition. Any propaganda engaged in by teachers in public education constitutes a twofold infringement: of the legal provisions banning propaganda, and of the provision that orders teaching to be carried out in accordance with the principle of secularism (section 17 of the General Education Act and section 3 of the EFD). The Government stresses that this case involves public officials governed by a set of regulations; that it is not about teachers being denied the possibility of expressing themselves; the issue is that they did so inside the school in various offices and during working hours since evening classes were in progress at that time and that the constitutional reform in question. had no connection with trade union rights or with public education regulations but was related to the subject of public safety in Uruguay.

Incidents concerning Empalme Olmos High School (Canelones)

619. The Government indicates that: (i) the Schools Inspectorate informed the CES that the students at the school had used scarves with the slogan "No to the constitutional reform" while participating in union meetings inside the school, and it noted a violation of the right of freedom and of the principle of secularism and indicated that the students did not have the authorization of the school management required under the terms of the Student Regulations (in force since 2005); (ii) the CES Legal Division agreed with the suggestion of the Schools Inspectorate that, in line with the regulations in force, an administrative investigation should be conducted in order to elucidate the facts, but no element emerged that amounted to anti-union persecution or reprisals of any sort with regard to FENAPES members, an organization which does not represent the students; and (iii) the administrative investigation was closed without any liability having been established on the part of any official (DGES decision of 21 February 2022).

Incidents concerning Montevideo High School No. 16

620. The Government indicates that: (i) the school management reported to the DGES that on 8 March 2021 material was found referring to the Urgent Consideration Act (LUC) (promulgated on 9 July 2020) inside the registration office on the upper floor of the school (leaflets concerning a political campaign for the collection of signatures aimed at the repeal of the Act, which has nothing to do with union rights); (ii) the DGES, following the suggestion of the Legal Division, ordered the opening of an investigation to determine the facts and apportion responsibility; (iii) the action of the DGES was in line with the law and upheld all the principles that govern public education; and (iv) a number of teachers, regardless of whether they were union members, featured in the investigation, which was closed without any liability having been established on the part of any official (DGES decision of 16 December 2021).

621. The Government also mentions that banners referring to the campaign against the LUC were placed on the facade of the school and an order was given to remove the banners from the facade but not to remove the banners located in the vicinity of this or any other school, this being done to defend the principle of secularism, the preservation of which does not affect freedom of expression or freedom of association. The Government indicates that recital (VI) of CODICEN decision states as follows: "There is no intention to violate or restrict the legitimate right to use trade union noticeboards, nor to limit, restrict, violate or interfere with the exercise of freedom". The Government has annexed a copy of an *amparo* [protection of constitutional rights] judgment handed down in 2019 (the Government points out that at that time the authorities of the ANEP were different, appointed by the Government prior to the one that took office in March 2020) and which obliges the ANEP to remove proselytising/propaganda banners from the facades of its premises. In this judgment, the Administrative Court of First Instance indicated that the banners had a clear political message that undoubtedly constituted proselytising activity and that the banners violated neutrality. Based on the above, the Court ordered the ANEP to prohibit the placement of banners (on that occasion put up by the students) relating to the constitutional reform or with similar content on the facade of any other of its buildings.

622. With regard to the complaint filed with the National Human Rights Institution and Ombuds Office (INDDHH), the Government recalls that neither the ANEP nor any other public entity has any dependent link with the aforementioned institution and that it has no obligation to comply with any instruction issued by it, and so it stated that it did not accept its opinion. The ANEP brought invalidation proceedings in the Court for Administrative Disputes (TCA) and this case is currently being examined by the Supreme Court of Justice. What was prescribed by CODICEN (part of the ANEP) does not constitute any element of anti-union repression since it was addressed to its own offices and the order was issued for the purpose of upholding constitutional principles.

