



Governing Body

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Report of the Director-General

Fifth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Portugal of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129) and the Occupational Safety and Health Convention, 1981 (No. 155)

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▶ I. Introduction

1. By a communication received on 5 October 2020, the Union of Labour Inspectors (SIT) made a representation to the International Labour Office, pursuant to article 24 of the Constitution of the International Labour Organization (ILO), alleging non-observance by the Government of Portugal of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129) and the Occupational Safety and Health Convention, 1981 (No. 155). The Conventions remain in force in that country.
2. The following provisions of the ILO Constitution relate to the representation:

Article 24

Grievances concerning the application of an agreement

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

3. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation, informed the Government of Portugal and brought the matter before the Officers of the Governing Body.
4. At its 340th Session (November 2020), the Governing Body decided that the representation was receivable and decided to set up a tripartite committee to examine it. The Committee is composed of Mr Luis Carlos Melero García (Government member, Spain), Mr Fernando Yllanes Martínez (Employer member, Mexico) and Ms Béatrice Lestic (Worker member, France).
5. The Government of Portugal submitted its observations concerning the representation in a communication received by the Office on 17 November 2021. The Committee was informed that the parties had shown willingness to enter into a voluntary conciliation procedure at the national level, although this procedure did not lead to an agreement.
6. The Committee met in person on 17 March 2022 and virtually on 13 April 2022 to examine the representation and adopt its report.

► II. Examination of the representation

A. The complainant's allegations

7. In its complaint, the SIT alleges that the Government of Portugal failed to comply with Conventions Nos 81, 129 and 155 through the adoption of Decree No. 2-B/2020 of 2 April and Decree No. 2-C/2020 of 17 April 2020, as well as through the measures taken to implement these decrees.
8. In the context of COVID-19, the Government of Portugal declared a state of emergency, adopting the aforementioned decrees, which provided, inter alia, that the inspectors and senior technical officers of the inspection services, indicated in article 3 of Decree-Law No. 276/2007 of 31 July, could be temporarily assigned to reinforce the team of the Working Conditions Authority (ACT) by order of the Prime Minister and the Minister of Labour, Solidarity and Social Security.
9. Consequently, Order No. 4698-D/2020 of 16 April 2020 of the Prime Minister and the Minister of Labour, Solidarity and Social Security, modified by Amendment No. 339-A/2020 of 18 April, established that the Inspector General of the ACT could assign up to 150 inspectors and senior technical officers to the ACT, in order to strengthen its inspection powers.
10. The SIT notes that, in order to deal with the emergency created by the pandemic, it had proposed that a certain number of trainee inspectors and candidates who had passed the public competitive examination should take up their duties in advance. The SIT reports that this proposal was accepted by the Minister of Labour, Solidarity and Social Security. As a result, 44 trainee inspectors, who had already completed the theoretical stage of their training and had moved on to the practical stage, were on an exceptional basis allowed to become senior labour inspectors, while 80 candidates, who had passed the public competitive examination, were on an exceptional basis allowed to work as trainee inspectors.
11. In addition to this measure, the SIT states that through Order No. 4756-B/2020 of 20 April 2020, the Inspector General of the ACT identified the need to assign to the ACT 150 inspectors and senior technical officers from various state inspectorates in order to temporarily strengthen the capacity of the labour inspectorate in the context of the impact of the COVID-19 pandemic on labour relations, particularly in relation to leave, termination of employment, and occupational safety and health.
12. The complainant organization alleges that the unions representing the inspectors, such as the SIT, were not consulted in the adoption of this measure. According to the SIT, the inspectors assigned to the ACT (from, for example, the education, agriculture, taxation and hunting inspectorates) were given only five days of remote training via videoconference to familiarize them with concepts relating to labour rights, occupational safety and health, and relevant professional activities. After the training, the officers were placed in the different decentralized services to carry out inspection activities with the support of labour inspectors.
13. The SIT believes that these assigned inspectors did not have the technical and legal knowledge to carry out inspections with the ACT and that their virtual training was insufficient. The SIT also states that the use of inspectors without specific knowledge or expertise in labour matters has weakened the work of the ACT.
14. The SIT alleges that this constitutes a violation of Article 7 of Convention No. 81 and Article 9 of Convention No. 129, concerning the recruitment and training of labour inspectors, as well

as Article 9 of Convention No. 155, which requires the enforcement of laws and regulations concerning safety and health at work by an appropriate and adequate inspection system.

