

► **Direct Requests and Observations of the ILO Committee of Experts (CEACR)¹ regarding the implementation by Türkiye of the Safety and Health in Mines Convention (C176)**

Information Note

The ILO's 110th Session of the International Labour Conference in 2022 resolved to raise the “safe and healthy working environment” to the status of a fundamental principle and right at work. Through amendments to the ILO's Declaration on Fundamental Principles and Rights at Work, safe and healthy working environment is now recognized across the world as a fundamental principle and right at work

Türkiye ratified the two core Conventions relating to the right to a safe and healthy working environment, Occupational Safety and Health Convention, 1981, (No. 155) in 2005 and Promotional Framework for Occupational Safety and Health Convention, 2006, (No. 187) in 2014.

Türkiye further ratified in 2015 the Safety and Health in Mines Convention, 1995 (No. 176).

ILO monitors, through a specific supervisory mechanism, the implementation by Member States of the ratified conventions. The Member states regularly report to the ILO, whereas workers' and employers' organizations communicate their observations to the ILO, and the ILO's relevant bodies monitor Member States' practices, and communicate their observations and requests to governments.²

The following are the major Direct Requests and Observations, during 2018 to 2022, by the ILO Committee of Experts (CEACR) regarding the OSH conventions (particularly relating to mines) ratified by Türkiye:

- **Continuous improvement of OSH in consultation with the most representative organizations of employers and workers and the national tripartite advisory body. National OSH policy and programme. (Articles 4, 7 and 8 of Convention No. 155, Article 3 of Convention No. 167)**

In its previous comment, the Committee requested the Government to provide information on the review of its National OSH Policy and Action Plan for the period 2014–18, on the formulation and adoption of a new OSH policy and on the consultations held with the most representative organizations of employers and workers in this respect.

The Committee requests the Government to provide detailed information on the establishment, mandate and composition of the National OSH Board under the Presidency and in particular, to indicate if it includes representatives of employers' and workers' organizations. The Committee requests the Government once again to provide information on the review of its National OSH Policy and Action Plan for the period 2014–18, including the evaluation of progress made with the performance indicators. The Committee also requests the Government to provide information on the formulation and adoption of a new OSH policy

¹ Committee of Experts on the Application of Conventions and Recommendations (CEACR)

² The full text of the 2022 Report of the ILO Committee of Experts regarding the ILO Conventions ratified by Türkiye is available at: https://www.ilo.org/ankara/news/WCMS_839340/lang--tr/index.htm. Observations expressed here also include the reports of previous years.

and programme for the subsequent period. It requests the Government once again to provide detailed information on the consultations held with the most representative organizations of employers and workers in this respect.

► **Prevention as the aim of the national policy on OSH. (Articles 2 and 3 of Convention No. 187 and Article 4 of Convention No. 155).**

In the framework of a national OSH policy and plan, as mentioned above, the Committee requests the Government to continue to provide information on the actions taken and the results achieved in order to promote, in consultation with the most representative organizations of employers and workers, basic principles such as assessing occupational risks or hazards; combating occupational risks or hazards at the source; and developing a national preventative safety and health culture that includes information, consultation and training. The Committee also requests the Government to continue to provide detailed information on the number of occupational accidents, including fatal accidents, in all sectors and workplaces. It also requests the Government to provide information regarding occupational diseases, including data disaggregated, by sector, age group, gender and type of occupational disease.

► **Right of workers to remove themselves from danger. (Articles 13 and 19(f) of Convention No. 155, Article 12(1) of Convention No. 167 and Article 13(1)(e) of Convention No. 176)**

In its previous comment, the Committee requested the Government to take the necessary measures to ensure that national legislation or regulations provide that workers shall have the right to remove themselves from danger when they have good reason to believe that there is an imminent and serious danger (or in the case of workers in mines, when circumstances arise which appear, with reasonable justification, to pose a serious danger) to their safety or health. The Committee notes that the Government reaffirms that section 13(3) of the OSH Act, adopted by Decree-Law No. 703 of 2018, provides that workers are able to leave their place of work without going through the process of authorization foreseen in section 13(1) of the OSH Act, if the danger is serious, imminent and unavoidable. The Committee recalls that Article 13 of Convention No. 155, Article 12(1) of Convention No. 167 and Article 13(1)(e) of Convention No. 176 do not refer to a danger that is “unavoidable” and include situations where the workers have a good reason or a reasonable justification to believe that there is an imminent and serious danger.