Trade union leave

623. The Government refers to the complaint made by the principal of San José High School No. 1 in 2021 for "allegedly excessive use of paid hours for the purpose of trade union activity and the use of an inappropriate legal basis to justify them", which was backed by a parliamentarian from one of the political parties comprising the government coalition. In this regard, the Government indicates above all that at no time was action taken by the ANEP, through the DGES, that could constitute anti-union persecution. The Government points out that the existence of provisions regulating the use of trade union leave in the sphere of the ANEP cannot be ignored and that if faced with alleged irregularities the Administration has the power and the duty to review its own acts. The Government emphasizes that this cannot be regarded as anti-union action but action directly and solely related to compliance with legal standards.

624. With regard to the teacher Mr Slamovitz, the Government indicates that: (i) after analysing the findings of the investigation, the head of the DGES Legal Division suggested that administrative proceedings should be opened in relation to the teacher; the Government explains that the head of the DGES Legal Division is not bound by the statements of the investigator and may or may not concur with the preliminary report and, if appropriate, may issue a different opinion; (ii) accordingly, administrative proceedings were ordered in the present case, with the application of precautionary measures (suspension from duties and a 50 per cent pay deduction), within the scope of the regulations in force (Ordinance No. 10 of 2004); (iii) this was not about anti-union persecution or discrimination but solely involved the exercise of the disciplinary power of the Administration, in that summary proceedings (that is, proceedings for determining or proving the liability of the official against whom charges have been brought) are ordered for alleged gross misconduct on account of misusing hours for trade union purposes; (iv) the summary proceedings were conducted with the guarantees of due process and were not ordered for the purpose of investigating or calling into question the teacher's trade union activity but rather his action as an official in breach of the regulations in force; (v) although the official, as a trade union leader, can exercise his right to paid time off for the exercise of union activity, such exercise is regulated by the Wages Board or through collective agreements; and (vi) various accords or agreements (all in writing) have been concluded and the hours allocated for union leave have been specified in each case but at no time do the agreements or other decisions cited by the complainants refer to the use of section 70.10 of the EFD in order to justify hours for union purposes.

625. The Government indicates that the head of the Legal Division indicated in his report that he disagreed with the investigator's conclusions and that in his view it was not legally possible that the former CES authorities could have concluded an agreement with FENAPES in a valid manner (accepting the applicability of section 70.10 of the EFD to justify excessive use of hours for union purposes) since that would have violated the provisions of the teaching regulations and would have exceeded the scope of its competencies and hierarchical powers. The report of the Legal Division also indicates that nobody was able to substantiate the existence of the alleged agreement and that under no circumstances can trade union leave be made up for by the application of section 70.10 of the EFD (reference is made in section 70 to special leave for teaching officials which shall be granted for special tasks or services assigned by CODICEN, by the respective individual boards or as required by other state bodies, in accordance with explicit legal provisions). According to the Government, the aforementioned section is clear and under no circumstances can it be used to justify trade union leave. The Government points out that although the complainants based their position on an alleged "verbal agreement" with the former CES authorities, an agreement of that nature is inconceivable where one of the parties is the State, in this case the ANEP. Furthermore, although the complainants maintain that there are no formalities for collective agreements, the actual facts show that those concluded between CODICEN and the CSEU were in written form. The Government emphasizes that the regulation of trade union leave arises from the agreement signed between CODICEN and the CSEU, embodied in Resolution No 12 of Record No. 90 dated 29 December 2006, which establishes year by year the ceiling on the number of hours corresponding to trade union leave. The Government has attached a copy of this Resolution. The Government indicates that the above-mentioned agreement of 2006 makes no reference to the use of section 70.10 of the EFD. The Government states that there was no agreement containing justification of union leave based on section 70.10 of the EFD and that Resolution No 12 of Record No. 90 of 29 December 2006, to which the complainant organizations refer, does not mention anything in this regard either. The Government attaches a press release in which the former CODICEN president, Mr Wilson Netto, reportedly pointed out the "illegality" of applying the above-mentioned section to justify union leave.