B. The Government's response

15. In its response, the Government maintains that it did not fail to fulfil its obligations under Conventions Nos 81, 129 and 155.
16. According to the Government, due to the pandemic emergency declared by the World Health Organization, it was necessary to temporarily reinforce the ACT's intervention, especially in the preparation and dissemination of information to support the prevention of biological risks in the sectors of the economy that remained active, and there was an urgent need to verify and monitor compliance with the legal measures adopted in this context in order to prevent the contagion and spread of COVID-19.
17. As indicated in Order No. 4756-B/2020, the reinforcement was accomplished mainly through the assignment of inspectors and senior technicians who had already worked in the ACT, given their knowledge of the field in which they would be called upon to intervene. During the assignment process, information on their functions in their services of origin was also provided by the respective services. Regarding their profiles, about 41 per cent of them had a degree in law, followed by economics (16 per cent) and business management (13 per cent).
18. The Government also states that the inspection and control activities were led by ACT labour inspectors who teamed up with a temporary assigned inspector. According to the Government, the inspection response teams that were deployed were short-term and temporary in nature and these teams were always able to draw on the knowledge and skills of the labour inspectorate, supported by the knowledge and skills of other inspection services. In addition, the periods of service of these inspectors in the ACT were of reduced duration and their assignment started on 11 May 2020 and ended no later than 31 December 2020.
19. The Government argues that the training provided in the framework of the assignment was provided by the ACT on an "expedited" basis. The selection of training modules and trainers and the adaptation of the workload and content of the training given to the assigned inspectors, in terms of the response to the situation resulting from the pandemic, were consistent with the legally established training for labour inspection. In particular, the basic principles governing the action of the inspectorate in the field were conveyed to them, in accordance with the powers, activities and procedures provided for in the Statute of the Labour Inspectorate and the Procedural Regime applicable to labour and social security violations. In addition, the theoretical phase of the training was conducted online due to the health measures in effect under COVID-19, which was also the case for the trainee inspectors.
20. The Government considers that the training was sufficient for the assigned inspectors to carry out their duties, given the limitations in the context of the pandemic and the urgency of strengthening the ACT's capacity and powers. According to the Government, this training was intended to provide the assigned inspectors with a rapid but adequate preparation that would enable them to carry out field inspections, duly supervised by ACT labour inspectors and in safe conditions.

▶ III. The Committee's conclusions

21. The Committee's findings are based on its review of the allegations presented by the complainant organization and the response provided by the Government.
22. The Committee recalls Article 7 of Convention No. 81, which provides that:
 1. Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties.
 2. The means of ascertaining such qualifications shall be determined by the competent authority.
 3. Labour inspectors shall be adequately trained for the performance of their duties.
23. The Committee recalls the text of Article 9 of Convention No. 129, which provides that:
 1. Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, labour inspectors in agriculture shall be recruited with sole regard to their qualifications for the performance of their duties.
 2. The means of ascertaining such qualifications shall be determined by the competent authority.
 3. Labour inspectors in agriculture shall be adequately trained for the performance of their duties and measures shall be taken to give them appropriate further training in the course of their employment.
24. The Committee also recalls the text of Article 9 of Convention No. 155, which provides that:
 1. The enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection.
 2. The enforcement system shall provide for adequate penalties for violations of the laws and regulations.
25. The complainant organization alleges that Article 7 of Convention No. 81, Article 9 of Convention No. 129 and Article 9 of Convention No. 155 were not respected in the context of the events that are the subject of the representation, because 150 technical inspectors from various state inspection services were assigned to the ACT to strengthen the capacity of the labour inspectorate in the context of the impact of the COVID-19 pandemic, without having received adequate training.
26. In response, the Government maintains that no violation of Conventions Nos 81, 129 and 155 occurred, because the assignment of inspectors from other services to the ACT was of a temporary nature (from 11 May to 31 December 2020) and for specific purposes in the context of the COVID-19 pandemic, and that the training provided was adequate for the expected outcome.
27. With regard to Article 7(1) and (2) of Convention No. 81 and Article 9(1) and (2) of Convention No. 129 on the recruitment of labour inspectors, the Committee considers that, although a number of trainee inspectors and successful candidates from the public competitive examination assumed their duties in advance, the assignment of more inspectors from other services would seem to be justified as an emergency measure in the context of the COVID-19 pandemic.
28. The Committee notes that, according to the Government, the requisitioned inspectors were already part of the inspection system and were performing inspection and audit functions, and