Therefore, the Committee urges the Government to adopt the necessary measures in order to give full effect to Articles 13 and 19(f) of Convention No. 155, Article 12(1) of Convention No. 167 and Article 13(1)(e) of Convention No. 176, by ensuring that national legislation or regulations provide that workers shall have the right to remove themselves from danger when they have a reasonable justification to believe that there is an imminent and serious danger (or in the case of workers in mines, when circumstances arise which appear, with reasonable justification, to pose a serious danger) to their safety or health.

► **Mechanisms for ensuring compliance with national laws and regulations relating to OSH, including systems of inspections. (Article 9 of Convention No. 155 and Article 16 of Convention No. 176)**

The Committee notes that in reply to its previous comment regarding the reasons for the decrease in the number of OSH inspections in 2019, the Government indicates that, during that year, in addition to the regular inspection duties, the Directorate for Guidance and Inspection was engaged in the preparation of

a study for the development of 32 sectoral labour inspection guides on OSH covering mining and construction as well as metal and chemical industries. The Government adds that in 2020, the tasks of the labour inspectors were adapted in order to respond to the COVID-19 pandemic, which had an impact on the number of OSH inspections carried out. The Committee also notes that, in reply to its previous request, the Government provides detailed information on the number of OSH inspections carried out, the suspension or partial suspension of work requested and administrative fines issued in relation to the construction and mining sectors for the period 2015 until May 2021. The Committee further notes that the Government report does not contain information regarding OSH inspections on the safe use of machinery and on the inspection activities with regard to employers' obligations concerning protection from ionizing radiation. Noting that the decrease in the number of OSH inspections in 2019 and 2020 was due to specific contingencies, the Committee trusts that the Government will take the necessary measures to ensure that the enforcement of laws and regulations concerning occupational safety and health and the working environment is secured by an adequate and appropriate system of inspection.

The Committee requests the Government to continue to provide information on the number of OSH inspections undertaken, disaggregated by controls carried out in the mining and construction sectors and with regard to the safe use of machinery, as well as statistical information on the inspection activities concerning employers' obligations to ensure protection from ionizing radiation. It also requests the Government to provide information on the number of violations detected, the number and nature of penalties imposed and the orders to suspend operations issued.

► **Effective enforcement of laws and regulations providing for sufficiently dissuasive penalties. Effective cooperation between the inspection services and the judicial system. (Articles 5(a), 7(3), 17 and 18 of the Convention, No. 81)**

The Committee takes due note of the statistics provided by the Government concerning the number of inspections conducted and the sanctions imposed in the period 2016–19. Nevertheless, the Committee notes an absence of information on the compliance strategy pursued to address the issue of effective enforcement of dissuasive sanctions, which had been discussed in 2015 by the Committee on the Application of Standards (CAS) of the International Labour Conference on the application of Convention No. 155. The Government indicates that, despite the increase in fines for non-compliance with the Occupational Health and Safety Law No. 6331, as amended by Act No. 6645 in 2015, the amount of administrative penalties applied per inspection during the period 2016–18 has decreased compared to 2014, and the Committee notes from the statistical information in the Government's supplementary report that there was a further decrease from 2018 to 2019. The Committee also observes with concern that the total number of fines imposed (3,938 in 2016; 3,485 in 2017; 2,637 in 2018; and 470 in 2019) remains low compared to the number of OSH inspections effectuated in the period 2016–19 (14,287 in 2016; 10,804 in 2017; 12,649 in 2018; and 3,088 in 2019), and the number of enterprises suspended as a result of OSH inspections has substantially declined (820 in 2016; 726 in 2017; 239 in 2018; and 49 in 2019). With regard to effective cooperation between the labour inspection services and the judiciary, the Committee notes that, according to information provided by the ILO Ankara Office, the training programmes provided to labour inspectors and auditors of the Social Security Institution (SSI) in 2018 and 2019 included a component on judicial processes, with the participation of judges from the Ministry of Justice. The Committee also notes the observations of the TISK regarding the participation in ITC–ILO training courses, in February 2020, of 40 labour inspectors and two judges from the Supreme Court and Turkish Academy of Justice.