626. The Government indicates that FENAPES issued countless "records" of trade union activity to present to the school principals, requesting "justification of the absence" of the official in question "in accordance with section 70.10 of the EFD in line with the agreement signed between CODICEN and the CSEU". Although the school principals accepted the excess hours taken by delegates as free time for union activity, they did so on the basis of a misleading record issued by the union authorities, which prompted the justification of absences by referring to a "signed" agreement (which, it has been accepted, was non-existent, as was any verbal "signature"), and with the indication (supposedly backed up by the non-existent agreement) that the absence was covered by section 70.10 of the EFD (a legal provision which has nothing to do with union leave). The Government explains that it was the large number of absences that Mr Slamovitz attempted to justify on the basis of such records that caused the principal of High School No. 1 to contact the CES in 2019 to find out what was the "agreement signed between CODICEN and the CSEU" to which FENAPES referred, given that the lost classroom hours were causing major disruption to the work of education.

627. The Government indicates that with over 240 absences in two years on the part of Mr Slamovitz having been established, the proceedings concluded that there had been gross administrative misconduct and a sanction of 180 days' suspension with deduction of pay was imposed on him, the period of suspension already served during the proceedings being subtracted. The Government emphasizes that this lawful decision does not constitute anti-union persecution or discrimination by the State but solely amounts to the exercise of the Administration's disciplinary power. On the basis of the above, the Government emphasizes that the ANEP, through the DGES, acted within the scope of its competencies and never committed any violation of freedom of association or engaged in any sort of anti-union persecution.

628. With regard to the filing of the criminal complaint against Mr Slamovitz and other members of the FENAPES executive committee, the Government indicates that all public officials have the duty to report the existence of circumstances that appear to be criminal and to bring them to the attention of the justice system so that they can be investigated and resolved. The Government explains that nothing has been "classified" as a crime and emphasizes that the terms of the DGES decision are not a consequence of exercising the right to take union leave or of performing "an activity inherent in the collective right to work", as claimed by the complainants.

629. With regard to the parliamentary commission, the Government indicates that this body did not assume any power that it does not possess, that it did not violate the regulations governing the operation of parliamentary commissions, that it did not act unlawfully, that it had no intention of interfering in trade union autonomy or in the collective bargaining process, nor was there any attempt at criminalization, but that it fulfilled its purpose, which was to conduct the investigation. The Government asserts that what was undertaken was an investigation into the activity of public officials, who beyond the weekly hours of union leave made use of leave on the basis of a formula which stated that the absence was justified under section 70.10 of the EFD, in accordance with an agreement which was never presented despite being asked for by various bodies. All this activity, related to the granting and justification of leave taken during the 2015–19 period, which was the subject of investigation by the parliamentary commission, caused enormous damage to the students since those hours, unlike the hours for union activity, did not give grounds for the provision of a replacement teacher, as stated in the previous reply.

630. The commission which had the task of investigating the granting and justification of irregular leave to FENAPES members by the CES during the 2015–19 period ended its activity by concluding that there had been negligence on the part of the comptroller of authorities during that period (2015–19), resulting in omissions, administrative irregularities and apparently criminal conduct by public officials who were members of FENAPES and of the CES in the 2015–19 period, and for this reason it referred the investigated activities to the ANEP Central Executive Board, the Transparency and Public Ethics Board and the Public Prosecutor's Office.

Disregard of collective bargaining and interference by the DGES authorities with regard to the ATES

631. The Government indicates that the alleged interference by the DGES in the sphere of union leave is untrue, given that the latter was bound to carry out a study and analysis of union leave, since there were no administrative acts which properly regulated the use of union leave by the ATES and the corresponding control mechanisms had not been established. The Government points out that the reasoning behind Decision No. 4141 was to bring order into what had occurred until then, with the aim of ensuring that all officials would make use of the hours actually allocated to them for the purposes of union leave. The decision approved the lists presented by the ATES with the corresponding number of hours that formed the basis for union leave and the number of hours for each official, and setting the maximum number of hours that could be justified for union leave. The motive for the DGES decision was the improper justification of union leave, grossly exceeding the hours allocated to the union for each official on the basis of the number of union members. The Government indicates that FENAPES applied to the Court for Administrative Disputes (TCA) for the act to be revoked and possibly declared null and void, and so no final ruling has yet been issued and the DGES may revoke it wholly or partially.