that priority was given to inspectors and senior technicians who had already worked in the ACT, taking into account their functions in their services of origin and their knowledge of the field in which they were called upon to work. Nevertheless, the Committee notes that the assignment of inspectors from other services was of a short duration, from 11 May 2020 to 31 December 2020 at the latest. ***In these circumstances, the Committee considers that there has been no violation of Article 7(1) and (2) of Convention No. 81 or of Article 9(1) and (2) of Convention No. 129.***

29. With regard to Article 7(3) of Convention No. 81 and Article 9(3) of Convention No. 129, concerning the training of labour inspectors, as confirmed by the Government, the assigned inspectors received training in selected modules that contained essential principles for carrying out inspection activities, adapted to the needs of the pandemic and the related emergency. Nevertheless, the Committee notes that the inspection and monitoring activities were led by ACT labour inspectors who teamed up with the assigned inspectors. ***In these circumstances, the Committee considers that there was no violation of Article 7(3) of Convention No. 81 or of Article 9(3) of Convention No. 129.***
30. With regard to Article 9 of Convention No. 155, the Committee notes that no specific information was provided by the complainant organization indicating that the inspection system did not ensure the enforcement of laws and regulations concerning safety, health and the working environment due to this temporary assignment.
31. Nevertheless, the Committee notes that, according to the Government's indication, the assigned inspectors were mainly involved in the preparation and dissemination of information to support biohazard prevention in those sectors of the economy that remained active. In addition, as mentioned above, they did not perform their duties alone but were always accompanied by ACT inspectors. ***In the absence of any specific allegation in this regard and taking into account its analysis of Article 7 of Convention No. 81 and Article 9 of Convention No. 129 as set out above, the Committee considers that there was no violation of Article 9 of Convention No. 155 in the context of the events in question.***
32. Finally, the Committee notes that the representation was submitted in the context of an acute health crisis caused by the COVID-19 pandemic. It also notes that the parties showed an initial willingness to engage in voluntary conciliation at the national level, even if this did not enable them to reach an agreement. In this regard, and in view of the exceptional health context, the Committee underlines the importance of a comprehensive social dialogue with all representative workers' and employers' organizations in the sectors concerned when taking measures to find effective and sustainable solutions to the crisis (such as the one caused by the COVID-19 pandemic), including measures concerning the enforcement of laws and regulations concerning occupational safety and health and the working environment through an adequate and appropriate system of inspection, in accordance with the provisions of Article 9(1) of Convention No. 155.

► IV. The Committee's recommendations

- 33. In the light of the conclusions contained in paragraphs 28, 29 and 31 above on the issues raised in the representation, the Committee recommends that the Governing Body:**
- (a) approve the report;**
 - (b) publish the report and declare closed the procedure resulting from the representation.**

Geneva, 14 April 2022

(Signed) Government member: Luis Carlos Melero García
Employer member: Fernando Yllanes Martínez
Worker member: Béatrice Lestic