The Committee requests the Government to provide further information on the impact of the increase in fines introduced in 2015, particularly on compliance with OSH legislation, and to continue to provide statistics on fines and sanctions imposed, as compared to the number of violations detected. It also requests the Government to provide information on the reason for the more recent decrease in the number of fines imposed as well as for the decrease in the number of penalties applied per inspection. The Committee further requests the Government to continue to take the necessary measures to ensure effective cooperation between the inspection services and the judiciary and to provide information in this regard.

► **Number of labour inspectors, frequency and thoroughness of labour inspections. (Articles 10 and 16 of the Convention, No. 81)**

The Committee requests the Government to provide its comments in this regard. Observing that the number of labour inspectors has remained stable since its previous comments, the Committee also requests the Government to indicate the measures taken to ensure that the number of labour inspectors is sufficient to secure the effective discharge of their duties, and to ensure that workplaces are inspected as often and as thoroughly as is necessary to ensure the application of the relevant provisions. In addition, the Committee requests the Government to provide further information on the role of auditors in the labour inspection system, including their functions and powers.

► **National policy on OSH in mining. (Article 3 of the Convention, No. 176)**

The Committee notes the detailed Regulations on Occupational Health and Safety in Mining (No. 28770 of 2013) and the Government's reference in its report to the tripartite National OSH Council. It further notes that the National Policy Document III (2014–18) includes, as one of its objectives, the reduction of the rate of occupational accidents in the mining sector. The accompanying Action Plan includes the action item "preventing accidents due to collapse, explosion, and other causes at mines" with the performance indicator of reducing the rate of occupational accidents in the mining sector by 3 per cent each year between 2014 and 2018.

The Committee requests the Government to provide information on the measures taken to periodically review the policy on safety and health in mines as well as the consultations held with employers' and workers' organizations in that respect, including within the context of the tripartite National OSH Council. It also requests the Government to provide information on the progress made with regard to the above-mentioned performance indicator, specifically as regards the rate of occupational accidents in mines.

► **Procedures for reporting and investigating fatal and serious accidents, dangerous occurrences and mine disasters, and compilation and publication of statistics. Employers' obligations to report dangerous occurrences. (Articles 5(2)(c) and (d) and 10(e) of the Convention No: 176)**

The Committee previously noted that section 14(2) of the OSH Act provides that the employer shall notify the national social security institution with respect to occupational accidents and diseases, but that this provision does not provide that employers shall report dangerous occurrences in mining and mine disasters that do not result in occupational injuries. The Committee notes the Government's indications, in response to the Committee's request, that employers are required to report incidents occurring in a mine even if they do not cause accidents.

The Committee requests the Government to provide further information on the procedure for the notification of dangerous occurrences in mining, and to indicate if this notification is required in national legislation or regulations. The Committee also requests the Government to continue to provide information on the measures taken to compile and publish statistics on accidents, occupational diseases and dangerous occurrences in the mining sector. It further requests the Government to provide information on the planned publication of such data, as provided for in Article 5(2)(d).

► **Design of mines. (Article 7(a) of the Convention No: 176)**

The Committee previously noted that section 5(1) of the Regulations on Occupational Health and Safety in Mining provides that the employer has the obligation to take the necessary measures to ensure the safety and health of workers, including by ensuring that workplaces are designed, constructed, equipped, commissioned, operated and maintained in such a way that workers can perform the work assigned to them without endangering their safety and health. The Committee notes that the Government has not provided the requested information on the application of this provision in practice.

The Committee therefore once again requests the Government to provide further information on the measures taken to ensure that mines are designed to provide conditions for their safe operation and a healthy working environment, including information on the application in practice of section 5(1) of the Regulations on Occupational Health and Safety in Mining (such as the number of inspections conducted and the shortcomings observed).