632. The Government adds that this situation is also being dealt with in a tripartite collective bargaining body. The Government explains that in the complaint FENAPES does not allege non-compliance on the part of these bodies towards itself but only refers to those relating to the ATES, citing the refusal of the Director-General for Secondary Education, but omitting to mention that it was the verbal aggression against the Director-General committed by the ATES president in a tripartite body which caused the temporary suspension of the negotiations. The Government indicates that the union did not request bipartite or tripartite meetings until March 2022, when the negotiations were launched.

633. In general terms, the Government affirms that, far from finding the actions of the public education authorities to be a violation of the international and national standards which protect freedom of association, these authorities have properly discharged their powers and duties, both in investigating the liability that might have been incurred by the union or any of its members in violating the "law of the land" which Convention No. 87 requires to be respected, and in putting into practice common-sense rules for the use of trade union leave. The Government emphasizes that the administrative proceedings which were initiated (administrative investigations and summary proceedings) were based on actual proven facts and are regulated by the standards and principles of the rule of law itself, and that all decisions can be challenged through administrative appeals, and that there is judicial control of all such administrative activity.

634. The Government emphasizes that the Constitution does not exempt unions of officials (established under article 57 of the Constitution) from the restriction established in article 58 stating that: "In workplaces and during working hours, any activity unrelated to official duties shall be prohibited, and any activity for propaganda purposes of any kind shall be deemed unlawful." It also indicates that although the complainants refer to a "public media campaign against FENAPES", there has not been a single press release aimed at undermining the trade union or encouraging public rejection of it. The Government affirms that FENAPES continues to fully exercise freedom of association, freely organizing its union activity, and all that is required of it is full respect for the provisions of applicable law and agreements.

C. The Committee's conclusions

635. *The Committee notes the allegation of the complainant organizations in the present complaint that since the change of government in March 2020 the education authorities, in particular the Directorate-General for Secondary Education (DGES) (formerly the Secondary Education Board (CES)) at the National Public Education Administration (ANEP) placed various limitations on the trade union activities of the National Federation of Secondary School Teachers (FENAPES), the most representative organization in the sphere of public secondary education, and its activists. The Committee notes that the Government denies that there has been any anti-union persecution, asserts that the ANEP has always been open to dialogue, and that what is being denounced as an attack on freedom of association is merely the requirement for the country's legal order to be respected. The Government indicates that the DGES exercised the legitimate powers conferred on it by law and that at no time was trade union activity investigated but the conduct of officials bound to the Administration by a set of regulations governing their conduct.*

636. *The Committee notes the complainants' allegation that the anti-union policy expressed itself through a series of incidents that took place in different parts of the country and are described below:*

Administrative investigations (incidents involving San José High School No. 1, Empalme Olmos High School (Canelones) and Montevideo High School No. 16)

637. *The Committee notes the complainants' allegation that as a result of complaints made by the principals of the high schools to the DGES between late 2019 and early 2021 for alleged violations of the guiding principles of education (secularism and prohibition of propaganda), the DGES conducted a series of disciplinary investigations without safeguards involving trade union leaders, who were penalized for their views, resulting in an environment of public censure of the activists. The Committee notes that the investigations involving the three high schools were concerned with the participation of FENAPES leaders in activities of an allegedly union nature and were related to a plebiscite on constitutional reform relating to issues of public safety and a referendum on a law entitled the Urgent Consideration Act (LUC).*

638. *The Committee notes the Government's indication that the investigations relating to activities carried out in the high schools in Canelones and Montevideo (in the latter case, a number of teachers featured in the investigations, regardless of whether or not they were union members) were closed since no liability on the part of any official was established.*

639. *With regard to San José High School No. 1, the Committee observes that the investigation by the DGES focused on teachers and trade union leaders who took photos of each other inside and outside the school, during the evening, with banners indicating their rejection of the constitutional reform related to public safety. The Committee notes that while the complainants indicate that the union activists took care to exercise their right of expression outside the school premises and without the presence of students, the Government indicates that the photos were taken when evening classes were in progress. The Committee observes that the complainants emphasize, among other things, that the DGES conducted the investigation without granting the teachers the right of defence and that it culminated with a report which omits to mention the union nature of the activity and condemns the exercise of free speech with respect to a topic which had generated intense public debate since it included aspects of major social interest. In this regard, the Committee notes the Government's indication that the constitutional reform had nothing to do with trade union rights or public education but was related to issues of public safety, it affirms that the public servants enjoyed the guarantees of due process and that there was no anti-union persecution, and it emphasizes that what was investigated was not union activity but actions by teachers as public servants in breach of constitutional standards, in particular article 58, which bans propaganda/proselytism.*

640. *The Committee notes the complainants' and the Government's indications that: (i) the investigations of the persons who took photos of each other on the public thoroughfare near the school were concluded without establishing any liability (since it was demonstrated that no administrative infringement had been committed); (ii) the proposal to dismiss the teachers who had taken photos inside the school was dropped; and (iii) a sanction of 180 days' suspension with deduction of pay was imposed. The Committee notes that, according to the Government's information, none of the sanctioned teachers appealed the sanctions.*

641. *The Committee notes that the complainants also allege that in 2020 the ANEP issued a decision demanding that FENAPES remove banners relating to the campaign against the LUC which were on the facade of different high schools. The Committee notes that although the complainants indicate that they reported this incident to an impartial parliamentary body (INDDHH), which recommended that the most controversial sections of the decision should be removed, the Government indicates that the decision was based on defence of the principle of secularism and explains that it did not order the removal of the banners located "in the vicinity" of the high schools but only those that were on the facades. It also indicates that the ANEP is not dependent on the INDDHH and that it brought invalidation proceedings in the Court for Administrative Disputes (TCA) but these have not yet been* *settled. The Committee notes that the Government has annexed a copy of a judgement issued in June 2019 concerning an amparo action that ordered the ANEP to prohibit the placement of posters (on that occasion put up by students) relating to the constitutional reform on public safety issues or with similar content on the facade of any other of its buildings. The Committee also notes FENAPES' indication that it brought another complaint before the INDDHH relating to other situations such as the ban on holding union meetings on school premises. The Committee has no further information regarding this other complaint.*

642. *The Committee observes that article 57 of the Constitution of Uruguay promotes the organization of trade unions and article 58 provides that public officials are in the service of the nation and not of any political faction, and that in workplaces and during working hours any activity unrelated to official duties shall be prohibited, and any kind of activity for propaganda purposes shall be deemed unlawful. The Committee notes that while the complainants consider that a coherent interpretation of articles 57 and 58 of the Constitution suggests that article 58 bans political propaganda while article 57 places trade union activities under the protection of that ban, the Government emphasizes that propaganda of any kind is prohibited by article 58 and the prohibition cannot be circumvented by invoking freedom of expression or trade union rights. The Government also indicates that when a teacher in public education engages in propaganda, this entails a twofold infringement: of the legal provision that bans propaganda, and of the provision prescribing that teaching shall be carried out in accordance with the principle of secularism (section 17 of the General Education Act and section 3 of the EFD Teaching Staff Regulations).*