► **Obligation to stop operations and evacuate workers. (Article 7(i) of the Convention No: 176)**

The Committee previously noted, with reference to its comment above under Article 12(2) of Convention No. 167, that the Government referred to section 12 of the OSH Act. The Committee recalled that Article 7(i) of the Convention requires employers to ensure that when there is a serious danger to the safety and health of workers, operations are stopped and workers are evacuated to a safe location. It also emphasized, that, unlike section 12 of the OSH Act, this obligation is not limited to cases of imminent or unavoidable danger. The Committee notes the Government's indication, in response to the Committee's request, that section 12 of the OSH Act is based on the requirements of EU Directive 89/391/EEC. The Government adds that in accordance with constitutional law, international agreements are directly applicable in national law and take primacy.

The Committee requests the Government to provide further information on the measures taken or envisaged to give full effect to Article 7(i) of the Convention by ensuring that employers are required to stop operations and evacuate workers in all situations where there is a serious danger to the safety and health of workers. In this respect, noting the Government's indication concerning the direct applicability of international agreements, it requests the Government to provide further information on the direct application of Article 7(i) of the Convention in practice.

► **Two or more employers undertaking activities at the same mine. (Article 12 of the Convention No: 176)**

The Committee previously noted that pursuant to section 5(1)(4) of the Regulations on Occupational Health and Safety in Mining, where workers from several undertakings are present at the same site, each employer shall be responsible for all matters under their control but that the employer who is in charge of

the workplace shall coordinate the implementation of all the measures concerning the safety and health of the workers. That employer shall state, in their safety and health document, the aim of that coordination and the measures and procedures for implementing it. The coordination shall not affect the responsibility of the individual employers. It requested information on section 5(1)(4) in practice. The Committee notes the Government's indications, in response to its request, that where operating permits have been transferred to third parties, or where employers have subcontracted work, the responsibilities of each employer are controlled separately. It also notes the Government's indication that during the last five years during inspections in mines, no penalties were applied.

The Committee requests the Government to provide more detailed information on the implementation of section 5(1)(4) of the Regulations on Occupational Health and Safety in Mining as regards the responsibility for the coordination of measures by the employer that is primarily responsible for the safety of operations, including any violations detected in the course of inspections and subsequent penalties applied.

► **Right of workers' safety and health representatives. (Article 13(2)(c) and (f) of the Convention No: 176)**

The Committee notes the Government's reference to legislation providing for the rights of workers' safety and health representatives, and the employers' possibility to have recourse to external technical support for the establishment of risk assessments, where applicable upon request made by the workers' safety and health representative. The Committee also notes that the Government indicates, with respect to Article 13(2)(c), that there is nothing that prevents workers' safety and health representatives from having recourse to advisers and independent experts. The Committee notes that the Government does not provide information on the right of workers' representatives to receive notice of accidents and dangerous occurrences.

The Committee requests the Government to provide further information on the measures taken or envisaged to guarantee the right of workers' representatives to receive notice of accidents and dangerous occurrences, in accordance with Article 13(2)(f) of the Convention.

► **What is Committee of Experts on the Application of Conventions and Recommendations (CEACR or Committee of Experts)?**

Within the ILO supervisory system, the Committee of Experts on the Application of Conventions and Recommendations (CEACR or Committee of Experts) is an independent body responsible for conducting the technical examination of the compliance of member States with provisions of ratified Conventions (and Protocols). The CEACR was set up in 1926 and is presently composed of 20 legal experts from different geographical regions, representing different legal systems and cultures. The Committee of Experts undertakes an impartial and technical analysis of how international labour standards are applied in law and practice by member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope and content of the provisions of the Conventions.

When examining the application of international labour standards, the Committee of Experts makes two kinds of comments: observations and direct requests. Observations contain comments on fundamental questions raised by the application of a particular Convention by a State. These observations are published in the annual report of the Committee of Experts. Direct requests relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the governments concerned.

The Reports of the Committee of Experts since 1932 is accessible at <https://www.ilo.org/public/libdoc/ilo/P/09661/>

Committee's 2022 Report can be accessed at: https://www.ilo.org/ilc/ILCSessions/110/reports/reports-to-the-conference/WCMS_836653/lang--en/index.htm

This note brings together observations and direct requests of the Committee in 2018-2022 period regarding Türkiye's application of Conventions related to Occupational Safety and Health.

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