643. *The Committee notes that it is clear from the above-mentioned details that: (i) six members or trade union leaders of FENAPES were sanctioned with six months' suspension with deduction of pay for having taken and then disseminated photos in a high school to express their opposition to a constitutional reform concerning public safety issues; and (ii) the public administration had ordered the removal banners put up in various high schools in relation to a referendum on a law, which contained, inter alia, provisions relating to the exercise of the right to strike. The Committee notes that, in both cases, the Government considers that the duty of neutrality and impartiality of teachers vis-à-vis students was violated and that, in the first case, the referendum in question concerned a constitutional reform totally unrelated to the interests of the trade union and its members. The Committee notes that FENAPES, for its part, considers that the activities in question were fully within the scope of trade union activity and should have therefore been protected.*

644. *The Committee recalls that freedom of opinion and expression constitutes one of the basic civil liberties essential for the normal expression of trade union rights and that in a previous case it requested a government to ensure that public officials' trade unions have the possibility to express their views publicly on the wider economic and social policy questions which have a direct impact on their members' interests [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 233 and 246]. The Committee takes note of the substantial nature of the sanctions imposed on the members or trade union leaders of FENAPES for having taken and then disseminated photos in a high school to express their opposition to a constitutional reform, and stresses the importance that they be effectively proportional to the offences committed so that in the future they do not have a deterrent effect on the action of trade union organizations in situations that involve the defence of their members' interests. Likewise, in relation to the two cases referred to above, the Committee considers that a reasonable balance should be established between the obligation of political neutrality of public teachers in the educational field established by the Constitution of Uruguay and the right of teachers' organizations to express their opinions on economic and social policy questions that may affect their members and to be able to disseminate them in the workplace, bearing in mind the need not to impair the education of the children. The Committee requests the Government to ensure the existence of such a balance and to take any* *necessary action in this regard. The Committee also requests the Government to keep it informed of the outcome of the invalidation proceedings brought in the Court for Administrative Disputes (TCA) relating to the removal of banners from the schools' facades, and also of the status of the other complaint filed by FENAPES with the INDDHH relating to the ban on holding union meetings on school premises.*

Acts related to the use of trade union leave

645. *The Committee notes the complainants' allegation that since the change of government a number of hostile actions were recorded calling into question the use of trade union leave by FENAPES, referring to two specific incidents: (i) a complaint made by the principal of High School No. 1 to the DGES concerning the excessive use of hours for union activity, which resulted in the DGES conducting an investigation into the hours used by the teacher and FENAPES leader Mr Marcel Slamovitz for union activity; and (ii) the setting up of a parliamentary commission to investigate the granting and justification of irregular leave for FENAPES members by the CES during the 2015–19 period (in order to establish whether or not an appropriate legal basis had been used to justify the hours for union activity – in particular, the use of section 70.10 of the Teaching Staff Regulations (EFD) to justify hours of union leave).*

646. *With regard to Mr Slamovitz, the Committee notes the allegations that: (i) the DGES ordered the suspension of this teacher from his post for 180 days with total deduction of pay for gross misconduct on account of the use of "trade union power" to mislead the school principal; and (ii) in the context of the investigation it was decided to file a criminal complaint against this teacher and other FENAPES leaders, seeking possible criminalization of the union leaders' conduct for issuing and using false records of union activity in the context of agreements concluded with the authorities at that time. In this regard, the Committee notes the Government's indication that: (i) the more than 240 absences in two years led the school principal to contact the CES to obtain more details of the certificates used to justify such absences; (ii) the investigation was conducted under the guarantees of due process and determined the existence of gross administrative misconduct for using "trade union power" to mislead the school principal; and (iii) every public official has the duty to report the existence of circumstances that appear to be criminal and to bring them to the attention of the justice system so that the latter can investigate and resolve them.*

647. *The Committee observes that, according to the complaint and the Government's reply, FENAPES issued "records" of trade union activity to present to the school principals, requesting "justification of the absence" of the official in accordance with section 70.10 of the Teaching Staff Regulations (EFD). The Committee observes that said section refers to extraordinary leave of teaching staff that "is granted for special tasks or services entrusted by the Central Board of Directors, by the respective Boards or required by other state agencies, in compliance with express legal provisions". The Committee observes that the complainants affirm that: (i) a non-written agreement had been duly concluded between FENAPES and the previous authorities to justify any hours for union activity in excess of those specified by agreement by invoking section 70.10 of the EFD; (ii) there are no formalities of any kind in Uruguayan law that require that an agreement must be in writing, whether in the public or private sphere, and (iii) customary compliance with the terms of an agreement also contributes to the understanding that an agreement exists even if not in writing. The Committee observes that, for its part, the Government indicates that: (i) when the school principals accepted the excess hours taken by the delegates as free time for union activity, they did so on the basis of a misleading record issued by the union, which induced justification of the absences through reference to an agreement (whose existence could not be proven) with the indication (supposedly backed up by the non-existent agreement) that the absence was covered by section 70.10 of the EFD (which has nothing to do with union leave); (ii) the DGES considered that it was not legally possible that the* *former authorities could have agreed that section 70.10 of the EFD was applicable to justify the excessive use of hours for union activity, since that would have violated the statutory regulations and exceeded the scope of their competencies; (iii) it is inconceivable that there could have been a verbal agreement on this matter since one of the parties was the State; and (iv) the regulation of trade union leave arises from the agreement signed between CODICEN and the Coordinating Committee of Uruguayan Teaching Unions (CSEU), embodied in Resolution No. 12 of Record No. 90 dated 29 December 2006, which establishes year by year the ceiling on the number of hours corresponding to trade union leave and this agreement makes no reference to the use of section 70.10 of the EFD to justify trade union leave.*

648. *With regard to the parliamentary commission, the Committee notes that while the complainants indicate that there was unlawful conduct with the clear intention of persecution and condemnation of freedom of association, the collective bargaining process between FENAPES and the CES of that time having been called into question, the Government indicates that the commission neither acted illegally nor sought to interfere in trade union autonomy or in the collective bargaining process, nor was there any attempt at criminalization, but that it investigated the actions of public officials who, beyond the hours of leave for trade union activity, made use of leave based on a formula indicating that the justification of absence was covered by section 70.10 of the EFD, in line with an agreement which was never presented despite this having been requested by various bodies.*

649. *The Committee notes that the commission concluded its activity with two reports: (i) a majority report, drawn up by the government coalition, which concludes that there was negligence on the part of the comptroller of authorities at that time (2015–19), resulting in administrative irregularities and conduct that appeared to be of a criminal nature by public officials belonging to FENAPES and members of the CES, and so the activity of the commission was referred to the ANEP, the Transparency and Public Ethics Board and the Public Prosecutor's Office; and (ii) a minority report, voted on by members of the outgoing government party, which highlighted the violation of the right of defence of the FENAPES leaders and concluded that no criminal acts had been established and hence it should be for the administrative authorities to conduct an investigation and impose sanctions.*

650. *The Committee notes the above-mentioned elements relating to the investigation undertaken by the DGES (a state authority) and the parliamentary commission. The Committee observes that in this case the parties concerned disagree with regard to the existence of an unwritten agreement between CODICEN and FENAPES under which trade union leave was reportedly justified for a number of years, beyond what was agreed in a collective agreement signed in 2006. The Committee notes that this difference of views relates to the formalities which, according to the Government's indication, must form the basis for agreements made by the public administration, in particular the need for such agreements to be recorded in writing. The Committee also notes that the dispute concerning the existence of the agreement concerned, in which the State is one of the interested parties, was ultimately adjudicated by the authority of the sector concerned. In this regard, while taking note that the Government only recognizes the existence of the collective agreement signed in 2006 between the CSEU and CODICEN, the Committee recalls that it has considered that in the event of conflicting interpretations of a collective agreement in the public sector, the definitive interpretation should not be that of the public administration, which would be acting as judge as well as party in the case, but rather that of an independent authority [see* ***Compilation****, para. 1476]. The Committee, also recalling that it has drawn attention to the importance of promoting collective bargaining, as set out in Article 4 of Convention No. 98, in the education sector [see* ***Compilation****, para. 1265], expresses the firm hope that in future, and in line with Uruguay's tradition of social dialogue and its recognized commitment to collective bargaining, it is precisely through dialogue and bipartite collective bargaining that issues* *relating to trade union leave taken by secondary education teachers will be addressed and reviewed, if deemed necessary, in a climate of confidence, respect and good faith.*

651. *Moreover, though recalling that while persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, the arrest of, and criminal charges brought against, trade unionists may only be based on legal requirements that in themselves do not infringe the principles of freedom of association [see* ***Compilation****, para. 133], the Committee requests the Government and the complainants to keep it informed of the status of the criminal complaint filed against the teacher and union leader Mr Slamovitz and other union leaders, and to provide information on the action taken by the ANEP, the Transparency and Public Ethics Board, and the Public Prosecutor's Office, to which the parliamentary commission referred the activities in question.*

Collective bargaining with the Association of Secondary Education Non-Teaching Staff (ATES)

652. *The Committee notes the complainants' allegation that in 2021 the DGES issued Decision No. 4141, which amended the terms of a collective agreement of 2007 between the ANEP and the Coordinating Committee of Uruguayan Teaching Unions (CSEU) regarding the use of trade union leave by the ATES by modifying the formula used to determine the number of free hours that were paid. The Committee notes the Government's indication in this regard that: (i) there were no administrative acts that properly regulated the use of union leave by the ATES and otherwise the decision merely approved the lists presented by the ATES with the maximum number of hours that could be justified for union leave; (ii) FENAPES requested the Court for Administrative Disputes (TCA) to revoke the decision and declare it null and void, and so a final ruling is still pending; and (iii) this situation is also being addressed in a tripartite collective bargaining body. Recalling that agreements should be binding on the parties [see* ***Compilation****, para. 1334], the Committee requests the Government to keep it informed of any decision issued by the TCA and of any developments in the above-mentioned tripartite negotiations.*

The Committee's recommendations

653. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to ensure a reasonable balance between the obligation of political neutrality of public teachers in the educational field established by the Constitution of Uruguay and the right of teacher organizations to express their opinions on economic and social policy issues that may affect its members and to be able to disseminate them in the workplace bearing in mind the need not to impair the education of the children, and to take any necessary actions in this regard. The Committee also requests the Government to keep it informed of the outcome of the invalidation proceedings brought in the Court for Administrative Disputes (TCA) relating to banners on the schools' facades, and also of the status of the other complaint filed by FENAPES with the INDDHH.

(b) The Committee requests the Government and the complainants to keep it informed of the status of the criminal complaint filed against the teacher and union leader Mr Slamovitz and other FENAPES leaders, and to provide information on the action taken by the ANEP, the Transparency and Public Ethics Board, and the Public Prosecutor's Office, to which the parliamentary commission referred the activities in question.

(c) While requesting the Government to keep it informed of any decision issued by the TCA and of any developments in the above-mentioned tripartite negotiations mentioned by the Government in relation to the ATES, the Committee expresses the firm hope that in future, in line with Uruguay's tradition of social dialogue and its recognized commitment to collective bargaining, it is precisely through dialogue and bipartite collective bargaining that issues relating to trade union leave taken by secondary education teachers will be addressed and reviewed, if deemed necessary, in a climate of confidence, respect and good faith.

Geneva, 8 June 2023

(Signed) Professor Evance Kalula
Chairperson

Points for decision:	paragraph 69	paragraph 356
	paragraph 97	paragraph 376
	paragraph 134	paragraph 392
	paragraph 159	paragraph 428
	paragraph 183	paragraph 437
	paragraph 217	paragraph 495
	paragraph 228	paragraph 533
	paragraph 277	paragraph 597
	paragraph 304	paragraph 653
	paragraph 345	